

**BUILDING SERVICES LEVY BILL 2010**  
**BUILDING SERVICES (COMPLAINT RESOLUTION AND ADMINISTRATION) BILL 2010**  
**BUILDING SERVICES (REGISTRATION) BILL 2010**

*Cognate Debate — Motion*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [9.01 pm]: I seek leave for the bills contained in orders of the day 11, 12 and 13 to be considered cognately. By way of brief explanation, it is a generally held view in the chamber that this is the most expeditious and convenient way to proceed. We will deal with order of the day 18, the Building Bill 2010, in due course.

Leave granted.

*Second Reading — Cognate Debate*

Resumed from 6 April.

**HON LJILJANNA RAVLICH (East Metropolitan)** [9.02 pm]: I rise to support the three bills. In fact, two of the bills are more substantive than the Building Services Levy Bill, which should not take a great deal of time to deal with. A range of issues in the Building Services (Complaint Resolution and Administration) Bill 2010 and the Building Services (Registration) Bill 2010 need to be canvassed. As I have said, the Building Services Levy Bill 2010 just provides a mechanism by which to establish the levy.

I want to canvass the history of this legislation; in fact, it goes back quite some time. The original consultation started in 2005. Public information sessions were carried out in 2006. There was extensive consultation on the establishment of a one-stop shop, if you like, for building registration and a range of issues surrounding the building of residential and commercial buildings in the state. At the time, a very comprehensive stakeholder group was established. It is fair to say that the legislation before us now is based on some of that early work. I understand that the government intends to have this legislation commence by June 2011, with a phased implementation period over the following 12 months.

I understand that some of the changes that the Building Services (Complaint Resolution and Administration) Bill and the Building Services (Registration) Bill will effect from a practical point of view will also put Western Australia in good stead in the work that is being undertaken by the Council of Australian Governments. The Business Regulation and Competition Working Group has been established at the federal level. It is working on a range of issues in the building sector, including building regulation. The working group is investigating the merits of a national construction code proposed to combine provisions for building, plumbing, electrical and telecommunications work. It will be interesting to see how that pans out in due course. Another working group is looking at a national trade licensing system. Work is being done by the Housing Working Group in consultation with the Business Regulation and Competition Working Group. That working group is progressing the adoption of electronic development applications across local councils to help speed up the whole process. Work is also being done on climate change, water issues, consumer policy and so forth. It is good to know that this legislation that the government has put forward will position us well in the national agenda after that has been dealt with by the commonwealth government.

I want to put on the public record that the building sector in this state is a very important sector. Although the mining sector often gets the credit for being a great employer, industries such as the building and construction industry and the small business sector are in fact the great employers in this state. One thing we do know is that when the building sector in this state is doing well, the economy as a whole is doing well. It is very important that we have a vibrant building sector and that approvals processes and a whole range of issues surrounding the way in which that sector operates are as efficient as possible.

The idea that a one-stop shop would be created in the Building Commission seems to be a pretty good way to go. There is no doubt that there are too many acts, regulations and by-laws that have to be gone through to achieve an outcome and to deal with all manner of things relating to building. The idea of the Building Commission and the one-stop shop concept is a good thing. However, I have a genuine concern that it is not really an independent commission, just as the Small Business Commissioner is not really a proper commissioner and just as the Mental Health Commission is not really a proper commission. The Building Commission is not being set up under its own statute; it is nothing more than a branch of the Department of Commerce. The Building Services (Complaint Resolution and Administration) Bill 2010 clearly states —

The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Building Commissioner for the purposes of this Act.

That is a little concerning. When the government says that it is establishing the Building Commission, the average person would think that the commission would be independent of government. But the government then says that the commission will be able to collect fees and charges for a number of functions that it performs, because, as I understand it, the commission will operate under a cost-recovery model. Clearly, people do not want these fees and charges to be collected and possibly used to fund the operations of an agency which already exists and which probably should be funded through consolidated revenue in any event. I have a real problem with the government creating a perception that it is creating independent commissions that stand at arm's length of the government when in fact they are no more than a department of the agency itself. I want to find out from the minister, when he responds, why this package of building legislation does not establish an independent commission that is at arm's length of the department. Can the minister explain to the house why the government went for this model? In fact, why we did not simply create a division of the department that performed all these functions I do not know. Can the minister explain why he has chosen to in fact establish a claims commission, if we like? Why is there no reference anywhere to an independent commission and why was the commission not established under its own legislation? Can the minister put on the public record whether it is true that the use of the term "commission" in this legislation is a misnomer and whether in legal terms there is no commission, just as there is no Mental Health Commission or indeed there will be no small business commission? Also, can the minister put on the public record whether it is true that if the government genuinely wanted to have a real commission, it would have created it under its own legislation? If the Building Commission does not have its own act, is it not simply a branch of the division of the Department of Commerce, which is wholly subject to the control and direction of the executive? Is this not in reality a long way short of it being an independent auditor and regulator, which it claims it is? The commission cannot be an independent auditor and regulator when in fact it is just an arm of the department and in reality has the potential to be a puppet of the government of the day. I also want some information about whether legal advice was sought on the establishment of the commission and what the advice of the legal counsel was.

Another concern I have is about the third bill, which is the Building Bill 2010. I looked at the Building Bill and thought it probably should have been—I know that we are not dealing with that bill at the moment—called a penalties bill because it is absolutely riddled with penalties for all manner of things. We want an assurance that these penalties will not be used to subsidise the operations of the agency. I understand that the Building Commission has already been set up; it has been operational in West Perth for approximately a year. The Building Commission will bring together building practitioner registration, building standards, complaints processing and the policy for building in this state.

Before us is a suite of three bills and so far I have made just general remarks about the Building Commission. I want to make some remarks about the Building Services (Complaint Resolution and Administration) Bill 2010, which seems to contain very similar functions to those of the Building Disputes Tribunal. In fact, the Building Commission will clearly take over some of the tribunal's functions. There is some conjecture about whether the complaint resolution bill is the best way forward. Perhaps we may well have been better off with what we already had. One concern that has been raised with me is about the costs associated with the establishment of the new structure, which seems to be a much more legalistic and probably more time-consuming process. I want some assurance that that is not the case.

The Building Services (Complaint Resolution and Administration) Bill is about builders, painters and building surveyors, which are currently registered under three statutes. The CRA bill, along with the Building Services (Registration) Bill 2010, will replace those statutes with a single, modern, streamlined system of registration and approval for persons working in the building industry. The CRA bill will establish the Building Commissioner, as we have already said, as a statutory role within the commission and as a central place for the administration of building regulation and customer service. I will leave the functions of the Building Commissioner until we get to that third bill; however, there is no doubt that the complaint resolution and administration bill has been some cause for concern for some people.

Not long ago I received an email from Valdene Buckley, which came to me by way of Hon Sue Ellery, about the Building Services (Complaint Resolution and Administration) Bill. I had met with Ms Buckley and Joan Milne from the Consumers' Association of Western Australia, which has a number of issues about this legislation. Basically, the association sent the email about this legislation, which it argued will overturn a low-cost, tight-turnover, no-frills, non-legalistic, highly democratic process based on equity and good conscience. The association's claim is that the Building Disputes Tribunal tended to bring parties together to try to mediate and resolve the dispute in a positive way to get a satisfactory outcome between the parties. All of a sudden, there will be a process in which the State Administrative Tribunal is involved, and it seems as though it will be a much more legalistic and, certainly, longer, protracted process than was the case with the Building Disputes Tribunal. I wonder whether the minister can provide some advice to the house about whether the government undertook any

comparison of the cost of the Building Disputes Tribunal to the end user—that is, the consumer—and the cost of the process proposed in the legislation.

I understand the Consumers' Association of Western Australia also wrote to the minister on 2 February 2011. Its main objectives were to represent the views of consumers in Western Australia, to investigate and act on issues of concern to consumers, to provide a forum for the discussion of matters of common interest to consumers and to encourage consumer education. Because it had some serious concerns about the impact of this suite of legislation on the consumer—the end user—the association brought this to my attention.

First of all, the association was concerned about the new system being more costly. It gave the example of the current flat fee of \$70 on all building licences, including commercial properties, but under the new act it will be set at 0.125 per cent of domestic licence fees. The fee in effect is indexed according to the cost of a home. For example, a home costing \$300 000 equates to a fee of \$375 towards a dispute resolution process. If those figures are correct—I have not done the sums myself—there is quite a huge cost differential for the dispute resolution process between that which the government is abandoning—that is, the disputes tribunal—and the new one the government is proposing under this legislation.

The consumer association in its correspondence raised the issue that owners will still have to pay an additional fee when lodging a complaint, which it understands will be considerably higher than the current fee of \$32. I noted when I went through the legislation that there are provisions for regulation-making powers right throughout the four pieces of legislation; however, there is little indication of the likely net impact of the finances. I would be interested to get the minister's comments on the fee for lodging a complaint. It would be good if the minister could get that information for us so that we could do a comparison of how the new fee compares with the current \$32 fee.

The association also argues that the new system will be downgraded just because the proposed model is a breach of both the common law rights of parties to be heard and the duty of decision makers to provide a fair hearing in accordance with the rules of natural justice and procedural fairness. Building Commission decisions will simply be administrative decisions. When complaints are made to the Building Commission, they are determined by Building Commission staff on the basis of the written information presented by the parties and without the opportunity of face-to-face hearings before an experienced and properly constituted panel, as has been the practice of the Building Disputes Tribunal. Parties to disputes are denied natural justice in the proposed model, as they will not be given an opportunity to fairly represent their case and reply to the other party's submission. The association's third major concern is that the new system will be much more legalistic. Because of that fact, its final point of objection is that dispute resolution will take longer.

When I met with representatives from the Consumers' Association of Western Australia, they provided me with information on workload statistics. It is fair to say that the Building Disputes Tribunal has been doing a good job. The number of complaints received in 2009–10 was 828. Of those, 738 involved workmanship issues. The number of inspections made by the disputes tribunal was 342. There were 205 orders of remedy made by the registrar and 105 orders of remedy made by registrar BDT.

**Hon Simon O'Brien:** The Building Disputes Tribunal.

**Hon LJILJANNA RAVLICH:** Thanks, honourable member. The really interesting thing is that the number of applications to the State Administrative Tribunal for review of Building Disputes Tribunal decisions was only 42 out of the original 848. I want to put on the public record that the Building Disputes Tribunal has done a good job for a long time, and there is an expectation that what is being put forward is better than what we have had. If it is not better than what we have had, it raises the question of why we are making the changes. I think it is beholden on the minister to demonstrate that what is being provided here is good for the end user. At the end of the day that is who we need to have in mind. It is not about growing the business of the Department of Commerce. It is not about keeping happy all our mates in certain services in the building industry. It is not about providing patronage to some of our mates out there. It is about whether we are creating —

**Hon Simon O'Brien:** Are you suggesting that any of that is involved?

**Hon LJILJANNA RAVLICH:** I need to explore a few ideas here. There are a few ideas that are worthy of exploration, and I will put some questions to the minister, so it will be interesting to see how he responds. The point I am making is that the minister should be driven by what is best for the consumer. When I read some of the provisions within the legislation, I am not convinced that consumers will be better off. They are going to have to pay an application fee for this; they are going to get a fine for that. I went through pages and pages that contained just provisions and fines. I am very concerned, because that is not what this legislation should be about. That completes my contribution on the Building Services (Complaint Resolution and Administration) Bill 2010.

I want to make some comments about the second of these bills, the Building Services (Registration) Bill. The key objectives of the Building Services (Registration) Bill are to provide a flexible system of registration and control of building services providers in Western Australia; to provide a system of approval and control of owner-builders in Western Australia; and to replace the Builders Registration Board, the Painters' Registration Board and the Building Surveyors Qualifications Committee with a new Building Services Board. Once again the same should apply. What we will get as a result of this legislation should be considerably better than what is being left behind. Also, the objective of the Building Services (Registration) Bill is to replace the Builders' Registration Act 1939 and the Painters' Registration Act 1961, and to support streamlined approvals proposed by the new Building Act.

I want to touch on the Building Services Board. I understand the board will be appointed by the minister. From my reading of the legislation, it was not clear how many people would make up that board. The minister might want to provide information on that. There was reference to two people here and two people there, but I could not find a definitive figure for the total quantum of people on the board. I am wondering whether that has been determined yet. The board will be appointed by the minister and will have the power to grant and renew registrations, grant owner-builder approvals, approve supervision arrangements, determine disciplinary matters, ask the State Administrative Tribunal to suspend or cancel registrations, deal with minor disciplinary matters and advise the Building Commission on building industry developments and issues. The board would also have the function of registering building occupations. The bill makes a distinction between registration of practitioners and contractors, and it determines that practitioners are individuals, supervisors, employees or practitioners who are not trading, and contractors are individuals or firms trading or contracting.

The bill is what it claims to be—that is, a bill that looks at the registration of certain classes of individuals and prescribes that building service providers, be they individuals, partnerships or companies that carry out prescribed building services, are to be registered in the relevant class. I think it is a good thing. I thought that a lot of these providers were registered. I am wondering —

**Hon Simon O'Brien:** It was surprising to find out who is not registered.

**Hon LJILJANNA RAVLICH:** I think the minister is trying to achieve, through the legislation, a composite set of the full number of individuals, partnerships or companies registered, be they builders, painters or building supervisors. That is not a bad thing.

The bill refers to building service providers and identifies that they need to be registered in at least one of two broad categories—either practitioners and/or contractors. They can be either one or the other, or they can be both. I understand that these practitioners are individuals only. They must possess the prescribed qualifications, demonstrate that they have the prescribed level of expertise, and be fit and proper persons. But, interestingly enough, past convictions or bankruptcies do not justify the applicant's exclusion from the industry. That is really interesting in itself. I wonder why that is the case. If somebody were to perhaps have a past conviction or a bankruptcy in an industry other than the building industry, I do not know how that would be treated. I am thinking of a registered builder who may have a past conviction or be bankrupt. Maybe we would be worried about both. I wonder whether the minister can give us a bit of a rundown on how this applies in other industry sectors.

The Building Services (Registration) Bill prescribes building services for builders, painters and building surveyors. It deals with the question of the duration of registration and moves to a new three-year renewal system. At least some builders, painters and building surveyors used to be on a one-year renewal system. It was deemed to be cumbersome and, I guess, from an administrative point of view not particularly efficient, whereas moving it to a duration of three years for re-registration seems to be a much better way to go. There is no doubt that the Building Commission will keep a register of that.

There are special provisions in the legislation for builders' supervision requirements. All building service contractors will have one or more practitioners registered in relevant classes and will nominate a supervisor for work done by a contractor. The board must be satisfied with the contractor's supervision arrangements before registration or renewal. There are a range of new provisions relating to owner-builder requirements—a whole new world there—but I understand there is also a provision that an owner-builder cannot sell his or her house for a minimum period of three or four years. I understand that had previously been a longer period, something in the order of seven years. I wonder whether there has been a shortening of that. I can understand why that provision exists. If there are risks with an owner-builder, such as any risks associated with the quality of the work performed, then clearly an owner-builder should not be able to on-sell a problem to the purchaser, even when the work was performed in good faith. I wonder whether the minister can provide clarification of that; otherwise we might go through that when we go into Committee of the Whole. Penalties are scattered throughout the bill, and we will deal with that in due course.

The final bill I will make comment on is the Building Services Levy Bill 2010. That is the third bill in this suite of three. It imposes a levy on building services. The amount is to be set by regulations prescribed under clause 94 of the Building Services (Complaint Resolution and Administration) Bill 2010. I will conclude my remarks. I have put on the public record some issues that have been brought to my attention. We will canvass additional issues during the committee stage of the legislation.

**HON LYNN MacLAREN (South Metropolitan)** [9.40 pm]: I rise to speak in broad support of the Building Services Levy Bill 2010, the Building Services (Complaint Resolution and Administration) Bill 2010 and the Building Services (Registration) Bill 2010. The existing process for building approvals was established in the Local Government Act 1960. There is, therefore, a clear need to update the existing legislation. The Greens broadly support these three bills, which I will address at this stage, and I will leave my comments on the Building Bill 2010, which are more substantial, to that later order of the day.

As I understand it, these bills have been on the cards for about 10 years. I congratulate the government for finally bringing these bills to this house—good job. I will briefly summarise the consultation that has been undergone on these three bills. In 2003–04, informal discussions were held about updating and modernising the Builders' Registration Act 1939. In 2005, a building act discussion paper was circulated broadly. In 2006, responses came back, and an industry reference group was set up. That was a very good process, under which the government sought consultation on this legislation. In 2007, this legislation was drafted under a Labor Party government, so we on this side of the house should have an in-depth knowledge of these bills. That drafting continued in 2009, and at last we are dealing in the upper house with the second reading of these bills.

From my discussions with stakeholders, which included the Western Australian Local Government Association, and local council building inspectors, these bills appear to be relatively uncontroversial. There seems to be broad agreement that there is a need to modernise the current legislation. I did note the comment by my colleague Hon Ljiljanna Ravlich about the complaints that have been brought to her attention, and I look forward to hearing the responses from the minister to those concerns. However, I cannot say that those concerns have been raised with us.

The Building Services Levy Bill provides for a levy to be imposed on persons to whom permits and building approval certificates are granted under the Building Bill, which we have yet to discuss. The levy will be used to fund the operations of the Building Commission division of the Department of Commerce, in its role as regulator of the building industry in Western Australia. The levy will replace the levy under section 4B of the Builders' Registration Act 1939—it has been a while since that act was established, has it not? This bill has been produced as a standalone bill, as Parliament requires that taxing provisions be included in separate bills. That is a good practice, and it provides a good opportunity to scrutinise this bill independently. We therefore support it.

The Building Services (Complaint Resolution and Administration) Bill 2010 provides a new system for dealing with complaints about building services in Western Australia. It will replace the current Building Disputes Tribunal. The local council building inspectors with whom we have consulted believe that the complaints mechanism outlined in the Building Services (Complaint Resolution and Administration) Bill appears to be an improvement on the existing complaints mechanism, which it has been argued is not operating very effectively, although, as we have heard, that may be up for debate. The system that is proposed in this bill is a new modernised system, and it should be tested to see whether it is better than the existing system. It is fair to say also that the Greens have concerns about the cost benefits of this bill. We also have concerns about rising costs, particularly for home buyers who are trying to get into a market that they have not been in before. Housing affordability in this state is at a crisis point, and we need to be mindful of anything that may increase the costs for people who want to buy a home.

The Building Services (Registration) Bill establishes an office of the Building Commissioner to inspect and investigate buildings and building services in Western Australia. It also provides for orders to remedy unsatisfactory building services in Western Australia. These purposes are worthy and appropriate, and, hopefully, they will also be efficient. According to the stakeholders whom we consulted about the registration bill, this bill is a step in the right direction, because it will require building surveyors to hold qualifications. That is not currently the case, which surprised me. Building surveyors will also need to prove that they are up to date with the Building Code. Some of the disputes and complaints that have come up may be avoided through the professionalising and registration of building surveyors. We welcome that move. But as I have said, we would be concerned if this legislation were to increase costs for homeowners. I will conclude my remarks at that point.

Debate adjourned, pursuant to temporary orders.