

**BUILDING BILL 2010**

*Second Reading*

Resumed from 14 April.

**HON LJILJANNA RAVLICH (East Metropolitan)** [9.10 pm]: I rise to support the second reading of the Building Bill 2010. In doing so, I would like to make some comments about the importance of the building industry to the Western Australian economy and then look at some of the issues of concern to some of the stakeholders in the building and construction industry, and, of course, to those aligned to the building and construction industry. I refer to local government authorities, which historically have had a very important role in the issuing of building permits and the like. Under this legislation, we will see a substantial change, it is fair to say, in the role that local governments will perform, and, clearly, they have some matters that they want raised in this place on their behalf and some questions to which they want answers from the minister.

First, this legislation has been in the pipeline for quite a considerable time. There is no doubt that, in 2008, or around that period, when the skyline of Perth was filled with cranes and when there was an absolute shortage of builders for the building and construction industry, it became apparent that there was also a clear shortage of a range of experienced people such as surveyors, architects and so on. This was particularly felt within local government authorities. There is no doubt that things have changed since then. We know that there has been a significant reduction of activity in the construction industry and that the housing sector, which is also a very important sector of the building and construction industry, is now doing it particularly tough, with prices and the demand for new buildings having gone down. It is interesting that we introduce these reforms at a time of such a lack of activity within the building industry.

This bill will probably bring in some of the biggest reforms we have seen in the building and construction industry for decades. Some people would argue that the reforms are long overdue; others would argue that they may be worse for the industry as a whole. Certainly, some of the concerns I have as I go through this bill are those I had with one of the previous bills, and they are the costs associated with so many of the provisions in this bill and the penalties associated with not adhering to its requirements. It is fair to say that those charges and penalties are probably such because they will end up being the funding provided to the Building Commission; there needs to be a revenue stream from which that will occur. Having said that, the Building Bill will replace the Building Regulations 1989 and parts of the Local Government (Miscellaneous Provisions) Act 1960, which in itself indicates how long it has been since we have had reform in this area. The bill will cover building throughout the whole of Western Australia and will introduce permit-issuing authorities that will enable private certification of design compliance, and this is designed to streamline and clarify the building process.

An issue that has been raised with me is the fact that construction work on mining projects is not covered by this legislation, and I will ask the Minister for Commerce to explain to the house why this is the case and whether it was ever considered that the construction or building work done on mining construction projects should be covered by this legislation; and, if it was under consideration at any time, why the government did not proceed to ensure that it was captured by this legislation.

Given the intent of this legislation, one would think that we may end up with a better regime, because this bill professes to provide competent builders to construct buildings in accordance with not only certified plans, but also good trade practices and building standards, and this will be an improvement on the past. This bill will require occupancy permits for buildings other than single residential buildings and outbuildings, and occupancy permits will confirm not only that new buildings have been constructed with certified plans, but also the use of the buildings as approved under planning or other legislation. They will also require inspection and maintenance of essential services. Therefore, we would think that we will end up with better standards of buildings as a result of the introduction of the Building Bill 2010.

However, local governments do not necessarily see things entirely in that way. I have received some correspondence from the City of Armadale, one local government authority that has expressed its concern about the legislation. I will put some of its concerns on the public record, but in summary, the position of local governments at a more general level, as expressed by the Western Australian Local Government Association, as I understand it, is the lack of formal consultation on this bill. I will ask the Minister for Commerce why there has not been more consultation with local government. I notice that he nods his head over there, but I think that that is a fair —

**Hon Simon O'Brien:** You might find that that assertion is not correct; there has been a lot of consultation over a long time.

**Hon LJILJANNA RAVLICH:** All right; there may well have been, and this correspondence may well have been drafted and sent prior to some of that consultation taking place. Maybe there was some consultation, or more consultation, between the time that this correspondence was sent and this bill was drafted. Anyway, there is

the question of formal consultation and the extent to which formal consultation occurred, especially in light of the fact that we deal with legislation that will have a substantial impact on local government.

There is also the issue of the proposed approval process. WALGA's argument is that this would be more complex and costly, and that the benefits are yet to be proven. I have already raised the issue of the costs associated with some of these processes, and when the bill goes through the Committee of the Whole, the true extent of those cost increases will become apparent. I will ask the minister, in preparation for the committee stage, to provide the chamber with a schedule containing the clause number, the clause title and the penalty provided in the bill. We had a similar schedule that compared the Builders' Registration Act with the Building Services (Complaint Resolution and Administration) Bill. I am asking not for a comparison, but for a schedule of all the penalties in the relevant clauses so that we might have a closer analysis of the total cost.

**Hon Simon O'Brien:** When do you want that?

**Hon LJILJANNA RAVLICH:** If the minister can provide it by tomorrow, that would be good. I cannot imagine us getting through the bill tonight.

**Hon Simon O'Brien:** Where is your optimism? I have had officers available to provide this sort of material through briefings for a very long time.

**Hon LJILJANNA RAVLICH:** Either the minister can or he cannot.

**Hon Simon O'Brien:** You will have our best endeavours.

**Hon LJILJANNA RAVLICH:** If the minister can give it his best endeavour, that will be satisfactory to me.

**Hon Simon O'Brien:** The information is in the bill, obviously.

**Hon LJILJANNA RAVLICH:** Yes, I know, but I do not really want to —

**Hon Helen Morton:** You don't want to read it.

**Hon LJILJANNA RAVLICH:** I have read it.

**Hon Helen Morton:** But you don't want to have to read it; you'd rather be told.

**Hon LJILJANNA RAVLICH:** I fully intend to go through the bill clause by clause, but if the honourable member wants us to really get into the detail, it will take us a lot longer if we have to spend a considerable amount of time on each individual clause.

The Western Australian Local Government Association has also made the point that it is unclear how planning and heritage matters that are currently dealt with by building surveyors will be assessed by private building surveyors. Once again, I would appreciate it if the minister could provide some information on whether a local government will be liable for noncompliant buildings for which a permit has been issued, despite the local government not being required to assess plans. Under the proposal, local governments will not be required to assess plans, but they want to know what will be their liability, if indeed there is any liability, if a building is noncompliant. We can explore how the interface between local government and other players will work in practice under this legislation.

Another concern raised by WALGA is the ability of a local government to employ qualified building surveyors if it has a significantly reduced income stream and industrial relations implications, should staffing need to be reduced. One of the issues that will emerge is that some of the functions that were performed by local governments will no longer be performed by them because other key individuals will have established roles under this legislation. As a result, they will probably not need, for example, as many qualified building surveyors or, perhaps, other staff. This will no doubt impact on their income stream. I want to know whether due consideration was given to that issue by the government.

Again, on behalf of the City of Armadale, I touch on the issue of the legal liability of local governments. The City of Armadale claims that the legal ramifications for local governments arising from issuing a permit based on information that subsequently proves to be deficient are not clear. It appears likely that the local government will be liable to some degree because it is not merely receiving and filing, as is the case in the regime operating in Queensland, but is actually issuing permits. In the past, the City of Armadale has not been commended by applicants for drawing attention to deficiencies in documentation, but it has been in the public interest to do so. It can be predicted with confidence that a private operator with no such public interest to protect will be more easily prevailed upon to shortcut Building Code of Australia requirements. We can explore what that legal liability may well mean for local government authorities.

I want to make some comments about the six-star rating. I understand that there is a national requirement for a six-star rating. I need to understand whether, under the standards outlined in the Building Bill, that six-star rating

will be mandated for all new homes. I understand that there has been a divergent view by some players in the building industry and that a number of leading builders are lobbying the state government to scrap the six-star energy rating for new homes. I do not know what level of energy ratings are currently compulsory; I do not know whether any new homes have a requirement for a three, four or five-star rating or, indeed, whether it is compulsory at a level. Perhaps the minister could provide information on the current energy-rating requirements for homes in Western Australia. There are probably energy ratings for commercial buildings or other buildings that are not homes, and they would vary depending on the type of building. I wonder whether the minister could provide the chamber with information on the energy star ratings for those different types of buildings.

I also want to comment on work affecting other land. I note that clause 80 in part 6 provides that fences are not to be removed without consent or a court order. I think that, by and large, local governments spend a lot of their time intervening in disputes between neighbours about boundaries and fences. The provisions in this legislation will probably assist in clarifying some of those issues. A recent example that was brought to my attention concerns a gentleman by the name of Mr Ian Walters. It was reported in an article in *The Perth Voice* of 12 February 2011 headed "Police fail fence victim". The sub-caption under a photo of Mr Walters states, "Ian Walters says his fence was effectively stolen but police don't want to know." Mr Walters' neighbour was building a two-storey house and one morning Mr Walters woke up, got out of bed, went to his front yard and noticed that his fence had been torn down. I should not laugh. He dutifully went off to the police station.

**Hon Simon O'Brien:** Had it actually been removed?

**Hon LJILJANNA RAVLICH:** I think it had been removed. It had been torn down and taken away. He went to the police station the next day and he told the police officer that somebody had stolen his fence. The police officer said that he did not think he could accept that type of complaint because someone cannot steal a fence. Mr Walters said that when he went to bed that night the fence was there and when he got up the next morning it was gone, so it has obviously been stolen. The poor old police! These things happen in real life and all sorts of disputes arise because people may act in an unlawful manner. Clearly, the person concerned did not have the permission of Mr Walters to take that fence down. Perhaps the person who took that fence down held a genuine belief that he was doing Mr Walters a favour by removing his fence; who knows? He might have thought that it was a pretty crappy fence anyway, so he would get rid of it and put a new fence up; I do not know. I put this article on the public record —

BEDFORD man Ian Walters had no garden fence for six months after it was flattened while his neighbour's house was demolished.

Mr Walters had returned from a charity function in August to find his fence obliterated, his reticulation wiring severed and gas meter so damaged he was without gas for a week.

His neighbour denied giving the demolition team the go-ahead to take down the fence, so an apoplectic Walters stomped down to the local police station to report it as stolen property.

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"They sent a patrol car up but the senior constable said it was a domestic matter and they wouldn't take a complaint," Mr Walters told the *Voice*.

"I replied 'fine, if that's not stealing I'll be down shortly with a pick and shovel to remove 30 metres of your police station fence'."

His lawyers have now told the neighbour to erect a new fence in 28 days or face legal action.

"My house has been totally exposed to the street for over six months—it's totally unacceptable," Mr Walters said.

At last week's Bayswater city council meeting, Mr Walters asked for a by-law requiring 48 hours' written notice to neighbours of demolitions.

"Council sympathises with the property owners faced with these kinds of issues, but unfortunately our ability to intervene is very limited," mayor Terry Kenyon said. "However this is something council wishes to address and is examining what options might exist."

The good thing is that under the provisions of this bill, as I understand, this perhaps will not occur as frequently because the fence would not be able to be removed without consent or a court order. There is light at the end of the tunnel. Mr Walters' problems do not end there, however, because I am told that the fence has been rebuilt in brick, but it has not been built half on each owner's side. It is a brick fence and normally it would be put down the middle of the property, but apparently that has not occurred. None of the fence is on Mr Walters' boundary. The whole fence is on the neighbour's boundary, which technically means that Mr Walters does not have a fence

at all. I am told that he technically does not have a fence because he does not have any fence sitting on his boundary. That is an interesting development.

This bill is long overdue. I will be happy if the minister provides me with responses to some of the issues that I have raised. The Building Bill is about a range of issues that deal with the construction of buildings in this state, including applications for permits for building and demolition work; each has a sum of money attached to the application. The bill is about the standards for the construction and demolition of buildings and incidental structures, the use and maintenance of and requirements for existing buildings and incidental structures. The bill deals with work affecting land other than the land that the work has been done on. Importantly, the Building Bill amends the Local Government (Miscellaneous Provisions) Act 1960 and other various acts and repeals the Building Regulations 1989 and the Local Government (Prohibition on Dealings in Land) Regulations 1973. The bill addresses a range of other matters; we can deal with some of the substance of the legislation in committee stage. Having said all that, we support the bill.

**HON LYNN MacLAREN (South Metropolitan)** [9.35 pm]: The Greens broadly support these bills. As I have mentioned, there was a suite of building bills and the Building Bill 2010 is the final big one. We still broadly support these bills.

**Hon Simon O'Brien:** We better go to a vote quickly then, before that goodwill evaporates!

**Hon LYNN MacLAREN:** It is not changing. As Hon Ljiljanna Ravlich mentioned, an update of the existing legislation is clearly needed, since the existing process for building approvals was established in the Local Government (Miscellaneous Provisions) Act 1960. As I understand it, the building bills have been on the cards for 10 years. As I said when we debated the other bills, we congratulate the government on finally seeing the light of day.

The objectives of the bills are to provide a comprehensive system of building control in WA, reduce building approval time, set standards for building and demolition work, and deal with building or demolition work that affects other land. The Building Bill is slightly more controversial than the other three bills and it is worth looking at it in a bit more depth, as I think has been flagged. The bill makes quite major changes to the way that buildings are assessed, by allowing private consultants and local governments to assess buildings. Local government officers will also be able to assess buildings, but in some cases their role will be reduced to only checking whether the bill is compliant with plans and has planning permission. The Western Australian Local Government Association, the Master Builders Association of WA and the Housing Industry Association Ltd have all argued that there are large gaps in the legislation and that it has a big reliance on regulations. All three organisations argued that the bill should not be implemented until these details are fleshed out and their concerns with the legislation addressed. I look forward to hearing the minister's response to those concerns.

Some of WALGA's concerns are that the bill may indeed lessen building standards. If anything, there needs to be an improvement in building standards. It is not clear that the bill will achieve this. Some local governments have argued that the bill could result in the assessment of buildings becoming fragmented and that there is a danger that the whole process will not be coordinated. Local governments also raised the concern that builders often submit work that is below standard and there is a danger that this will not be picked up. From the briefings that I had, I think that these risks have been identified. Basically, we want to hear that a system is in place to reduce the risks. Another concern that was mentioned to us was the danger of private building surveyors, particularly those who may work within the offices of large developers.

[Quorum formed.]

**Hon LYNN MacLAREN:** The Building Bill 2010 currently relies on registration as a mechanism for preventing this kind of behaviour. It has the capacity to deregister building surveyors if they approve dangerous buildings. I am sure the minister recognises that this would occur after the fact; we want to make sure that this does not occur in the first place. Because of this, local governments have argued that the bill may go against the government's duty of care and may not be in the public interest. The Western Australian Local Government Association also mentioned to us that the bill may affect housing affordability. This is a serious matter that this house has considered at length over the past two years, and it is something that we do not want to worsen. Although the Building Commission has argued that the changes could make the system more competitive, the experience of the eastern states, with the exception of Tasmania, has not borne this out. In some cases the costs for assessment of housing doubled, and we would not like that to occur here, so we would like to hear how the minister is looking at keeping the costs down to make sure that housing affordability is not impacted by these otherwise quite important changes to our system.

Local governments have calculated that the bill may result in increased costs of \$3 000 per client, with no clear benefits, and this may have an impact on housing affordability. These changes are likely to benefit large developers who can employ their own surveyors to work within their business, so they would potentially have

those costs paid to them. The Building Commission has admitted that it may push up costs for individuals who are building their own homes, and that is of some concern as well.

Whilst the minister argued that the bill will encourage innovation in building design, innovative designs are likely to be the most costly to assess under these new stipulations. There is a danger that the bill may stifle innovative design. These days, when we are trying to increase energy efficiency, innovative design is critical, and we want to ensure that the system does not discourage innovative design, particularly energy-efficient design. In common with Hon Ljiljanna Ravlich, I am interested in a cost-benefit analysis so that we can see the costs to the end user—someone who is buying or building a house—under this system versus under the old system.

The Western Australian Local Government Association also raised concerns about how the bill would interface with other approvals in areas such as planning, R codes, heritage and health. The concerns that were raised included increased potential for disjointed applications; inefficiencies in referrals; adverse health, heritage and amenity outcomes; and a general lack of integration within the approvals process. This might relate to the lack of detail and reliance upon regulation, so anything the minister can say to address those concerns would be most helpful.

The Greens (WA) broadly support this bill and the need for legislation to be updated; however, there are large gaps in the legislation and a lot of reliance on regulation. We think the bill should not be implemented until these gaps have been filled or fleshed out, and the concerns that I have raised have been addressed, because of the significance of the stakeholders—the Western Australian Local Government Association, the Housing Industry Association and the Master Builders Association. I would like to hear the minister's responses to that, but the Greens (WA) support the bill.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [9.44 pm] — in reply: I thank members for their contributions and support during the second reading debate on the Building Bill. Obviously I will continue my remarks tomorrow. I will just mention that I will make sure that departmental officers are available tomorrow morning for members' convenience, if they want to take advantage of that and discuss matters prior to going into the committee stage. If there are any issues that members wish to follow up on, or to have a detailed discussion on, I will be more than happy to do so.

**Hon Ljiljanna Ravlich:** We don't start until the afternoon, though.

**Hon SIMON O'BRIEN:** That is right, so if the member would like to take advantage of it, I will make officers available in the morning at members' disposal; it might be an option that members want to follow up on.

Debate adjourned, pursuant to temporary orders.