BUILDING SERVICES (REGISTRATION) BILL 2010

Second Reading

Resumed from 17 March.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Terms used —

Mr T.R. BUSWELL: I move —

Page 2, lines 24 and 25 — To delete the lines and substitute —

building permit means —

(a) a building permit granted under the *Building Act 2010*; or

(b) a building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374 before that provision was deleted by the *Building Act 2010*;

In moving this amendment, I simply point out to the house that it is, again, one of those transitional amendments that enables effectively the existing regime to operate while we wait for the Building Bill 2010 to come fully into force.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4 put and passed.

Clause 5: Claims as to registration —

Mr M. McGOWAN: I raise the point that there is a range of provisions that carry penalties. A point I made earlier during debate on another bill was that the fines were quite high. This clause concerns people saying that they are registered when they might not be registered. Sometimes there might be a misunderstanding or perhaps the registration has just expired. The concern that has been expressed to me is that some of these penalties might be a bit high. For instance, in another case—perhaps I will find it later on, but I will just raise it right now—there is a penalty of $10 000 for failing to notify the board of a change of business address. I am seeking an indication of how the minister has arrived at these penalties and whether he thinks the penalties are appropriate considering that some of the offences might be quite minor.

Mr T.R. BUSWELL: The advice I have is that this is comparable with the fine and/or penalty regime that exists under the national licensing framework. We are comfortable with the quantum of the fines, noting of course that it is a maximum fine. If a person wants to attempt to mislead a consumer into thinking they are a registered builder—with all of the benefits to the consumer that go with that—when they are not, I think it is fair and reasonable that we seek to pursue them with a significant penalty. I understand the industry's concern. It would be fair to say that the government is keen to work with industry to make sure that these penalties are not used for purposes other than those for which they were intended, but quite clearly we are focused on protecting consumers and delivering a better outcome. The point the member made about the quantum is noted, but my view is that that is a fair amount in order to dissuade people from trying to create the impression they are registered when they are not.

Clause put and passed.

Clauses 6 to 8 put and passed.

Clause 9: Classes of building service practitioner and building service contractor —

Mr C.J. TALLENTIRE: I seek clarification from the minister regarding clause 9(2). Is there the potential that a body may be registered but the employees of that body may not be registered? What is the process to determine whether or not a person approaching a registered builder can be sure that those individuals working on their property, on their dream home, are actually going to be registered persons with all the necessary skills that a consumer would expect the persons doing the work to have?

Mr T.R. BUSWELL: It is a good question and I thank the member. I refer the member to clause 21. The advice I have is that when we are talking about a body other than an individual in the building industry—for instance, a corporation or a partnership—there has to be a nominated supervisor, and that nominated supervisor has to be registered. The protection the member is seeking, rightly so, is provided by the requirement that the body have a registered supervisor who would bring to the job the standards and skills that the member talked about.

Mr C.J. TALLENTIRE: I appreciate the explanation, but I think that is a worrying set of circumstances for consumers, because so often people have a job supervisor, someone who comes around to the site when construction is underway, but that person will not be permanently on-site. It still leaves open the situation that somebody might think they are paying to have registered builders, people with a particular quality of skills, working on their home, but in reality all they have is a supervisor who is occasionally on-site who has those registered skills. I do not think this really reassures consumers at all. It really makes bare the fact that too often in the building industry we have unskilled people doing jobs that can cost people lots of money in the future when things have to be repaired. It means that people could have the worry that comes with shoddy workmanship. This is not really in keeping with the expectation of members of the community in seeking assurances that the workmanship that they are paying for is of the highest standard.

Mr T.R. BUSWELL: It is a good point. I should point out, though, to the member that even when the builder is an individual—for instance, Sally Smith, builder—there is no guarantee that that individual will be on-site for the totality of the job. People come and go, and often even individual builders may have more than one job. It should be acknowledged that this is not just for the building of a house; it can be for additions, renovations and the like. However, the point the member raised, as I have been advised, is picked up in the Building Bill. The Building Bill requires the builder to have inspections by an appropriately registered person done at certain times during the construction. In other words, at the end of the construction there would have had to have been certain times during the construction—I do not have the exact details—when inspections of that site would have to have happened. Those inspections would have checked for workmanship and the various issues that the member raised. I think expecting that the registered person, under clause 9, would be on site for the whole time is not practical and will not happen. I am looking at another clause. Under clause 18(1)(e), in order to become registered an applicant has to demonstrate that they have adequate arrangements in place to ensure that building services to be carried out by the applicant will be managed and supervised in a proficient manner. There is a fair bit of coverage in the bill to ensure that the quality of service is delivered by a registered individual body or person of suitable standing.

Clause put and passed.

Clauses 10 to 13 put and passed.

Clause 14: Further information —

Mr M. McGOWAN: I want to briefly raise an issue that the Housing Industry Association raised about clause 14. It had a concern that this broad power to require further information is way beyond what is in the current legislation. Its concern is that this will make the renewal process more difficult than the current system and will potentially add more red tape. The association supports the move to a triennial licensing system, but it suggests that this additional power provided to the board might make life a lot more difficult for builders than it currently is.

I am aware that the government has launched red tape reviews and so forth, but we often see that it creeps back into legislation. I am interested in how the minister envisages this power being used and how he answers the concern that more red tape will be created for builders as a consequence of this law.

Mr T.R. BUSWELL: This is in line with some of the other questions that the member has asked about issues brought to his attention by the Housing Industry Association. My advice is that this matter has been the subject of some discussion between the government and the HIA. Again, an understanding has been clarified by the government for the building industry that seeking further information under clause 14 will generally be restricted to cases in which there is what I would best term a non-normal application. What may a non-normal application be?

Mr M. McGowan: Abnormal.

Mr T.R. BUSWELL: Yes. An abnormal application could perhaps involve someone from overseas who has not been able to access the diploma-type training in Western Australia or a person who is using experience rather than formal qualifications in relation to registration. In those cases, the board will use these powers to seek further information and/or qualification of the provided information to support the processing of that abnormal application.

Clause put and passed.

Clauses 15 to 37 put and passed.

Clause 38: Terms used —

Mr T.R. BUSWELL: I move —

Page 25, lines 5 and 6 — To delete the lines and substitute —

building work means work for which a building permit is required;

This amendment will change the definition of "building work" as it currently appears in the bill so that building work has the meaning in section 3 of the proposed building act—that is, it is work for which a building permit is required. Members may recall that we amended clause 3 of this bill, with the unanimous support of the house—it was probably one of the high points of the evening so far—to extend the meaning of "building permit" to include a building permit granted under not only the proposed building act, but also section 374 of the Local Government (Miscellaneous Provisions) Act 1960. This amended definition of "building work" will bring some consistency to the bill and will enable us to effectively transition from the existing framework to the new framework.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 39 to 44 put and passed.

Clause 45: Decision on application for approval —

Mr T.R. BUSWELL: I move —

Page 28, lines 2 to 9 — To delete the lines.

This amendment links back to the change we made to the definition of "building permit" in clause 3. This amendment will remove an unnecessary replication of that definition.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 46 put and passed.

Clause 47: Conditions of owner–builder approval —

Mr T.R. BUSWELL: I move —

Page 29, lines 27 and 28 — To delete "permit granted under the *Building Act 2010*; and" and substitute —

permit; and

Again, this amendment will remove the reference to a permit granted under the proposed building act such that the permit will include building licences issued under not only the proposed building act, but also the Local Government (Miscellaneous Provisions) Act 1960. Again, this amendment will bring consistency to that transitional mechanism.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 48 to 52 put and passed.

Clause 53: Disciplinary matters —

Mr T.R. BUSWELL: I move —

Page 33, lines 22 and 23 — To delete "*Building Act 2010* or" and substitute —

Building Act 2010, the *Local Government (Miscellaneous Provisions) Act 1960* or

Once again, this amendment will simply provide consistency with previous amendments.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 54 to 148 put and passed.

Clause 149: Section 25A amended —

Leave granted for the following amendments to be considered together.

Mr T.R. BUSWELL: I move —

Page 80, line 27 — To insert before "granted" —

issued a building licence or

Page 81, line 10 — To insert before "granted" —

issued a building licence or

Again, these amendments will alter the definition to pick up the changes that have been made to the bill and will provide consistency.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 150 and 151 put and passed.

Clause 152: Section 25FA amended —

Mr T.R. BUSWELL: Before I move the amendments, I seek some clarification from you, Mr Speaker. If I, perchance, wished to move some amendments to earlier clauses in the bill —

Mr R.F. Johnson: You would have to recommit the bill at the end of consideration in detail. You cannot amend earlier clauses.

Mr T.R. BUSWELL: I am not asking you!

The SPEAKER: I think the Leader of the House's advice is succinct, profound and accurate.

Mr T.R. BUSWELL: In that case, I will do that at the end of consideration in detail.

Leave granted for the following amendments to be considered together.

Mr T.R. BUSWELL: I move —

Page 82, line 21 — To insert after "date" —

the building licence is issued, or

Page 82, line 22 — To delete "granted" and substitute —

granted,

These amendments are part of the ongoing minor changes being made to be consistent with previous clauses.

Amendments put and passed.

Clause, as amended, put and passed.

Sitting suspended from 6.00 to 7.00 pm

Clauses 153 to 155 put and passed.

Clause 156: *Local Government (Miscellaneous Provisions) Act 1960* amended —

Mr T.R. BUSWELL: I move —

Page 84, after line 19 — to insert —

(4) After section 374 insert:

374AAA. Local governments not to issue building permits in certain circumstances

(1) A local government must not issue a building licence to commence or proceed with any building work with a value of $20 000 or more unless the licence is issued to a person who —

(a) is a building service contractor, as defined in the *Building Services (Registration) Act 2010* section 3, registered in a class of building service contractor prescribed by the regulations for the purposes of this section; or

(b) has been granted owner–builder approval, as defined in the *Building Services (Registration) Act 2010* section 38, to carry out the building work.

(2) A person who for the purposes of obtaining or attempting to obtain a building licence from a local government makes a representation or statement that is false in a material particular in relation to —

(a) the value of building work to be carried out under the building licence; or

(b) the fee or charge payable in respect of the carrying out of the building work; or

(c) whether the person is registered, or has been granted approval, under the *Building Services (Registration) Act 2010*,

commits an offence.

Penalty: a fine of $10 000.

This is simply dealing with the transition from the old system to the new system and will enable a provision on the role that local governments can fulfil to be placed into this bill, rather than the Builders' Registration Act. This is nothing other than a transitional clause.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 157 to 159 put and passed.

Title put and passed.

Reconsideration in Detail — Motion

On motion by **Mr T.R. Buswell (Minister for Transport)**, resolved —

That the Building Services (Registration) Bill 2010 be reconsidered in detail for the purpose only of considering the minister's amendments to clauses 32, 35 and 36.

Reconsideration in Detail

Clause 32: Notification of change of address —

Mr T.R. BUSWELL: I move —

Page 22, line 13 — To delete "$10 000." and substitute —

$5 000.

This is the first of a handful of amendments that will reduce the maximum penalty for a series of notification-related issues from $10 000 to $5 000. These changes have been agreed to by the government following consultation with builders' representatives, including the Housing Industry Association and the Master Builders Association.

Mr C.J. TALLENTIRE: I appreciate that perhaps the minister has just received advice from the industry that it does not like the penalties that the government had initially endorsed. However, we need a bit more explanation of that. I find it absolutely extraordinary that, at this late stage, a bill that has been before the house for several months at least, and which has been in preparation for a long time, is suddenly changed. I will concede that amongst these penalty amendments, some offences would seem to be of a fairly minor nature; however, I do not think that is true of all of them, which is particularly worrying to me. Perhaps the Premier and the minister have taken calls from senior people in the building industry—I do not know whether it is Dale Alcock or anyone else in the HIA—who have put it to them that these penalties are too severe. That is okay for some of these amendments, and perhaps it could be argued that a penalty of $10 000 for failing to notify change of address is severe. But I do not think that is the case for some of the other changes, and I will certainly be arguing the case in other clauses.

From the outset, the minister needs to explain why, at this very late stage, he has suddenly taken on board this advice from the building industry. If the building industry and its members are not capable of analysing legislation that is coming before the Parliament or providing feedback in a timely manner it raises questions about their competency and leaves us wondering about their true motivation here. They comprise a body of people who make massive profits out of the business of providing and selling new homes. If they are not able to organise themselves to engage in debate on legislation, that is a poor reflection on them. Why, at this late stage, is the minister suddenly going weak at the knees to the demands of the building industry?

Mr T.R. BUSWELL: I find the member's statements outrageous. I have sat in here for the entire debate and I have heard the member for Rockingham argue that the fees are all too high. I indicated to the member for Rockingham that we would deal with some of the more minor or administrative issues at the appropriate time. The opposition kindly enabled us to move through this bill with some speed. As we attempted to deal with this new environment of haste and mutual cooperation to deal with this legislation, it took me a while to get these amendments onto the table. I have not had a phone call from Dale Alcock or anyone in the building industry on these matters. I think the member just needs to cool his jets a bit. This is not part of some grand conspiracy to rip off the consumer and feather the pockets of these builders, who the member would assert will all fly off to

Cannes for the film festival in a few weeks' time. I earlier gave a very clear indication to the member for Rockingham that we would address the quantum of the fine for some of these administrative matters. That is what we are doing. I am happy to work through each of them, but the member for Gosnells needs a bit of a reality check. He has not uncovered some great conspiracy between the government and the building industry. The member for Gosnells should check *Hansard*. For a number of the matters raised by the member for Rockingham, we maintain that we feel it is an adequate level of penalty. That position is not supported by the building industry. We are not rolling over and having our bellies tickled by the building industry. We are attempting to provide some realistic penalties for fees that, in my view, are either relatively minor in nature—administrative—or on which we, as a government, can obtain information through alternative means. We will deal with those in due course.

For the purpose of this amendment, and whilst not attempting to deflate the quality of the member's argument, I think that a $10 000 fine for failing to notify a change of address is a little steep. I think a $5 000 fine is probably fair. The member is right; that is the view of the building industry. I am not sure that Dale Alcock or others have raised this as an issue. They definitely have not raised it with me. I cannot vouch for the Premier. I suspect there are probably other, more significant issues that they would choose to raise with the Premier. I know that there has been a significant ongoing process of negotiation between government officials and the building industry to try to resolve some points of difference. In some areas we have not agreed. I have outlined those to the house. In some areas, including some of these, we have agreed. If the member reflected on the *Hansard*, he would see that on balance we disagree on more areas than we agree on. In fact, a number of those areas were highlighted by the member for Rockingham. The member for Gosnells just needs to calm down a bit. I am happy to deal with each amendment on its merits. The reason they are a little out of order from that in which they would normally be dealt with by the house is that I simply could not get the amendments in front of me quickly enough. I apologise if that has caused some consternation. It was not meant to. There is certainly no backroom deal between the government and the building industry on these amendments.

Mr C.J. TALLENTIRE: The minister's explanation of why these amendments have arrived so late in the Parliament was no explanation at all. He apologised for them arriving so late, but he gave no satisfactory explanation for why they have arrived so late. I am prepared to concede that the amendment to clause 32 deals with an offence of a fairly minor nature. I do not think that is true of some of the other clauses. Yes, the minister is right; there was debate about some of the penalties being perhaps a little on the severe side. We need to bear in mind that these penalties are maximums. All kinds of discretion would be used. I do not think that some of the amendments to other penalties should be contemplated at this stage, unless the minister can provide justification, firstly, for why these amendments have arrived in the house so late, and, secondly, for their nature. Some of the offences that are dealt with in some of the clauses we are going to come to are quite serious. In fact, had we had the opportunity to debate those clauses with these amendments in mind, we would have gone into greater detail and highlighted how the offences are quite serious. I am prepared to accept that clause 32 could stand amended, but I do not think that is the case with some of the others. I await the minister's explanation—not his apology—of why these amendments have arrived so late, given that the government has had months to receive these amendments. I first made a speech on this legislation in November last year on the last day of sitting for the year. If the minister is telling me that he has some legitimate reason for these amendments arriving in the house today after all that time, I ask him to please let me know. I cannot see what it is. I ask the minister to please advise us.

Mr M. McGOWAN: I am a bit rusty on where we are up to. Are we dealing just with clause 32?

Mr R.F. Johnson: We have recommitted the bill to deal with those amendments.

Mr M. McGOWAN: Are we dealing with clause 32 or are we dealing with them all en bloc?

Mr R.F. Johnson: Each one separately.

Mr M. McGOWAN: We are dealing just with clause 32, which is about notification of a change of address. The amendment seeks to reduce the penalty relating to a change of address. That seems okay to me.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 35: Notification of certain offences —

Leave granted for the following amendments to be considered together.

Mr T.R. BUSWELL: I move —

Page 23, line 12 — To delete "$10 000." and substitute —

$5 000.

Page 23, line 15 — To delete "$10 000." and substitute —

$5 000.

Page 23, line 20 — To delete "$10 000." and substitute —

$5 000.

Mr D.A. TEMPLEMAN: We are seeking to amend lines 12 and 15 on page 23 of the bill. Is that not repeated? The two subclauses appear to be the same.

Ms J.M. Freeman: One is for charged; one is for convicted.

Mr D.A. TEMPLEMAN: Okay. I am inquiring about the background to the definition of "serious offence". The definition appears, from memory, in the preliminary part of the bill. I take the point of the member for Gosnells. The minister is seeking to reduce the maximum penalty from $10 000 to $5 000. This is one example of when a clear explanation of the amendment needs to be given, because we are talking about serious offences. Why would the government propose to reduce a maximum penalty when it relates to a serious offence? The minister may need to give the house an example of the sorts of offences that might be seen as serious. This clause deals with a serious offence, so the minister needs to give a very good reason for proposing a reduction to the maximum penalty. We moved an amendment to clause 32 because that was seen as a minor anomaly or issue; however, the alarm bells ring when I see the words "serious offence" and we seek to reduce the penalty from $10 000 to $5 000 in clause 35(1) and 35(2). Along the lines of the member for Gosnells' question, I ask the minister to again give the reason we are talking about serious offences and yet proposing to reduce the maximum penalty.

Mr T.R. BUSWELL: I will deal with the definition of "serious offence" as contained in subclause (3). It is important to understand that this is not a penalty for the offence; this is a penalty for failing to notify the Building Commission of the offence—whether the person was charged or was convicted in a commonwealth or other jurisdiction. This is not the penalty for the offence. There is no reduction in the penalty for the offence; that was dealt with under the relevant law. This is a penalty for failing to notify the Building Commission of either the charge or the conviction.

I am not going to die in a ditch over this. I am happy to tell the NBA that the Labor Party does not want this changed. I am not sure that is necessarily the view of the opposition lead speaker and members opposite might want to talk to him about that. I do not think that we need to get to that point. The NBA's view is that this is a notification issue. The reason the fine for the offence does not need to be $10 000 but $5 000 is the Building Commission has access to the court records, and to other records, that should enable it to inform itself of these matters should it be required to do so. Again, this is not a die-in-the-ditch issue from me. I am sure it is not a die-in-a-ditch issue for the Building Commission. However, it is an argument that was put by the NBA. By way of comparison, I draw the member's attention to clause 34, "Notification of financial difficulty". We did not agree to a change in the fine for failing to notify of financial difficulty, because it is very hard to obtain information about the financial position of builders. Yes, if a builder goes into extreme financial difficulty, we can obtain the information, but it is hard to do as an interim step. This amendment is not trying to reduce a penalty. The view of the building industry, via the NBA, is that this is a fine for a notification offence, rather than a charge or a fine for an offence and there are alternate mechanisms by which the commission can avail itself of this information. For the record, I contrast the government's refusal to change the penalties for things like "Notification of financial difficulty". At the end of the day, these matters always involve ongoing and often last-minute negotiation with the building industry. I do not see this as a great concession to the industry. We talked before about the fines that matter, including refusing to act on the direction of or an order by SAT. To me, they are the fines that matter. I clearly indicated that there were some administrative/notification issues for which the government was prepared to entertain some of the building industry's suggestions, and that is all this amendment is. I do not know why it has just appeared. I assume it is because negotiations went for some time. However, if this is a major issue for the opposition, I am happy to tell the building industry that the opposition did not support this. They spoke about the fines being too high, but when —

Mr C.J. Tallentire: Only on some points; not on this.

Mr T.R. BUSWELL: Members opposite presented an argument that the fines for failing to comply with an order of the commission could be too high.

Mr C.J. Tallentire: Not in relation to these clauses.

Mr M. McGowan: I am happy to respond.

Mr T.R. BUSWELL: All I am saying is that in our view although the offences are serious, alternate notification mechanisms are available and are reflected in the change of penalty, but a change of penalty has not applied to those notification issues for which there is no other mechanism by which to find out that information.

Mr M. McGOWAN: During the course of the second reading debate, a range of penalties were raised. I presented the arguments provided to me by the housing industry; some of which I agree with and some of which I do not agree with. For instance, in clause 32, dealt with a moment ago, a penalty of $10 000 for failing to provide written notice of a change of address struck me as a little excessive. I presented that argument and the minister agreed with that argument. I did not present an argument in relation to clause 35, which is the clause we are dealing with. The housing industry wrote suggesting that clause 35 and the failure to provide notice of having been charged with a serious offence was a breach of civil liberties and an unnecessary imposition on privacy. On balance, I would probably disagree with the industry. I think it important that people are aware that a registered builder has been charged, if not convicted, with a serious offence. I took a different view to the Housing Industry Association and did not raise the matter during the course of the debate. Whether the maximum penalty is $10 000 or $5 000 is really quite immaterial to me. I do not think the opposition has a view one way or the other on that. However, we do have a view about the change of address provision whereby someone can be fined for failing to notify the authority that they had moved from an industrial unit to the lot next door. It seems a bit extreme to be fined to that degree for failing to provide such notification, and the opposition is pleased the government amended that. We do not object to these amendments; they are not of great importance.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 36: Notification of disciplinary action —

Mr T.R. BUSWELL: I move —

Page 23, line 31 — To delete "$10 000." and substitute —

$5 000.

My arguments in support of this change are similar to those I presented earlier.

Amendment put and passed.

Clause, as amended, put and passed.