

LEGISLATIVE ASSEMBLY

**BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT
(AMENDMENT) BILL**

(Amendments to be moved by Mr. Hulls)

1. Clause 11, page 10, lines 7 to 33, and page 11, lines 1 to 7, omit all words and expressions on these lines and insert—
 - (a) the work has been carried out or the goods and services have been supplied under the construction contract; and
 - (b) the person for whom the work has been carried out or the goods and services supplied or a person acting for that person under the construction contract requested or directed the carrying out of the work or the supply of the goods and services; and
 - (c) the parties to the construction contract do not agree as to one or more of the following—
 - (i) that the doing of the work or the supply of goods and services constitutes a variation to the contract;
 - (ii) that the person who has undertaken to carry out the work or to supply the goods and services under the construction contract is entitled to a progress payment that includes an amount in respect of the work or the goods and services;
 - (iii) the value of the amount payable in respect of the work or the goods and services;
 - (iv) the method of valuing the amount payable in respect of the work or the goods and services;
 - (v) the time for payment of the amount payable in respect of the work or the goods and services; and
 - (d) subject to sub-section (4), the consideration under the construction contract at the time the contract is entered into—
 - (i) is \$5 000 000 or less; or
 - (ii) exceeds \$5 000 000 but the contract does not provide a method of resolving disputes under the contract (including disputes referred to in paragraph (c)).
- (4) If at any time the total amount of claims under a construction contract for the second class of variations exceeds 10% of the consideration under the construction contract at the time the contract is entered into, sub-section (3)(d) applies in relation to that construction contract as if any reference to "\$5 000 000" were a reference to "\$150 000".

Example

A building contractor enters into a construction contract. The consideration (**contract sum**) under the contract at the time the contract is entered into is \$3 million. The contract contains a dispute resolution clause. The contractor undertakes work at the direction of the other party. The contractor claims (the **new claim**) that the work is a variation to the contract. The other party does not agree that the work constitutes a variation to the contract (**disputed variation**). The contractor has already made a number of claims for disputed variations under the contract. The new claim brings the total amount of claims for disputed variations under the contract to \$350 000. This amount exceeds 10% of the contract sum. As the contract sum exceeds \$150 000 and the contract contains a dispute resolution clause, the disputed variation in the new claim and all subsequent disputed variations under the contract will not be claimable variations under this Act.'

2. Clause 17, line 9, omit all words and expressions on this line and insert—
- 'amount; and
 - (d) must be in the relevant prescribed form (if any); and
 - (e) must contain the prescribed information (if any).".'