

LICENSING PROVISIONS AMENDMENT BILL 2015

Second Reading

Resumed from 13 October.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [5.38 pm]: I rise on behalf of the opposition to indicate its support for the Licensing Provisions Amendment Bill 2015. The government advises that this bill is part of its red-tape reduction plan and will cut out unnecessary regulation. I must say that this bill actually seeks to do that. It is a fairly sensible piece of legislation. It picks up on about half a dozen different acts currently in place and seeks to make processes much simpler. Most of the bill's provisions are about licensing and providing for the transition of licensing applications to be available online. It also seeks to remove the requirement for occupational licence applications and certificates provided to the Commissioner for Consumer Protection to be accompanied by a statutory declaration.

The first act the bill amends is the Auction Sales Act 1973. It will allow for licences and renewals to be issued for up to three years rather than one year and will remove the requirement for auctioneers to provide multiple copies of testimonials with their applications. Auctioneers will no longer be required to advertise a notice of their application in a newspaper. I should probably call this the “Steve Mills” amendment. More than a year ago, I heard Steve Mills on 6PR talking about this issue for auctioneers and how crazy it was that they had to renew their licences every single year. If no-one else is happy, at least Steve Mills will be happy because we have ticked that key performance indicator and he will have to renew his licence only every three years once this bill is passed. The next legislation to be amended is the Debt Collectors Licensing Act 1964. Again, the amendment will provide for a longer licensing period of up to three years for debt collectors. The Land Valuers Licensing Act 1978 will also be amended to ensure that fees are paid before the licence is issued. The amendment also provides for a \$20 000 fine for providing false and misleading information in an application to obtain or renew a licence. The bill amends the Motor Vehicle Dealers Act 1973 to allow motor vehicle dealers to provide a statutory declaration as an alternative to completing a trust account audit if the trust account has not recorded any transactions during the financial year. Obviously, that will save motor vehicle dealers quite a lot of time and expense. Motor vehicle dealers who have not had any transaction in their trust account during the financial year will no longer have to undergo a yearly audit that can cost up to \$500 an hour. Currently, when a second-hand vehicle is found to be defective and the owner of the vehicle elects to hand the vehicle's number plates to a licensing centre, the owner must also complete and submit an approved form with those licence plates. This bill removes the requirement to complete and submit this form, as processes used by licensing centres render the practice obsolete.

The next legislation to be amended is the Real Estate and Business Agents Act 1978. The amendment seeks to remove the prohibition against commission payments to real estate agents prior to settlement for off-the-plan property sales. It also provides for a \$20 000 fine for providing false and misleading information in an application to obtain a licence. I have a question around this issue. I will refer to the bill's explanatory memorandum on these amendments. The explanatory memorandum refers to removing the prohibition to receive commissions. Having met with members of the Real Estate Institute of Western Australia, I know that they are very keen on this amendment. They told me that this has been a significant issue in the industry given we have had growth in the sale of off-the-plan apartments, particularly in the CBD. They told me that in some cases real estate agents involved in those sales have had to wait many, many years to receive their commission, or, if for some reason the arrangements change, they may not receive payment at all.

The detail in the explanatory memorandum focuses on real estate agents involved in off-the-plan strata title projects for the payment of commission. My question is: does this amendment to the Real Estate and Business Agents Act pick up salespeople who work in project homes? From memory, I have raised WOW Homes with the Attorney General in the past. Let me pull a few names out—I am not directing my comments at anyone—Dale Alcock Homes and Collier Homes. I am trying to think of some of the other builders; there is First Choice Homes WA and a plethora of others. People go out to certain suburbs where display homes are set up, which all look fantastic, really keen salespeople try to sell them the plan for the building and the consumer signs on the dotted line. At that point I do not think that the salesperson is actually a real estate agent but a salesperson working in that sector, and I understand that there is a process for when they get their commission. The first part of the commission does not kick in until the pad has been laid, and there are a couple of other stages before the salesperson gets the remaining elements of their commission. If something in the contract changes, I understand it can delay the commission payment. At a later stage, if the builder has to pay for changes to the construction that were not in the original contract, those costs come out of the commission to the salesperson. That is a whole other issue. I have dealt with people who have been caught out by that, including one poor young fellow who has now been declared bankrupt as a result, which is dreadful. I think a whole lot of work needs to be done to afford some sorts of protections to people working in that part of the industry.

I wonder whether that group of salespeople working in real estate selling homes—albeit homes that have not been built yet—is not all that different from salespeople selling apartments off the plan. We are changing the legislation to provide support to people who rely on commissions and to ensure that they are paid their commission at an earlier stage and do not have to wait for years on end to receive it. Does this set of amendments also pick up on salespeople involved in display home sales? It is a simple question.

Hon Michael Mischin: I do not know the answer but I will think it through.

Hon KATE DOUST: The Attorney General may not be able to give me the answer to that question today—I appreciate that—but I think it is an interesting question. A significant number of people are employed in that type of home sales. I have met with a number of people in that part of the industry, which is the entry point, if you like, for someone thinking of building their own home or for first home owners, and they would come into contact with that individual. A lot of people are doing that job who, I understand, are pretty much wholly and solely reliant on commissions. Based on the meetings I have had with some of the young people involved in this work, it seems to be a complicated arrangement, and, in some cases, a trap for new players. I am curious about whether the Attorney General can tell us whether these amendments will pick up and provide the same sorts of protection, if you like, to that group of salespeople working in real estate or whether they are restricted to the group who work on strata title projects?

Hon Michael Mischin: Do you want me to do this by way of interjection?

Hon KATE DOUST: It is fine for the Attorney General to answer when he makes his second reading reply.

If the project home salespeople are excluded from this provision, perhaps, for future reference, that is something that the Consumer Protection Division might want to look at. There might be some work to be done on how their matters are managed better, because there seem to be no protections for those people who have to wait extensive periods to get any cash. I do not think that their commission payments would be on the same level as those for some of the strata plan apartments around the city.

Hon Michael Mischin: All right, I will do that.

Hon KATE DOUST: Okay. The next legislation to be amended is the Settlement Agents Act 1981. The amendment to this act provides for a penalty of \$20 000 for providing false and misleading information in an application to obtain or renew a licence. All the changes that I have just been through fairly quickly come under the Department of Commerce, so they are fairly straightforward. The amendments are very sensible; they are about modernising, updating penalties and ensuring that people receive their appropriate entitlements. I know stakeholders in the industry support getting this legislation through Parliament and there is no difficulty with that.

The other two areas picked up under this bill deal with amendments to the Transport Co-ordination Act 1996, which is a very niche area of change. The first amendment seeks to increase the licensing period for aircraft operator licences from one year to five years.

Hon Michael Mischin: It's for aircraft operators, I think.

Hon KATE DOUST: It is for aircraft operator licences.

Hon Michael Mischin: Yes.

Hon KATE DOUST: I would not have thought that this was a common area—only a very, very small group of people are involved in that space.

The final amendment, which I am sure my colleague Hon Robin Chapple will talk about in more detail, is to the Mining Act 1978.

That amendment is about notifying multiple tenement applicants, or tenement holders with separate addresses. Hon Robin Chapple will recall that we dealt with mining legislation earlier this year and met with miners in Kalgoorlie. I looked through this bill and wondered how we communicate with these people and get the information to them. A lot of those matters were canvassed with us during that time. The Licensing Provisions Amendment Bill 2015 was probably already in the house then. I suppose that this type of change will make life a bit easier for those small to medium-sized miners we met with, given they were loath to deal with lots of paperwork. There was also a degree of reluctance from some of the more senior members of that mining community to engage online. In this case, it is an interesting balance to be reached for those people.

For the first tranche these are sensible changes, particularly those relating to the Department of Commerce. Expanding the time to obtain licences is very sensible and changing the arrangements for penalties is just modernising the procedure. Ensuring that everything is available online is a positive change for the staff working in the department and certainly will benefit the consumer; being fully portable and fully accessible makes more sense. These changes are very positive. Other than the one issue around those salespeople, we are quite satisfied with these changes and support the bill.

HON RICK MAZZA (Agricultural) [5.51 pm]: I rise to make a few comments on the Licensing Provisions Amendment Bill 2015. Having dealt with quite a few of these types of licences over the years, it is quite pleasing to see that this legislation will now be streamlined and modernised, in particular the auctioneers licence. As Hon Kate Doust alluded to, it has been a very onerous process to have to fill out a fairly detailed application form and provide references each and every single year. It costs \$400 a year, which is quite an expensive application, which then has to go before a magistrate to be signed off to approve a person's auctioneer's licence. That takes up time in the court, which seems over-engineered and probably unnecessary. Three-year licences will be very much welcomed by people who are involved in auctioneering, as I once was. I do not know whether this amendment will take away the need for the licence to be approved by a magistrate, now that some online applications can be made. It would be good if sometime in the future the requirement for a magistrate to sign off on an auctioneer's licence could be taken out of that process.

For different reasons than Hon Kate Doust, I have some questions also about the Real Estate and Business Agents Act 1978 and the ability for real estate agents to receive a commission before the settlement on strata titles. The Real Estate and Business Agents Act requires settlement of a property prior to an agent being able to receive a commission or draw the commission from a trust account. This amendment will allow real estate agents to receive a commission prior to settlement because often it can take years before strata title complexes are completed and if the sale has been made and the real estate agent has done their job, it is important they be paid, for cash flow and other reasons. I am intrigued that the provision does not extend to vacant land subdivisions, which has exactly the same sort of arrangement in which a real estate agent will be engaged by a developer to sell new blocks in a subdivision. Again, it could take years by the time they go through all the planning and other approvals.

Hon Kate Doust: It is not dissimilar to the situation with salespeople in those project homes.

Hon RICK MAZZA: I might touch on that, although I do not want to pre-empt the answer Hon Kate Doust will get from the Attorney General. I think she will find that land is not involved when selling a new home building contract; it is an arrangement between the builder and the new home salesman. If no land is involved, the Real Estate and Business Agents Act does not really come into it. The only time it would be if a person buys off the plan when a piece of land is involved in the transaction. Those arrangements between a builder and a new home salesman are removed from the Real Estate and Business Agents Act and are a direct arrangement between the builder and that sales representative. I am a little intrigued about why vacant land subdivisions have not been included in this particular amendment for exactly the same reasons that the strata title is included in it. It would be interesting to find out from the Attorney General why vacant land has not been included.

It is also welcomed that we will have an online facility and statutory declarations rather than having to go through the onerous process with a lot of these applications. Fines have been increased to \$20 000 to ensure people are discouraged from making false applications and to give some integrity to the online system. Overall, it is a good bill and we support it. It is good to see this omnibus bill come through to make business in the state a lot easier.

HON ROBIN CHAPPLE (Mining and Pastoral) [5.55 pm]: The Licensing Provisions Amendment Bill 2015 amends the Auction Sales Act 1973, the Debt Collectors Licensing Act 1964, the Land Valuers Licensing Act 1978, the Mining Act 1978, the Motor Vehicle Dealers Act 1973, the Real Estate and Business Agents Act 1978, Settlement Agents Act 1981 and the Transport Co-ordination Act 1966. I listened to my parliamentary colleagues, Hon Rick Mazza and Hon Kate Doust, and I will not go to the areas that they covered, but I am interested in the amendments to the Mining Act 1978. A couple of things have come to my attention. The Attorney General's second reading speech states —

The bill will amend the Mining Act 1978 to create a single point of contact, known as the designated tenement contact, for all mining tenements and applications for mining tenements. Currently, when there are multiple tenement applicants or tenement holders with separate addresses, the Department of Mines and Petroleum must send separate letters to each of those applicants or holders. Introducing a single contact point will enable efficiencies in delivering correspondence, save money on postage and speed up the processing of transactions and queries.

Another issue concerns iron ore. I come back to the bill and the explanatory memorandum. The explanatory memorandum states —

Section 8 amended

Introduces a definition for a designated tenement contact, who is to be the single point of contact for a mining tenement or an application for a mining tenement.

Clause 20 of the bill, "Section 8 amended", states —

designated tenement contact (DTC), —

Which will be added to section 8, which is the descriptor part of the Mining Act 1978 —

in respect of a mining tenement, or an application for a mining tenement, means the person who is, or the persons who are, in accordance with the regulations, the designated tenement contact for the mining tenement or application;

In my view, there seems to be a discrepancy between what is in the explanatory memorandum and what is in the minister's second reading speech, because proposed section 8 states, "means the person who is, or the persons who are", which means that, in my view, proposed section 8 refers to multiple people. It is really important for the people Hon Kate Doust and I met with who stated that in many joint ventures between prospectors, one might be out on the ground while the other is in town or is working another lease somewhere. We were advised that in many cases some of those people were not readily available because they were out bush and would be for a number of weeks.

The first thing I want to clarify is that if there is a joint venture, both parties to that joint venture will get the notice, so one of them who is in Kalgoorlie or Coolgardie, say, will get the notice and the other one who might be the nominated person and who is not available because they are out working the tenement and might be there for three months, six months or whatever, will not miss the notice. Quite clearly, if they miss a notice, if it is a form 5 or an expenditure notice or something like that, it can mean an impost and possibly the loss of the tenement if the person does not respond in a timely manner. I have had some correspondence backwards and forwards with the Amalgamated Prospectors and Leaseholders Association of WA, and it is an area that it would really like to see clarified. One thing that prospectors have to do is give their annual reports to the Mining Rehabilitation Fund for lodgement and at the moment it contains all the names on the tenements for the annual MRF. This could potentially be far-reaching and I really want to clarify, most probably via committee, how this clause will be applied to small miners. Recently, one of their number was fined \$1 200 for not lodging a form 5, which is the expenditure report for a prospecting licence, in a timely manner. This issue of contact with the junior miners is something that, as Hon Kate Doust has said, was brought to the attention of our committee of inquiry. I would not wish to see any new process introduced that in any way, shape or form could inhibit the activities of what are the backbone of the small gold mining sector in Kalgoorlie. I need to get some detailed clarification on those points.

As I said, there is some discrepancy between what the explanatory memorandum says, what the minister has said and what is stated in the bill, so that needs clarification. I certainly welcome the second part of the amendment, and that is the removal of reference to iron ore. Currently, prospectors and explorers, or anybody who specifically identifies that they want to go after iron ore, has to make a special application. Section 111 of the Mining Act 1978 is "Power of Minister to exclude mining for iron from mining tenements". It states —

Notwithstanding the provisions of sections 48, 66, 70J and 85 —

- (a) a prospecting licence does not authorise the holder thereof to prospect for iron on the land the subject of the prospecting licence;

It goes on to explain that an exploration lease, a retention lease and a mining lease are the same. The unfortunate thing is that we know that someone prospecting land can sink a drill down and may find nickel, gold and hopefully a whole host of minerals in that one drill hole, but if they find iron ore, they are not supposed let anybody know, because they are not supposed to be looking for it. I think it is a real step forward to get rid of that section, so we will support that. We support the whole legislation, the package, but I need some proper clarification about that single point of contact in the mining part of this bill.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [6.05 pm] — in reply: I thank honourable members for their contribution to the debate on the Licensing Provisions Amendment Bill 2015 and for the indications of support for this red-tape reduction initiative. As has been identified, the bill ranges over a variety of statutes that govern processes that have been identified as able to be refined or dispensed with, and foreshadows in some respects, in particular in relation to the Auction Sales Act, a more general review I have asked the department to undertake—it is taking a bit of time—to examine the question of what, if any, regulation is needed for auctioneers. That is just one example of an analysis of whether or not licensing processes we have come to take for granted are necessary. My recollection is that the Auction Sales Act provides for general auctioneers' licences, real estate licences and stock licences. A real question arises about whether auctioneers need to be licensed at all. There may be some specialist need in the case of stock sales, but generally spruiking auctioneers are not holding moneys in trust; they are simply spruikers, albeit with enormous skill. Why it is necessary to regulate them as opposed to allowing the market to pick the ones who are the best is a good question. But pending a more thorough review of that, with the necessary consultation processes that need to be undertaken in order to achieve such a reform, the extension of the period of time for a licence from one year to three years takes some of the burden off the licensing process and what auctioneers need to do in order to be able to do their jobs. Part of that review, of course, will also examine the question of why they need to get their

licences issued by a magistrate. It seems odd to me. It is probably an anomaly from way back when, but I do not understand the reasoning behind it. Nowadays most of these sorts of licences are issued by the Commissioner for Consumer Protection or some other public officer who has the responsibility for the policing of that particular industry. It would seem to be one of those circumstances that seemed like a good idea at the time in simpler days and has now been entrenched and remains part of the system, but needs to be addressed.

I will not go into all of the matters that have been raised mainly by way of comment, but I will deal with a few specific issues that have been canvassed. Firstly, I might start in reverse order with Hon Robin Chapple and section 8(1) of the Mining Act 1978, which will be amended by clause 20 of the bill. The designated tenement contact allows for more than one person, and the answer to Hon Robin Chapple's basic question is yes, the amendment will allow for more than one designated tenement contact. Even when there is a joint venture, both parties can be designated as tenement contacts for a tenement. I understand that will relieve some of the problems that require sending notifications to people rather than allowing some element of choice in the matter in order to simplify the communication process not only from the point of view of the government, but also from the point of view of the tenement holders as to who they would prefer to have as the designated contact.

On the issue of the amendment to the Real Estate and Business Agents Act, this particular amendment applies only to licensed real estate agents. Sales representatives who are employees of the developer would have their conditions of employment and their commissions, if they are entitled to any, governed by their employment contract.

Hon Kate Doust: Yes; I've seen those contracts.

Hon MICHAEL MISCHIN: That may be another issue, but this is aimed at licensed real estate agents. The Real Estate and Business Agents Act allows for a commission at the time of settlement alone.

The Strata Titles Act currently requires that a consumer's funds be held in trust until settlement, and that means that the consumer's funds cannot be used to pay the commission and will be protected if the development does not proceed. There is a slight departure in the Sale of Land Act that needs to be addressed. The Sale of Land Act currently does not have the same safeguard for a consumer's deposit. A bill to amend the Sale of Land Act will introduce a similar requirement that the deposit be held in trust. Once this is in place, the capacity for a real estate agent to receive an early commission will be extended to off-the-plan sales of lots of land, and that will be done by way of regulation.

The amendment to the Real Estate and Business Agents Act will allow sales pursuant to the Sale of Land Act to be captured by the early commission provision; that is, sales off the plan pursuant to that act will be prescribed in regulations if the Sale of Land Amendment Bill 2016 passes through Parliament and incorporates the protection of consumer deposits. Although there is a necessity, to the government's mind, for allowing, quite sensibly, real estate agents who have done their job to be paid at an appropriate time once they have completed the function for which they have been engaged, it is also essential that that payment not come out of deposits that might have to be refunded to the purchaser in due course.

Hon Rick Mazza: Under the Real Estate and Business Agents Act, you are required to put any deposit you receive into a trust account until settlement is effected or, if settlement fails due to the fault of the seller, you can then claim as well. Why is there a need to amend the Sale of Land Act when there is already that protection in the Settlement Agents Act that the deposit must be put into a trust account?

Hon MICHAEL MISCHIN: I do not have that act before me at the moment. It may be a requirement that it be held in trust. However, we are also providing for the payment for the real estate agent. It is my understanding that there needs to be amendment to the Sale of Land Act to allow this particular facility to carry through to it. I am happy to provide Hon Rick Mazza with some more detailed advice on this issue. I am afraid that I just do not have the information at my disposal at the moment to address that particular issue.

Of course, should members have any queries about the operation of that legislation, I am happy to oblige outside of session. Otherwise, I thank members for their support for the reforms advanced in this bill and I move that the bill be read a second time.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Brian Ellis) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 1: Short title —

Hon ROBIN CHAPPLE: The second reading speech quite clearly states that the bill will amend the Mining Act to create a single point of contact. That is the concern of the constituents I represent. Having said that, it appears that the bill does not do that. The bill refers to “the person who is” or “the persons who are”, so in what context will there be a single point of contact if the amendment to section 8 refers to multiple people? I really want some explanation of this single point of contact, because the single point of contact is the very issue that my constituents in the goldfields are very concerned about. They do not want a single point of contact. I am really trying to ascertain where we are at.

Hon MICHAEL MISCHIN: Currently, the requirement for regular notices is that they must go out to all tenement holders. This legislation will provide that tenement holders can choose a single point of contact if that is what they desire. Legal action and things of that nature will still require the service of process on whoever is affected by that process. However, for the more routine notices that ordinarily are sent out to a multiplicity of people, they may consider that if that is what they want, but if they prefer to have a single point of contact, it allows for it; hence, either one or more persons being designated by the tenement holder for that purpose. It is a red-tape reduction measure from the point of view of the department because it allows for that flexibility. It is also a significant convenience for the tenement holders if they choose to avail themselves of having one person responsible for fielding all these notices rather than having to deal with a pile of paperwork that each of them receive that may be a duplicate of what a person at the same address receives on the same matter.

Hon ROBIN CHAPPLE: I thank the Attorney for that clarification. That is the clarification that my constituents needed.

Clause put and passed.

Clauses 2 to 43 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Michael Mischin (Attorney General)**, and passed.