BUILDING SERVICES (REGISTRATION) BILL 2010

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No 1

Page 25, lines 22 to 27 — To delete the lines and insert —

40. When owner–builder approval may be applied for

(1) An owner may apply for approval under this Part (***owner–builder approval***) before obtaining a building permit to carry out owner–builder work on the owner's land if the owner proposes to be named as the builder on the building permit.

No 2

Page 28, lines 13 to 16 — To delete the lines and insert —

(e) the applicant has complied with each other requirement prescribed by the regulations for the grant of an owner–builder approval.

No 3

Page 84, lines 5 and 6 — To delete "with a value of $20 000 or more".

No 4

Page 84, after line 16 — To insert —

(2A) Subsection (1) does not apply in respect of a building licence for building work —

(a) with a value of less than $20 000; or

(b) that is to be carried out in an area of the State prescribed by the regulations for the purposes of this section.

Mr T.R. BUSWELL: I move —

That amendment 1 made by the Council be agreed to.

Mr M. McGOWAN: This is obviously an amendment to the original bill, which passed through this house and which has been passed by a majority in the upper house. I am interested in a full explanation of what this amendment is designed to do. Given that consideration of this message was on the daily program today, I expect the minister will have a full explanation for this amendment available to the house.

Mr T.R. BUSWELL: Clause 40 of the bill, to which this amendment applies, comes under "Part 4 — Owner–builder approvals". It requires owner–builders to obtain approvals under part 4 before obtaining a building permit to carry out owner–builder work. This amendment effectively inserts a new subclause (1) and removes the requirement for an owner to seek owner–builder approval in all circumstances before obtaining a building permit, which was the intent of the original bill. As I understand it, the amendment removes unintended restrictions on registered building service contractors from being owner–builders if they wish. Clearly, in the deliberations of the upper house, some exploration was done of the scenario in which a registered building services contractor wanted to be an owner–builder, and it was determined through advice that that was therefore a restriction. This removes that. It also removes the unintended requirement to get owner–builder approval when a registered building contractor would not be required for the work. As I recall, that would be under some of those thresholds set for those such as we discussed—the garden shed or patio.

Mr M. McGOWAN: I have a copy of the head bill and the amendment. It appears that the minister was not aware of this amendment to his legislation, because he is suggesting that the upper house decided on this course of action. Is it endorsed by the government? Is this the minister's amendment to the legislation or has it arrived merely as a result of those deliberations in the upper house?

Mr T.R. BUSWELL: These are amendments returned from the upper house with the endorsement of the Minister for Small Business and the support of the government.

Mr M. McGOWAN: I am still a little bit hazy on the exact difference between the two. Is the minister suggesting that the amendment on the notice paper seeks to provide that an owner–builder who is a building services contractor does not therefore have to obtain a building permit?

Mr T.R. BUSWELL: I am saying that it removes an unintended restriction whereby registered building service contractors could not be owner–builders. Clause 40(1) states, "an owner who is not a building service contractor", and the amendment states, "An owner may apply for". It basically removes an unintended consequence whereby a building service contractor could not be an owner–builder. Clearly, there are cases in which building service contractors may wish to be owner–builders. In fact, I know of a number of people who are builders, or associates, who have built their own homes. It was obviously an unintended consequence of the passage of this bill that they would be excluded from that right to be an owner–builder.

Mr M. McGOWAN: Does this legislation mean that a person who wants to become an owner–builder and whose ordinary occupation is that of a builder would be subject to lesser requirements for approvals and so forth if they were building their own home or another building for themselves than if they were building for another person or another party? What restriction or what capacity is there to stop someone who is a builder from using the ability to act as an owner–builder to avoid certain requirements that might otherwise be imposed?

Mr T.R. BUSWELL: Clearly, the act intended, and I am pretty sure that we canvassed this during consideration in detail, for the long-held practice of owner–building to continue. This bill has inadvertently removed the capacity for registered building service contractors to be owner–builders and imposed the unintended requirement of owner–builder approval in certain circumstances. First, if a building service contractor wants to be an owner–builder, in my view, that is a perfectly legitimate choice for a building service contractor. All this amendment says is that a building service contractor who wishes to build a house as an owner–builder, with all the relevant conditions as set out in part 4 of the Building Services (Registration) Bill, is entitled to do so.

Mr M. McGOWAN: I understand the point in that this is designed to allow someone who is a builder to act as an owner–builder for their own property, which is, I think, what we are trying to get to with this clause. However, I am interested to know how clause 40(1) will interact with clause 40(2), which indicates that —

> An owner–builder approval cannot be granted to an owner who is not an individual.

Therefore, if operating as a proprietary limited company, will the interaction of clause 40(1) and (2) exclude a person from acting as an owner–builder in relation to a personal property?

Mr T.R. BUSWELL: My understanding of that is as clause 40(2) states —

> An owner–builder approval cannot be granted to an owner who is not an individual.

In other words, a body corporate—let us use that term—cannot be an owner–builder; full stop. My reading of the bill and of this amendment is that owner–builders are specifically tailored to individuals, and, irrespective of whether the individual is a building service contractor, appropriate approval can be obtained to be an owner–builder. The explicit removal of a body corporate—that is, not an individual—changes nothing in someone being granted approval to be an owner–builder.

Mr M. McGOWAN: If I were an owner–builder who operated in the form of a company, and the property upon which I wished to undertake the work was held or owned by a corporation, of which I was probably the principal shareholder, does that therefore mean that I would not be able to obtain permission to undertake this work given the interaction of clause 40(1) and (2)?

Mr T.R. BUSWELL: Yes. An owner–builder, and I will take the member back to the terms used, means —

> … a person to whom the owner–builder approval is granted;

Clearly, an owner–builder is a person. Clause 40(2) is entirely consistent with that because it effectively says that entities that are not individuals cannot be owner–builders.

Mr M. McGOWAN: A lot of builders—that is, small trades people—operate as a proprietary limited company.

Mr T.R. Buswell: I know that.

Mr M. McGOWAN: Although they are individuals, at the same time they are a corporation or company.

Mr T.R. Buswell: Yes.

Mr M. McGOWAN: So they are both. They are an individual and they are —

Mr T.R. Buswell: Member, in that case they would apply to be an owner–builder as Bob Smith or Fran Smith, rather than as "Bob Smith Bricklayer Contractor Pty Ltd".

Mr M. McGOWAN: What would happen in the circumstance that the property on which they wished to undertake the work was held by the company rather than by the individual?

Mr T.R. Buswell: My understanding is that this relates to the building, as distinct from the ownership of the land.

Mr M. McGOWAN: Clause 40(1) refers to the owner's land; therefore, if the owner is a company and the approval is provided to an owner–builder who is also a company, would the interaction of those two clauses mean that is not permitted?

Mr T.R. BUSWELL: I think the member is confusing two issues. The proposed amendment refers to the construction of a building. As the member rightly points out, clause 39(1) refers to the owner of the land as a person and not an entity. Therefore, by extension, I conclude that the member's assumption is correct in that an owner in this circumstance is —

> … a person —
>
> (a) whose name is registered as the proprietor of the land; or
>
> (b) who holds an interest in the land of a kind prescribed by the regulations.

An owner–builder approval cannot be granted to an owner who is not an individual. Therefore, I believe that we have worked through the argument and that the member for Rockingham's position in relation to owner–building appears to be consistent with what is laid out in part 4 of the bill.

Mr M. McGOWAN: In that circumstance, would that therefore not defeat the minister's intent? Let us say that a tradesperson who acts as a builder and operates by way of a proprietary limited company has a property on which he wishes to undertake work as an owner–builder and which is owned by the corporation or company in question. The property is a yard in which the person wishes to erect a shed and a workshop as an owner–builder. If that yard is owned by the company for which that person is the principal person in charge and the person is excluded —

Mr T.R. Buswell: Member, can I just clarify: I understand that there is a point of distinction between commercial and non-commercial properties.

Mr M. McGOWAN: What is that? My understanding is that the minister should probably have his advisers here.

Mr T.R. Buswell: I know that that is your understanding and you are —

Mr M. McGOWAN: And I think that it is probably the minister's understanding as well. I think that it is probably everyone's understanding.

Mr T.R. Buswell: You can soldier on and I will keep answering your questions.

Mr M. McGOWAN: We can; but I think that in dealing with this the minister should have his advisers here. I am sure that they would have straightforward answers to these questions.

Mr T.R. Buswell: Carry on.

Mr M. McGOWAN: Are the minister's advisers on their way?

Mr T.R. Buswell: Not that I am aware, at this stage.

Mr M. McGOWAN: It is a bit unusual for the minister to not have his advisers in the house when we are dealing with the consideration in detail stage of the bill.

Mr T.R. Buswell: These three amendments are very simple.

Mr M. McGOWAN: They are not simple.

Mr T.R. Buswell: They are.

Mr M. McGOWAN: They are not; the minister cannot answer my questions.

Mr T.R. Buswell: I have answered the member's questions.

Mr M. McGOWAN: The minister said that there is a distinction when it is a home versus a commercial property when someone is an owner–builder. Is that the minister's argument? Is the minister saying that someone cannot undertake that owner–builder work under this requirement if it relates to —

Mr T.R. Buswell: My recollection of our discussion around —

Mr M. McGOWAN: Hold on. We are not dealing with recollections; we are dealing with an amendment to the bill. With all due respect to the fine members of the upper house, perhaps they did not consider this circumstance and it is up to us—the member for Vasse in particular as the relevant minister—to consider this circumstance.

The ACTING SPEAKER (Mr A.P. O'Gorman): The question is that the amendment be agreed to. Those of that opinion say —

Mr M. McGOWAN: I think it is appropriate—I am not sure whether the minister has answered —

The ACTING SPEAKER: The member was on his feet and he sat down. Member for Warnbro.

Mr P. PAPALIA: I would like to hear more from the member for Rockingham.

Mr M. McGOWAN: It would be unusual for me to attempt to draw this matter out. I am not; there is no point in me drawing it out. All I am attempting to do is ensure that we understand exactly what we are passing in these changes to the bill. As I said, I have great respect for the members of the upper house and their capacities, but I am not exactly sure that they have examined this matter in the intricacies and in the manner we are examining it to get an exact answer. I am not sure whether the amendment the minister proposes will not defeat the purpose when it relates to commercial properties owned by a corporation—even though the corporation's single shareholder might be an individual—rather than a person's home.

All I suggest to the minister is that rather than sitting there looking surly, he might want to have appropriate answers to these questions or ensure that tomorrow morning he has his advisers here so that we can get answers to these questions. Advisers should be present when legislation is being considered. I can assure the minister that as far as I can recall, ministers have always had their advisers present when dealing with legislation, unless it was with the concurrence of the opposition that no questions of significance or substance were to be asked in the consideration in detail stage, in which case, legislation passed quickly by agreement. We do not have that agreement in this case, and these questions are complex and involved. I am interested to see us get to a situation in which we are given satisfactory answers to the questions I have asked.

Mr T.R. BUSWELL: Again, the advice I have received is that "owner–builders" relates to persons and not to corporations.

Mr M. McGOWAN: Let us hopefully draw this to a conclusion. If the property is owned by a corporation, an owner–builder cannot carry out the work as suggested if that person is also an owner of that property, yet they can do so on a property that they own as an individual. Quite frankly, if the minister suggests that that is the situation with this legislation, that is a nonsense. The minister has two different rules depending upon what name appears on the title deed of the property. I suggest to the minister that if that is the case, he may wish to have another look at the drafting and fix this clause or bring the bill on tomorrow morning. With the minister's advisers present, he may well be able to give us a simple, easy and reasonable answer to this question. In light of the minister's inability to answer this question, I will pursue each of these provisions to ensure that we get appropriate answers. I think in the future the minister should always have his advisers present in the house when we deal with these matters.

Question put and passed; the Council's amendment agreed to.

Mr T.R. BUSWELL: I move —

> That amendment 2 made by the Council be agreed to.

Mr M. McGOWAN: I would have thought that this amendment would have warranted at least some explanation. The minister can confirm whether I am correct when I have finished outlining what this amendment does. This amendment is designed to delete some parts of clause 45(1)(e) that relate to the number of applicants for an owner–builder approval and to insert a new paragraph (e) to read —

> (e) the applicant has complied with each other requirement prescribed by the regulations for the grant of an owner–builder approval.

The current paragraph reads —

> (e) the applicant or if there is more than one applicant, at least one of the applicants, resides and will continue to reside, or intends to reside, on the land on which the building work is to be carried out.

We are deleting a requirement for owner–builders to have an intention to reside in a property that they are constructing, and this new provision suggests that there will not be that requirement, thereby backing my argument about an earlier clause. Therefore, the regulations will set out the requirements for an owner–builder. Consequently, there may well not be a requirement for an owner–builder to live or reside in a property that they have constructed. That seems to me to be a fairly significant change, about which I have a number of questions. Why is this change being made? Does the amendment relate to an owner–builder who is also a builder or will this change apply to any owner–builder?

Mr T.R. BUSWELL: Again, we are dealing with circumstances that were identified in the other place but were not picked up as this bill passed through our scrutiny in this place. It may be the case that an owner–builder carries out work on a property and it is not appropriate for them to reside in that property. I acknowledge the member's point earlier that "owner–builder" relates to a person or individual. Examples of that may be—the member for Rockingham touched on this correctly—commercial or industrial property in which it is not appropriate for the owner to reside. This amendment changes clause 45(1)(e) and effectively takes out the

requirement for the applicant to continue to reside or intend to reside on the land on which the building work will be done. I think that is reasonably clear. I would suggest that in the most significant number of cases the owner–builder would intend to live on the land, because I would imagine that for most owner–builders, they are building on that land a house or something associated with a house.

Mr M. McGOWAN: Therefore, this does not relate only to a builder who is an owner–builder; this relates to any owner–builder. I assume it relates to individuals in that situation. However, the amendment is basically suggesting that an owner–builder can be a person who is constructing a commercial or other property apart from a home, and, therefore, the amendment broadens the intent of the legislation away from housing.

Mr T.R. BUSWELL: I think the amendment acknowledges that that may well occur under the existing framework, and in a case in which that happens, if someone is legitimately classified as on owner–builder, in and around "person" and "individual", the person or the individual who applied as the person or individual on land owned by the person or individual may be building something that they are never going to live in. The member raised that point earlier and corrected a statement that I made, which is fine. This amendment acknowledges that fact, but also acknowledges that there will be circumstances in which an owner–builder will not be in a position to live in the building that they build.

Mr M. McGOWAN: The minister is suggesting that this amendment is not expanding the intent of the legislation; however, the original clause 45(e) is entirely about properties that people intend to live in, which we would assume would be residential properties. This amendment expands this and suggests that the regulations prescribe what requirements there might be. It might be that the government gazettes regulations that allow it to apply only to places where people are going to live. What is the policy intent here? Will the minister restrict this to places that people intend to live in or will it apply more widely? For example, will it apply to a person who wants to construct a studio out the back of his residence, which is not something they will be residing in but which is still adjacent to and an adjunct to their residence? Will it be something of that nature or something on a completely different block of land that the person has no intention of living in? They might be constructing a workshop—for want of a better example—a children's playground, a childcare centre or something of that nature. Is it going to be that broad or will it apply only to a property that the owner–builder intends to live in or something associated with it?

Mr T.R. BUSWELL: The specific advice I have is that there are circumstances in which individuals, specifically on commercial or industrial property, may build as an owner–builder. I think that clarifies the issue that the member raised earlier about whether it applies to housing or to industrial or commercial properties. The issue is not the usage, as much as the ownership, as we canvassed earlier, by an individual. The advice I have is that the amendment is required as some types of owner–builder work is carried out on commercial or industrial property where it is not appropriate for the owner to reside on the land. The example that was canvassed in the other place specifically related to an owner–builder building on commercial or industrial land. Clearly there are circumstances in which an owner–builder might build a shed in a light industrial area and they cannot live in it.

Mr M. McGowan: People do.

Mr T.R. BUSWELL: I know they do in Karratha.

Mr M. McGowan: Everywhere!

Mr T.R. BUSWELL: That is true, and similarly for commercial work. This amendment is designed to take away the requirement for the board in granting owner–builder approval to insist that the person lives there, because that is not going to be the case in all circumstances.

Question put and passed; the Council's amendment agreed to.

Mr T.R. BUSWELL: I move —

> That amendment 3 made by the Council be agreed to.

Proposed section 374AAA(1) of the Local Government (Miscellaneous Provisions) Act 1960 will now read —

> A local government must not issue a building licence to commence or proceed with any building work —

We then delete "with a value of $20 000 or more" —

> unless the licence is issued to a person who —

This amendment removes the $20 000 minimum that applies in this circumstance.

Mr C.J. TALLENTIRE: I would appreciate if the minister could clarify his justification for this deletion. I am looking forward to the next amendment, but when I look ahead I get the impression that this amendment reverses

the intent of putting that minimum value there. Is the minister trying to say that there will be no requirement on people to get a building licence when the value of works is less than $20 000?

Mr T.R. BUSWELL: The advice I have is that there were concerns that this bill will come into play ahead of the Building Bill and that this $20 000 limit would apply to regulations in areas of the state—for example, in remote areas where currently that limit does not apply—until the passage of the Building Bill. It was felt it would be better to deal with that through this bill to stop the introduction of this regime into areas that currently are unregulated ahead of the Building Bill.

Mr C.J. TALLENTIRE: That concerns me. We had a lot of discussion on the Building Bill going into a lot of detail. Both sides of the chamber supported the intent of the Building Bill, and I believe that was the situation in the other place as well. Why are we saying that the requirement for a building licence is something that we all support once the Building Bill comes into effect, but until the Building Bill comes into effect we are saying that it is not justifiable? Why should what happens in the next few months be any different from what will eventually be the situation once the Building Bill is in place?

Mr T.R. BUSWELL: This amendment is in response to some issues raised by local government and industry. Clearly there are some significant requirements on local government, in particular, as a result of changes in the way local government operates. It is really a timing issue. The feedback we have had is that local government and aspects of industry in areas that are currently not regulated need some more time to get up to speed and when it comes in they will be ready to comply. The member is right that both sides of this place supported the Building Bill. The Building Bill will come into effect by about October this year. This will cover a short period of time during which, I imagine, particularly local government and certain aspects of industry in those more remote areas get themselves organised ahead of the introduction of the Building Act. That will have some implications for them that currently do not exist, because in a lot of those areas they will have to assess buildings under the Building Bill that are currently excluded.

Mr C.J. TALLENTIRE: I am afraid I find that explanation remarkable, because one of the main reasons for the Building Bill was so that we could in some ways outsource the process that is undertaken when we issue a building licence.

Mr T.R. Buswell: Member, there are still some requirements on local government as part of that process. As the member would know, there is the requirement to come back and work through that checklist and that sort of stuff. In some areas, the advice of local governments is that they are quite simply not in a position to do that. They need some more time, and they will have until October to get up to speed with their requirements.

Mr C.J. TALLENTIRE: But the situation we are creating is one in which they can get outside experts—people who are approved building surveyors—to do all the work for them. At the moment they do not have that; they have to do the work themselves. We are creating a situation in which they can outsource the work. I do not think it is reasonable to then say that we are going to be overburdening them with additional work, because that is not the case. The whole intent was to give local government the opportunity to outsource work so that there is a very final check. I do not think there is an additional workload; in fact, there is a significantly reduced workload. I just do not see how this stacks up at all.

Mr T.R. BUSWELL: The advice I have is that this is to maintain the status quo. The member is exactly right: once the Building Bill is enacted, local governments will be required to play their role as defined in the legislation. This just maintains the status quo ahead of the enactment of the Building Bill, because for some of those local governments in more remote areas there will be a time lag while they effectively reach a competency point or get up to speed with their requirements under the legislation.

Mr C.J. TALLENTIRE: It does not maintain the status quo. It actually takes us back.

Mr T.R. BUSWELL: No; the status quo in a lot of remote areas is that for certain dwellings, which will be covered under the Building Act, there is not the need for the sorts of approvals we are talking about. Under the Building Act there will be consistency across the whole state. Under the current regime there is no consistency across the whole state, in particular in remote areas.

Question put and passed; the Council's amendment agreed to.

Mr T.R. BUSWELL: I move —

> That amendment 4 made by the Council be agreed to.

This amendment relates to the insertion of clause 156(2A) on page 84 of the bill.

Mr M. McGOWAN: Whilst I was listening intently to the minister's earlier explanation, I think it is important for the purposes of statutory interpretation that we get a full explanation of what this amendment means. My reading of it is that there is not a requirement for a building licence when the work is under the value of $20 000,

except in some parts of the state where that might be required. As I said, although I was listening intently, I assume that must be in regard to issues perhaps related to climactic conditions, such as cyclones or something of that nature, for which there might be a requirement for a building licence for some buildings because they could very well become dangerous in some circumstances if they were not built according to a certain standard. If that is not a correct interpretation of this provision, I would be interested in the minister's explanation of what this provision is designed to do.

Mr T.R. BUSWELL: Clause 156 is being amended by the insertion of subclause (2A) to set out circumstances in which local governments are not to issue the licences—that is, where the value of the building work is less than $20 000 or where it is to be carried out in an area of the state prescribed by regulations. Those regulations are generally for remote areas, as I have been advised. There are special provisions that deal in certain circumstances with the issuing of building licences in remote areas.

Mr M. McGOWAN: To follow on from that, I would have assumed that if someone is not required to have a building licence for work of less than $20 000 in the metropolitan area and, I assume, major towns and cities around Western Australia, it would be more difficult for someone living in a remote area to obtain any sort of licence prescribed by regulations in any way. I would have assumed that the requirement must have been related to some sort of condition associated with problems we might have with the weather in the north of the state, which might require a greater level of licensing or scrutiny by government agencies to allow for the construction of such buildings. Otherwise, I am at a loss as to why someone might require a licence in the remote part of the state, where it is much more difficult to obtain a licence, rather than in West Perth, where it is probably a lot easier to obtain such a licence. In the interest of providing an explanation to country people for why they are being treated differently from city people, I think the minister needs to provide a little clarity around this clause.

Mr T.R. BUSWELL: My understanding is that all we are trying to do with this amendment is to make sure that the current regime of a requirement to be registered does not suddenly change when the Building Services (Registration) Bill 2010 is enacted. Therefore, if someone wants to build something to the value of less than $20 000, they do not need to be registered. If someone is carrying out work in remote areas of the state, similarly, they do not have to be registered. I am trying to get some advice on the nature of buildings that can be built in remote areas of the state without registration, but I would assume, for example, if it was a government building in an area defined as remote —

Mr M. McGowan: I think I see.

Mr C.J. TALLENTIRE: The minister is justifying the deletion of the provision for building works less than $20 000 and the introduction of a subclause that says that section 156(1) does not apply to building licences for building work in certain cases. The minister justifies that on the basis that this legislation is about a set of transitional arrangements that will be in place until the Building Act comes in. Looking more broadly through the legislation, I do not see where it is made clear that this is a set of transitional arrangements. I am concerned that what is introduced may not be around only until the Building Act comes in; I think it will be with us for good. That would mean that this strange situation in which people who in certain areas of the state are building properties or doing works to their properties of less $20 000 are not going to be getting building licences, and they are not going to be getting the benefit of that quality assurance or of qualified tradespeople. All those things fall away if this is something that can endure. That is my concern, because it does not appear to be the transitional arrangements that the minister is suggesting.

Mr T.R. BUSWELL: The advice I have is that the Building Bill covers a lot of the issues the member is talking about. This amendment is designed to assist with the transition to the introduction of the Building Act. That is the advice I have.

Mr C.J. TALLENTIRE: The minister said that this is about transitional arrangements. Where in this bill is it stated that this is about transitional arrangements? I repeat that my fear is that this will endure beyond the time when the Building Act will come into effect.

Mr T.R. BUSWELL: It is not in this bill. It is in the Building Bill. The Local Government (Miscellaneous Provisions) Act 1960, which we are currently amending—provisional amendments, if we can call them that—will be dealt with as part of the Building Bill.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.