

BUILDING LEGISLATION AMENDMENT BILL 2000

Second Reading

Resumed from 19 October.

HON BOB THOMAS (South West) [10.41 pm]: I am not the lead speaker on this Bill; nonetheless, I will indicate the Labor Party's position on it. The Labor Party agrees with most of the measures in the Bill and it will therefore support it. The genesis for those measures stems from the work done by Hon Alannah MacTiernan in this place in 1994-95 when she raised a range of well-publicised major problems associated with the industry. As a result of her work an indemnity insurance scheme was implemented for home buyers. The measures in this Bill also flow from her work. The Harvey McCleod report and several other reports dealt with these issues and culminated in this legislation.

The minister's second reading speech clearly outlines the purpose of the Bill, which will introduce measures to streamline dispute resolution procedures. It is particularly aimed at reducing the waiting time for resolutions. It will provide measures to assist the Builders Registration Board in the administration of the Builders Registration Act and the Home Building Contracts Act and will give the board more power to deal with fraud and misconduct. It will also provide for additional revenue sources for the Builders Registration Board.

The Labor Party supports the renaming of the Building Disputes Committee to the Building Disputes Tribunal and the provision of extra powers and resources to the tribunal to allow it to more efficiently expedite disputes.

The Government has two amendments on the Supplementary Notice Paper, the first of which seeks to amend proposed section 38 and the second of which seeks to delete the two subsections in proposed section 45A and to replace them with five new subsections.

This amendment Bill was initially intended to allow for the tribunal to award legal costs in frivolous and vexatious cases before the tribunal. The Labor Party will be opposing that amendment. We believe that the tribunal has not been awarding costs; it generally does not award costs. We believe that the costs should be awarded when those disputes have been unduly delayed or prolonged. They are usually delayed by the builders, and sometimes those builders act in a vexatious or frivolous manner. We believe that this clause should remain in the Bill but be amended to take account of those cases that have been unduly delayed or prolonged.

The Labor Party will also support the second amendment, which is designed to include in the Builders' Registration Act 1939 the same legal representation clause contained in the Home Building Contracts Act. Section 25 of that Act deals with those cases in which parties in a dispute can be represented by a lawyer at tribunal hearings. We think it makes sense to include that in the Builders' Registration Act, which deals with most of the disputes anyway.

The Labor Party does not support the Government's stated intention of imposing a \$100 levy on those people who wish to lodge a complaint with the Builders Registration Board. We note that the Government intends to raise about an extra \$720 000 a year, of which this particular component will raise about \$75 000. The other \$650 000 will be raised from the \$30 levy on building licences. We support that; however, we do not support the imposition of the \$100 lodgment fee on people who lodge a complaint with the tribunal. Most people who need to approach the tribunal to have a dispute arbitrated are on low incomes. They have usually just built their first home and, in many cases, have financially extended themselves to the limit. Frequently, those people have not been able to move into their home when they had planned and will therefore be paying a mortgage on the new home as well as paying rent for their existing home. We do not believe they will be in a position to pay the \$100. It will be a significant imposition on them and may discourage some people who have a legitimate claim from making that claim.

The Government has said that this measure will raise \$75 000 out of the \$720 000. I have inquired of the Ministry of Fair Trading and been told that at present the Builders Registration Board of WA is making a loss of about \$200 000 a year and that it expects to spend a further \$100 000 a year on the new measures that are aimed at expediting the resolution of these disputes; that is, to employ more inspectors. It appears that the board will have at its disposal an extra \$400 000 a year. That money will be put towards paying off the board's overdraft as well as building up a surplus to use in the future. We should not be building up that surplus at the expense of home buyers who can ill-afford to spend \$100 to lodge a complaint with the tribunal. When that regulation is gazetted, members of the Caucus will examine it and determine whether they should disallow that. If the Government intends to gazette that regulation it should consider carefully whether it will gazette a \$100 fee or go back to what the committee suggested - that is, a \$25 fee. That will mean that instead of raising \$75 000 from this measure it will probably raise \$19 000 a year. As a result of that, instead of raising \$720 000 overall it will raise \$670 000 a year. The board will still be able to do everything that it wants to do. With that small reduction in the revenue it will be able to pay off the overdraft, build up reserves and introduce new measures to expedite

the conflict resolution process as well as better administer the building legislation. If that regulation is gazetted before 21 May next year when it comes before Caucus, and if it is anything more than the \$25 recommended by the committee, I will move that it be disallowed. If we are in government, I hope that our Government will gazette a regulation that prescribes a fee of \$25.

The Government has been promising the introduction of this legislation for a number of years. I can recall in 1994 or 1995 a press release issued by the then Minister for Fair Trading, Hon Peter Foss. He stated that many of the measures that are contained in this Bill would happen in the near future. It is five or six years since that press release and this legislation has come before the House only today. If the Government loses the election it can look back and say that this was one of the issues which contributed to its downfall, because the purchase of a home is the biggest investment many people make in their lives. When it goes bad - as we have seen in a large number of cases in Western Australia in recent years - those people become very angry and they expect Governments to do something about it. The fact that this Government has dragged its feet for so many years, and only just introduced this legislation, is just one of the reasons for growing disaffection with this Government within the electorate. If there is a change of Government next year, the coalition will be able to blame itself for not introducing the legislation sooner, because that will be one of the reasons it will lose the next election. That aside, the Labor Party supports the second reading of this Bill.

HON GIZ WATSON (North Metropolitan) [10.55 pm]: The Greens (WA) support the Bill, and I am considering the amendments on the Supplementary Notice Paper. The intentions of the Building Legislation Amendment Bill are appropriate and we support them. It will strengthen the powers of the Builders Registration Board in dealing with failures, fraud and misconduct of builders, and will introduce measures to streamline the dispute resolution procedure and reduce waiting periods for the resolution of building disputes.

Having spent 12 years in the building trade, I am aware that disputes over contracts between the builder and the client are, unfortunately, fairly frequent and cannot always be resolved amicably. Hon Bob Thomas commented that building a house is often the most significant financial undertaking many people will make, whether it is their first or subsequent home. In my experience, it is a time of extreme stress, and it is easy for details of the contracts and the work that is carried out to be not what the client expected. The Builders Registration Board plays an important role in resolving those disputes. I note the Bill will improve efforts to implement a system of mediation to try to ensure that disputes do not always go through to the higher body for resolution. That is a good move. Hon Bob Thomas commented on the proposed introduction of a \$100 fee for the lodgment of complaints with the Building Disputes Tribunal. It is proposed that this will assist in discouraging frivolous and minor complaints, thereby increasing the efficiency of the tribunal. The Bill also proposes a reduced fee of \$30 for those who are financially disadvantaged, such as health care cardholders or pensioners. It does not seem an unreasonable amount for owners to have to pay up-front to prove they seriously want to take a case to the disputes tribunal. However, I will consider the amendment that has been foreshadowed. The Greens also support the provision that will require owner-builders and trade contractors to contribute to the costs of the Builders Registration Board. Again, that is fair and reasonable, as they previously had the benefit of the board without contributing to it financially.

We have no problem with the other minor amendments to the operation or the Act and the board. It is probably a timely update and an improvement on the legislation that has been operating in this State. We are happy to support this Bill and will be interested in the debate on the proposed amendments.

Debate adjourned, on motion by Hon Norm Kelly.