BUILDING AMENDMENT BILL 2012

As to Third Reading

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr P.C. TINLEY: This is more of a general question, and I will take guidance from anywhere at the moment, in relation to the Building Amendment Bill 2012. I have before me what my staff has prepared to assist me—a compilation that shows the proposed amendments to bill 304–1—which is unremarkable in itself. It is basically a marked-up copy of the amendments to be made to the quite substantial act. To give an example that permeates through, in my marked-up copy—this is not covered in the actual amendments as printed—there are mark-ups for amendments that do not appear in the Building Amendment Bill 2012. I hope this is the right juncture to ask this question, but, for example, section 3, "Terms used", under part 1, "Preliminary", has "applicable building standard" marked up in my copy, but it does not appear in this amendment bill. That is obviously what we are debating and that is what we are into now. Is there a reasonable explanation as to why that is the case? There are others, but I will not delay the house by going through them. Were they intended amendments that never made the cut or are they amendments we will subsequently see? Were they thought about and discarded, and we have just been provided with a marked-up copy inappropriately?

Mr J.M. FRANCIS: Member for Willagee, there is actually a fairly simple explanation. Effectively, part of it comes into force when the bill is proclaimed, and part of its comes into force when the regulations come into effect, which is why it looks as though there are two separate parts; it comes in on two separate occasions. That is why some are included in the mark-up the member is looking at and some are not.

Mr P.C. Tinley: By interjection, I have just been alerted by member for Gosnells that the particular example I used, "applicable building standard", actually appears under "Section 3 amended" on page 22 of the bill. So is it just the way it has been organised? What I am trying to ask is whether the amendments that appear in this marked-up version appear in the bill but in a different arrangement.

Mr J.M. FRANCIS: It is purely just because of the way it has been organised, and it is in two separate sections.

Mr P.C. Tinley: What do you mean by two separate sections?

Mr J.M. FRANCIS: There are the bits that come into effect when it is proclaimed, and then there are the bits that come into effect by regulation.

Mr P.C. Tinley: Okay; I will not labour that point because it is not material. I was just trying to understand what was in —

Mr J.M. FRANCIS: So it is done in two separate parts —

Mr P.C. Tinley: Yes; I know that is the separate bit, which is what we are discussing now in the consideration in detail stage. This document I have is the act, with, supposedly, the amendments embedded in it. But the example I used of "applicable building standard" does not appear in part 1, "Preliminary", of the bill; it appears in clause 33 under part 4.

Mr J.M. FRANCIS: That is because part 4 is the second part, which comes into effect with the regulations.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended —

Mr C.J. TALLENTIRE: I thank the member for Willagee and others for that clarification, although it is still not entirely clear in my mind why there is this curious ordering of amendments. There is indeed an amendment to this definition of "authorised person" that appears in clause 4 of the bill, and that has ramifications for section 3 of the act. But another important part of section 3, which is being amended, is this definition of "applicable building standard", and we have to turn to clause 33 of the bill to find that. It just seems a little curiously ordered. Perhaps the parliamentary secretary would like to give a further explanation on that one.

I would also like to know about this definition of "authorised person". Clause 4, "Section 3 amended", states that it is —

(a) a person who is prescribed as an authorised person for the purposes of section 93(2)(d); and

(b) a person who is authorised by a local government in the manner prescribed for the purposes of section 93(2)(d);

I would like greater clarity on how this person will be prescribed. Is there further detail to come in regulations, or should I rest assured that all the necessary detail is included in this amendment and the existing legislation?

Mr J.M. FRANCIS: I am advised that part 2 will come into effect on assent, and parts 3 and 4 on proclamation, so maybe about a month afterwards. With regard to the member for Gosnells' question on "authorised person" in clause 4, I am advised that the clause amends the definition of "authorised person" in section 3 of the Building Act to include a head of power for regulations to prescribe an authorised person, and to prescribe a way for a local government to authorise a person who is not an employee of the local government for inspections under section 93(2(d) of the Building Act. This provides more flexibility to appoint inspectors of existing buildings for compliance with regulations prescribing swimming pool fences, smoke alarms and other requirements for existing buildings. That, hopefully, explains why it is laid out in that particular way.

Mr C.J. TALLENTIRE: Further to that, though, section 93(2(d) reads —

> Regulations mentioned in subsection (1) may —
>
> …
>
> (d) require a permit authority to arrange for an authorised person to inspect or test, on a specified day, at specified intervals, or when a specified event occurs, an existing building for the purpose of monitoring whether a provision of the regulations is being complied with; …

I do not feel that I am getting further information there that really tells me the actual nature of this authorised person. I am getting information on what the person's tasks might be. I was looking to get some guidance on the qualifications or the necessary professional body of which this person might be a member. As I say, I see there in section 93(2(d) a quite good listing of the tasks and the timing at which events should occur, but I am looking for information on the qualifications of this authorised person.

Mr J.M. FRANCIS: I guess the best example I could give the member for Gosnells is in the instance of, say, a swimming pool fence inspector. As the member knows, about a year after installation in a backyard, a swimming pool needs to be inspected to ensure the fence and everything around it complies with the requirements, which are obviously fairly stringent. Then at an interval after that, which I understand is approximately five years, it has to be re-inspected; an inspector comes back and inspects these things again. Not all councils do that. Until now councils had the ability to appoint someone from the Royal Life Saving Society of Australia to go and do that job. This amendment will allow councils to still get someone from such an organisation who knows what the regulations are to do those inspections.

Mr C.J. Tallentire: So it comes down to this detail being in the regulations.

Mr J.M. FRANCIS: That is correct.

Clause put and passed.

Clauses 5 to 19 put and passed.

Clause 20: Section 79 amended —

Mr P.C. TINLEY: Section 20 is on the grant of a building permit. I note paragraphs (i), (ii) and (iii). I am sorry, I have just lost my place. It refers to a public authority as defined in section 3 of the registration act for the granting of a building —

Mr J.M. Francis: I am sorry, member for Willagee, while you are on your feet I am not quite following where you are at.

Mr P.C. TINLEY: Clause 20.

Mr J.M. Francis: The way I read it, clause 20 amends section 79.

Mr P.C. TINLEY: It states —

> **Section 20 amended**
>
> (a) After section 20(1)(b)(ii) insert …

It is clause 7 on our amending bill.

Mr J.M. Francis: The member is talking about clause 7, which amends section 20.

Mr P.C. TINLEY: I am sorry, clause 7 in this bill.

Mr J.M. Francis: I am happy to take your question, if the Acting Speaker allows it.

Mr P.C. TINLEY: Clause 7 in the amending bill amends section 20. This is obviously the root of some of our confusion. Are we happy to proceed?

Mr J.M. Francis: I am happy to proceed.

Dr K.D. Hames: Just ask the question while the Acting Speaker is trying to work it out.

Mr P.C. TINLEY: Section 20, "Grant of building permit", which is clause 7 of the bill, refers to a public authority as defined in the registration act. For the purposes of granting a building permit, can the parliamentary secretary give me an example of a public authority that would do that?

Mr J.M. Francis: It is the government or a state government agency.

Mr P.C. TINLEY: What about then, for example, the Department of Housing, because it does its own construction work; that is, under the registration act?

Mr J.M. Francis: I am advised it is a department of the state.

Mr P.C. TINLEY: A permit authority?

Mr J.M. Francis: Yes.

Mr P.C. TINLEY: It is actually not. I think there is application for it at the moment.

Mr J.M. Francis: It is not yet but I understand it is soon to be delegated by the minister as such.

Mr P.C. TINLEY: Yes, there is ministerial authority to award that to them. I am sorry, have we resolved it, Mr Acting Speaker?

The ACTING SPEAKER (**Mr I.M. Britza**): Yes. We are on clause 20. Clauses 5 to 19 have already been passed, so we are on clause 20.

Mr P.C. TINLEY: My apologies.

Clause put and passed.

Clause 21: Section 80 amended —

Mr C.J. TALLENTIRE: Clause 21 relates to amendments to section 80 of the Building Act, and it is on an issue on which I know all members received submissions; that is, fences. There is that wonderful saying that good fences make good neighbours. One of the intents of this legislation is to facilitate someone who wants to gain access to their block via another block. One of the purposes of these amendments is to enable that to occur more readily. However, the amendment in clause 21 states —

> **Fences etc. not to be removed without consent, court order or other authority**

I can understand that we would want to protect the sanctity of dividing fences; that makes perfect sense. But given that the intent of this legislation is to facilitate people's access when a project is about to happen, I am trying to reconcile how these two things will work together. Perhaps the parliamentary secretary can clarify that for me and explain how we will manage to maintain these two things that are important to us.

Mr J.M. FRANCIS: Obviously, for example, if a person building a house next to another house needs access for whatever reason through their neighbour's property to build that dwelling, they will have some issues for starters. Firstly, one of the flaws in the way the legislation stands at the moment is that people have to get consent from the owner of the building next door. That has not always been possible. I hate harping back to personal examples, but for example the house next to me in Harvest Lakes was built about five years ago by a couple who lived in Malaysia. It was empty for years until about a year ago. About a year and a half after it was built, the smoke alarm batteries went flat. I was damned if I could locate and track down that owner or do anything to stop the beeping noise going through my house for six months, which is probably why I was in a bad mood for a while! What we are trying to do is make it easier in situations in which the owner cannot be tracked down. If it is a rental property, an adult resident will be able to give permission for access. Clause 21 amends section 80 and will make it an offence to remove fences on or beyond the works land without the consent of the adjoining owner or a court order. A lack of flexibility in the Building Act 2011 means that consent is required where a fence must be removed to allow construction of a zero-lot wall directly up to the boundary. I may stand corrected, but they are instances in which a garage wall goes right up and the side of the garage wall becomes the neighbour's fence effectively for the length of the garage. Even when a building permit has authorised the wall to be constructed, that section of fence has to be removed and the new garage wall becomes the fence. Difficulties in getting consent have delayed house builders applying for permits for small lots where planning schemes support efficient land use by encouraging zero-lot walls. We are seeing a lot more estates in which houses are being built closer together. Clause 21 deletes section 80(1) as enacted, and replaces it with proposed new section 80(1) which carries over the existing provisions of 80(1)(a) to proposed paragraph (c). I hope that clarify things for the member.

Clause put and passed.

Clause 22 put and passed.

Clause 23: Section 86 amended —

Mr C.J. TALLENTIRE: Clause 23 refers to an application for a court order if consent has not been given. It outlines a process whereby an application needs to be made to the Magistrates Court, and involves certain time delays. What information has the government received from industry that these time delays are workable? I have been hearing all along that it is almost impossible for industry to work with delays of 28 days. But that is what is provided for in proposed section 86(2A)(b) on page 13 of the bill. I seek reassurance that this amendment will be workable and that it is something that industry will find useful.

Mr J.M. FRANCIS: Member for Gosnells, that is a good question. As it stands at the moment, if a person receives a knockback from a neighbour for whatever reason—perhaps the neighbour is worried about not having his dogs fenced off, cannot be located or is just being unreasonable—he or she would have to wait 28 days before seeking a court order. Industry told government that waiting 28 days before seeking a court order was a problem. This provision removes the time constraint of 28 days after a knockback. If my neighbour said no to me today for whatever reason, I could ask the court to consider the issue tomorrow.

Mr C.J. Tallentire: What sort of turnaround will this reduce the time frame to? Will it go from 28 days to within 48 hours?

Mr J.M. FRANCIS: It would depend on how willing the neighbour is and, obviously, it would depend on the workload of and wait time in the court system. I am advised that very few issues have gone through to court order even after having to wait the 28 days.

Clause put and passed.

Clauses 24 to 27 put and passed.

Clause 28: Section 145A inserted —

Mr C.J. TALLENTIRE: This clause refers to local government functions and outlines the powers of a building surveyor who is employed by a local government. I am trying to work out how this will take into account an application that has been certified by someone who is not employed by local government. I am trying to work out the connection between outsourcing, the private certification that we have been keen to adopt, and how that relates to this situation in which some would have the option of going to their local government building surveyor to have the work done.

Mr J.M. FRANCIS: Obviously there are two ways of lodging an application and having it certified. It can be pre-certified with a certificate of design compliance or it can be certified by the local government authority. I do not want to debate the efficiencies and size of local councils right now, but obviously not every local council across Western Australia has a certifier on staff. Section 17(1) will require a permit authority to arrange for a building surveyor to assess uncertified applications. Local governments can refer the application to a building surveyor employed by the local government or to any building surveyor in another permit authority—maybe a neighbouring local council—or in private practice. This opens it up —

Mr P.C. Tinley: So this clause gives them the power to refer to a private certifier —

Mr J.M. FRANCIS: Yes, they can.

Mr P.C. Tinley: — and/or other adjacent agencies?

Mr J.M. FRANCIS: Or another permit authority. The Cities of Cockburn and Melville might want to share. That is probably a bad example, but two small councils might want to share one. That would be their arrangement. They can use any other permitted authority or a building surveyor in private practice.

Clause put and passed.

Clauses 29 to 38 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR J.M. FRANCIS (Jandakot — Parliamentary Secretary) [8.28 pm]: I move —

> That the bill be now read a third time.

I will keep this fairly short, because I know the house needs to get on with other business. I start by sincerely thanking the opposition for its cooperation in getting this bill through as quickly as possible. As a number of

members observed in their second reading contributions, this bill will essentially amend a number of unforeseen anomalies and speed humps that came out of the implementation of the Building Act in April. The government obviously accepts to a degree the responsibility for fixing this problem—which is what we have done—as soon as possible. Hopefully, this will sort out all of the problems that have been facing the building industry, with the implementation of ministerial orders between the time that the problems arose, and now. So I thank very much the members who have contributed to this debate, and I again thank the opposition for expediting this process.

MR P.C. TINLEY (Willagee) [8.29 pm]: I want to include some comments from this side of the house on the Building Amendment Bill. I am more than happy, on behalf of the opposition, to take the thanks from the parliamentary secretary in relation to the passage of this bill. I do, however, have some disagreement with the parliamentary secretary, because I do not believe that this bill will fix all the problems besetting the building industry. Many members in this place live with constituent complaints, and also stakeholder complaints, particularly from developers and builders, in relation to not just the Building Act but a range of other things. I hope that this bill is the early opener—I know it is, actually—for a far deeper and more wide-ranging review of not only the Building Act, but also the relevant planning acts, because if we spend any time reading this tome, we realise that it is a complete labyrinth of an international standard, and a complete maze. We have 50 years of stuff to work through to ensure that the alignment between the Building Act, the Planning and Development Act and the Local Government Act work as one right now, as a system of systems that is in some modest way at least transparent.

I raise the issue that if I was a builder of a bog-standard residential home, in a standard-zoned residential area, I would be completely mystified as to why I would need, in any local government authority, to put in a development application or a planning application, when the matter should go straight to building licences, with a very clear set of parameters under the existing standards and R codes et cetera—even the more modified and hopefully updated R codes—that would enable any person of almost a semiskilled nature, in any local government authority, public certified or private certified, to go through a checklist and have the application out the door in at least seven to 14 days, otherwise it is deemed approved. That is a long way from where we are now. That is where we need to get to. It is incumbent on both sides of this place to work as hard as we can to, for once and for all, try to progress our arcane planning system—no; I withdraw that. Our planning system is actually, believe it or not, from my investigations, probably about the second or third best in the country—which maybe is not necessarily the best recommendation. But until we can get to that position, I think we have a long way to go. So it is incumbent on both sides of this house to work as hard as we can. That is why the failure of some aspects of this bill has achieved far more notoriety than it ordinarily would. Typically, matters of planning and building and so on are not romantic and not sexy in any sense of the word in the political context, and they should be the preserve of good, earnest efforts on the part of both sides of the house to get them right. Typically, no elections are won or lost on the basis of whether we got the Building Act right or wrong—and we should hope not.

So, on that note, I reserve some thanks for members on this side who took an interest in this bill and followed through, the member for Gosnells in particular. I also thank the members of the other place, in particular Hon Kate Doust, who took on some great burden in her effort to both understand the act and carry it through upon its introduction in that place, with some great merit. On that basis, the opposition rests.

Question put and passed.

Bill read a third time, and passed.