Hon. MF McARDLE (Caloundra—LNP) (Minister for Energy and Water Supply) (7.57 pm): I move—
That the National Energy Retail Law (Queensland) Bill, as amended, be now read a third time.

Question put—That the National Energy Retail Law (Queensland) Bill, as amended, be now read a third time.

Motion agreed to.

Bill read a third time.

Long Title (Cognate Debate)

Hon. MF McARDLE (Caloundra—LNP) (Minister for Energy and Water Supply) (7.58 pm): I move—
That the long title of the Electricity Competition and Protection Legislation Amendment Bill be agreed to.

Question put—That the long title of the Electricity Competition and Protection Legislation Amendment Bill be agreed to.

Motion agreed to.

Hon. MF McARDLE (Caloundra—LNP) (Minister for Energy and Water Supply) (7.58 pm): I move—
That the long title of the National Energy Retail Law (Queensland) Bill be agreed to.

Question put—That the long title of the National Energy Retail Law (Queensland) Bill be agreed to.

Motion agreed to.

BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS AMENDMENT BILL

Resumed from 21 May (see p. 1683).

Second Reading

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (7.58 pm): I move—
That the bill be now read a second time.

In opening, I thank the Transport, Housing and Local Government Committee for its consideration of the Building and Construction Industry Payments Amendment Bill 2014. In particular I thank the committee and the chairman, the member for Warrego, for their deliberation and report on the bill which was tabled on 1 September 2014. I am now pleased to table the government’s response to the committee’s report.


I would also like to thank those who made submissions regarding the bill to the committee. I appreciate the time that they have invested in conveying their feedback. I would also like to particularly thank Mr Andrew Wallace for the very hard work he has undertaken to review this act.

The construction industry is one of the main pillars of the Queensland economy. It is therefore vital that we have a system of payment which is fair for all. The Building and Construction Industry Payments Act, or BCIPA, was created to provide an alternative to the court system and is intended to be a quick and easy way to resolve payment disputes. Anything that allows payment disputes to be resolved quickly is worth supporting and, for the most part, BCIPA has operated reasonably well. The amendments being debated here tonight are intended to rectify a few issues which have been undermining confidence in the system.

One of the key areas of reform deals with the way adjudicators are appointed to decide cases. Under the new legislation an adjudication registry will be set up within the Queensland Building and Construction Commission from which adjudicators will be appointed by an impartial registrar. This will address the perception of bias that cannot help but exist in a situation such as we have at present,
where adjudicators are appointed by private entities, known as authorised nominated authorities or ANAs, who could be seen to have a commercial interest in the outcome. Consultation conducted as part of Mr Wallace’s review of the act delivered up example after example of this perceived bias. A sample of some of the submissions received by Mr Wallace include a statement from a lawyer that—

The current system effectively promotes ‘ANA shopping’ and ‘adjudicator shopping’ as the claimant has the right to elect which ANA to choose and therefore the claimant is likely to choose an ANA whose adjudicators are perceived to be more favourable to claimants.

A quantity surveyor submitted that—

The current system of profit motivated ANAs appointing adjudicators detracts from the operation of the act. It leads to claims, real or imagined, of bias, places undue pressure on adjudicators and does nothing to facilitate the proper operation of the Act.

An adjudicator stated that—

The present ANA system is open to and is presently being performed with undisclosed conflicts of interest. One of the main problems is with the ANAs maintaining an unhealthy relationship with what they refer to as preparers. These preparers are recommended to claimants by the ANA with the expectation that the preparer will direct the application to the ANA. There is an unhealthy chain of involvement which must inevitably one day end up with a Court action once someone is sufficiently aggrieved and has sufficient liquidity to run the case. The reputation of the BCIPA process will be shattered if this is allowed to continue.

A committee of the Queensland Law Society stated that—

Any process which allows one party to unilaterally appoint a decision maker (or in this case, an ANA) is open to abuse and may lead to the apprehension of bias and prejudice.

In my consultation I heard stories detailing what can only be described as a completely inappropriate cycle of inter-dependence between ANAs, adjudicators and claims preparers, many of whom are also adjudicators. Let us consider a situation where claim preparers, who are also adjudicators for a particular ANA, would allegedly recommend that the claimant use that ANA in exchange for the ANA providing said adjudicator with work on another claim. Other stories involved claimants approaching ANAs for advice and ANAs recommending claimants use a particular claims preparer, who just so happens to also be one of the adjudicators on the ANA’s panel, on the proviso that the claims preparer uses them as an ANA. When it is open to this kind of mutual back scratching, the current system is totally untenable. Justice must not only be done, but also be seen to be done. Under these changes, adjudicators will now be appointed by the independent and impartial Queensland Building and Construction Commission based on their skills, knowledge, experience and area of expertise. Adjudicators would also be subject to a more comprehensive professional development regime, ensuring that they are better trained and more accountable.

The second area of reform is needed to make sure the time frames relating to responding to claims are fair. It stands to reason that complex claims—that is, those valued at more than $750,000—should be treated differently to smaller claims. However, at the moment, claims are subject to the same time frames whether the dispute is over $500 or $5 million. The changes would also help put an end to what are commonly known as ambush claims, which are cases where one party might take a whole year methodically putting together a claim to which the respondent has less than a fortnight to reply. Often those sorts of ambush claims would be served a few days out from Christmas or at other periods when businesses normally shut down, making the task of formulating a meaningful response even harder. That kind of creative use of the existing time frames in the act has resulted in all sorts of bizarre consequences. Believe it or not, some law firms have had to put on what they call a night crew, specifically to work on responses to those kinds of ambush claims.

Under the proposed amendments, the time frame in which a payment claim can be made has been reduced from 12 months to six months from the time work was last carried out or goods and services were supplied. Given that the intent of the act is to help people get paid quickly, this is a common-sense change. Time frames for respondents to provide a payment schedule for claims of less than $750,000, which represent 90 per cent of all claims, will remain unchanged at 10 days. For claims involving more than $750,000, respondents will have an extra five days to provide a payment schedule. In cases that proceed to adjudication, the time for a respondent to provide an adjudication response will increase from five business days to 10 business days and up to 15 business days for complex claims, with discretion for the adjudicator to grant extra time under certain circumstances.

I now turn to the committee’s recommendations in relation to the bill. The first recommendation is that the bill be passed, and I thank the committee for its endorsement of the bill.
The second recommendation seeks to develop and include high-level guiding principles regarding the appointment process of adjudicators in the bill, with which agency staff must comply. While the government agrees that criteria and principles need to be established to rank and appoint adjudicators, this could be best accomplished via a policy that is approved by the QBCC Board and published on the commission’s website. It is also important to note that the appointment of adjudicators by the registrar will be under the jurisdiction of the Crime and Corruption Commission and the Ombudsman. Therefore, while the proposed amendment to the bill is not supported, the spirit of the recommendation will be achieved by other means.

The third recommendation is to implement an alternative model for the appointment of adjudicators to matters where the Queensland government is a party. The government is of the view that the appointment of adjudicators is best undertaken by the registrar in all instances. Furthermore, the registrar will be selecting adjudicators based on a QBCC Board approved policy and all activities undertaken by the registrar will be under the jurisdiction of the CCC and the Ombudsman. Contrast those heightened levels of accountability with the current arrangements where adjudicators are appointed by private companies that are not accountable to anyone.

In addition to these measures, the QBCC will publish the appointment of adjudicators and adjudication decisions on its website on a daily basis. These measures will ensure there is probity in the appointment process and for this reason the government considers the proposed amendment unnecessary at this time.

Recommendation 4 suggests that the bill should be amended to implement recommendation 19 of the Wallace report which proposes adjudicators should fall within the jurisdiction of the CCC. Crown law advice on this recommendation was that because adjudicators are not considered to be public officials they cannot be made subject to the CCC.

Recommendation 5 suggests I outline the advice received from the Queensland Competition Authority addressing the perception that the amendments are anticompetitive. In response, I note the QCA’s consideration of the preliminary impact assessment found that the proposed amendments were not likely to result in adverse impacts and therefore a regulatory impact statement was not required. I am confident that these amendments will lead to more competition in the market for adjudication services and create an environment which could lead to a reduction in adjudication costs for all parties involved.

In recommendation 6 the committee recommends that the minister include a list of who is responsible for the training and accreditation of adjudicators in the bill. This is a function currently undertaken by the authorised nominating authorities, ANAs. The government agrees in principle with this recommendation, but believes an amendment to the regulation will address the requirements for training and accreditation of adjudicators.

In recommendation 7 the committee recommends that the bill be amended to include indemnity protection for ANAs to cover them for any functions undertaken prior to the amendment of the legislation. This recommendation is unnecessary as ANAs will already have indemnity protection for functions performed prior to the amendments under the Acts Interpretation Act 1954.

Recommendation 8 recommends that the bill be amended to ensure adjudicators engage independent agents. The government agrees in principle with this recommendation, but believes this objective can be achieved by making the engagement of an independent agent a condition of registration.

Recommendations 9 and 10 look at the definition of ‘complex claims’. Through the committee process concerns were raised that the definition was too complex and could lead to some claims being classed as complex when they were for a relatively minor amount. The government accepts that the definition of ‘complex claims’ be amended and will do so.

In recommendation 11 the committee recommends that recommendations 10 to 15 of the Wallace report be implemented. These recommendations relate to the inclusion of retention moneys and securities in payment claims, the establishment of a construction retention bond scheme, the introduction of penalties for contractors and the empowerment of adjudicators to direct the release of securities. The government remains committed to boosting the security of payment for subcontractors and has begun investigating additional options to supplement BCIPA. Over the coming months we will be engaging with industry to develop a suite of initiatives that strike the right balance between the needs of all parties in the contracting chain.
In relation to recommendations 10, 12, 13, 14 and 15, the department will undertake further investigation and will consider adopting these recommendations in future amendments. With regard to recommendation 11 of the Wallace report, the department is actively monitoring the implementation of a statutory retention trust fund scheme in New South Wales. I will consider the best approach for Queensland following a review of that scheme.

Recommendation 12 relates to investigating ways to protect claimants against the nonpayment of outstanding amounts, once the contract has been terminated. The government notes this recommendation with interest and will explore options in more detail.

In recommendation 13 the committee recommends that the bill be amended to provide for the regulation of all adjudication fees, application fees and certification fees. The government agrees that the application and certification fees should be regulated and will support the regulation of adjudication fees for small claims up to $25,000. Adjudication fees for claims of greater than $25,000 will be at an hourly rate which will be agreed with the adjudicator. Last year approximately 50 per cent of all claims were under $25,000.

In recommendation 14 the committee recommends that the bill be amended to replace ‘must’ with ‘may’ in proposed section 100(4). This amendment provides the Supreme Court with the ability to enforce part of a payment. The government agrees with this recommendation and the bill will be amended accordingly.

In recommendation 15 the committee recommends the bill state clearly how claims, schedules and adjudication applications, relating to claims which have already commenced, will be treated under the amended act. The government agrees with this recommendation and the bill will be amended to include a transitional arrangement to address this.

Recommendations 16, 17 and 18 from the committee’s report all seek amendments to the bill to address a range of needs. Among other things, these recommendations clarify section 20A and resolve some inconsistencies which were identified in submissions to the bill inquiry. The government agrees with all of these recommended suggestions and proposes that the bill be amended in that regard. These amendments will assist in reducing costs to the industry through introducing a more competitive market. This could see a reduction in adjudication costs as well as a reduction in red tape by establishing a one-stop shop for claimants.

For BCIPA to work to its fullest potential, people at all levels of the contract chain need to have faith in the system. The amendments put forward today will create a payment dispute resolution model that is simpler and easier to use, ensures disputes can be solved in time frames that are fair for all parties and, importantly, is free from the perceived conflicts of interest that have beset the current system. I commend this bill to the House.

Mrs D’ATH (Redcliffe—ALP) (8.16 pm): I rise to address the Building and Construction Industry Payments Amendment Bill 2014. Let me state from the outset that there are elements of this bill which the opposition does not philosophically oppose and we would be willing to consider them if they were presented to the House in coherent, credible legislation. Unfortunately, this bill has not been presented to this House in such a fashion. Unfortunately, this is a dog’s breakfast of a bill that should not have been introduced in its current state.

The Labor Party cannot and will not support such slipshod legislative processes and policy development. The fact that this bill was introduced raises serious questions about the minister’s competence and about the quality of cabinet consideration under the Newman government. Because of the many severe deficiencies contained within this bill, the opposition will be voting against it.

The Building and Construction Industry Payments Act 2004 is designed to provide security of payment for contractors in the construction industry. The issue was identified as serious by a number of stakeholders and at the Cole royal commission in 2002. As the original explanatory notes explain—

Security of payment has been an issue in the building and construction industry over many decades. Recently the Royal Commission into the Building and Construction Industry flagged security of payment as a significant industry matter requiring Federal legislation where specific State legislation appears to be deficient. It also found that traditional remedies under Commonwealth Corporations Law, common law and contract law were not sufficient to address the issue.

The building and construction industry is particularly vulnerable to security of payment issues because it typically operates under a hierarchical chain of contracts with inherent imbalances in bargaining power. The failure of any one party in the contractual chain to honour its obligations can cause a domino effect on other parties resulting in restricted cash flow, and in some cases, insolvency.
The act currently allows for the progress payments to be made to a contractor even where they are not explicitly guaranteed in the contract. It also sets up a system for the timely adjudication of claims through the appointment of independent adjudicators through private authorised nominating authorities, ANAs, which operate on a fee-for-service basis.

After 10 years of operation, it makes sense to review the operation of the act and to consider whether any amendments are necessary. Unfortunately, the review and amendments proposed by the minister fall significantly short of best practice. We do have some sympathy for the minister in that the Building and Construction Industry Payments Act was developed to deal with conflicts between developers and subcontractors and changes to it are likely to favour one group over the other. It is not easy to walk that line, but that is why it is imperative that a proper consultation process be followed before the bill is introduced to parliament.

Although the minister charged Mr Andrew Wallace to conduct a review, further consultation should have occurred with all sectors of the industry before the bill was introduced. A complete exposure draft should have been released to industry for comment and feedback. If the minister had followed such a process, it is likely that the deficiencies of this bill could have been addressed. Instead, the Transport, Housing and Local Government Committee had to conduct extensive inquiries and recommend wholesale changes to the bill. While the opposition does not agree with every element of the committee’s report, we cannot fault its members and its secretariat for the serious way they have attempted to rectify errors in this flawed legislation.

The opposition is also aware of the fact that the minister has circulated extensive amendments to this bill. While some of these amendments address serious issues within the bill, they do not address all of the substantive concerns raised during the committee process. We commend the minister for correcting a small number of his own errors in these amendments. However, it is disappointing he has not sought to correct more by withdrawing this bill and starting again.

The scale of changes needed for this bill to pass muster are so great that it would be an abuse of this process to attempt to rectify them in the consideration in detail process. Despite the fact the amendments before the House only concern a small number of issues identified during the committee process, there are some 25 amendments. It is difficult for anyone in this House to properly assess these amendments in the short time available between their circulation and their debate. That task is made even more difficult when the explanatory notes fail to properly explain the amendments. For example, the explanation for amendment No. 6 merely states—

Amendment 6 reinstates current section 20(4) of the Act so that it is no longer omitted.

The relevant section of the bill’s explanatory notes merely states—

Section 20(4) is omitted.

The paucity of information provided in these explanatory notes is simply inexcusable. The opposition has noticed a significant decline in the quality of explanatory notes during this term of government. We are not sure if this is a deliberate attempt from the government to hide from scrutiny, an overworked Public Service which is feeling the brunt of massive reductions in staff or simply the government’s incompetence. Whatever the reason, it should be arrested immediately.

One of the key recommendations of the Wallace inquiry was the removal of responsibility for adjudicator appointments from existing authorised nominating authorities to the government itself. Labor does not have a philosophical objection to moving the responsibility of these appointments to the government. However, in a situation in which ANAs have held this responsibility for 10 years, we feel it is necessary for such a drastic change to undergo due diligence. The government must be able to show that there are problems with the current process. We do not believe this first condition has been satisfied. In his submission to the committee inquiry, Mr Jonathan Sive made the following observation—

A hard look at the facts and circumstances relating to the concern of bias and to all other administration issues identified in the Wallace Report in the various submissions cited in the report, when considered in their entirety and specifically in relation to the proceeding giving rise to an adjudicator’s decision, does not reveal a pattern of conduct on the part of the Authorised Nominating Parties and Adjudicators that leads to a finding of bias, whether actual or implied ...

The evidence supplied on this issue is nothing more than anecdotal and it is a poor body of evidence on which to base a substantial change. It should be noted that some members of the committee shared that sentiment. During committee hearings, the member for Algester stated the following—

One of the reasons for the abolition of ANAs was this perception of bias. Mr Wallace has just given us chapter and verse on why he has made his recommendation and, as he has pointed out, none of those submissions to him were ever tested so they are literally allegations at this point. We have heard from a respected gentleman, Mr Sive, some statistical evidence that shows
that the current situation is working, that there is no perceived bias in the system. I might say that the department has misled the committee because in one of the earlier hearings they used the argument for bias as a reason for this supposed, and you do not use the word 'abolition' of ANAs, but if you do not give them a role then they are abolished. That is really the guts of it. Mr Rivers, I am a little bit confused about this whole issue. We have someone telling us that statistically the system is working.

Clearly the member for Algester at that time shared Labor's concerns that the sole basis of this significant change is just unsubstantiated allegations. If we were to accept the need to move to a system of the government appointing adjudicators, we should at least be able to expect the legislation to set out a clear and transparent process that would be followed. Unfortunately, that is not clear within this bill. I will quote Mr Sive again—

However, attempting to re-allocate the administration of the process completely to the BCIP Agency without a rulemaking process that is transparent and fully set out with notice to the public for comment and review does not diminish the amplitude of concern comprehensively outlined in the Wallace Report any more than rearranging the deck chairs or swabbing the deck in a frenzied panic on the Titanic prevents its sinking.

I note that the committee recommended that there could be serious perceptions of bias for the government to appoint adjudicators for which the government was a relevant party. I can understand the committee's concerns on that matter, given the lack of transparency on how the registrar would appoint adjudicators under this bill. The committee recommended a separate process be used for matters in which the government is a party. Labor thinks it is untenable to run two different systems for the appointment of adjudicators, but we cannot fault the committee's intention on this point. If the minister had done a better job in drafting this legislation and set out a clear, transparent and rigorous process for the appointment of adjudicators by the registrar, this could have addressed concerns of partiality. Unfortunately, he has not done so.

I note that under the amendments circulated by the minister the Queensland Building and Construction Board will publish a paper which sets out the selection criteria that will need to be followed by the registrar when appointing adjudicators. While this is an improvement on the current deficiencies of the bill, we do not believe it is entirely satisfactory. First of all, we are being asked to accept in good faith that this board paper will be comprehensive and transparent. Given the significant problems with this bill, I am not sure that the opposition or the construction industry can have confidence that the board paper will be comprehensive. Further, we believe it would be a better practice to set out the principles under which the registrar must appoint adjudicators in the legislation.

One of the major concerns raised in submissions to the committee hearings was how it will affect the future of ANAs. Several ANAs made submissions to the inquiry suggesting they will essentially cease to exist under the changes to the bill. The Australian Solutions Centre stated the following—

ANAs were invited to attend a meeting with Michael Chesterman (Adjudication Registrar) and Steve Griffin (QBCC Commissioner) 8th April 2014. At that meeting the ANAs were told, amongst other things:

'The reforms will be outlined in this discussion and the official announcement will be made tomorrow;

There are 2 issues that will be discussed today and the first is that the appointment process of adjudicators will become within the QBCC from 1st September 2014, therefore there will be no ANAs in Queensland after 1st September 2014;

Every adjudicator will still be registered on 1st September;

The adjudicator will have the opportunity to be directly served with documents or appoint a commercial service agent to do what the ANAs will no longer be doing for them.'

This is in complete contradiction to the first reading of the Bill (extract as follows):

'The bill changes the role of ANAs, which will no longer appoint adjudicators. This removes the perception of conflicts of interest in the appointment process raised in response to the discussion paper. ANAs will continue to offer their services as a document service agent.'

While we accept the statements by departmental representatives during the committee inquiries that ANAs will be able to continue to fulfil many of their roles, there can be no doubt that there has been a significant failure of communications between the government and ANAs. For so many ANAs to be concerned about their future and for one to claim that they were told they would cease to exist is evidence that this minister has failed in his duties. If the minister had issued an exposure draft of this legislation and properly consulted ANAs, the concerns that have been raised could have been addressed. I note that Callum Campbell of the Australian Mediation Association stated in his submission to the committee—

I recommend the Bill be amended so that ANAs continue all their statutory functions other than the appointment of adjudicators. To keep costs down, ANAs should compete through the provision of information and quality of service to receive adjudication applications. The only difference will be that ANAs supply the Registrar with their nominations for appointment.
This seems to be a reasonable proposition, and it is clear that due to the minister’s poor consultation process it was never properly considered.

I will quickly address the issue of complex claims as the minister has circulated amendments which address the major issue. Several stakeholders raised issues with the definition of ‘complex claim’ in the bill. The bill acts on a recommendation of the Wallace inquiry that a separate claims resolution process be used for complex claims. The bill defines a complex claim as one that is for an amount of over $750,000, involves a latent condition or a time related cost. Several submitters were concerned that too many claims would be considered complex under this legislation. The opposition understands that this definition will be amended, but it is yet more evidence that this bill was not properly considered before it was introduced to this parliament. It should be an embarrassment to this minister that he has to correct such a fundamental legislative error through amendments. Once again, if he had released an exposure draft, this issue would never have had to be raised in this House.

Several stakeholders have raised concerns about the amendment time frames for the adjudication process under this bill. Able Adjudications, an ANA, stated the following—

Currently, where there is a s18 payment schedule, the maximum timeframe for completion of an adjudication decision is 35 business days (7 weeks) from the date the payment claim is received.

Under the Amendment Bill, where there is a s18 payment schedule, the maximum timeframe for completion of a standard adjudication decision is 40 business days (8 weeks) and appears to be 105 business days (21 weeks) for a complex adjudication decision.

It is suggested that the additional 70 business days (16 weeks) for the complex adjudications is disappointing and unnecessary.

The government’s response to these concerns was severely lacking. It erroneously claimed that the extended time frames only related to complex claims. This is demonstrably untrue. The report states—

The Committee notes the Department’s response regarding the proposed new timeframes for complex claims but understands from the Bill that the extensions relate not only to the new, complex claims category but, in the case of adjudication responses, to the standard claims category.

The Committee notes that the purpose of BCIPA is to provide a “quick and easy cost-effective solution to resolving payment disputes” and has some concerns that the extension of timeframes generally provided for in this Bill are counter to these foundational objectives of the Act.

Labor shares the concerns raised by the committee and we do not think that the government has been able to justify its changes to time frames in this bill.

There are a number of other provisions of this bill that the opposition could potentially support. The changes in the definition of business days to exclude days around Christmas make sense as a method to avoid nuisance claims. We also do not have a problem with the reduction in the time allowed to lodge a payment claim.

I want to finish on an issue which is relatively sensitive, and that is the suitability of Andrew Wallace to conduct the review into the Building and Construction Industry Payments Act 2004. Before I do, I want to make it clear that I am not questioning Mr Wallace’s experience or the rigour of his report. I do, however, believe it is necessary for the minister to satisfy the public that the appointment process was aboveboard. In her submission to the committee, Ms Helen Durham stated—

I note at the outset that I harbour significant reservations about the probity and quality of the Wallace Inquiry’s recommendations as government inquiries are usually and quite appropriately headed by one or more eminent, independent persons, such as a senior judicial officer, retired senior judicial officer or senior barrister, and not by junior barristers, and especially not by junior barristers who have an economic or other stake in the outcome of the inquiry.

In this regard, I specifically note that Andrew Wallace, whose recommendations form the basis of the changes to be effected by the Bill, was a junior barrister and adjudicator immediately prior to his appointment to review and report on submission made in response to the Minister’s “Discussion Paper”. If Mr Wallace determines adjudication applications that are referred to him by the registrar, under the new powers that Mr Wallace recommended be reposed in the registrar, which were in turn the result of an appointment that the registrar undoubtedly had a hand in, Mr Wallace stands to benefit financially from the reforms that he has recommended and can therefore hardly be considered independent.

It should also be noted that in 2005 Mr Wallace was a candidate for LNP preselection for the federal seat of Fisher. In circumstances where an active member of the LNP is appointed to conduct a government review, it is incumbent on the relevant minister to assure the public that the appointment is aboveboard. The minister has so far not explained his selection of Mr Wallace and I would invite him to do so in his reply. Specifically, he should set out for the benefit of the House what
process he followed to appoint Mr Wallace and how much Mr Wallace was paid to conduct this review. While he is at it, he may also want to answer the same questions in relation to the appointment of Mr Wallace to conduct the review of the Building Act 1975 and building certification in Queensland.

It is a matter of concern for the opposition that we are unable to support this bill. This should not be an ideological bill and I can easily envisage amendments to the act which could be supported by all parties in this chamber. Unfortunately, this bill falls significantly short of the quality that Queensland Labor expects from legislation. As I stated earlier in my speech, it should never have been introduced to this House in its current state. An exposure draft should have been released to relevant stakeholders so that the fundamental errors were addressed before reaching this chamber. The fact that this bill has been introduced in such poor quality is an indictment on the minister. The fact that the bill has limited industry support raises serious questions about the competence of the Minister for Housing and Public Works.

The opposition will not be supporting the legislation. We urge the minister to go back to the drawing board and start again.

Mr HOBBS (Warrego—LNP) (8.35 pm): I am pleased tonight to talk to the Building and Construction Industry Payments Amendment Bill. The member for Redcliffe talked about the fact that the security of payments has been a problem for many years. They certainly have. That is why the bill is before the House. This bill will make some dramatic changes to improve that process. I think we need to understand that.

The committee process is quite robust. In fact, I believe that the member for Redcliffe was bordering on verballing some of the submitters when she quoted them. While the quotes may have been taken from Hansard, the reality is that the committee system is robust. We challenge the evidence. We really try to get to the bottom of the argument and that cannot be done by asking innocuous questions. We have to be able to challenge people. Sometimes we have to frame questions in order to get the answers from all sorts of people. At the end of the day we need to get a good conclusion. That is why sometimes we have to go fairly wide to get to a good conclusion.

I am disappointed to hear the opposition being critical of Andrew Wallace. I thought he did a very good job. He is a very qualified person. He has been there and done that. He was a barrister and an adjudicator; he has been in the industry and he has been a builder. He has been right through the ranks and I think that is perfect for someone to give an opinion. His report is very detailed. He references all the way through, so we can go back and check the source. At the end of the day it is the government and the minister who determine what happens and the direction the government takes.

The committee’s role was to examine this in detail and we did that. We put a lot of time and effort into it. Quite frankly, we were not sure where we were going with it for a while until we really delved into it and heard various sides of the argument, and that is the way it should be. People very strongly and robustly put their argument about what they wanted. We came to a conclusion in the end. The first and most important recommendation was that the bill be approved. We then went further into it and said that, in order for this to work properly, we recommend the development and inclusion in the bill of high-level guiding principles to guide the adjudicator appointment process. The government agreed that it was necessary to establish criteria and a set of principles for the ranking and appointment of adjudicators. The recommendation was not necessarily in the words we suggested, but the appointment principles are going to be published by way of a Queensland Building and Construction Board approved policy which will be given effect through new policy-making provisions in the amending bill under the watch of the investigative powers of both the Crime and Corruption Commission and the Ombudsman. The work that we did has borne fruit insofar as the recommendations we made might not have been exactly followed, but we are very satisfied with the answer we got.

The government has listened, and they have put together a system that I believe is far better than what we first looked at. I will go through a few others as well. We recommended that—

... an alternative model for the appointment of adjudicators to matters where the Queensland government is a party be developed and included in the bill.
We thought this was important because the government of the day has to have credibility. You have to ensure that in no way can people come back and say, ‘It is the government’s building site. They are the ones who appoint the adjudicators, and they are the ones who are going to come out of this smelling like roses.’ As the government stated in its response—

... all activities undertaken by the registrar will be under the jurisdiction and investigative powers of the Crime and Corruption Commission and the Ombudsman, which means that all decisions are under scrutiny at all times.

There is a watchdog over how that process works, and we think it will work.

In addition to these measures, the daily publication of adjudication decisions on the Queensland Building and Construction Commission website will continue to occur, and the appointment of adjudicators will be published daily on the QBCC website.

So there will be an update, and it is fairly upfront. We wanted to ensure that adjudicators fall within the jurisdiction of the Crime and Corruption Commission, and the government agreed that there should be monitoring of the activities of adjudicators. As the minister said earlier on, they are not considered to be public officials, nor do they hold an appointment in a unit of public administration; therefore, adjudicators are not subject to the jurisdiction of the CCC.

However, it should be noted that the bill proposes an increased level of monitoring of adjudicators by the QBCC.

That in itself is another check and balance that will be in the system.

We also looked at addressing the perception that the amendments are anticompetitive, and the minister addressed that tonight. The responsibility for the training and accreditation of adjudicators is so important as well. It is currently a statutory function undertaken by only those ANAs prescribed under the Building and Construction Industry Payments regulation. The government agreed in principle to this, and this is where the opposition is not really following this. There have been great improvements made in this legislation compared to what we had before. As stated in the government’s response to recommendation 6—

The government agrees in principle with the recommendation, but advises that a proposed amendment to the regulation will make provision for training and accreditation providers for the adjudication qualification course, which will be offered from early 2015.

There are changes that will be coming up. In recommendation 7 the committee stated—

... that the Bill be amended to include indemnity protection for Authorised Nominating Authorities to cover them for any existing function claims prior to the amendment of the legislation.

We thought that would have to be in the bill. But it did not have to be in the bill because, as the minister has advised the House tonight, ANAs are covered under the Acts Interpretation Act. That is another positive as well. ANAs have obviously had a very important role to play and we thank them for the work they have done in the past; however, there probably will come a time to move on and the structure will have to change. I am sure there will be quite a few who will have to readjust, and I wish them well. We do feel for them because they were very passionate in their argument and in their submissions to us. We certainly hope that they will have a place in this industry in the future.

In recommendation 8 we said—

The Committee recommends that the bill be amended to include a requirement that adjudicators engage independent agents.

The government said in their response—

The Government agrees with the recommendations regarding a requirement that adjudicators engage independent agents to undertake administrative functions on behalf of the adjudicator. However, it is proposed that this requirement will be addressed through a suitable condition of registration that the Registrar intends to impose on all adjudicators.

That is another check and balance that will happen within the system. Recommendation 9 says—

The Committee recommends that the Bill be amended to remove the inclusion of both latent and time-related costs from the definition of complex claims.

Complex claims was an area that I think the department initially got wrong. You often do not know these things until the submissions come in, and then you think that it was not quite right. That issue was addressed, and the department very quickly agreed to propose an amendment to the definition of complex claims, and I thank them for that. That is where this committee system does work so well insofar as we are able to identify some issues that do not seem to be evident in the early stages, but arise during the committee process through submissions and hearings so we are able to fix them up. That has been done as well, so I think there have been some great gains made with this bill. Recommendation 11 states—

The Committee recommends that the Minister implement Wallace’s Recommendations 10-15 concerning the inclusion of retention monies and securities in payment claims, the establishment of a Construction Retention Bond Scheme, the introduction of penalties for contractors and the empowerment of adjudicators to direct the release of securities.
This is a game changer as well, and it is something that you probably cannot just move straight into without some research. The minister has indicated in his second reading speech that they are going to look at that, and let us hope that down the track we can do that. I think that is the next phase of where this BCIPA legislation should go. I believe that is very promising for the whole industry. We also recommended—

... that the Minister investigate ways to protect claimants against non-payment of outstanding amounts once a contract has been terminated.

The government have said—

... the department will investigate ways to protect claimants against non-payment of outstanding amounts once a contract is terminated. It is proposed that the outcomes from this investigation will be known at the time the outcomes from the planned 12-month review ...

We often say this with legislation, but not always, that sometimes when you make game changing changes to legislation, you need to have a review to see how it is going. I think a 12-month review often is necessary—not always—but certainly in this case it is because we are making significant changes, and I think that is healthy. We also recommended—

... that the Bill be amended to provide for the regulation of all adjudication fees and costs ...

The Government agrees that the adjudication application and certificate fees should be provided for in the Regulation. However, the fees charged by each adjudicator, aside from deciding adjudication applications where the claimed amount is 25,000 and below ...

So there is a mechanism there that will probably help; however, I do think that down the track those costs will blow out if we are not careful.

They are some of the recommendations that the committee made. This bill will make some significant changes to the building industry. There is more to come, and it is wonderful to see that we are prepared to make these changes at this time. We need to be able to develop our state and our nation for the future and have laws that people have confidence in. I commend the bill to the House.

Mr JUDGE (Yeerongpilly—PUP) (8.48 pm): I will firstly start by acknowledging the chair of the committee, Howard Hobbs, for whom I have a great deal of respect. I would also like to acknowledge my colleagues on the committee, who I also have a great deal of respect for even though we come from different political parties. I want to acknowledge the departmental staff. I know that they work very hard to serve the government of the day; that is their obligation.

I do not agree with the government of the day on this particular piece of legislation. Newspaper articles confirm that once again the Newman government is simply not listening—this time to the building industry and subcontractors. I will table a few recent newspaper articles in relation to that particular matter.

On 14 June the Sunshine Coast Daily carried an article headed ‘Subbies urged to leave state if legislation changes’. The article states—

Building subcontractors should move interstate or face the prospect of working for nothing if changes mooted to the Building and Construction Industry Payments Act are approved later this year ...

... Chris White said at a time when subbies were reeling from the $69 million collapse of Walton Construction last October, the State Government was moving to weaken the payments Act ...

Tabled paper: Article from the Sunshine Coast Daily, dated 14 June 2014, titled ‘Subbies urged to leave state if legislation changes’ [5916].

I heard the minister say that they would be looking interstate in relation to that matter. The minister is putting the cart before the horse. This is something that should have been dealt with upfront and then perhaps changes looked at.

Another article states that fraud is costing the construction industry $3 billion a year. That is an unacceptable amount of money that has a dramatic impact on a lot of builders, contractors, subcontractors and their families and into the broader community. I table the article.

Tabled paper: Article from the Queensland Times, dated 28 August 2014, titled, ‘Fraud costing construction industry $3b a year’ [5917].
The Gold Coast Bulletin of 9 September, just a couple of days ago, ran an article which states—

Tradies were greeted by security guards when they turned up yesterday morning to put the finishing touches to the $35 million Pure Kirra tower on the Gold Coast’s southern end.

...

Hundreds of staff and subcontractors will be left out of pocket ...

These are unacceptable outcomes that are occurring. I table the article.

Tabled paper: Article from the Gold Coast Bulletin, dated 9 September 2014, titled ‘Pure Kirra tradies in turmoil as Gold Coast construction company Glenzeil goes bust’.

I have made a comment to the Sunshine Coast Daily. I think the Sunshine Coast is being failed badly by the current LNP members on the Sunshine Coast. People like the Attorney-General and member for Kawana are failing to speak up on important issues like security-of-payment legislation to protect subcontractors. He is all about having a strong plan for a bright future. This is complete nonsense. If he had a strong plan he would be looking after subcontractors. He would be having security-of-payment legislation. I table that article as well.

Tabled paper: Article from the Sunshine Coast Daily, dated 1 August 2014, titled, ‘Palmer’s man bats for subbies against the developers’.

I oppose the bill. More work needs to be done. I do not blame the department. I do not blame the hardworking leadership team in the department, nor the legislation development officers who work for the department. I have been a legislation development officer. Their job is to serve the government of the day, and I am sure they have done that to the best of their ability under the instructions they have been provided. I am sure that their cabinet submissions and their proactive release statements supported what the minister and the Newman government wanted. What the Newman government wants is to not protect Queensland subcontractors. It is pretty pathetic, really.

Earlier this year the Minister for Housing and Public Works introduced the Building and Construction Industry Payments Amendment Bill. One of the key points promoted by the minister when introducing the bill focused on the cutting of red tape and the reduction of regulatory requirements. References relied upon by the minister in highlighting red-tape reduction were, like the bill itself, misconceived and related to initiatives that had nothing to do with the payments act and related only to the Queensland Building and Construction Commission Act 1991. This is a false analogy and does not follow the real issues behind the bill.

A hard look at and review of the changes created by the bill in relation to the three areas of reform identified within the bill shows that anything but a reduction in red tape and regulation will occur. It would be impossible to do more than scratch the surface in relation to the increase in red tape and regulation under the bill within the time provided to make this speech. Suffice it to say, there is considerably more red tape and considerably more regulation under the bill.

The overarching impact of the bill is the complete erosion of the object of the act, which is to ensure that a person who undertakes to carry out construction work or supply related goods and services under a construction contract is entitled to receive and is able to recover progress payments. An important consideration, if not the determinative factor, when this parliament enacted the payments act in 2004 was the existence of unequal bargaining power within the classes of participants within the construction industry and the need to achieve a reasonable balance within the contractual hierarchy. Subcontractors and suppliers to the construction industry are in the class of participants that sit lowly within the construction industry hierarchy and become the biggest losers in the construction industry chase for payment.

The dominant players within the construction industry before the payments act followed the golden rule ‘he who has the gold makes the rules’—the Newman government seems to be following that rule over and over again within Queensland, and we are seeing it not only in this bill; we are seeing it also in other legislation it is putting through the House—when deciding whether they should make progress payments to subcontractors and suppliers.

The menacing culture of nonpayment within the construction industry has been reformed by the payments act, but statistical data compiled by the Building and Construction Industry Payments Agency for the 2012-13 reporting period shows that, on average, less than 50 per cent of the value claimed by a claimant for performance tendered under a construction contract is being paid by the
respondent. The reforms identified in the bill not only assist but also enliven and strengthen the respondent’s mischief of nonpayment. They will assist the respondent in avoiding payment obligations under a construction contract by permitting the respondent to adopt a stonewall position, strategically fortified by the provisions of the bill.

Statistical data published by the agency shows that claims of $500,000 or more represent 14 per cent of the claimants seeking adjudication under the act. However, the dollar value of the claims presented by these claimants was 95 per cent of the total amount claimed by claimants. When a decision was released by an adjudicator under this range of claim, this 14 per cent of claimants received only 47 per cent of what had been claimed. The bill will now make it much harder for claimants working on larger projects to get paid promptly or at all if the respondent decides that payment is not an option that suits the current needs of the respondent.

The approach taken by the government to amend the payments act is rushed, and a range of impacts and financial implications flow from it. In the rush to bring this bill before the House, the necessary participants in the process have not been comprehensively consulted. It has been indicated that there is more work to be done on this bill. That work should have already been done. An example is the financial sector, with the banks and insurance companies being two considerations that have been completely overlooked by the minister and the government.

Construction industry insolvency is a serious concern. I have indicated that by the articles I have tabled. If it does not lead the list of industries that are more prone to insolvency, it is certainly in the top five. Passage of the bill will make a tough situation even harder for the subcontractor and supplier to secure finance. Insurance premiums, because of the higher risk of nonpayment within the subcontractor and supplier field of industry participants, will be increased based on the new risk of nonpayment or significantly delayed payments. The battle for the subcontractor and supplier to get paid in the construction industry will be monumentally harder if this bill is passed.

The bill is based on faulty logic and irrelevant and insufficient information. That came out in the committee’s review. The Wallace report was seriously criticised by submissions. That was very evident. The bill does not merely amend the payments act but rather radically changes the core purpose of the act, with the determinative factor in this regard being the exclusion of many participants from the statutory process and the concentration of private and public power without good cause or justification being shown by the minister and the government.

As it relates to the adjudication marketplace, the bill is anticompetitive. The minister must address this aspect in his reply to the debate. It is beyond me why a minister would not seek crown law advice on such an important issue. It was detailed in a submission that there is possible infringement of federal laws. That matter has simply been overlooked. Simply taking advice from the QCA is not sufficient.

The bill also is an example of unjustified government extremism, with the inescapable conclusion being that the government has been forced to assist or otherwise further the menacing conduct of nonpayment engaged in by respondents, the biggest of whom is the government itself. The government itself engages with a lot of subcontractors because of the commercial units of government. These things cannot be overlooked.

Clause 12 of the bill seeks to reform the adjudication marketplace and will accomplish this by removing or otherwise abolishing authorised nominating authorities from the marketplace created under section 21(3) of the payments act. The clear intent of the bill is to centralise all administrative functions of the adjudication marketplace within the Building and Construction Industry Payments Agency. The agency was created in 2004 to oversee limited administration of the payments act. The agency commenced oversight of the payments act on 1 October 2004 and it is from this date of assent that the government began collecting statistical data about the operation of the act. The explanation given by the government for ‘removal and centralisation’ is that the bill removes ‘the perception of conflicts of interest and bias in the appointment of adjudicators. This should result in the reduction of adjudication fees.’ The suggestion presented by the minister and the government is misconceived and assists in showing that the minister and the government have not performed the necessary assessments I will be discussing when advancing the suggestion that bias exists and exists in such a manner that requires the state to take complete control of a marketplace functioning in a manner contemplated by the object of the act.
The perception of bias finds its genesis in the Wallace report and the report commissioned by
the agency that sets out 49 recommendations in relation to the three main areas of reform in the bill. What is quite curious is that neither the agency nor the Wallace report rely on statistical data compiled
by the agency. The collection of these isolated comments identified in the report became the basis
upon which the agency recommended that all administration should now be handled by the agency. During the proceedings of the committee, the committee was presented with statistical facts compiled
by a lawyer who is also an adjudicator from data published by the agency for the 2012-13 reporting period. The statistical evidence presented to the committee by this person showed that in general adjudicators awarded claimants less than 50 per cent of the amount claimed by claimants. The perception of bias identified in the explanatory material accompanying the bill is not validated. The minister’s concern that respondents are receiving unfair prejudicial treatment or that something more sinister is occurring in the appointment of adjudicators by authorised nominating authorities is not supported at all by the statistical evidence presented to the committee. That is an important fact. The government lacks the evidence to back up its claims. That is an important issue.

The statistical evidence presented to the committee, on the other hand, showed quite convincingly that the claimant is still the biggest loser in the construction industry payment chase. The claimant, however, would be an even bigger loser if the payments act had not been enacted in 2004. A further concern in this regard is that over half of the value claimed by the claimant is being retained by the respondent. This is an unbargained for windfall by respondents. This unfair outcome is of no concern to the minister, who says that he is concerned with fairness in the industry. The failure of this money to move down the contractual chain shows that the current system is still balanced in favour of the respondent which raises the concern of why the minister is favouring respondents with an intrusive and burdensome regulation that makes payment harder for claimants when the evidence shows that the system still favours respondents. The removal of ANAs is neither reasonable nor justified. The evidence presented to the committee shows that the conduct of ANAs in making the appointment of an adjudicator under the act and the conduct of the adjudicators in making a decision under the act does not rise to the level of unfair treatment of respondents requiring reform in the manner proposed by the bill or at all. Reform, however, is needed not to assist respondents but to assist claimants so that claimants are better able to receive the full value of the work or services performed under a construction contract. Sadly, however, this is not occurring as revealed in the statistical data compiled by the agency, an administrative state of affairs, for reasons known only to the minister and the government.

During the process of review, no evidence at all was presented by the agency to show or to assist in showing the committee that the agency has a plan and is ready to implement the plan once removal of the authorised nominating authorities occurs. That is important. There is no plan in place. The agency has considered all of the impacts, financial or otherwise, of such centralisation not only on the government but also on the industry participants, especially the claimant. The failure of the agency to have a well-thought-out plan, as revealed during the proceedings of the committee, is a recipe for disaster with injurious consequences for the claimant being a stark reality.

In response to the concern that the removal of authorised nominating authorities is anticompetitive, the committee sought advice on this matter from the department and was advised that the department had in fact prepared a preliminary impact assessment. This fact was never made known by the department throughout the review process and was only made known sometime after 21 July as revealed in the report of the committee. Although the PIA was performed by the department, it is clear that the department, because it only performed a preliminary review, did not consider the necessary impacts, financial or otherwise, when electing to create a monopoly controlled by the state. The record before the committee is bare of any evidence that the minister even attempted to assess the removal of competition from the marketplace as it pertains to the claimant’s absolute right under section 21(3) of the payments act to choose an authorised nominating authority.

I refer to a submission by Jonathan Sive about the anticompetitive nature of this bill. The department produced a report in the 2012-13 financial year. There is statistical analysis showing that the full payment or part payment received was less than 48 per cent. In terms of the building and construction industry, the QBCC represented 84,493 people as at 4 September 2014. That is nearly 85,000 people. The government is effectively ignoring 85,000 people. It did the same with WorkCover. It effectively watered down WorkCover, ignoring 2,300,000 people. There has been a research paper done on the committee system by Amanda Honeyman which talks about executive control over the committee system. It says that large government majorities are a feature of
Queensland's optional preferential voting system and goes on to talk about how the executive influences committees. I would suggest that the executive has seriously impacted on the committee's consideration of this bill and that the minister has put the cart before the horse. There should have been consideration of security payment legislation advanced prior to this bill being introduced. I table that report by Amanda Honeyman and other documents.

Tabled paper: Research paper titled 'An evaluation of the Queensland parliamentary committee system: from Fitzgerald to recent reforms' [5920].

Tabled paper: Email, undated, from the Queensland Parliamentary Library regarding a statistic on the number of contractors in Queensland [5921].

This bill should not be passed. This bill is not ready to be passed. This bill is rushed. This bill is detrimental to subcontractors. This bill is a failure by the Newman government to respect subcontractors. Newspaper articles in recent times verify the extent of the damage. The minister thinks it is funny. The minister does not care about subcontractors. The minister is not fair dinkum about his role at all. The minister does not care about subcontractors one bit. He is—

(Time expired)

Dr FLEGG (Moggill—LNP) (9.08 pm): I rise to speak to the Building and Construction Industry Payments Amendment Bill 2014. I would like to congratulate the minister, the office of the minister and the staff of the department on bringing this matter forward. Tonight, after listening to those on the opposite side, I believe that something very strange is happening. I am quite certain that the minister understands, and I understand, that he is not reshaping the building industry. He is addressing a number of very specific problems that have been hanging around for years. I hear the ALP and the leader of the Palmer United Party saying that this bill is rushed, that we should take more time, that we should consult more. Two years ago—in 2012—when I had responsibility for this area I was receiving urgent communications from companies that on Christmas Eve would get a wheelbarrow sized claim for $100 million that had taken 12 months to prepare to which they had five days within which to respond. Here we are, almost at the end of this parliament, and those opposite want to delay the legislation further. They might be surprised to hear that there may even be an election sometime early next year. If we delay the passage of this legislation much further, it is going to fall off the Notice Paper and we will be starting again.

This bill addresses a number of very specific matters within the building industry. Payments within the building industry are and always will be a minefield. They are so because of the nature of the industry. Firstly, the work is paid for in arrears. The subcontractor or builder gets on the site, does the work and is paid in arrears, generally by progress payments. He is out of pocket until he is paid. The amounts of money are often significant. They are lumpy payments that can be very tempting for people to delay or, as the member for Yeerongpilly said, in some cases try to avoid paying altogether. In almost every claim for payment that is made in the industry there are variations, because of the nature of what happens when you build. Variations in the contract price or in the progress payments will always be contentious issues. To add to all of that, the building industry is very diverse. It could be a small builder building a home. It could be a $100 million pipeline contract going into Gladstone. There can be an enormous imbalance between one very large, powerful, deep pocketed party and another very small party. The law needs to make sure that it provides fairness and equality.

The two main issues that are being dealt with by this legislation were acute problems back in 2012. With respect to those on the other side, they cannot wait forever to be fixed. I refer to the ambush claims that I described, where there is an imbalance between the period allowed for the preparation of a claim and up to 12 months allowed for the lodgement of that claim and the matter of a few days being allowed in which a respondent had to respond. This bill puts in place measures to try to deal with that issue.

The second issue is in relation to the adjudicators. There was a perception—and I think the minister went to great pains to say that most of the time it was probably only a perception—but it is important that all parties in this payment system respect the independence of the adjudicators. It is a disaster if you have to settle these contracts in the courts. Let me tell members—and I know that there are a few lawyers around the place—that I have paid a few legal bills in my day and once you have to settle a matter in a court, not by virtue of an adjudicator, there are no winners whatsoever except some of the lawyers. So the process of ensuring that adjudicators are appointed by an independent process and are not perceived to be appointed by one of the participants in the payment dispute removes at least that perception and, who knows, even the possibility that in some circumstances there was bias.
These issues have been around for years. It is more than time they were fixed. The minister is well and truly aware and the House should be aware that we are not rebuilding the building industry—pardon the pun; we are fixing some long overdue problems. The idea that this legislation should be delayed further is ridiculous. I am more than happy to support the bill in this House tonight.

Debate, on motion of Dr Flegg, adjourned.

**ADJOURNMENT**

Mr **STEVENS** (Mermaid Beach—LNP) (Leader of the House) (9.14 pm): I move—

That the House do now adjourn.

**Abbot Point Coal Terminal, Dredge Spoil**

Ms **TRAD** (South Brisbane—ALP) (9.14 pm): I rise to make a contribution tonight in this debate in relation to one of the most significant issues that has been canvassed this week and that is the government's outrageous backflip in relation to the Abbot Point Coal Terminal expansion. Since this government was elected in 2012, we have seen a complete trashing of the plans that the former Labor government had to use dredge spoil to reclaim the port area, to enhance it, to expand it into a multicargo facility in order to ensure that increased exports could occur from the Abbot Point Coal Terminal. Time and time again the Deputy Premier has come into this House and trashed that proposal.

When the federal government made the decision to approve the dumping of dredge spoil in the marine park, what did this government do? This Newman LNP government formed the most vigorous, the most enthusiastic cheer squad for the dumping of dredge spoil in the marine park and the World Heritage area. Basically, the Deputy Premier said that this was a fantastic decision because the Great Barrier Reef was not under environmental threat. In fact, he believed that it was a self-correcting ecosystem—

An opposition member interjected.

Ms **TRAD**: A self-correcting ecosystem. We also had the environment minister say that, basically, there was no scientific evidence whatsoever to suggest that dumping was a bad environmental idea for the reef. In fact, this government threatened to sue Ben & Jerry’s for running a campaign in opposition to the dumping of dredge spoil in the Great Barrier Reef Marine Park.

Let us be really clear about what Monday’s announcement was about. It was about last week’s Ashgrove poll, which saw primary support for Kate Jones at almost 52 per cent. On a two-party preferred basis, Kate Jones would romp it in on 58 per cent. On Monday, we saw Jeff Seeney and the Premier do a complete backflip to go back to Labor’s original position, which is to use dredge spoil in order to reclaim land in the port development area.

This plan is on the hop. It is uncosted. Today we saw in the *Australian Financial Review* the government admit that it would probably be too expensive for them to buy the dredge spoil, buy back Queenslanders’ sand, and give it to big mining developers. That is what is happening. The Deputy Premier has conceded that they have costed it and they cannot afford it. So they are going cap in hand back to the federal government. This government is duplicitous. It cannot be believed on anything, including the Great Barrier Reef.

*(Time expired)*

**Suicide; Smart, Mr A**

Dr **FLEGG** (Moggill—LNP) (9.17 pm): Today, 10 September, is World Suicide Prevention Day. Lifeline Australia has estimated that in this current year we have hit a record 10-year high for suicides in this country. Last year, 2,535 Australians died by their own hands. This is a significant increase. Back in 2006, that figure was 1,800. This is a battle that we are not winning. Of those 2,535 Australians, 1,901 were males and 634 were females. That is around seven Australians dying by their own hand every day. There are in excess of 20 attempted suicides for every successful one.

Suicide is a very misunderstood phenomenon in a couple areas. It is a preventable phenomenon, more particularly among young people. In my professional experience, the hardest group to prevent committing suicide were middle-age males. The disease itself, or the phenomenon itself, is complicated by social and psychological factors. We see it in young people, we see it in
Mrs CUNNINGHAM (Gladstone—Ind) (11.29 am): I rise to speak to the committee’s report in relation to fraud risk in the Public Service. This parliament has observed some very serious incidents, particularly in relation to the Health department. The member for Murrumba referred to the Tahitian prince, and that is certainly a relevant event. We would also remember the absolute debacle—that is the wrong word—of the rollout of the new payroll system. Well could one ask what that had to do with fraud. It did not have anything to do with fraud, but it did have something to do with human failure combined with the wrong or incomplete use of IT and the effect that can have on not only departments but also people. Certainly there has been plenty of experience for the current Minister for Health to deal with.

Rather than seeing the current health issue—I know that we have not discussed this in this House for obvious reasons—as a negative, I would like to believe, until there is information to the contrary, that it shows positively that some of the new processes that have been put in place actually work, that problems are intercepted early and are dealt with appropriately. As I said, until there is other information to the contrary I will certainly see that as a positive.

The committee made 13 recommendations, as has been stated. I think the role of the Auditor-General in this process should not be underestimated. That department has to be fiercely independent in order to carry out these audits to highlight failures. It is only in highlighting the failures that proper and effective remedies can be implemented. I think that is one of the reasons—there are many—that the role of the Auditor-General has to not only be independent but also be seen to be independent and not influenced by any other parties. I would also like to thank the departmental staff who were involved in the audits that were used as a basis on which the Auditor-General made a report and which our committee used in great measure for its investigation.

Critically important in all of this in fraud management has to be that within departments it is more than just a sheet of paper with ‘fraud awareness’ typed on the top, some information and then at the bottom a box for each individual person to tick once they have read it. It has to be very proactive and interactive because fraud is not something that smacks you in the face; it is subtle and it is done by somebody who has usually well thought out the process by which they will execute their illusion and their deceit.

Certainly I think there is room for what would be affectionately called a ‘secret shopper’ in relation to some of the departments. Some would say that that could be termed ‘entrapment’. I do not believe that it would be; I believe that it would be an immensely valuable training tool and an immensely valuable investigative tool, simply because it would highlight whether departments with high turnovers, or indeed low turnovers, do have vulnerabilities. Often fraud starts over small amounts just to test the waters, to see whether that payment would be made undetected. So I believe the use of some very practical training tools—and by that I mean humans—would go a long way in highlighting any deficiencies in our fraud detection systems and also in ensuring that staff who handle money and who handle validations of expenditure— invoicing et cetera—could be kept more aware of the responsibility of their role not only to the department but also to the people of Queensland.

Question put—That the motion be agreed to.
Motion agreed to.

BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS AMENDMENT BILL

Second Reading

Resumed from 10 September (see p. 3188), on motion of Mr Mander—

That the bill be now read a second time.

Hon. DF CRISAFULLI (Mundingburra—LNP) (Minister for Local Government, Community Recovery and Resilience) (11.34 am): I rise to make a brief but hopefully helpful contribution on the proposed amendments to the Building and Construction Industry Payments Amendment Bill. At its heart there are three matters that this bill seeks to address, and all of them are worthy: the imbalance in time frames between claimants and respondents; the current inability for a respondent to provide additional information; and, the one I want to speak about today, the appointment process and the skill of the adjudicators. I will focus my comments based on what I have seen in the area of local government, but I hope that in doing so those in this House can see this for what it is—that is, positive reform.
I listened to some of the contributions made last night. I listened to the contribution of the member for Redcliffe. I say to everybody that anyone who cares about value for money—whether that be value for money for taxpayers, value for money for an individual or value for money in the way society operates—but, equally, anyone who cares about fairness should support what the minister is doing here. I will use an example of what I have seen—without naming businesses—that highlights why these changes, particularly the one relating to the appointment of an adjudicator, are so very fair and so very useful.

At the moment we have a system whereby people can effectively embark on adjudicator shopping. They can choose somebody who, either via not having the adequate skills at best or at worst having a vested interest in getting a particular outcome, can deliver a disastrous situation. I have seen situations in which companies have come into this state and have sought to use this process to rip off councils, to rip off ratepayers, to rip off the people we should all be representing in this place and should be doing so with pride. We have had a culture whereby people have been prepared to buy jobs. They go in, they put in a price to deliver a job that they know full well they cannot deliver for that price, but they get the job. They get their claws into it. Once they have that, the games start. Then the claims for unexpected works start. When, in good faith, the company or the council that has issued that job says, ‘Hang on. That is not in the original scope,’ they then use this act and use the knowledge of a friendly adjudicator to milk the system dry.

I say to all members here today that this is sensible reform. It is sensible reform in terms of value for money, but it is also sensible reform for fairness. It enables both parties to find a common ground. It does not enable, at the 11th hour, information to be tucked onto somebody’s desk in the dark of the night. It does not allow people to adjudicator-shop. It does deliver value for money. We should all support it. I commend the minister on finding what I think is an excellent middle ground. I implore everybody in this House to support what is a common-sense amendment.

Mr WELLINGTON (Nicklin—Ind) (11.37 am): I rise to participate in the debate on the Building and Construction Industry Payments Amendment Bill. I note that this week it has been reported that another significant construction company in Queensland has shut down, with liquidators appointed on Monday. The construction company I am referring to is Glenzeil. It has been reported that earlier this week tradies who turned up to work on the $35 million Pure Kirra development tower on the Gold Coast were turned away. The gates were locked. Suppliers were asking when they would get paid for the goods they had provided.

This follows on from last year’s winding up of Walton Construction which forced many contractors and suppliers into bankruptcy, forcing them to sell their homes and take on significant new debts while the white-collar vicious, lawless, unscrupulous participant and associated fraudsters hid the money they took before they went into liquidation.

Subcontractors and suppliers in our construction industry sit near the bottom of the construction industry hierarchy, and history shows that this group of workers and suppliers in the construction industry is continually the biggest loser in the construction industry claim for payment.

Yesterday the minister said that the intent of this legislation was to improve security of payment in the construction industry and that it was important that the legislation was fair and equal for all. I think his words were that we will have a system of payment in the construction industry ‘which is fair to all’. The Hansard record will show that the minister also spoke about the need for justice to not only be done but be seen to be done in Queensland. I do not believe this bill achieves those aims. If the government was fair dinkum in wanting to make sure that justice was done and the law was fair to all in Queensland, then the simplest way is to introduce amending legislation that simply requires that money that is paid for a specific contract must be secured for that particular contract and cannot be siphoned off to be used on unrelated projects. In other words, we should introduce an amendment to legislation to take action against the white-collar vicious, lawless and unscrupulous participant and associate corporate thieves who use money from one contract for another unrelated project. No-one else in Queensland can take money for one purpose and use it for another and then perhaps later on reimburse that money from someone else. We would be charged with stealing. Yet Queensland history is full of cases where we have regularly seen white-collar unscrupulous participant fraudsters posing as construction companies sending subcontractors and suppliers to the wall and not being able to be caught by the government when they transfer money from one job contract to another which has no connection whatsoever.
I understand that the big construction companies will never support my simple proposed change to the law in Queensland, because that is how they run their businesses—that is, they use money from one contract on another unrelated contract. And guess who are significant donators to the LNP? I will leave it up to members to guess. If a company is going to go to the wall, we would minimise the number of people who are caught out by that company’s collapse if the contract money is quarantined for the specific job at hand and is not able to be juggled amongst a whole range of different unrelated contract sites. We can stop the fraudulent transfer of money within the large construction companies by their white-collar corrupt fraudulent participants by simply changing the law. I look forward to the day when we hear regular reports from our Premier on how ‘task force clean up white-collar unscrupulous fraudsters’ has arrested participants and arrested associates involved in unscrupulous money-shifting transactions in the building and construction industry. We would then see on the six o’clock news the exclusive media interview as the ‘clean up white-collar unscrupulous fraudsters task force’ raided the head offices of the white-collar criminals and arrested the alleged participant and associate fraudsters. But, alas, I am only dreaming. I do not believe we will see the Newman Liberal National Party government take action. It will be left to a future state government to take the strong action against this protected group of people who are closely connected with people of influence in the government.

Before I resume my seat I refer members to the minister’s earlier comment on recommendation No. 4 of the committee. The Hansard record shows that the minister’s response was—

Recommendation 4 suggests that the bill should be amended to implement recommendation 19 of the Wallace report which proposes adjudicators should fall within the jurisdiction of the CCC.

The minister went on to say—

Crown Law advice on this recommendation was that because adjudicators are not considered to be public officials they cannot be made subject to the CCC.

It is amazing that that was the same explanation the Attorney-General gave recently as to why the Deputy Premier in his skirmish with Clive Palmer could not be investigated by the Crime and Corruption Commission. Guess why? Because it did not fit within the definition of ‘public officials’. That can be changed with the stroke of a pen. Here today we can amend the Crime and Corruption Commission legislation to specifically include adjudicators. We can also specifically amend it, while we are in the spirit of it, to include the allegations involving the Deputy Premier because the Crime and Corruption Commission Acting Chairman, Dr Levy, said, ‘Sorry, it doesn’t fall within the terms of reference of our powers.’ We can change it if we want to. I say this government does not have the strength of character to ensure that everyone is equal before the law in Queensland. I will not be supporting this bill.

Dr DOUGLAS (Gaven—Ind) (11.44 am): This bill deals with a critical area of our economy. I have children involved in the industry and there would be many here who have either been in the industry themselves or have family and friends and many constituents involved in aspects of this legislation. The legislation as presented here today is insufficient for me to consider supporting it. I say this because it appears to either involve undue haste at the last minute to try to get something out or there was a lack of understanding of what the problems are or just that it was way too difficult to get around. The sad statement is that, in leaving this state with what will inevitably pass today, I do not believe this legislative step will leave us in any way better off than where we are now. It is arguable that it may leave us a little worse off. In that case, why would we be doing it or considering it at all? The committee report tells us a lot more about that which we will hear today and what we heard yesterday from government members and what they will admit to. The primary concern is that one might summarise some of those statements and the committee hearings by saying—and I would say this as a summary of it—that the proposals will not do anything to promote greater trust or impartiality, and that is a very poor result.

This is an industry adjudicating on building and construction conflicts. That is how the money is made. This legislation has significant impacts on the lives of many, particularly in my electorate where literally a third of people are involved in the building industry—and remain so—yet they are largely travelling to achieve it. They are the subcontractors, contractors or a variety of roles in that industry, and they want to stay in that industry. They are listening and watching today. The industry has a variety of issues facing it internally and externally. Whilst this is but one, it is one of the causes of much heartache and without doubt the amount of moneys involved are significant. To give the industry something less than what it needs is to fail it. It is an industry where margins of profit and less than the margins of profit are the currency of the game. Anything that impacts upon those margins is very important. It is about time that the current situation of these recurrent collapses, such as Glenzeil...
and Walton Construction on the Sunshine Coast where builders and subbies were left without any money, and the phoenix companies that rise after their collapse stop. That is what we need to be doing. It is a tragedy that the adjudication component of resolving receipts, recovery payments, supply of goods and services and contracts has been so critical to the survival of many in the industry.

We have heard all of the different stories of what we need to correct, but in fact we are not correcting any of those things, and I will tell members why, and it is around perceived bias primarily. Those companies have used the process for the benefit of themselves over issues with councils, and we heard the member for Mundingburra, who is a former councillor, and my wife is a former councillor. We have seen this over and over because the councils are the biggest players in these games, but there are also other individuals, and we need to stop it. Some of the Gold Coast’s major and smaller building groups have failed through no fault of their own but often due to disagreements between themselves, the clients, the banks and third parties. If it is not already hard enough to do business and employ staff and argue with councils, to end up arguing about getting paid because the major companies are going to screw you over is basically too much for these people and they are exasperated. Ultimately, too many good people are lost from the building industry for no other reason than they cannot live on free air and, sadly, there are too many sharks on the land and not in the ocean.

Under those circumstances, to run a viable business in the construction industry is very difficult. For too long there has been the culture that there is always someone else to fill in for those who are exiting the business or who will not submit an even lower price, including many below cost—again, as elegantly stated by the member for Mundingburra. The process of winning tenders and contracts with below-cost price and then clawing back those profit margins by a vigorous approach to variations that attract a cost-plus charge and building on a bare-bones price is almost immoral. It is also unsafe, it leads to a lower quality and it leads to very poor building outcomes. In some cases, as has occurred on the Gold Coast, because they do not spend money on the things that they should, it leads to the loss of life. In a very high proportion of cases that has been the genesis of these building and construction conflicts. In some cases, those who were successful using the adjudication prospered often at the expense of too many other builders and consumers. In that situation, it is not always the successful builder who is the best builder, as was said by the members for Moggill and Mundingburra. If you want a good outcome, you have to have prices from the word go that are reasonable. That way you can avoid all of these steps.

You introduce another problem when you have a perceived bias in favour of the person who sets the standards. That is not going to work. The building companies are very smart. One of the members here is a former solicitor who would represent those types of people. He would tell you that, as I would. Sadly, the consumer is all too often the loser in the process. In most circumstances they are paying a high-entry price for a new product and they are not getting a proper outcome. So when the market takes off in Sydney and, to a lesser extent, in Melbourne, and the price of apartments goes up to the $600,000 mark, we are seeing exactly that happen. The public do not get to know the difference and, in many cases, the builders get dragged into conflicts and kill their cash flows when they are competing against a narrow but a very solidly funded group—largely coming from superannuation money—and then, with no mezzanine finance, they start falling over. The product and the consumers lose. That is what is happening in this market.

I look at this legislation and I think that we are now in a situation where we have 84,000 contractors being put at risk by a rushed strategy that is not going to deliver us the type of result that we need. We have seen this government do the same thing previously. Under the Newman government’s WorkCover charges, 90 per cent of 2.5 million workers were sold out. That followed on from 20,000 public servants who were sacked straight after the election. This bill is the logical, consequential result of those types of decisions.

The key arguments as to why the legislation should not be supported were stated well last night by the members for Redcliffe and Yeerongpilly and also today by the member for Nicklin. I support those considered views. I take into account the considered views of the member for Moggill—the former responsible minister—and the Minister for Local Government, who spoke eloquently in his short presentation. But I share the concerns of the major speakers with regard to the negative case. We need to do something about the whole process of payment. It is not just obscure; it is hopeless. In the modern world, you cannot run a business with a cash flow that is basically in arrears and in a situation where the majors have it all over you from the word go. You are not going to get the results.
The problem with the government’s argument is that it is not addressing the real problems. Major building companies are using funds for one project coming across from another project. They also have the benefit of the super funds, because they can access that money at lower-cost capital with no mezzanine finance. The end result is a dreadful result for all of us, but particularly for any government entity, including local government. We need to change that. This legislation should not have delivered us this sort of result. The government should have used its massive majority and harnessed the power of the committee structure to give us the type of legislation that would fundamentally change the issues that we need to confront. I would say that, primarily, it needed to address everything but also make sure that, if the government were going to introduce a perceived bias, it needed to introduce a structure that existed itself from it. The government has not done that, because it is appointing these adjudicators. The perceived bias will be built into it. They are the biggest player in the game. In other words, they are appointing the adjudicators. Nothing will change. Of course, the companies will get around the process. What can be expected? Nothing can come out of it. This is fatally flawed legislation and it should not go forward.

Mr CAVALUCCI (Brisbane Central—LNP) (11.54 am): It gives me great pleasure to rise to speak in support of the minister’s Building and Construction Industry Payments Amendment Bill 2014. From the outset, can I say that it is my birthday today—not that that is important—but what is important is that this year is also—

Honourable members interjected.

Mr CAVALUCCI: Stop it.

Mr DEPUTY SPEAKER (Dr Robinson): Order! Leave the birthday boy alone.

Mr CAVALUCCI: This year is also the 34th year of my family’s construction business. That means that my entire lifetime has been spent in the construction industry and 15 years of that lifetime was spent working directly in the family construction business. From what I have heard last night and in some of the debate today from the opposition and others, the extent and the limit of their construction knowledge could be attributed to maybe possibly watching an episode of *Bob the Builder* or something. What I have heard from them is absolute nonsense.

The elements of the bill that I support are the streamlining of the appointment of adjudicators and the proposed amendments regarding changes to time frames for payment claims and adjudication applications. These amendments will go a long way to supporting the building and construction sector, which so desperately needs them.

One of the reforms is in relation to the appointment of adjudicators and the adjudication process. A single adjudication registry will be established within the Queensland Building and Construction Commission, which administers the act. That will mean that claimants will have a convenient one-stop shop in relation to submitting a claim and claimants and respondents will access all relevant information in the one place. Under the current arrangement, the claimant submits an adjudication application to an authorised nominating authority—known as an ANA—and then the ANA appoints the adjudicator. In his report Wallace identified that the claimant chose the ANA and that that could lead to perceptions of conflict of interest and bias in favour of the claimant. This issue is one of the reasons some people were dissatisfied with the appointment process.

Wallace explored various options to solve this issue. The preferred option was to establish a single adjudication registry within the QBCC. Currently, the commission registered adjudicators and if the QBCC also appoints adjudicators, it will ensure greater transparency and accountability in the adjudication process. That should help allay any concerns regarding conflicts of interest or bias. It will also mean that the appointment process will be subject to scrutiny from the QBCC board, the Ombudsman and the Crime and Corruption Commission.

Mr Gibson interjected.

Mr CAVALUCCI: The member for Gympie is giving me an extraordinarily difficult time here. The adjudication registry will monitor the performance of the adjudicators and will appoint them based on their skills, knowledge and experience. I know that the adjudication registry has been working hard on the process, which will be in place to monitor the adjudicators and has established transitional training for those who are interested in registering with the adjudication registry.

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registry will publish details of the appointment of adjudicators on a daily basis. The registry will also keep information regarding adjudicators’ skills, experience and areas of expertise to assist with better aligning adjudicators with claims.

An additional change will be that adjudicators must determine if they have the jurisdiction to make a decision regarding an application. To encourage this, adjudicators will be entitled to be paid for their time if they conclude that they have no jurisdiction to decide on the matter. Another benefit that I would like to outline is that these amendments will save time and money by allowing claimants to withdraw an application, which is not available under the current legislation.

In relation to the second point that I raised earlier—the amendments relating to the changes to the time frames for payment by claimants and respondents—the Wallace report showed clearly that a one-size-fits-all concept simply does not work in relation to complex claims. Both claimants and respondents need to be given sufficient time to present a clear and strong case. To get the balance right, Wallace’s report suggested implementing two models that will provide a fairer and more appropriate system for both claimants and respondents to deal with complex claims whilst maintaining the same provisions for standard claims.

This amendment recognises that 10 business days is not sufficient time for a respondent to provide a payment schedule for a complex claim. To distinguish between standard and complex claims, a complex claim will be defined as a claim in excess of $750,000 and all other claims will be classified as standard claims. In recognition of the difficulties often involved with complex claims and the need to provide a wider range of information, respondents will be given 15 business days to provide a payment schedule, an increase on the 10 business days provided for standard claims. The amendment also makes provision to extend deadlines further for complex claims to 30 business days under certain conditions. The time for a respondent to provide an adjudication response will increase from five business days to 10, with a further increase to 15 business days for complex claims.

This amendment bill also deals with the issue of ambush claims by reducing the opportunity for claimants to wait for unreasonably long periods after work has actually been completed before lodging the claim. The bill reduces the period after construction within which a claim can be made from 12 months to six months to address the issue, with particular processes for a final payment claim. This amendment will prevent claimants from intentionally ambushing another party long after construction work has been completed. The purpose of this amendment is to encourage prompt payment in relation to work undertaken, and the amendments support this principle.

It is a fact of Australian life that many businesses and industries either close down or slow down during the Christmas and New Year period. This bill makes sure that the act takes sufficient account of this reality. The definition of ‘business day’ under the act will be changed to exclude the three business days before Christmas and the first 10 business days of the New Year to make sure that claimants and respondents do not inadvertently miss important deadlines because of the holiday season.

Although many of the provisions in this bill relate to the introduction of the complex claims category, it should be noted that the vast majority of claims under the new regime will remain standard claims. Statistics from the Queensland Building and Construction Commission show that on average between 85 and 90 per cent of claims have been standard claims, with the changes to such claims under this bill being an additional five business days for the provision of an adjudication response and reducing the time limits within which to lodge a claim. In other respects the time frames for claims equal to or less than $750,000 will operate in the same way as they do under the current legislation. I have no doubt that this will ensure greater equity for both claimants and respondents.

The key change that will provide benefits to complex claims is when a respondent can provide additional reasons for withholding payment as part of their adjudication response. This can be done even if the reasons were not raised in their payment schedule. This will enable provision of additional information to support the claim and lead to fairer outcomes for the parties to the dispute. There have been a number of concerns raised in the industry, one of which is that a payment schedule must be compiled and served within 10 business days after receiving the payment claim, even though the payment claims may have been prepared over extended periods, up to 12 months in some cases. This was also identified as an issue in Wallace’s report. Under the current act respondents are only able to provide reasons for withholding payment that were already included in their payment schedule. To address the issue of unfair time frames in regard to preparing payment claims and schedules for complex claims, respondents will be able to provide all reasons for withholding payment in the adjudication response. They will be able to do this whether or not they raised these matters in
their payment schedule. To safeguard claimants they will be entitled to raise any issues in response by way of written reply. This will allow the adjudicator to fully consider all information relevant to the payment claim and lead to better informed and fairer adjudication decisions.

The intent of the act is to create a speedy and efficient adjudication process and not to slow down the outcomes for contractors and subcontractors. However, for claims that are complex in nature, it is important that the adjudicator has the ability to consider all the relevant details to make an informed decision. The ability to provide additional information does not impact on standard claims of up to $750,000, which are mainly lodged by smaller contractors. It is understood that between 85 and 90 per cent of the claims that reach the adjudication process are not complex so the majority of claims will not be impacted at all by this amendment. I am confident that there will be significant benefits to the building and construction industry as a result of this bill and I commend the minister for his great work in this area.

A government member: Can we fix it?

Mr CAVALLUCCI: We can fix it, Bob the Builder, yes, we can. Absolutely. I congratulate the minister and commend the bill to the House.

Mrs CUNNINGHAM (Gladstone—Ind) (12.04 pm): Along with all members of this House I wish the previous speaker a happy birthday and hope he has many more. The Building and Construction Industry Payments Amendment Bill is important because, when it all boils down, it is our local builders and subbies who are disadvantaged if the system does not work. It is often those people who are caught out in terms of non-payments. Our energy needs to be well and truly used to ensure that the amendments work.

I have listened to previous speakers, the member for Gaven and the member for Redcliffe expressing their concerns, and I am looking forward to hearing the minister’s response to those concerns. I think valid issues raised here do deserve to have a response so I am looking forward to hearing the minister’s response in relation to those matters.

There are a lot of matters to which one could give attention. There are just a few that I would like to comment on. I commend the appointment of adjudicators on an impartial basis. It is very difficult, no matter what situation you are in, if you feel aggrieved, to have a designated path that you must take and if you feel that down that designated path those who have to hear the issue have vested interests or are not impartial in their point of view, that does not help in any way practically, nor does it help the person who has the grievance in terms of their physical and mental health, because it works so destructively in terms of the process. Any changes that will assist in adjudicators being independent and being seen to be independent is certainly welcome.

I listened to the comments of the member for Nicklin in relation to the adjudicators being subject to the Crime and Corruption Commission. I again will be listening to the minister’s reply with interest, because wherever individuals or groups are dealing with the expenditure of public money—and this is often not public money and I acknowledge that, but there is some construction that is public money—I think that anybody in the roles that the adjudicator fills and others do need to be subject to scrutiny.

I would be surprised if any member here has not had somebody in their office who has been duded by a principal contractor. It is a grievous position to be in, particularly small family builders. In my electorate—albeit too late—we have had a rush of building. Some of it occurred when the pressure for affordable housing was on. All the building that occurred was investment building so it did not help those people who were struggling with high rents. However, it did help those who had investment money, those from the south who had investment dollars and those who were on good wages and could afford to purchase. One of the outstanding issues in that whole building cycle was that our local builders greatly missed out on contracts. The family builders, who were usually just the builder, his wife who did the books and the local contractors who they used pretty much all the time, were excluded for the same simple reason: that the out-of-town builders undercut them on price and potentially undercut them on quality—I would say definitely undercut them on quality but I am in here so I have to be careful. They often did not use local contractors because our local contractors were people who did a good job, they stood behind their job, it was guaranteed whether it was a subbie or the principal builder, and they knew that they had done a good job because of the price that they had paid. What happened was that when any of these out-of-town building companies that got 30 or 40 houses went belly up, it meant that a string of subbies were left out in the cold.
I note that the time frame in which a payment claim can be made has been reduced from 12 months to six months and that the time frame for respondents to provide a payment schedule for claims of less than $750,000—and that is 90 per cent of claims—will remain unchanged at 10 days. Claims involving more than $750,000 will have 15 days. Ten days is a practical amount of time. There is paperwork that has to be accrued and investigation that has to be done. However, if you are a local individual builder, anywhere in Queensland, and you are carrying debts of around that level, in unpaid bills or whatever, that is a lot of dough. I know other members have talked very vehemently about the problems with the proposed legislation. I am looking forward to the minister’s response, because I am going to support anything that will give assistance to builders, even if it is an incremental step of benefit, and there is more to be done.

I close by quoting the minister’s second reading statement, in which he said—

For BCIPA to work to its fullest potential, people at all levels of the contract chain need to have faith in the system. The amendments put forward today will create a payment dispute resolution model that is simpler and easier to use, ensures disputes can be solved in time frames that are fair for all parties and, importantly, is free from the perceived conflicts of interest that have beset the current system.

I want to support our local builders and the building industry with a system that, as the minister said, works to its fullest potential, that is fair and that is trustworthy. I commend our local builders. They do a brilliant job. I commend our local subbies who also do a brilliant job. I want to support any legislation that will assist them not only to do a good job but also to survive in the process. I look forward to the minister’s responses.

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (12.11 pm), in reply: I thank all honourable members for their interest and their contributions to the debate on what is a very important issue. In particular, once again I thank the members of the Transport, Housing and Local Government Committee for their diligence and the hard work that they put in to examining this legislation. Again I acknowledge all those who made submissions on the bill and took the time to present their arguments before the committee. I will address some of the issues raised by the various speakers.

The member for Redcliffe suggested that there has not been enough consultation on this legislation. With respect, on this bill there has been as much consultation as is humanly possible. In my time, the review of this act and the consultation process has been going for almost two years. If some parties are disappointed because they did not get their way, that does not mean there was not enough consultation. I note the member’s comments about the 2002 Cole royal commission and its views on security of payment issues within the industry. My question to the member for Redcliffe and the Labor Party is this: what did they do about that? They had more than a decade in which time they introduced the current BCIPA regime, a regime that they are now complaining about as it does not do enough to protect subbies. Now they are saying that it ought to be expanded to include a complete overhaul of the building industry payment system. It is almost as though Labor’s interest in the interests of subcontractors was born at roughly the same time they made the sad walk from this side of the chamber to the other.

Security of payment in the construction industry has been an issue for as long as there has been a construction industry. What did Labor do about it? Absolutely nothing! I have already told the House what this government is doing and will continue to do. Unlike those opposite who spent a decade sitting on their hands, we are committed to improving security of payment for contractors. However, you do not do that by expanding the scope of the BCIPA act so that it becomes a monolithic catch-all bill encompassing fraud, insolvency and phoenix activity. This bill is not the appropriate vehicle for bringing about that kind of change. The legislation before the House is about addressing specific issues around the probity and fairness of the current payment dispute resolution system.

I turn to the suggestion by the member for Redcliffe that there is no evidence of problems with the current process. Again I would direct her to the Wallace report and the litany of testimony questioning the probity of the current process and highlighting the potential for bias and conflicts of interest to prosper. If the member genuinely believes there is nothing wrong with a situation where vast sections of the industry have serious concerns about the probity of the process, then she is not on the same planet as the rest of us. I hark back to the examples I gave during my second reading speech of the mutual back scratching that allegedly goes on under the current system. Let us consider a situation where claim preparers, who are also adjudicators for a particular ANA, would allegedly recommend that the claimant use that ANA in exchange for the ANA providing the said adjudicator with work on another claim. That is an inherent conflict of interest in the process and, therefore, needs to be addressed.
Finally, I turn to the farcical suggestion that the bill has limited industry support. The bill has almost universally been welcomed by industry. Just because the member can fill her speech with extensive quotes from those who have different views does not validate those views. The fact of the matter is that, by and large, the only people who have taken issue with these changes are people with a vested interest in preserving the status quo. I note the comments of the member for Redcliffe about the need for an exposure draft of the legislation. I am very reliably advised that no such exposure draft was provided by the ALP during their introduction of the original BCIPA legislation.

I now turn to the comments of the member for Warrego and chairman of the relevant committee. I thank him for his support and his stewardship of the committee as it went through this process in great detail. I thank him for recognising that the legislation put forward by the government will be a significant improvement on the current system. I thank him also for his recognition that there could be no more qualified person to review the act than Mr Andrew Wallace, a man who knows the industry backwards, having worked at every level from the construction site to the court room. He is a builder, a solicitor, a barrister and an adjudicator.

I refer to the contribution of the member for Yeerongpilly, which can only be described as rambling gibberish that was very difficult to understand. I do not doubt that he is genuine in his concern for subcontractors, but I fear he has wasted his time babbling on about fraud and insolvency issues rather than discussing the issue of the payment disputes, which is what this bill is all about. I also note that he expressed a great deal concern for the people of the Sunshine Coast. He said that the people of the Sunshine Coast are ‘being failed’. Those were his exact words. I did not notice any concern for the people of Yeerongpilly. I wonder why that could be? The voters of Yeerongpilly must be delighted to have a member who has completely abandoned them halfway through his first term in order to pursue his own political interests.

One particularly ludicrous claim was made by the member for Yeerongpilly. Specifically, he said that the changes that we are proposing to this act will radically change the core purpose of the act. That is absolute nonsense. It just goes to show how little he understands the legislation he is trying to criticise. The changes under consideration do not at all change the purpose of the act. They simply ensure it can achieve that purpose without being subject to accusations of bias or conflicts of interest. I do not doubt the member’s concern for people who do not get paid for services rendered. Who is not concerned about that? Not paying people when you owe them money is a low act and that is what he implied. On that topic, during his speech Mr Judge was very keen to read a number of newspaper articles and I thought I might do the same. I have one here, which I am happy to table, about the leader of the Palmer United Party, Clive Palmer, refusing to pay $5,300 to a small country race club that hosted a calamari and chips night for his political party. I refer the member to this article and suggest that to avoid being labelled a hypocrite he should reassure the House that no similar bills have been left unpaid after PUP fundraisers in Yeerongpilly or on the Sunshine Coast or wherever this member might ultimately decide to pursue his self-interest.

Tabled paper: Bundle of media articles regarding Clive Palmer MP [5940].

I thank the member for Moggill for his common-sense contribution. He is a man who has had experience in this area. He is a man who was the Minister for Housing and Public Works. He knew about the uproar in the industry with regard to this particular act. Again, he brought some perspective to the debate. This is not about totally reconstructing—excuse the pun—the building and construction industry. It is a specific act that we are dealing with today. It deals with those who are involved in disputes in trying to get progress payments. I thank the member for Moggill for his contribution.

I thank the Minister for Local Government, Minister Crisafulli, for his contribution from a local government perspective.

I turn to the member for Nicklin’s contribution. Like the member for Yeerongpilly, he focused his attention on things that are not within the remit of the bill being debated today. I refer the member to my previous speech about what we are doing to help protect subbies. I ask the member for Gladstone to listen to this too. There are two distinct things we are doing here. The first relates to BCIPA. We are making sure that disputes that come about in relation to progress payments are dealt with in a fair way.

The other issues about insolvency, companies falling over and the security of payments are totally separate issues. Those issues deserve attention. We remain committed to boosting the security of payments for subcontractors. We have begun investigating additional options to supplement BCIPA. Over the coming months we will be engaging with industry to develop a suite of initiatives that strike the right balance between the needs of all parties in the contracting chain.
The former leader of the Palmer United Party, the member for Gaven, made the same mistake as the current Leader of the Palmer United Party. He suggested that BCIPA can be a silver bullet to fix all the issues around security of payment in the construction industry, fraud, insolvency and phoenixing et cetera.

What these amendments can do is make the existing dispute resolution system fairer, more transparent and free from the conditions that lead to perceptions of bias. The member claims that the process is rushed. As I have already mentioned, it has been ongoing for almost two years. Precisely how long would he want this current situation to drag on for? I agree with the member’s comments about the need to do something about the payment issues that have beset the construction industry for decades. That is why, unlike the former government, which did nothing for the best part of 20 years, we are doing it. I have mentioned what we will do.

I thank the member for Brisbane Central for his contribution. I wish him a happy birthday as well. I know he is not feeling the love today. He is a person who has had plenty of experience in the construction industry.

For the member for Gladstone’s benefit, I want to reiterate some of the things I have said. When the member was talking about one of the committee reports she mentioned the Auditor-General. She said that it was important the Auditor-General was not only independent but also perceived to be independent. That is very relevant with regard to the adjudication process. We have a situation at the moment where claimants can go adjudicator shopping and try to find someone they think will give them favourable treatment.

There is an inherent conflict of interest in the way the system has been set up. I am not saying that there have been issues of impropriety but there is definitely the perception that that can occur. We have had plenty of anecdotal evidence that suggests that sometimes people did cross the line.

We are trying to address a totally different issue to the insolvency issues. They are important, but we will address those with a different vehicle. This act is all about giving subcontractors an opportunity to receive progress payments even if it is not in the contract and to make sure that when there is a dispute about that, there is a process to actually bring about a resolution as quickly as possible. That is the idea of the act. The act has, in the main, worked, but there have been some unintended consequences. That is what we are addressing with these amendments.

In conclusion, I would like to thank once more all honourable members who have contributed to this debate. I thank the officers in my department who have been working on this for quite some time. There has been an incredible amount of work put into this and an incredible amount of consultation. I again thank Mr Andrew Wallace for his contribution to this. He is a man who lives and breathes BCIPA. In my opinion, there is nobody who knows this act better—other than the registrar. I thank Mr Chesterman for the role he has played in bringing this together. On that note, I commend the bill to the House.

Division: Question put—That the bill be now read a second time.

AYES, 61:
- LNP, 60—Barton, Bates, Bennett, Berry, Bleijie, Boothman, Cavallucci, Choa, Costigan, Cox, Crandon, Cripps, Crisafulli, Davies, T Davis, Dempsey, Dickson, Dillaway, Dowling, Elmes, Emerson, France, Frecklington, Gibson, Grant, Grimwade, Gulley, Hart, Hathaway, Holswich, Johnson, Kaye, Langbroek, Latter, Maddern, Malone, Mander, McArdle, Menkens, Millard, Newman, Ostapovich, Powell, Pucci, Rice, Rickuss, Robinson, Ruthenberg, Seeney, Shorten, Shuttleworth, Smith, Sorensen, Springborg, Stevens, Stewart, Symes, Walker, Watts, Young.
- INDEPENDENTS, 1—Cunningham.

NOES, 13:
- ALP, 9—Byrne, D’Ath, Lynham, Miller, Mulherin, Palaszczuk, Pitt, Scott, Trad.
- KAP, 1—Knuth.
- PUP, 1—Judge.

Resolved in the affirmative.

Bill read a second time.

Consideration in Detail

Clauses 1 to 45—

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (12.32 pm): I seek leave to move the following amendments en bloc.

Leave granted.
Mr MANDER: I move the following amendments—

1 Clause 5 (Amendment of s 17 (Payment claims))
Page 6, line 24 and page 7, lines 1 to 4—

omit, insert—

Section 17(4) to (6)—

2 Clause 6 (Insertion of new s 17A)
Page 8, lines 12 to 20—

omit, insert—

defects liability period, for a construction contract, means the period, if any, worked out under the contract as being the period—

(a) starting on the day the construction work is practically or substantially completed, or the related goods and services are supplied, under the contract; and

(b) ending on the last day any omission or defect in the construction work or related goods or services may be required or directed to be rectified under the contract.

3 Clause 8 (Insertion of new s 18A)
Page 9, lines 2 and 3—

omit, insert—

(1) This section applies if, in reply to a payment claim, the respondent serves a payment schedule on the claimant.

4 Clause 9 (Replacement of s 19 (Consequences of not paying claimant if no payment schedule))
Page 10, after line 30—

insert—

(5) The claimant can not start proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt unless—

(a) the claimant gives the respondent a notice under section 20A(2); and

(b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.

(6) If the claimant starts proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt—

(a) judgement in favour of the claimant is not to be given by a court unless the court is satisfied the respondent—

(i) did not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and

(ii) failed to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and

(b) the respondent is not, in those proceedings, entitled—

(i) to bring any counterclaim against the claimant; or

(ii) to raise any defence in relation to matters arising under the construction contract.

5 Clause 10 (Amendment of s 20 (Consequences of not paying claimant under payment schedule))
Page 10, line 33, ‘(1)—

omit.

6 Clause 10 (Amendment of s 20 (Consequences of not paying claimant under payment schedule))
Page 11, lines 5 and 6—

omit.

7 Clause 11 (Insertion of new s 20A)
Page 11, lines 10 to 34 and page 12, lines 1 to 21—

omit, insert—

20A Notice required before starting particular proceedings

(1) This section applies if a claimant serves a payment claim on a respondent and—

(a) the respondent—

(i) fails to serve a payment schedule on the claimant under this part; and

(ii) fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and

(b) the claimant intends to—

(i) start proceedings to recover an unpaid portion of the claimed amount as a debt owing to the claimant; or

(ii) apply for adjudication of the payment claim.
(2) Before taking the intended action mentioned in subsection (1)(b), the claimant must first give the respondent notice of the claimant’s intention to take the action.

(3) The notice must—
   (a) be given to the respondent within 20 business days immediately following the due date for payment; and
   (b) state that the respondent may serve a payment schedule on the claimant within 5 business days after receiving the notice; and
   (c) state it is made under this Act.

(4) However, this section does not apply if the claimant previously gave the respondent a notice under this section for the unpaid portion of the claimed amount.

(5) The giving of a notice under subsection (2) does not—
   (a) require the claimant to complete the action stated in the notice; or
   (b) prevent the claimant from taking different action to that stated in the notice.

8 Clause 12 (Amendment of s 21 (Adjudication application))
Page 12, lines 26 to 31 and page 13, lines 1 to 3—
omit, insert—
(2) Section 21(2)(a) and (b)—
omit, insert—
   (a) the claimant gives the respondent a notice under section 20A(2); and
   (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.

(3) Section 21(3)(a) and (b)—
omit, insert—
   (a) must be in the approved form; and
   (b) must be made to the registrar; and

(4) Section 21(3)(c)(iii) ‘5 day period’—
omit, insert—
   5 business days

(5) Section 21(3)(e)—
omit, insert—
   (e) must be accompanied by the fee prescribed by regulation for the application; and

(6) Section 21(6), ‘authorised nominating authority to which an

9 Clause 14 (Replacement of s 24 (Adjudication responses))
Page 16, after line 22—
insert—
(7) If the claimant proposes to give the adjudicator a claimant’s reply, the claimant must give the adjudicator notice of the proposal within 5 business days after receiving a copy of the adjudication response unless the claimant gives the reply within the 5 business days.

10 Clause 15 (Replacement of s 25 (Adjudication procedures))
Page 17, lines 29 to 36 and page 18, lines 1 to 3—
omit.

11 Clause 15 (Replacement of s 25 (Adjudication procedures))
Page 18, lines 4 to 34 and page 19, lines 1 to 16—
omit, insert—
25A Time requirements for adjudication proceedings
(1) An adjudicator must decide an adjudication application on or before the deadline for deciding the application but not before the end of the minimum consideration period for deciding the application.

(2) However, the claimant and respondent may, before or after the deadline, agree in writing that the adjudicator has additional time to decide the application.

(3) The minimum consideration period for deciding an adjudication application is—
   (a) the period within which the respondent may give an adjudication response to the adjudicator under section 24A; but
   (b) if the claimant may give a claimant’s reply under section 24B—the period mentioned in paragraph (a) plus the period within which the claimant may give the reply.

Note—
Only a complex payment claim may involve a claimant’s reply. See section 24B.
(4) The **deadline**, for deciding an adjudication application relating to a standard payment claim, is the day that is 10 business days after—
   (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
   (b) otherwise—the last day on which the respondent could have given the adjudicator the response.

(5) The **deadline**, for deciding an adjudication application relating to a complex payment claim, is the day that is 15 business days after—
   (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
   (b) otherwise—the last day on which the respondent could have given the adjudicator the response.

(6) However, if the claimant may give the adjudicator a claimant’s reply under section 24B, the **deadline** for deciding the adjudication application is the day that is 15 business days after—
   (a) if the adjudicator was given a claimant’s reply in compliance with section 24B—the day on which the adjudicator receives the reply; or
   (b) otherwise—the last day on which the claimant could have given the adjudicator the reply.
Clause 38 (Omission of s 101 (Adjudicator must give copy of decision to authorised nominating authority))

Page 28, lines 15 to 18—

omit, insert—

Replacement of s 101 (Adjudicator must give copy of decision to authorised nominating authority)

Section 101—

omit, insert—

101 Queensland Building and Construction Board’s policy

(1) The Queensland Building and Construction Board may make a policy governing the administration of this Act.

(2) The policy does not take effect until approved by regulation.

(3) Section 19(4) of the Queensland Building and Construction Commission Act 1991 applies for a policy made under this section as if the policy were made under section 19 of that Act.

(4) In this section—


After clause 41

Page 29, after line 12—

insert—

41A Amendment of s 111 (Regulation-making power)

Section 111(2)—

insert—

(c) prescribe procedures for—

(i) the lodgement of adjudication applications with the registrar, including the last time during a day that applications may be lodged; and

(ii) the processing of adjudication applications by the registrar.

Clause 44 (Insertion of new pt 7, div 2)

Page 30, line 28, after ‘registration’—

insert—

as an authorised nominating authority

Clause 44 (Insertion of new pt 7, div 2)

Page 30, lines 30 and 31—

omit.

Clause 44 (Insertion of new pt 7, div 2)

Page 31, lines 1 to 16—

omit, insert—

114 Applications to authorised nominating authorities for referral to adjudicators

(1) This section applies to an adjudication application made, but not yet referred to an adjudicator, under section 21 before the commencement.

(2) The adjudication application must be dealt with under the unamended Act, section 21 as if this Act had not been amended by the Building and Construction Industry Payments Amendment Act 2014.

(3) In this section—

unamended Act means this Act as in force immediately before the commencement of this section.

Clause 44 (Insertion of new pt 7, div 2)

Page 31, after line 16—

insert—

115 Existing contracts not subject to new recovery of progress payment procedures

(1) This section applies to a construction contract entered into before the commencement.

(2) The existing recovery of progress payment provisions continue to apply for the recovery of progress payments relating to the construction contract as if the provisions had not been amended by the amending Act.

(3) However, the changes made under the amending Act and relating to the functions of the authorised nominating authorities being transferred to the registrar do apply to the construction contract.
Examples—

1. Adjudication applications are to be made to the registrar in the approved form and be accompanied by the fee prescribed by regulation.
2. The registrar refers adjudication applications to adjudicators.
3. Claimants may ask the registrar for an adjudication certificate.

(4) In this section—


eexisting recovery of progress payment provisions means the unamended Act, part 3, divisions 1 and 2.

unamended Act means this Act as in force immediately before the commencement of this section.

116 Mandatory training about adjudication changes

(1) The registrar may impose a condition on the registration of an adjudicator that requires the adjudicator—

(a) to complete the mandatory transition training prescribed by regulation; and

(b) to pay the cost of the training prescribed by regulation.

(2) This section expires 6 months after the commencement.

25 Clause 45 (Amendment of sch 2 (Dictionary))

Page 32, lines 6 to 15—

_omitted, insert—_

claimant’s reply, for an adjudication application, see section 24B(2).

complex payment claim means a payment claim for an amount more than $750,000 (exclusive of GST) or, if a greater amount is prescribed by regulation, the amount prescribed.

I table the explanatory notes to my amendments.


Amendments agreed to.

Clauses 1 to 45, as amended, agreed to.

Third Reading

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (12.33 pm): I move—

That the bill, as amended, be now read a third time.

Question put—That the bill, as amended, be now read a third time.

Motion agreed to.

Bill read a third time.

Long Title

Hon. TL MANDER (Everton—LNP) (Minister for Housing and Public Works) (12.34 pm): I move—

That the long title of the bill be agreed to.

Question put—That the long title of the bill be agreed to.

Motion agreed to.

WATER LEGISLATION (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Resumed from 3 June (see p. 1945).

Second Reading

Hon. MF McARDLE (Caloundra—LNP) (Minister for Energy and Water Supply) (12.34 pm): I move—

That the bill be now read a second time.