

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

*Second Reading — Cognate Debate*

Resumed from 17 May.

**HON LYNN MacLAREN (South Metropolitan)** [7.40 pm]: When this debate was adjourned last night, I had been concluding my remarks on these bills. The Greens believe that these three bills are relatively uncontroversial, and we support them. I had raised a number of our concerns about the cost benefits of this legislation. As I indicated also, the next bill that will come to us in this suite of bills, the Building Bill 2010, is the more substantial bill, and we will be commenting on that later. We congratulate the government for finally getting these very important changes into this house. They will modernise the current legislation. The complaints mechanism that is outlined in these bills seems to be an improvement on the current system, and we welcome that.

**HON WENDY DUNCAN (Mining and Pastoral — Parliamentary Secretary)** [7.41 pm]: The Nationals support the Building Services Levy Bill 2010, the Building Services (Complaint Resolution and Administration) Bill 2010, and the Building Services (Registration) Bill 2010. We agree that these three bills will considerably improve the management of the building industry in this state. I also note that we have received correspondence from the Consumers Association of Western Australia, and we have sought advice from the minister and from his advisers, and we are satisfied that these bills will meet the needs of the industry. A conciliation process will be available so that people will be able to avoid the need to go into a more rigorous complaints process. Also, as part of the process, full-time professional officers will be available, and that will enable the reporting process to be conducted more quickly and efficiently. The charging regime will hopefully ensure that frivolous and vexatious claims are minimised. We also believe that the inspection regime for buildings, particularly those that are at higher risk, will be improved. With those few comments, the Nationals will be supporting these bills.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [7.43 pm] — in reply: I thank those members who have contributed to the second reading debate on the Building Services Levy Bill 2010, the Building Services (Complaint Resolution and Administration) Bill 2010, and the Building Services (Registration) Bill 2010. The debate on these bills has benefited from some thoughtful input from all involved. I thank members from all sides for their indications of support for this suite of bills and the broad objectives that are contained within this legislation. We are considering these three bills cognately, and I think the house is finding that that is a convenient way to proceed. There is a fourth bill that forms part of this suite of bills. That is the Building Bill 2010. That bill has been alluded to in debate by a number of members, and necessarily so, because it is a key part of the reform program that we have been debating in this last day or two. Even though we will come to the Building Bill on another day, it is gratifying to know that members are approaching this debate knowing that it is part of a larger package of reforms.

I turn now to the three bills that I hope will proceed through the committee stage this evening, if we get the chance. I would like to respond to the comments that have been made by those members who have spoken in this debate. Members have taken some trouble to examine these bills and have made some very pertinent points. I want to make sure that I do them the courtesy of responding adequately to the matters they have raised before we go to the second reading vote, even though all sides have indicated that they are supportive. I will do that in turn.

Hon Ljiljanna Ravlich spoke on behalf of the opposition and indicated support for the bills. She noted quite correctly that the levy bill is a very simple and straightforward bill, whereas the other two bills attracted some observations on her part. In setting the scene, Hon Ljiljanna Ravlich pointed out quite correctly that there is a history to these bills. Their gestation has been over a number of years. She referred to a review commissioned as early as 2005 and a range of other procedures and consultations that had ensued over the subsequent years.

She commented quite rightly that there had been extensive consultation about these matters and matters that are contained in the Building Bill, which is order of the day 17 today. It is fair to say that that extensive consultation is just the sort of thing that has led us to the situation now where we have some bills that are attracting bipartisan or multipartisan support at this stage. I think that is a credit to those from government who have been involved in the processes, whether it has been successive ministers—there have been a few over the years; three in the last year at last count—and others before them under previous governments. It is also a testament to the effectiveness and the thoroughness of officers who have been involved most recently by the management and the extended team in the Building Commission division of the Department of Commerce. I am proud of the work that they have been doing with a range of stakeholders.

When we get onto the Building Bill I will let the house know a little bit more about that because, as Hon Lynn MacLaren pointed out, that is where there are some particularly meaty issues to attend to. If members are vegetarian, I hope that was not an offensive turn of phrase to use.

**Hon Lynn MacLaren:** You could say protein enriched.

**Hon SIMON O'BRIEN:** Yes, a protein-enriched bill—and for good reason. The Building Bill not only rounds out the ones we are considering now, but it actually redraws in legislative terms all the statutory machinery of a very large and complex sphere of activity here in Western Australia. Hon Ljiljanna Ravlich pointed out quite rightly that the housing sector is very important in this state, and therefore it needs to be working as efficiently as it can. She also reminded us that many acts and other statutes in existence touch on the matters that we are considering in this debate. I am satisfied to be managing these bills on behalf of the government, because I know they have been prepared with a thoroughness and attention to detail that gives me a great degree of confidence. I think that sentiment is shared by other members involved in this process.

I turn now from the general to the specific. Hon Ljiljanna Ravlich raised questions that I would now like to work through. She asked me to comment about any evidence that having a Building Services Board would be considerably better than what is being left behind. The proposed Building Services Board replaces a couple of boards and a committee; namely, the Builders' Registration Board, the Painters' Registration Board and the Building Surveyors Qualifications Committee. The Building Services Board will be supported by staff from the Department of Commerce and will work in close cooperation with the Building Commissioner. There will be an experienced body of officers involved with that, and as this system matures the body of experience amongst our government officers will further develop. Board members will not be involved in the administration of staff and finances and so on, which will enable them to focus their attention on the licensing and disciplinary functions of the board. We will obviously appoint the best people we can; people equipped with the specific skills to exercise those very particular requirements.

The board will have an open structure that will allow occupations to be added or removed by regulation. This is the flexibility that a number of members commented on, whereby as our systems evolve and questions of national licensing, for example, are contemplated in the months or years ahead and questions about which trades need to be registered here in Western Australia are addressed and resolved, the role of the Building Services Board may well be extended to make sure that all of those disciplines are captured, in the same way that the builders and painters and building surveyors will be in the first instance.

The honourable member also asked me to seek clarification about the number of members serving on the Building Services Board; there will not be a specific number, which is reflective of that flexibility that I just referred to. The Building Services Board will initially consist of seven members—that is, a chair, two consumer representatives, two building industry representatives, and two painting industry representatives. Although I used the term “representatives”, they will in a sense be drawn from each of those three sectors, but they will be there not so much in a representative capacity but because of their experience and expertise. It is important that we receive nominations from those trade sectors, to make sure that we have the very best and most respected people available to bring their skills and knowledge to the new Building Services Board. When the Building Bill is enacted—as it, hopefully, will be—two building surveying nominees will also be added to the board, so that will bring it up to nine members. I will contrast that with some of the bodies that are being wound up in the course of this legislative program when I come back to that later.

Hon Ljiljanna Ravlich asked me to also comment about the impact that past convictions or bankruptcies might have on an applicant's potential exclusion from the industry. Individuals must be fit and proper persons, as specified in clause 17(1)(c) of the Building Services (Registration) Bill 2010, and criminal checks of applicants will be conducted as part of the application process. Insolvency does not diminish the skills of individuals, but it does, of course, make them a potential risk when trading with the public. Under the registration bill, individuals who wish to trade with the public must also be registered in the contractor category and must meet the criteria there. The requirements for contractors include meeting minimum financial requirements, which are set out in clause 18(1)(b) of the registration bill, which include specific checks on the solvency history of applicants.

The honourable member also asked me to consider the question of when an owner-builder can sell his or her house, and whether there was a minimum period of three or four years. The member understood that there had previously been a longer period—something in the order of seven years—and she inquired as to whether that had been shortened or varied. The period before an owner-builder can sell a home is three years, which is contained in separate legislation, the Home Building Contracts Act 1991, so this legislation does not shorten or otherwise affect that period. The period before an owner-builder can build another house is six years, which is set out in the Builders' Registration Act 1939, which is one of the acts that we are repealing and replacing; however, the legislation before us now maintains that period. The seven-year period to which Hon Ljiljanna Ravlich referred

in her speech relates to the requirement under the Home Building Contracts Act for owner-builders to take out home indemnity insurance before they sell the property, and our legislation does not alter that period.

The honourable member also raised on behalf of the opposition a question about an independent building commission. I want to spend a bit of time on that now, because the way in which the member raised it was interesting. The member alluded to a future debate on the Small Business Commissioner and indicated the concerns she had were probably similar in both.

**Hon Ljiljanna Ravlich:** And the Mental Health Commissioner; it was all three.

**Hon SIMON O'BRIEN:** I am not in a position to comment on the Mental Health Commissioner, but I can comment on some other issues that might be beneficial for members' consideration and for the debate at hand. The government thinks that these bills and the creation of the Building Commissioner, in the manner that we are proposing meet the right balance in that the need for independence is balanced with the requirement for accountability, not only of the Building Commissioner and the commission, but also of the responsible minister.

**Hon Ljiljanna Ravlich:** That is not the issue. The minister would be aware that if it is a properly established commission, it should be at arm's length from the executive. Clearly, it does not sit with its own statute; it is just a branch of the department and therefore it is subject to ministerial direction. It is pretty simple stuff. The minister has given me everything, apart from what I asked him to comment on!

**Hon SIMON O'BRIEN:** Hon Ljiljanna Ravlich interrupted me as I was trying to address the point that she raised.

**Hon Ljiljanna Ravlich:** I am terribly sorry.

**Hon SIMON O'BRIEN:** On the point that the member raised, with respect, the question of independence is something that we might have to agree to disagree on. I believe that this does strike the right balance. I think there is more than one model, and this one is eminently defensible, and I can use actual examples in support of what I am saying. There are certain independent positions created in government that are way out of any form of immediate executive control. There is also the question of accountability here. I think the member would agree that she would want to be able to hold me, or the minister of the day, to account in this place and elsewhere for the conduct of this particular instrument of government, the Building Commission, given that it impacts on so many people in so many ways in the transactions that are going to be the subject of its purview.

**Hon Ljiljanna Ravlich:** I am sorry to interrupt, but can the minister explain this: the Lotteries Commission has its own act; the Disability Services Commission has its own act, so why has the government chosen this model? Did it get some legal advice? Why has it chosen not to go down the same path as the Lotteries Commission and the Disabilities Services Commission, but rather has chosen this path where it is just a commission by name only? That is all I am asking: what was the reason for that?

**Hon SIMON O'BRIEN:** We want a model that works in the application that we are going to apply it to. We can look elsewhere—for example, in my portfolio—for examples of independent positions that have the title of commissioner. Maybe the term “commissioner” is something that Hon Ljiljanna Ravlich reads a different meaning or definition into. I will give a few examples. The Commissioner of State Revenue is an officer and an agency that reports to me, yet nobody could say that the Commissioner of State Revenue is not independent of the minister or, indeed, the government of the day. He is not even the head of the department of which he is a part. Looking even closer to home, we could look at the Department of Commerce in which we have a WorkSafe WA Commissioner. Again, we could say that this is just a part of that department but very much making independent decisions in accordance with a mandate provided by this Parliament through legislation. We could consider also the Commissioner for Consumer Protection or the Director of Energy Safety. These positions enter into prosecutions and do all sorts of things without getting any tick-off from the minister. Sure, there is a power for the minister to direct but there is also the requirement that such direction has to be notified to Parliament. I think sufficient independence is available to balance what we require by way of accountability and ensure that the policy of government is implemented and maintained.

With respect to legislation, these functions that we are talking about now that are about to be consolidated into the new regime are currently being done by a division of the Department of Commerce called the building commission division and a range of other quasi-independent boards that are all supported administratively by that same department.

**Hon Ljiljanna Ravlich:** So why do you need this legislation if they are already operating? It begs the question: why have you brought this stuff into this place?

**Hon SIMON O'BRIEN:** The point I was leading to is that the member asked why the proposed Building Commissioner and the Building Commission do not have their own legislation. They have. They are the very

bills that are before us now that I want to see made into acts; that is, the legislation that sets out their duties, responsibilities and powers.

A question was asked about the overall cost of the new complaints process, including the complaint fee, and how it compares with the current system and with other systems. I know we are going into a bit of detail here but Hon Ljiljanna Ravlich was conscientious enough to ask me and I want to ensure that in my reply I give her the answer she asked for. The original levy rate discussed with industry stakeholders was 0.125 per cent. By way of comparison, the equivalent Victorian building commission levy came in at 0.128 per cent. That compares with the existing Builders' Registration Board levy of approximately \$40. That will be abolished and replaced by the levy. That original levy rate of 0.125 per cent—that is the value of the building—has now been approved at a lower rate of 0.09 per cent.

**Hon Ljiljanna Ravlich:** Why? Because when you've done the calculations, it ended up being too high, like \$345 000?

**Hon SIMON O'BRIEN:** No; we found that was the appropriate rate, having regard for the size of the sector and what is being produced. That was the appropriate rate to apply to fund the operation. One of the ways that the lower figure was achieved was that government buildings will be subject to the levy as well. It is not just the privately owned or privately commissioned buildings; government buildings will also be subject to the levy, and government agencies will pay. The Building Disputes Tribunal fee is currently \$32 and the proposed fee to lodge a complaint is \$100. The current amount has not been reviewed for some time. As a previous speaker mentioned, it is certainly not enough to deter frivolous complaints from being made. More to the point, we believe that \$100 strikes a more reasonable fee to reflect the service. The levy itself will pay the full cost of the complaints system after the initial fee, whether the complaint is resolved rapidly by the Building Commissioner or is referred to the State Administrative Tribunal for a formal hearing.

There was some discussion about whether the involvement of SAT under the new model would be more just, fair and less legalistic than the current BDT system. At this point I acknowledge the many people who have served on the Building Disputes Tribunal over the years. I would like to thank them all for the conscientious way in which they have gone about discharging their duties and the efforts they have made to ensure that we have a better system. I do not know offhand how many people we have on the BDT panel at the moment, but it is an extensive number. They do not all meet at one time; they are drawn from a long list of people so that a panel can be made up, as and when required. Although I thank those people past and present who either have served on or are serving on the tribunal, which will be wound up when this new regime is created, the fact is there have been a lot of complaints about the tribunal being an inflexible process, with almost all disputes going straight to a formal hearing. I am reminded that members of the tribunal, including representatives of consumer associations, are serving strictly in a part-time and occasional capacity. Although we appreciate their efforts, the simple fact is that it is difficult to schedule hearings in that environment and it is a system that is slow to write up the reasons for its decisions.

The new disputes process aims to resolve disputes as quickly and informally as possible by the Building Commission and its officers before a formal hearing is needed. That includes both investigations and conciliation, and orders to remedy or pay via the Building Commissioner. I think that will make for a far less legalistic, fairer, certainly more efficient and quicker system, thereby enabling people to get on with the projects in which they are involved. If people are involved in a semi-litigious system for an extended time, the costs can mount if representation is required. The reason we are doing this is to produce a system that is better on all those criteria. That is a theme that members will see in a number of other bills that will be introduced, which all have a common thread running through them. Whether it is legislation for workers' compensation, which we will see in due course, commercial tenancies or small business disputes, we are putting greater emphasis on early, informal, low-cost, non-litigious dispute resolution in each of those aspects. I will come back to that theme when we deal with the other bills, but it is a principle that we are trying to enshrine here. I reassure those who might have heard that we will have a system that is less efficient and more cumbersome than the current system that we are deliberately setting out to address the problems that have existed in that area.

I turn now to the remarks made by Hon Lynn MacLaren, and I thank her for her contribution to the debate. In addition to her supportive remarks, she asked what the cost benefits of the legislation would be, and how they would impact, particularly on home buyers who are trying to get into a market that they have not been in before. My response is that the new building legislation encourages innovation in building, and reduces time and increases certainty in building approvals through the use of private certification. In my introductory remarks I acknowledged, as she did, that the Building Bill 2010 is part of the regime. This is all part and parcel of the same thing, and they are the sorts of benefits that we are anticipating.

The Building Commission will set technical and professional standards and audit work to ensure that standards are maintained. That is good for consumers, and helps give them their money's worth. I have discussed at some

length how complaints about building services will be able to be addressed more quickly and more flexibly. Significantly, delay costs will be substantially reduced. The Housing Industry Association—I am sure that a number of members speak with the HIA on a regular basis—believes that a 15 per cent reduction in approval times will save \$100 million per annum nationally. That sounds like an awfully round figure to me, but it is nonetheless indicative of a professional body's conclusion that there will be very substantial savings to consumers as a result of the measures that we are talking about.

To bring things back a little more to the individual level, in Western Australia the HIA estimates the cost of approval for a project home to be approximately \$750 for every week it is delayed, so there are real savings to be obtained. I know there has been a bit of debate recently about what a typical first home buyer house might be, and I do not want to go there; there are all sorts, but if we take a \$300 000 figure, then the levy —

**Hon Kate Doust:** So you don't support the Premier's comments about people's expectations?

**Hon SIMON O'BRIEN:** The levy —

**Hon Kate Doust:** Minister, I'd be interested in your views on the Premier's comments!

**Hon SIMON O'BRIEN:** Put a motion on the notice paper and we will get around to it!

The levy payable on a \$300 000 house would be \$270. That is less than one week's interest costs on borrowings of that amount, so that is significant and it puts into perspective how we are introducing a more consumer-friendly regime by speeding up approvals and making people's money work better for them, rather than servicing a bureaucracy that needs to be updated. Of course, proportionate savings are also available for commercial buildings, where delay costs can be considerably greater per week than the figures I have mentioned.

I thank Hon Wendy Duncan for her contribution to the debate and her support on behalf of her National Party colleagues. We were having a discussion behind the chair with Hon Wendy Duncan a while ago, and she was focusing on the impacts upon people in regional areas, and the benefits that might accrue. We envisage resources being made available to the Building Commission, including regional resources, and access to regional offices and, in some cases, to consultants and video links. These are the sorts of advantages of the modern era that we can bring to the provision of a better service to regional areas of Western Australia. I think Hon Wendy Duncan indicated in her remarks that she was well satisfied with that, as well as with the package in its entirety.

I thank members for their support of these three bills. I know I have responded in some detail, but that might save a bit of time in Committee of the Whole. I certainly owed members the courtesy of a full reply because of the thought that they had put into the second reading debate, which I now hope the house will decide in the affirmative.

Questions put and passed.

Bills read a second time.