

HOME BUILDING CONTRACTS AMENDMENT BILL 2002

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Nick Griffiths (Minister for Racing and Gaming) in charge of the Bill.

Clause 1: Short title -

Hon RAY HALLIGAN: The Government has suggested that this Bill will fix a number of issues that are of grave concern to many of the smaller builders in Western Australia. Other speakers have mentioned the issues associated with the collapse of HIH Insurance and other problems in the insurance industry, so I will not go over that ground again. I place on record a meeting that I had with approximately 200 small builders on Monday, 21 October at the Balcatta Soccer Club. At that meeting a number of builders suggested that for some considerable time they have had concerns about the restrictions that are being placed on them by the insurance companies, and about the financial burden they have to carry and the fact that they are being asked to provide cover of \$100 000 before each project when the average claim is only about \$13 000. They also voiced the opinion that they would like to have a locally-based insurance provider and that a mutual fund would be the solution to their problems. Another of their concerns was that because of the problems associated with housing indemnity insurance, some of the larger builders appeared to be taking over many of the contracts that these smaller builders would normally take over.

At that meeting some figures were supplied by the Master Builders Association of Western Australia to indicate the percentage of total market share in the Perth metropolitan area for the top three and the top 10 builders in the period 1998 to 2002. In 1998 for the top 10 builders, the number of starts was 50.2 per cent and the value of starts was 44 per cent. To September 2002, for the top 10 builders the number of starts was 57.1 per cent and the value of starts was 52.4 per cent. In that four-year period, for the top 10 builders the number of starts has gone up by nearly seven per cent and the value of starts has gone up by just over eight per cent. This has caused the smaller builders some concern. They believe that if something is not done quickly, the larger builders will have taken over the part of the market that they had and it will become much more difficult for them to take back that market from those larger builders.

The second reading speech by Hon John Kobelke in the other place is particularly important with regard to mutual funds. It states -

A key amendment of the Bill is to allow mutual and approved funds to cooperate alongside and in competition with the traditional insurance companies. This should make home indemnity cover more readily available and more competitive.

That is a simplistic answer to the situation. It goes on to say -

The Bill gives the minister the power to grant approval to a fund or mutual scheme, subject to the fund or mutual meeting such terms and conditions as the minister may consider appropriate, including: the rules of the fund are approved by the minister; each person responsible for the management of the fund is approved by the minister; the minister is satisfied that there is adequate insurance or other provision for excess losses of the fund; and a requirement that the excess of loss insurer be authorised under the commonwealth Insurance Act 1973.

I think we will find that what the Government is providing as a solution to the problem is not a solution but just the beginning, and the Government will need to look very strongly at this insurer, or re-insurer, for the mutual funds that the small builders regard as their saviour. The minister's policy adviser, Simon Ward, said at that meeting in Balcatta that the Government will not be going down the path of taking on the role, as has the Queensland Government, of underwriting any claims of between zero dollars and \$10 million. However, the Government has provided that form of support to four of the larger builders for any claims in excess of \$10 million. I believe the minister in the other place has suggested that the smaller builders could obtain, through their mutual fund, that same benefit if they were to make an application. However, their difficulty is in the area of claims of between zero dollars and \$10 million in the shorter term until such time as any mutual fund that the industry was able to develop could create sufficient reserves to enable the minister to suggest that approval be granted for that mutual fund. I hope the Government will take that matter in hand, because otherwise this Bill will not be the solution that the Government has suggested to the industry it is providing.

Clause put and passed.

Clauses 2 to 8 put and passed.

Clause 9: Section 25A amended -

Hon NICK GRIFFITHS: I move -

Page 3, after line 10 - To insert-

“builder” includes, in addition to the meaning given by the definition in section 3(1), a person who is registered under the *Builders’ Registration Act 1939*, whether or not the person carries on a business referred to in that definition;

This amendment and the subsequent amendment provide for definitions of builder and owner-builder. The relevance of these amendments becomes apparent in dealing with the following amendments on the supplementary notice paper. The purpose of this exercise is to provide for the circumstance in which a registered builder builds his or her own home. It is thought appropriate that that person should be substantially under the same regime as a non-registered builder who builds his own home, with certain other safeguards that are dealt with in the corresponding or succeeding amendments.

Hon BARRY HOUSE: The Opposition supports this amendment and the subsequent consequential amendments because a builder self-insures anyhow when he builds his own home. It is pointless for a builder to take out indemnity insurance on his own work when he is ultimately responsible for his own property. In that regard, it is a sensible amendment and the Opposition has no problems with supporting it.

Amendment put and passed.

Hon NICK GRIFFITHS: I move -

Page 4, lines 14 to 16 - To delete the lines and insert instead-

(2) Section 25A is amended by deleting the definition of “owner-builder” and inserting the following definition instead -

“owner-builder”, in relation to a dwelling, means -

- (a) a person who constructs the dwelling under a building licence issued to that person in accordance with section 4A(1)(c) of the *Builders’ Registration Act 1939*; or
- (b) a person who -
 - (i) is registered under the *Builders’ Registration Act 1939*;
 - (ii) constructs the dwelling for himself or herself as his or her principal place of residence and not for immediate sale; and
 - (iii) was issued a building licence for the residential building work for the dwelling when no policy of insurance that complies with Division 2 was in force, or no corresponding cover (of the type referred to in section 25DA) was provided by an approved fund, in relation to the residential building work;

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10: Section 25B amended -

Hon NICK GRIFFITHS: I move -

Page 4, after line 21 - To insert -

(1) Section 25B(1) is amended by deleting “subsection (2)” and inserting instead -
this section

Page 10, after line 23 - To insert -

(3) After section 25B(2) the following subsections are inserted -

- (3) This Division does not apply to residential building work that is, or is to be, performed by a builder who is a natural person, if -
 - (a) the residential building work is to construct a dwelling for the builder as his or her principal place of residence and not for immediate sale; and

- (b) the builder has given the Builders' Registration Board a statutory declaration verifying that he or she has not, within the last 6 years, obtained a building licence for residential building work in respect of which no insurance was required because of this subsection.
- (4) The Minister may order that subsection (3)(b) has effect in relation to particular residential building work as if the 6 year period referred to were reduced to the lesser period specified in the order, if the Minister is satisfied that -
 - (a) the application for the order arises from a change in the circumstances of the person; and
 - (b) the person would suffer hardship if the application were refused.
- (5) In subsection (3) -
 "insurance" means a policy of insurance that complies with Division 2, or corresponding cover provided by an approved fund.

These amendments remove the requirement for a builder to have home indemnity insurance or corresponding cover if the building work is for the builder's principal place of residence and if a principal place of residence has not been built by the builder for himself in the last six years. However, the minister can reduce that period in the event of a change of circumstances that causes that person to suffer hardship.

Hon BARRY HOUSE: I reiterate the Opposition's support for these amendments and refer to proposed new subsection 3(b) in the second amendment. The nub of the whole exercise is that the builders caught up in this situation are, in the main, small, customised builders who are longstanding experts in the field who have been issued their authority by the Builders Registration Board of Western Australia and are now being told by insurance companies whether they can build. The critical point is that they have expertise and qualifications which have been approved and which are regulated by the Builders Registration Board. The board should be the body that determines who builds in this State, not an insurance company that might base its judgments on a range of other issues not pertinent to the builder's ability to build well or otherwise.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 11 put and passed.

Clause 12: Section 25D amended -

Hon BARRY HOUSE: This clause inserts the words "other than a developer". I will table information that came to me after I made my second reading comments last week. Hon Ray Halligan may have referred to the same figure. I will table a document that sets out in table form, for each year from 1998 through to September 2002, the percentage of the total market in Western Australia occupied by the top three builders and the top 10 builders and owner-builders. The trends were outlined previously, but the trend is markedly in favour of the bigger builders in Western Australia occupying an increasing market share. It is quite stark. A graph accompanies the table, which indicates that trend. The trend in the country is more marked than that in the city. These figures are for the city, but in country regions the market share of the top three builders in particular has increased quite markedly as a result of the situation in which the industry finds itself.

Hon Nick Griffiths: Does the document describe how the figures were compiled or refer to who compiled it?

Hon BARRY HOUSE: No, it does not.

Hon Nick Griffiths: Would you explain how you got the figures?

Hon BARRY HOUSE: These figures were given to me by people involved in investigating the option of establishing their own mutual funds.

Hon Nick Griffiths: Can you be more specific than that? Did it come from a particular organisation or an individual?

Hon BARRY HOUSE: I do not believe it came from a particular organisation. If an organisation played a part in its compilation, it was probably the Master Builders Association, but I cannot say with absolute certainty that that is the case. The evidence contained in these tables and the graph starkly indicate the impact of the insurance situation over the past 18 months on small builders in particular who build customised homes in Western Australia rather than on the project builders. The project builders have been able to negotiate and fund their way through the maze. However, the smaller builders, of which there are many in the city and country regions in

Western Australia, have been caught up in this situation. Hopefully this legislation will provide them with the opportunity to get out of the problems that they currently face. I seek leave to table those documents.

Leave granted. [See paper No 438.]

Clause put and passed.

Clause 13 put and passed.

Clause 14: Section 25F replaced -

Hon NICK GRIFFITHS: I move -

Page 7, line 1 - To insert after “replaced” -

by sections 25F and 25FA

Page 7, line 2 - To delete “section is” and insert instead -
sections are

Page 7, after line 26 - To insert -

25FA. Further restrictions on sale by certain owner-builders

- (1) A person to whom paragraph (b) of the definition of “owner-builder” applies in relation to a dwelling must not, within 3 years of the date of issue of the building licence to the person for the dwelling, sell or otherwise dispose of the land on which the dwelling was constructed unless the Minister by order otherwise consents.
Penalty: \$10 000.
- (2) Before making an order under subsection (1), the Minister is to be satisfied that -
 - (a) the application for the order arises from a change in the circumstances of the person; and
 - (b) the person would suffer hardship if the application were refused.
- (3) Subsection (1) does not apply to a person in relation to a dwelling if the building licence for the dwelling was issued to the person during a period specified in an order made under section 25I for the purposes of section 25C(3).

The first two amendments facilitate the substantive amendment, which is the third amendment. The third amendment places further restrictions on the sale of land on which a dwelling is constructed by certain owner-builders. The policy behind this amendment is to discourage speculation, bearing in mind the exceptional circumstances with which we are dealing.

Hon BARRY HOUSE: The Opposition supports these amendments, particularly the time line set within proposed section 25FA(1) that places certain restrictions on the sale of certain dwellings built by owner-builders. The three-year period is a sensible provision that eliminates the obvious opportunities that some people may use for the purposes of speculation, and it will provide a condition whereby genuine owner-builders will be protected.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 15 put and passed.

Clause 16: Part 3A Division 3A inserted -

Hon MURRAY CRIDDLE: I pointed out an issue during the second reading debate and I understand that the minister will clarify the situation.

Hon NICK GRIFFITHS: Hon Murray Criddle raised an issue in the course of the second reading debate with regard to mutual funds. The substance was that he wanted a greater explanation of mutual funds and what they were than has occurred so far in the course of the discussion. I note that he sought a satisfactory explanation from me. I will give him the best explanation I can; whether it satisfies him is another matter. I am looking at Hon Barry House; I think he has something else on his mind.

Hon Barry House: The builders want to be satisfied.

Hon NICK GRIFFITHS: Everybody wants to be satisfied. I will endeavour to give an appropriate explanation based on the information with which I have been provided. It is the Government's concern to ensure that the building industry is satisfied to the greatest extent possible. Proposed section 25GB(2) states -

The Minister is not to approve a fund unless -

- (a) the fund is, or is similar to, a mutual fund;

Those words have a fairly wide application. My task is to try to put some meat on those bones. The advice with which I have been provided is that a mutual is effectively a group of people or businesses that have come together for a particular purpose. With regard to this Bill, a mutual would be formed to make home indemnity cover available to members of the mutual. I am advised that mutual schemes currently operate in competition with commercial insurers in other sectors, for example, superannuation, universities and local government. If it is passed, this legislation will provide the opportunity for building industry groups to become more directly involved in the provision of home indemnity insurance. In making those observations I point out that the legislation is widely framed. It does not seek to impose a certain or particular form of mutual; it provides an opportunity for a proposal to be received and evaluated on its merits. That is about as far as I can take it at this stage.

Hon BARRY HOUSE: I will try to solicit some more specific responses from the minister. This is an enabling clause only. The legislation is academic unless the minister on behalf of the Government accepts the details applied in it. With regard to the mutual fund, I believe the industry must have some comfort that the Government will approve non-traditional models. In that sense, I am aware of a number of private bodies that are, on the strength of this legislation, preparing proposals to form mutual funds of amounts up to \$10 million. Such private bodies are not insurers and require comfort that their proposal will be accepted subject to prudential requirements. Will the mutual funds require Australian Prudential Regulation Authority approval? For example, if a building society not approved under the Commonwealth's Insurance Act 1973 is involved in a mutual fund, will the Government accept the mutual fund proposal?

Hon NICK GRIFFITHS: The Australian Prudential Regulation Authority has a number of functions; in particular it approves insurers. If APRA is of the view that it can regulate, it will do so. In a sense, one of the longest words in a parliamentary debate is "if". Having said that, if a mutual were to put forward a proposal that was acceptable to the Government but not approved by the Australian Prudential Regulation Authority, under the Bill the Government would impose a regulatory regime.

Hon BARRY HOUSE: Proposed section 25GB(3) states -

In deciding whether to approve a fund, the Minister may take into account -

- (a) the independence of the persons involved, . . .

A minister's judgement could become subjective. For example, I refer to a situation in which people get together to create a mutual fund or a private scheme on their behalf. They put up the money, organise the fund and want to be on the fund's board. However, the Government has the ability and the discretion to veto their appointment or to dictate the climate of their mutual fund and the way it will operate. Some people may not be comfortable with that situation, because, after running the risk and putting up the money, they could effectively find themselves vetoed from direct control over their mutual fund. Some people will object to that.

Hon NICK GRIFFITHS: The clause is not prescriptive because it does not spell out with precision the criteria that will be involved. The Government does not intend the minister to deal with the matter on an operational level by telling people how they should run their funds. The intention is that the minister will act on behalf of the community, and, in carrying out a public duty, it is intended that the minister will ensure - to the extent that the minister is able to do so - that the matter is dealt with prudentially, bearing in mind that the legislation removes the requirement for home indemnity insurance.

Clause put and passed.

Clauses 17 to 21 put and passed.

Title put and passed.

Bill reported, with amendments.

Leave granted to proceed forthwith through remaining stages.

Report

Report of Committee adopted.

Extract from *Hansard*

[COUNCIL - Thursday, 7 November 2002]

p2746b-2751a

Hon Ray Halligan; Hon Nick Griffiths; Hon Barry House; Hon Murray Criddle

Third Reading

Bill read a third time, on motion by Hon Nick Griffiths (Minister for Racing and Gaming), and returned to the Assembly with amendments.