

BUILDING SERVICES (COMPLAINT RESOLUTION AND ADMINISTRATION) BILL 2010

Committee

The Deputy Chairman of Committees (Hon Michael Mischin) in the chair; Hon Simon O'Brien (Minister for Commerce), in charge of the bill.

Clauses 1 to 4 put and passed.

Clause 5: Making a complaint about a building service or home building work contract matter —

Hon LJILJANNA RAVLICH: Clause 5 specifically states, in part —

- (5) The regulations may make provision as to —
 - (a) who can make a building service complaint; and
 - (b) any preliminary action required before making a complaint under this section.
- (6) A complaint under this section must be —
 - (a) made in a manner and form approved by the Building Commissioner; and
 - (b) accompanied by the prescribed fee, if any.

Why is there at this late stage no clarity around who can make a building services complaint; who does the government anticipate will be able to make those complaints; and is there a view about the preliminary action that will be required before making a complaint under this proposed clause?

Hon SIMON O'BRIEN: The structure of the whole clause provides that complaints can be made by a very broad group of people. There is a contemplation in clause 5(5) that if it should prove necessary, there may be a case to narrow that in due course if, for practical reasons, the provisions are abused in some way, shape or form. I hope it is not necessary to restrict that provision. What we are looking at, I guess, is the possible exclusion of someone who is not a party to the contract. Obviously someone who is a party to the work the builder is doing will not be proscribed from making a building service complaint.

Hon Ljiljanna Ravlich: Are you saying that someone external to the contract may make a building service complaint? If that is what you are saying, can you give us an example of somebody who is external to the contract?

Hon SIMON O'BRIEN: The answer to the first question is yes, somebody outside the building contract could make a complaint about a building service that the person is not a party to. It might be a neighbour; I do not know. The idea is that this provision be broad. The current provisions in the act are pretty broad, but we want the flexibility for future situations, particularly for unforeseen patterns of behaviour that might arise in the future; that is all.

Clause put and passed.

Clause 6: Time limit for complaint —

Hon LJILJANNA RAVLICH: Subclause (1) reads —

A building service complaint is made out of time if the complaint is made more than 6 years after the completion of the regulated building service to which the complaint relates.

I must say, having gone through some major extensions myself a few years ago, that I would not have a clue when my building was completed. Under this new system, whereby certificates of completion will be issued, there will be hard evidence of the time frame around when completion occurred. However, this will become a grey area for a lot of people who had building work done in the past but when no completion certificate was issued. What happens for people who want to make a complaint but have no firm date of completion because no completion certificate existed before now? In the same vein, I guess, subclause (2) states —

For the purposes of subsection (1) a regulated building service is taken to be completed —

- (a) if the criteria for determining the date of completion for that building service are prescribed — on the date determined in accordance with the criteria;
- (b) if paragraph (a) does not apply — on the date on which the building service was last carried out.

This will become a complex legal issue with a lot of grey areas on the question of completion and whether or not someone was out of the time limit for the lodgement of a complaint. I think a lot of people may well be caught out. Also, under the transitional arrangements, what happens if people who may have had some work done three

to four years ago want to make a complaint but they do not know the exact completion date? If people want to lodge a complaint close to the cut-off—it may well be two days or a week over that six-year limit—how will that matter be resolved?

Hon SIMON O'BRIEN: Clause 6(1) places a six-year time limit on making a building service complaint. That reflects the common law and the existing statutory time limits under the Builders' Registration Act, so there is no actual change, but the problem highlighted endures. Clause 6(2) attempts to provide processes for determining when the six-year limit is reached, which was the subject of the member's question. The regulations may prescribe criteria about this matter that may in some cases, in due course, provide some additional clarity; otherwise, the contractual date of completion can be followed. If the date cannot be ascertained under the contract, the time would run out on the last day on which the building service was carried out. I appreciate that the member is saying that sometimes the precise records are not available—it was a long time ago but was it six years? Some determination has to be made, and the Building Commissioner will either accept the complaint or reject it as out of time in accordance with the criteria in this provision. However, if a prospective complainant is out of time for lodging a building service complaint, they can still have recourse to the courts—for example, if it is years later and some structural problem occurs that needs to be fixed or something like that. Therefore, they still have that fallback. This provision relates only to the building service complaint. I recognise the problem and we are having a dip at trying to address it, but we have to strike a time at which a complaint will be accepted or not.

Clause put and passed.

Clause 7: Preliminary decision by Building Commissioner —

Hon LJILJANNA RAVLICH: Just quickly—I do not want to hold the bill up—when a complaint comes the Building Commissioner's way, he can either accept or reject it. Does the Building Commissioner have to provide a reason for doing so, because the legislation does not seem to say that that would be the case, not that I can see anyway?

Hon SIMON O'BRIEN: The member is right: nothing in this provision requires that. In practice, the Building Commissioner almost invariably would provide a reason, and that is simply a matter of fact.

Hon LJILJANNA RAVLICH: Clause 8(3) states —

The Building Commissioner may refuse to accept a complaint if the person making the complaint does not comply with a requirement under subsection (1) within the time specified in the requirement or, if no time is so specified, within a reasonable time.

If the refusal does not relate to the question of timing and if the decision not to accept the case is made on some other consideration, it would be expected that the Building Commissioner would provide a reason for his refusal.

Clause put and passed.

Clauses 8 to 138 put and passed.

Title put and passed.