BUILDING SERVICES (COMPLAINT RESOLUTION AND ADMINISTRATION) BILL 2010

Consideration in Detail

Resumed from 23 March.

Clause 49: Costs and expenses —

Debate was adjourned after the clause had been partly considered.

Clause put and passed.

Clauses 50 to 52 put and passed.

Clause 53: Failure to comply with order: offence —

Mr M. McGOWAN: I do not want to particularly delay this legislation, but I must say that I raised the provisions of this clause during the second reading debate. The provisions deal with offences and penalties that apply to people who might commit an offence under the legislation. I indicated that I had received correspondence from the Housing Industry Association about this issue. The association was concerned about the scale of penalties to be applied to people who might commit an offence under the legislation. Under the provisions a person must not fail to comply with an order of the Building Commissioner or a building remedy order from the commissioner; and if someone does fail to comply, they are liable to a fine of $50 000, $75 000 or $100 000 and imprisonment for 12 months. The concern of the Housing Industry Association is that those are pretty hefty penalties. Can the minister advise us how he came up with penalties of that scale and whether he thinks those sorts of penalties are appropriate or whether they need to be reduced to lesser amounts as part of his amendments to the bill? I realise they are maximum amounts but I must say that they seem a bit heavy to me.

Mr T.R. BUSWELL: The member is right. The penalties probably are a point of contention with the Housing Industry Association, although I understand there have been further negotiations with the HIA such that when we deal with matters regarding a failure to provide notice for a range of administrative issues, which is contained within the Building Services (Registration) Bill 2010, a different regime of penalties will apply. I think that is fair. It will be for things such as failing to notify a change of address and various other notifications that are required of registered builders. I should also point out that there is an amendment in my name on the notice paper that will add a defence of "without reasonable excuse". I do not think we will be terribly apologetic for insisting that builders comply with orders of the Building Commission. All too often people would work through the process with the Building Disputes Tribunal and, quite simply, non-satisfactory outcomes would be delivered by the builders in following the orders that were made. The member might have an alternative view. My view is that, in any building situation, I expect builders to follow orders of the Building Commission, especially when those orders and the processes that we have talked about previously are subject to appeal to the State Administrative Tribunal and to other bodies. I do not think that is unfair.

On the point about imprisonment for 12 months, ultimately that is a matter for the courts to determine relative to the seriousness of the offence. We are trying to ensure that there is adequate incentive for the builder to comply with a lawfully obtained or lawfully delivered order of the Building Commission or with a remedy order of the State Administrative Tribunal; otherwise, it is pointless having the process.

Mr M. McGOWAN: I do not disagree that people should comply. I think the point that was being made was that the level of potential penalty might be out of kilter with the level of offence. The Building Commissioner may order that someone paint a wall that was not painted, or perhaps the builder should have had a sign up showing his Australian business number. I am trying to think of examples of orders that could be made by the Building Commissioner. The Building Commissioner also might put in place much more stringent orders and might even make orders against not only the builder, but also the purchaser of the building service. We are not just talking about builders. It seems to me that a fine of $50 000 for a first offence might be a bit over the top. One way of mitigating some of the concerns of the housing industry might be for the minister to give a little guidance on some examples that he considers might warrant more severe penalties, what orders the Building Commission might make and what someone might be prosecuted for. If people will not be prosecuted for minor breaches, that might give the industry a bit more comfort that it will not be hit with major penalties.

Mr T.R. BUSWELL: If a consumer and a builder work through the process and the builder does not comply with an order, I would expect that a fine would be levied. I think that is an entirely acceptable outcome. The member raised the point about the quantum of the fine. There are a couple of things to point out. My understanding is that this does not involve orders in and around the administrative side of complying with registration; those orders are dealt with separately under the Building Services (Registration) Bill. Generally, they would be orders to either rectify faulty workmanship or pay money when that rectification cannot be done

for one reason or another, or there is some other reason for the builder to be forced to pay money to the consumer. I also understand that these fines are consistent with the fines contained in the national occupational licensing framework and also with fines levied in other jurisdictions. Although it is not specifically referred to in the bill, I understand that the fine is a maximum fine and that the courts will have the capacity to levy a penalty of up to that amount. Again, it is important that the industry understand that we are serious about protecting consumers. We heard lots of stories during the second reading debate about circumstances in which it was difficult for people to compel builders to comply with orders that they obtained through the process. Again, I point out that this process starts with the Building Commission and appeals can be made to the SAT. I assume that everyone is comfortable with the process by which orders will be made. It is entirely consistent that we should accept that penalties will be applied when those orders are not complied with by the builder.

Mr C.J. TALLENTIRE: It seems to me that there is potential for a crossover with planning approvals. For argument's sake, a wall may have been put up but it is not exactly where it should be; it might be 50 centimetres out of alignment. But there could be faulty workmanship as well. Therefore, the question that arises is: what consistency is there between fines that arise through the planning approval process and the fines under this bill?

Mr T.R. BUSWELL: It is a fair question. The advice I have is that these fines are consistent with fines that the local government can impose under the building act. The member is talking about fines imposed under the planning act. My advice is that they are comparable, but I do not have the exact quantum for the member, other than to say that from my experience in local government, some planning issues, particularly the issue that the member raised about the incorrect positioning of a fence or a retaining wall, are quite difficult to resolve because the cost of remedy is quite significant. I do not have a specific answer. The bill before us effectively does not deal with those planning issues. As the member rightly pointed out, it deals with issues of building workmanship and complaints brought against builders under this disputation process for the purpose of protecting consumers.

Mr M.P. MURRAY: The first issue that concerns me is imposing a fine on a company, not an individual. Should a fine be imposed on a company or on an individual, and what would happen if the company folded?

Mr T.R. BUSWELL: The advice I have is that, of course, in the first instance it is the company. If the company goes bust, for want of a better term, there is the capacity to pursue the directors, although I understand that there are some defences available to the directors in that case. I assume that, ultimately, the courts would determine that matter. Certainly, if a company folds, which, unfortunately, happens from time to time, there is capacity to pursue the directors of that company within the framework of this legislation.

Mr M.P. MURRAY: The other issue that concerns me is failing to comply with a remedy order. I am not quite sure, but I think that the gentleman who has brought these issues to my attention has also been to see the minister. He has been through the system over a period and has not been able to get the remedy order complied with, yet no fines have been imposed on the company. I am trying to reconcile the remedy order with the fine. In the first instance, people want the job fixed. How do we get around that?

Mr T.R. BUSWELL: Speaking frankly, that is why we are changing the system. When I had ministerial responsibility for this area, there were lots of complaints about outcomes delivered to consumers by the Building Disputes Tribunal. If the member is talking about the individual I think he is talking about, I know it had a huge impact on their quality of life. Often it is those stories or life experiences that people share that cause us to take an interest in these areas. One of the reasons that it has taken so long to get this bill to this place—it was nearly brought in under the previous government—is that I was insistent that we deal with the issue of the Building Disputes Tribunal, and that is what we have done. The member will find that this will deliver much better outcomes in terms of clarity of process and understanding of outcome. It will also provide a clear capacity to fine entities when enforcement does not occur.

The member for Rockingham raised the issue of the quantum of fines. I do not have a problem with the maximum quantum of the fines at all, because I have seen the impact on the lives of people of shoddy builders—albeit they are in the minority—who refuse to accept their contractual responsibilities.

To provide a more fulsome answer to the member's earlier question about who can be pursued, cover is also available to individuals through the home indemnity system in Western Australia in the rare instance that a builder goes financially out of business. I would like to think that what we have in this bill, and what we have already in place in and around the home indemnity regime, will provide adequate cover.

I apologise for not doing this earlier, and now move —

Page 40, line 5 — To insert after "must not" —

without reasonable excuse

Amendment put and passed.

Clause, as amended, put and passed.

Clause 54 put and passed.

Clause 55: Transfer of proceeding —

Ms J.M. FREEMAN: I am interested in clause 55, "Transfer of proceeding". I note that proceedings can transfer from court to Building Commissioner, from Building Commissioner to State Administrative Tribunal, and then back from SAT. I am interested to know whether regulations will set how those transfers will happen. Who will determine how those transfers will occur?

Mr T.R. BUSWELL: I understand that it relates to the capacity of the Building Commission or SAT to make an order for the builder to pay money. In a case in which an order is made for a builder to pay money, there are limits on how much each court can determine. The Building Commission's limit is $100 000. The SAT's limit is $500 000. And for matters above $500 000, the case goes to court. This gives the capacity to transmit matters between jurisdictions, depending on where the ball lands.

Clause put and passed.

Clauses 56 and 57 put and passed.

Clause 58: State Administrative Tribunal internal review —

Ms J.M. FREEMAN: Clause 58(3) states —

> The State Administrative Tribunal constituted … may —
>
> (a) affirm the order …
>
> (b) vary the order that is reviewed; or
>
> (c) set aside the order …

A person aggrieved by a building remedy order made by the Building Commissioner can go to SAT. Last time we discussed this, I raised the issue of costs in the matter of a person who takes a home building work contract complaint to the Building Commission, receives an order from the Building Commissioner and the builder appeals the decision to the SAT, which sets aside the order. I wonder whether the minister has had an opportunity to consider the matter and whether it is suitable for an order to be set aside and another order substituted such that costs will not apply to the person who, in good faith, went to the Building Commissioner as a person aggrieved, got an order against a builder, only to have the matter appealed to SAT and in the review have costs awarded. The minister may recall when I raised the matter. Will the minister clarify it now?

Mr T.R. BUSWELL: I thought it was a good point when the member first raised it. I think it is a good point now. I thank the member for refreshing my memory on that. I am advised that in the circumstance the member has outlined, it would be highly unlikely for SAT to award costs against the individual. That is the advice I have been given. The best I can offer up today is for us to have another look at the matter. I am trying to work out if this bill has already been to the other place.

Ms J.M. Freeman: No; it has not.

Mr T.R. BUSWELL: I have a few on the boil and can get a bit confused.

When this bill is transmitted to the other place, we can have a look at that and how SAT has perhaps treated, not similar, but not —

Ms J.M. Freeman: There was a similar situation in the Equal Opportunity Commission.

Mr T.R. BUSWELL: Yes, but a lot of those decisions should probably have been overturned. I am only joking.

Ms J.M. Freeman: There were orders against people who had issues taken across and had costs awarded against them. So it is not something that —

Mr T.R. BUSWELL: Let me describe what I think the member is asking so that we can get a little more information—if the member is happy for me to do that.

Ms J.M. Freeman: Yes.

Mr T.R. BUSWELL: I do not want to hold up the bill now, but I am sure the member's colleagues in the other house will follow it up. Basically, the consumer makes a complaint to the commission. The commission makes a determination or an order in favour of the consumer. In other words, the consumer, in good faith, accepts the outcome determined by the commission. The builder then appeals to SAT and upon review of the case SAT disagrees —

Ms J.M. Freeman: And sets aside the order that is reviewed or substitutes an order.

Mr T.R. BUSWELL: Yes—it disagrees with the outcome of the commission, and sets aside the order, does whatever it is that it does, and in the process awards costs, which are the responsibility of the consumer, who only appeared before SAT because the builder appealed the determination of the commission in the first place. If the member is comfortable that that is what we are talking about—I am not going to get that advice now because I cannot—when the bill is transmitted to the other house, I will ask the minister to have a look at it. I am sure the member's colleagues in the other place will pursue the matter. I am advised that SAT will take account of those matters or facts when making a determination. The member may have different advice from her engagement in a different jurisdiction and I take it from her nodding that she does. However, we will take it in good faith that we will look at the matter in the other place.

Clause put and passed.

Clause 59 put and passed.

Clause 60: Authorised persons —

Ms J.M. FREEMAN: I understand this section is about inspections and investigations. I understand the purpose of having a public service officer or someone under the Public Sector Management Act to be the authorised person for the purpose of this bill. It is not uncommon in these sorts of jurisdictions. I am, however, wondering why no consideration was given to include the capacity to authorise local government officers, who are often out and about, to undertake inspections, especially when clause 63 can limit the powers of the authorised person conducting the inspection. I understand inspection is a very arduous and important position to take, but it seems to me it is a limitation that we possibly may not have wanted to put in ourselves, given the role local government plays in this area.

Mr T.R. BUSWELL: The advice I have is as follows: local governments have powers to inspect and make orders. Those powers are conferred in the Building Bill 2010. Local governments have powers defined, I assume, under the Building Bill, to inspect and make orders in relation to matters dealt with in the Building Bill. That is one regime of inspection. The other regime of inspection in relation to this matter deals specifically, as the member pointed out, with inspections and investigations brought before the commission.

Ms J.M. Freeman: For disputes.

Mr T.R. BUSWELL: Yes.

Dr A.D. BUTI: I seek clarification on clause 60. Clause 60(1)(a) refers to "a public service officer". Can that be a federal or state officer?

Mr T.R. Buswell: State.

Dr A.D. BUTI: How do we know that by the act?

Mr T.R. BUSWELL: My understanding is that the Public Sector Management Act is the act; even though it is not referred to specifically —

Dr A.D. BUTI: It is in paragraph (b).

Mr T.R. BUSWELL: Paragraph (a) or (b). I am not sure how, in Western Australian legislation, the term "public service officer" could be interpreted to mean anything other than a Western Australian public service officer. It would be like the term "police officer"—perhaps that is a bad example; I might retract that. That is my understanding. I agree it does not specifically say "Western Australian public service officer", but we are pretty comfortable with that definition.

Clause put and passed.

Clauses 61 to 63 put and passed.

Clause 64: Compliance inspections —

Mr T.R. BUSWELL: I move the amendment in my name on the notice paper to clause 64 —

Page 48, line 14 — To insert after "records of a" —

local government or other

Mr M. McGOWAN: Considering we have examined clause 64 in great detail, I think it is incumbent that the minister explain to the house what the amendment is so that we can work out how it fits within clause 64.

Mr T.R. BUSWELL: This proposed amendment is based on a request from industry and local government. The request was effectively to enable the existing regime to operate for some months following the passage of this

bill pending the introduction of the Building Bill. It is really a transitional mechanism, as I understand it, that we are introducing at the request of the industry to assist it in the transition from the old regime to the new regime.

Amendment put and passed.

Mr T.R. BUSWELL: I would like to move a second amendment to clause 64 that appears on the notice paper in my name. I move —

> Page 48, line 15 — To delete "of permits" and insert —
>
> > or issue of building and demolition licences under the *Local Government (Miscellaneous Provisions) Act 1960* and permits

The ACTING SPEAKER (Ms A.R. Mitchell): Minister, will you explain it?

Mr T.R. BUSWELL: Certainly. Again, it simply helps with that transition by referencing the old act in this act; in other words, it provides that transition mechanism between the old set of arrangements and the new set of arrangements that was requested by both local government and the building industry.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 65 and 66 put and passed.

Clause 67: Powers after entry for compliance purposes or investigation —

Mr M. McGOWAN: I raise clause 67, again as a consequence of correspondence from the Housing Industry Association. They have expressed some concerns about the powers contained here. I am interested in advice from the minister on whether the powers here are more extensive than the powers that were in place beforehand. How does the minister envisage these powers will be exercised by any authorised person who uses this provision to enter certain premises? The minister is receiving advice. While he does that, I point out that it seems to me the powers are quite broad and provide quite extensive powers to an authorised person. In what circumstances does the minister expect they will be used? Is it to enter into a place of business to seize equipment, such as computer hard drives, laptops or records? Does it also mean that households can be entered to do the same? What will the provision be used for in practice as opposed to what is written here? I think people would like to know that. What is often in legislation is far more extensive than what is the practical application of legislation, once it is passed.

Mr T.R. BUSWELL: That is a good point; I can understand the concerns of the HIA. As I understand it, the Building Commissioner and the HIA have met and discussed this matter. There has effectively been an exchange of correspondence subsequent to those meetings. The government has indicated, importantly, to the HIA that the use of these powers will effectively be restricted to people who conduct investigations for the purposes of conducting a prosecution. People engaged in activities such as investigations for the purposes of workmanship, and other matters conducted by building inspectors, will not have the right to exercise these powers. Clause 63, as has been pointed out to me, provides the head of power, or the enabling clause, to enable the Building Commissioner to limit the powers of an authorised person. The HIA has raised a valid concern. The government has responded by saying: yes, we acknowledge that but there may be occasions when building inspectors are conducting investigations for the purposes of prosecution. That prosecution will generally be for breaches of this and other acts, such as building without a licence—I can find some other examples for members shortly—rather than for the everyday work of inspectors as it relates to investigating complaints about quality of workmanship.

Clause put and passed.

Clause 68 put and passed.

Clause 69: Use of force and assistance —

Ms J.M. FREEMAN: I seek some clarification. Clause 69 relates to the use of force and assistance to exercise a power under the act. I suppose "may use assistance" is a broad aspect. Given that this is such a legally technical part of the bill, and that in Australia, both now and in the past, some builders did not have English as a first language, I wonder whether "assistance" includes the provision of interpreters to ensure that people fully understand their responsibilities under this legislation relating to compliance and investigation.

Mr T.R. BUSWELL: That is a good question. I think the member for Nollamara raised the same point earlier in relation to another clause. Clause 69(3) indicates —

> An authorised person may request a police officer or other person …

Ms J.M. Freeman: Would that include interpreters?

Mr T.R. BUSWELL: The bill does not specifically say that, but that may be required. The authorised person must be able to communicate with the person who is being investigated. Therefore, I can only assume that the authorised person would sensibly use resources available to them.

Ms J.M. Freeman: Including interpreters?

Mr T.R. BUSWELL: The resources available could include interpreters, whether they are interpreters for communicating in other languages, or perhaps for people with other challenges in life. I recently attended the Housing Industry Association building awards at which a lot of families of Italian descent, in particular, did very, very well.

Ms R. Saffioti interjected.

Mr T.R. BUSWELL: They are fantastic builders. The other week I alerted the house to the presence of the elder statesman of a family—whose name escapes me now—who won for building a magnificent residence in Applecross.

Mr C.J. Tallentire: A "McMansion"?

Mr T.R. BUSWELL: No, this was not a "McMansion".

Mr C.J. Tallentire: A moderately-sized dwelling, was it?

Mr T.R. BUSWELL: The member would term the garage a "McMansion". It was very, very impressive. It was built by a father and a son. It was fantastic. It was a good night. It was not Zorzi Builders.

Ms R. Saffioti: Whereabouts?

Mr C.J. Tallentire: Zorzi?

Mr T.R. BUSWELL: No. Spadaccini Homes? I will find the name. It was a great night and a great family.

Ms J.M. Freeman: Now the minister has that in *Hansard*, all I want in *Hansard* is that you will use interpreters.

Mr T.R. BUSWELL: I said "interpreter".

Ms J.M. Freeman: Good. Thank you, minister.

Clause put and passed.

Clause 70: Obstruction —

Mr C.J. TALLENTIRE: Looking at clause 70, a penalty exists if a person who is an authorised person is obstructed from going about their inspection duty. The penalty is a maximum fine of $10 000. When we consider the sorts of circumstances in which this situation could arise, we could be looking at some situations in which a degree of violence is involved and a degree of obstructive behaviour that would basically be thuggery. A $10 000 maximum penalty seems very minor when talking about the sorts of strong-arm tactics that someone might use to stop an authorised officer making an inspection. An authorised person might have had some reason to think some poor quality workmanship was going on or reason to suspect that something was not quite right, and, therefore, have quite legitimate reasons to visit the property and make inquiries. If an authorised person is obstructed from going about their duties in any way, we could have very serious consequences. It would mean that people would not be able to gather information necessary for an inquiry, and that authorised persons would become hesitant to go about their duty; they would be scared about doing it. For this legislation to really carry the weight that it needs, it needs the potential for a more significant penalty than a fine of $10 000.

Mr T.R. BUSWELL: That is very good point, member, and perhaps a salient reflection on some aspects of the building industry in Western Australia. It is important to understand that this offence relates purely to the act of obstruction. If a building inspector is assaulted or is subject to any other form of violence, I expect that other aspects of the law would deal with that matter. I need to point out, as discussed in considering clause 69(3), that an authorised person, the building inspector, "may request a police officer or other person to assist". The member for Gosnells makes a valid point. I will explain why the figure is somewhat tempered in a second. I can only imagine that from a practical point of view, a building inspector who had an inkling that they would be putting themselves in harm's way—acknowledging that those outcomes cannot always be predicted, because people react for a range of reasons and in a range of ways—would utilise that clause that gives them the capacity to take a police officer with them. If the authorised person is on the site and they are assaulted, that is a whole different kettle of fish. This is not meant to be a cover-all for that sort of behaviour. The point was made to me that occasions may arise, albeit very limited, when a householder or someone else inadvertently obstructs. The

idea here is not to punish such people. This is an attempt to come up with a fair penalty in cases of hindrance or obstruction. We acknowledge that it may not always be the big, bad, burly builder who is engaged in that obstruction. As the member for Collie–Preston pointed out, these things can create huge stresses for people; we have seen that happen. Normal people can act in ways that are quite out of character. I would hate to think that those people would be subject to fines that are too onerous.

Ms J.M. Freeman: This is the maximum in any event. You would have mitigating circumstances.

Mr T.R. BUSWELL: I accept that. One would hope so. I think we are comfortable that there are enough other aspects of the law that provide the protection that the member for Gosnells is talking about.

Mr C.J. TALLENTIRE: I thank the minister for that explanation. I put it to the minister that in some circumstances a person may be acting on behalf of a company that does not want the authorised person to make the inspection. In that case, I would have grave concerns. Perhaps the person may be committing their first offence of some sort of obstructive behaviour and the company would know that and that it would be unlikely to incur —

Mr T.R. Buswell: The legislative head of power is not quite in our reach, but my understanding is that the fine for companies can be up to multiple of five times the amount in clause 70.

Mr C.J. TALLENTIRE: I thank the minister for the explanation. Is the minister saying that the term "person" in this clause can refer to a company? Could we almost interchange the word "person" with "company"?

Mr T.R. Buswell: Or "corporation". We have not got the legislative head of power, but I accept the advice I am given that the fine in that instance can be up to five times the amount for an individual.

Mr C.J. TALLENTIRE: Therefore, the fine could be $50 000 for a company that is obstructing an authorised person from making an inspection. If we imagine the scale of liability that could be involved on a building site for a major building in Perth and the building company prevents an authorised person from doing an inspection, we are talking about an occasion of poor workmanship that could quite easily cost millions of dollars. A $50 000 fine in those circumstances would seem very minor.

Mr T.R. BUSWELL: That is a fair point. However, if someone obstructs on authorised officer, that is not the end of the investigation. The authorised officer has a variety of powers to turn up a bit later on. Admittedly, they may run out and scrub whatever they scrub off their hard disk. I am no expert on that sort of stuff, but I do have a smartphone. The authorised officer could return, well supported by other resources and with other legal means, to gain access to the property for the purposes of conducting the powers conferred on them by the legislation. Just because someone is obstructed in the first instance does not mean they go home. The person would come back with a few things, making sure that they took action under clause 70 and using some of the other mechanisms under the act in order to get the information.

Mr M.P. MURRAY: I have just quickly consulted with my colleagues. Looking at it the opposite way around, if the building inspector does not carry out his duties of due diligence, are there any fines or any comeback on, say, the authorised person?

Mr T.R. BUSWELL: I am assuming that the member does not mean if the building inspectors obstruct themselves.

Mr M.P. Murray: No; I am sorry. Some I have seen probably would!

Mr T.R. BUSWELL: The important point to make—we had the discussion about the definition of public servant—is that these people are either members of the Western Australian public service or employed under that act. If a person does a half-baked investigation, the legislation does not specify a penalty, but I can tell the member that if a person is not doing his job properly, and that person is a public servant, a whole range of penalties are available. Let us talk about a scenario in which the inspector may be a friend or acquaintance of the builder. I assume that would not happen very often, but it may.

Ms J.M. Freeman: No, that's not what the member is talking about.

Mr T.R. BUSWELL: I might ask him what he is talking about.

Mr M.P. Murray: The point I am trying to make is that the authorised person may have gone through and said, "Yes, that's right; that's right", and it is not right. In that case we were talking about, the accusation was that the building inspector should have picked something up earlier. I am asking about what happens if he is found to be wrong in the future. If the authorised person has not carried out his inspections properly, what, if anything, is in the bill to address that?

Mr T.R. BUSWELL: No, the bill contains no fines for the authorised person, other than that it subjects that person to the same accountability mechanisms that apply to members of the public service.

Mr M.P. Murray: Doesn't that then cause a problem because no responsible person has made a decision?

Mr T.R. BUSWELL: I can understand the thrust of the member's argument, although, from my point of view, if the commission is conducting an investigation and it makes a determination that the person is not happy about and is not satisfied with, and one of the reasons is that he does not think that the building inspector investigated or reviewed the matter appropriately, that person has the capacity to appeal to the State Administrative Tribunal. I imagine, as part of that, that if one of the reasons for the appeal was the quality of the investigation, those issues could be teased out then.

Ms J.M. FREEMAN: Can I just clarify what the minister was saying about obstruction? If a person does not believe that he hindered or obstructed and he is given a penalty, would he have the capacity to appeal to SAT or would he have to defend himself in the Magistrates Court, which would apply to him the fine for the —

Mr T.R. BUSWELL: I am sorry, member; I was just getting some more information. I will provide a bit more information in answer to the member for Collie–Preston, and then the member for Nollamara can jump up.

Member for Collie–Preston, I want to point out an important issue. The advice I have on clause 100, in part 9, which we will deal with a bit later, is that there is no liability on an individual building inspector, but that exclusion from liability or protection from liability under clause 100 does not extend to the state. In other words, if at a time down the track it is shown that a poor quality inspection, or whatever, created a liability for the state, the consumer can pursue the state, but not the individual building inspector. I am sorry, member for Nollamara.

Ms J.M. FREEMAN: My question was about obstruction, and I want to get clarification of that. My assumption is that if someone has obstructed, that case will be taken to the Magistrates Court to impose the penalty.

Mr T.R. Buswell: Yes.

Ms J.M. FREEMAN: The question I have is: does the person have to defend himself in the Magistrates Court, where the rules of evidence apply, versus the capacity to go to SAT, where there is a broader procedural aspect in that the person is able to put his case that he did not obstruct, so that the merits of the matter would be looked at rather than deciding it on the rules of evidence?

Mr T.R. BUSWELL: I understand that any action brought under clause 70 for obstruction would be dealt with in the Magistrates Court.

Ms J.M. Freeman: Okay. So there will not be the capacity to go to SAT.

Mr T.R. BUSWELL: No.

Mr M.P. MURRAY: Will the minister please bear with me while I use a recent example from the Carnarvon floods? A house was put onto stumps, if you like, but they were round concrete fillers. That was passed by the building inspector. When the floods went through, the dirt was washed away from underneath the house. There have been great problems about who is responsible for that. There should have been proper footings, but there were not. It was a cyclone-proof house that weighed 35 tonnes because it had a heavy base. When the water went under the house, it took away the dirt. One half of the house fell down and it broke in half. Now the argument is about who is responsible for that. Is it the builder, the building inspector, the shire or others? That is probably the point that I am trying to make, and I do not think I quite got an answer to that question.

Mr T.R. BUSWELL: The advice I have is as follows: in that instance, when this regime is in place, that individual would have the opportunity to bring a complaint to the Building Commissioner in the first instance. The Building Commissioner would then investigate that complaint, as I understand it. That investigation would effectively determine who had responsibility for that particular circumstance. This is where it gets a bit challenging. If that responsibility rests with the builder, the Building Commissioner is in a position—this bill sets this up—to issue a remedy order against that builder. If it transpires that the issue is with the local government authority, which, as part of that building approval process, made a mistake that subsequently created the issue, my understanding is that under this legislation, no action can be taken by the Building Commissioner against the local government authority, although the Building Commissioner would be in a position to produce the evidence that the individual could use to take action against the local government. The inspectors we are talking about here are inspecting in and around complaints. This is a complaint-handling mechanism. That mechanism would deal with the situation the member has outlined. However, the outcome would effectively depend on whom the Building Commissioner deemed to be liable for the consumer's problem. If the builder was liable —

Mr M.P. Murray: So he had no —

Mr T.R. BUSWELL: Yes. However, if it were local government, the evidence gathered by the Building Commissioner would be available, as I understand it, to that individual to take action against the local government.

Clause put and passed.

Clauses 71 to 75 put and passed.

Clause 76: Terms used —

Ms J.M. FREEMAN: The definition of dangerous situation reads —

> … means a situation where there is an imminent and high risk to people, property or the environment…

Will that include asbestos dust given there is an argument that asbestosis is a disease of long latency?

Mr T.R. BUSWELL: Yes; perhaps in a demolition as part of a job or an addition. I cannot think of any others. I am aware of a situation in Geraldton—within the member for Geraldton's electorate—with the Department of Housing, in a significant subdivision in a place called Beachlands, where following some demolitions asbestos has emerged in the sand. It is not a building issue but it is a similar sort of case. It is a serious matter. It would certainly qualify easily as a dangerous situation if that is created as part of the process.

Clause put and passed.

Clause 77: Dangerous situation, emergency remedial measures —

Ms J.M. FREEMAN: I should have asked this earlier but I am inquiring in relation to clause 77(1)(b) whether a dust issue, other than asbestos dust, would require immediate measures to be taken to identify, assess or reduce the risk. I know of a case involving demolition in the member for Bassendean's electorate during the really hot days when strong easterly winds were blowing. Would that include dust or would it be covered by the subsequent remediation notice? The difficulty with that would be that by that stage the dust would all be blown into the area.

Mr T.R. BUSWELL: It would depend on the situation. We are talking about dangerous situations. My advice is that if the inspector was of a view that it was a potentially dangerous situation, the first job of work would be to stop the creation of the dust and the second job of work would be to determine whether indeed the dust does constitute a dangerous situation, and then how to work out how to remedy that. I cannot give an overarching solution, but my understanding is that is how it would apply in practice.

Dr A.D. BUTI: Regarding occupational safety and health issues, where would the authorised person sit if an inspector is on-site for workplace safety matters? Who would have primacy?

Mr T.R. BUSWELL: The advice I have is that these powers are conferred in addition to everyone else's powers. My advice is that in terms of practical on-the-ground application, it would be decided on a case-by-case basis. I would like to think that if there is an OSH issue and a WorkSafe person and a person from the Building Commission are on the ground, they would work out an appropriate course of action between the two of them. I do not think this establishes the pecking order, for want of a better term. We can only hope that commonsense will prevail. I do not think we can legislate to provide any better outcome.

Clause put and passed.

Clauses 78 to 92 put and passed.

Clause 93: Terms used —

Mr T.R. BUSWELL: I move —

> Page 71, after line 7 — To insert —
>
> (d) a building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374; or
>
> (e) a demolition licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374A.

This is another case in which an amendment is being moved to enable effectively the old regime to apply to the up-and-running new regimes. It is a tidy-up, consistent with a number of other amendments we have moved as we have moved through this bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 94 to 97 put and passed.

Clause 98: Incriminating information —

Dr A.D. BUTI: My first reading of clause 98(1) is that it seems to be trying to override the very well established principle of no self-incrimination or the right to not answer a question or provide information that may incriminate oneself.

Mr T.R. BUSWELL: I will read the advice on my red sheet. Clause 98 is a standard provision used to uphold a person's common law right of privilege against self-incrimination. Clause 98(1) requires a person to answer a question or provide information to help the Building Commissioner issue a remedy order or help an authorised person in a compliance investigation. This will ensure that dealing with complaints can proceed quickly and efficiently. Clause 98(2) protects a person from being prosecuted on the basis of self-incriminating information given in answering any question or providing information to help the Building Commissioner or authorised person.

Mr M. McGOWAN: Can the minister outline a circumstance in which that might be the case? I understand from what he just said that, on occasion, someone might have to provide information even though it might be self-incriminating. I assume that would concern issues of safety or something of that nature, but a person cannot be prosecuted for providing that information. It is difficult to quite understand the circumstance in which this power might be required.

Mr T.R. BUSWELL: I have a very simple example that may or may not address the issue. The advice I have uses the example of a footing. When an inspector or authorised person asks a tradesperson whether he put reinforcement in the footing and the tradesperson says no, that would lead the commission to take action to account for the fact that the footing had been done inappropriately. My understanding is that the person could not be prosecuted as a result of providing that information. That is the only, but essentially simple, example I have been given.

Dr A.D. BUTI: Is the minister saying that the tradesperson cannot refuse to give the information, but the information cannot be used as grounds for prosecution?

Mr T.R. BUSWELL: Yes.

Clause put and passed.

Clauses 99 to 102 put and passed.

Clause 103: Confidentiality —

Mr C.J. TALLENTIRE: I seek the minister's assurance that this clause will not compromise the actions of a public officer or a former public officer who might be about to engage in what is commonly called whistleblower-type activity. I seek the minister's assurance that this clause will not override their right, indeed their responsibility, to disclose information that may well be in the public interest.

Mr T.R. BUSWELL: My advice is that under paragraph (b) a person can disclose information if they are required to or allowed to by other written laws. I hope that gives the member the cover he is requesting. My advice is that it does allow that. Certainly, there is no intent to create a framework by which people will be discouraged from engaging in activity that the member calls whistleblower-type activity. I am not sure whether our legislation is called whistleblower legislation, but certainly there is the capacity to divulge information if someone is required to or is allowed to by other written laws.

Clause put and passed.

Clauses 104 to 108 put and passed.

Clause 109: Regulations —

Ms J.M. FREEMAN: Although these will be very broad regulations, has the minister assured himself that they in no way have the capacity to override or change the underlying operations of the bill and that they will keep within the stated provisions of the bill? In this way, I reflect on clause 109(1), which states —

> The Governor may make regulations prescribing all matters that are —
>
> (a) required or permitted …

(b) necessary or convenient …

I want to make sure that that does not give the capacity to override or change the underlying operations of the bill. In particular, I go to subclause (6), which states —

> The regulations may provide that contravention of regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding $5 000.

I suppose I want some guidance on how we are creating regulations and then fining people for not complying with those created regulations. How does the minister regard that as ensuring that there will be no compromise of the overriding and underlying operations of the bill?

Mr T.R. BUSWELL: The member might ask me the last part again, as I was listening to some advice on the first part. Clearly, the intent is not for the regulations to usurp the bill. The comfort the member can take from that is that regulations are ultimately reviewable by Parliament. I am therefore confident of and comfortable with that. The last part of the question related to the $5 000 penalty.

Ms J.M. Freeman: Making regulations that can make contravention of regulations an offence, and apply their own penalty.

Mr T.R. BUSWELL: Basically, the advice is that regulations detail certain processes. They can also determine that it is an offence not to follow some of those processes, and the penalty for that offence would not exceed $5 000.

Clause put and passed.

Clauses 110 to 138 put and passed.

Title put and passed.