BUILDING BILL 2010

Third Reading

MR R.F. JOHNSON (Hillarys — Leader of the House) [10.08 am]: On behalf of the Minister for Transport, I move —

That the bill be now read a third time.

MR M. McGOWAN (Rockingham) [10.09 am]: I am pleased to speak on the Building Bill. I am pleased to see that the Minister for Housing has finally arrived in the house and will be here for debate on the third reading of this important legislation. As members know, significant debate took place on this bill and the other three bills dealing with building issues in Western Australia. The opposition is supportive of each of these bills, as we concede that they will in an overall sense result in some streamlining and some capacity for modernisation of the existing laws. The existing laws in some areas of the building industry date back some years—at least one goes back to 1939—and have been subject to considerable amendment and ongoing adjustment over that time. It was time for the issues to be properly re-analysed and for the legislation to be completely rewritten. That is why those four pieces of legislation were debated and why the opposition has supported each one of them. As I recall, the opposition did not make any third reading contribution to the first three bills, but a few members of the opposition will make a few comments today about the Building Bill, the final and major part of this puzzle.

The principal and perhaps most controversial aspect of the Building Bill is the provision for private certification of a building approval. Back in 2005 or 2006, when the drafting process on this legislation commenced, the move to a private certification model was part of the drafting instructions issued by the member for Cockburn when he was Minister for Housing and Works—although it might have been the member for Midland. Traditionally when an applicant lodges a building application with a council, the building department of the council analyses it and the applicant awaits the council's decision. The private certification model means that an applicant wishing to lodge a building application can go to a private certified building surveyor who will look at the plans and approve the application with a tick or otherwise. That system is in place in other states; it is commonplace around Australia. Western Australia to a degree is a fair bit behind. The system has been in place in New South Wales for about 15 years and I think it goes back roughly that length of time in Victoria and Queensland. I do not believe there has been a problem with that system. In the intervening time, there have been significant delays in people getting approval for a building application from a large number of councils in Western Australia. Time means money for people in business; time means money for people who are undertaking the construction of a building. One can see that a family building a house would be quite concerned about the time delay in obtaining building approval. The opposition therefore supports streamlining and improving that system, provided that there are appropriate safeguards. The experience of other states indicates that private certification is not too big an issue and has not resulted in any significant diminution in the standard of buildings, particularly houses, around Australia. The opposition therefore supports the model in place in other states.

During the second reading debate we raised a number of issues with the government. It appears to me that of the four models in the various jurisdictions—Queensland, New South Wales, Victoria and Western Australia—the Western Australian model is the one that will continue to be bound in the most red tape. In an attempt to remove some of that red tape, the opposition moved some amendments to the bill to include a deemed approval provision. As the legislation exists, and will be passed by this house, it contains a provision for a deemed refusal after a certain time. A council that has before it a building application for a certain period—ordinarily two weeks, although there is provision for an extension—will be deemed to have refused that application if the council has not made a decision in that time.

Labor said to the government that enough was enough and that we were tired of the delay involved in approving some of these applications. We suggested to the government that it should go for an alternative model whereby there is a deemed approval after that time. Our argument to the government is that a deemed approval will enforce decision making upon tardy councils. That will not be a problem for a lot of councils that make decisions within that time. However, it will enforce a quicker decision-making process on tardy councils and councils that are overborne with red tape or excess bureaucracy. We moved two amendments to the legislation to that effect. Despite agreeing with what I had to say, the Minister for Transport indicated that the government would not support the amendments.

I suppose, therefore, that is the biggest difference between Labor and Liberals on this legislation. We listened to the extraordinary cacophony that came from the community about delays in building licence approvals, and we tried to improve the legislation to deal with them in a swifter manner. Deemed approval, therefore, is the opposition model; deemed refusal is the government model.

During debate I extended an invitation to all Liberal Party members—who are free to cross the floor at any moment—to cross the floor and vote with the opposition on the amendments on deemed approval, because I suspected that they all agreed with the amendments we put forward. However, not one of them took the opportunity to cross the floor, which I found surprising, member for Cannington, considering it is their right under their constitution.

Mr W.J. Johnston: It is extraordinary!

Mr M. McGOWAN: It is extraordinary that not one of them took the opportunity. I have heard members of the Liberal Party, including the Premier, say regularly that they have the right to cross the floor. However, in 21 years the Premier has never crossed the floor. I know that he is thinking about doing it one day!

Mr T.R. Buswell: Member, I suspect you may have convinced yourself by your argument, but no-one on this side, and that's mainly why no-one crossed the floor. Perhaps it was more a reflection on the issues canvassed in the debate, rather than our lack of desire to cross the floor on an appropriate issue. That's for others to comment.

Mr M. McGOWAN: The minister's argument would have some veracity and validity if he had not said in the debate that he agreed with me.

Mr T.R. Buswell: No; no.

Mr M. McGOWAN: That kind of comment defeated his argument when he stood at the table in the chamber and said that he agreed with me but that the government was taking a different point of view.

Mr T.R. Buswell: No; I said "in principle".

Mr M. McGOWAN: I wish I had the *Hansard* with me, because I would read out the minister's exact words. The minister's argument might have some veracity. But, as is often the case as time goes by, the minister might be looking at things through a different light. He probably cannot recall that last Wednesday night, when this matter was before the house, he said he was in furious agreement with me but that he would not vote for it.

In any event the opportunity was there for members of the government to cross the floor and vote with Labor to enhance and improve the approvals process at the local government level, and they did not take that opportunity. That is something that I noted and, as I said before, my surprise at that outcome—perhaps I was being slightly mischievous—was not that high. However, it was instructive that the opportunity was not taken by members of the government.

We are in the third reading debate, so I should canvass the issues that arose during debate in the house. I raised at length the issue of some councils having very swift approval times and some having very long approval times for building applications. The City of Swan and the City of Rockingham, for instance, take on average one or two weeks to approve a building licence application. That is excellent. People in the building industry love going to those councils and putting in their applications because they know they will be dealt with swiftly, effectively and efficiently by those councils. They are very happy with those arrangements. I know that the people who work at the City of Rockingham are very professional officers who get on with the job of making sure that people have affordable housing, and they are very effective. The City of Swan is the same, no doubt.

However, in other councils it is not so easy, according to statistics I saw recently for the western suburbs—it might have been Cottesloe, Nedlands or Claremont, but it was around there. The time taken, on average, for some of those councils is 40 weeks. On one hand, we have two weeks for Rockingham and Swan, and on the other hand we have 40 weeks. Members can see how that might upset people who want to build a home. In the northern suburbs, as I recall, in the City of Stirling, which is the biggest council in Western Australia, the time was around 17 weeks. One would think that, considering the size and capacity of the building departments that such councils must have, they would be quicker; but as I have learnt about councils, size does not necessarily mean swiftness. There is sometimes no rhyme or reason to how effectively and efficiently a council will work based upon its size. If one thinks about it, one would assume that the bigger it is, the quicker it would be, but my experience of local government is that that is not necessarily the case. Some of the smallest councils in the western suburbs of Perth take the longest time, and some of the biggest councils take a long time, although they are not the slowest. How does that work? Where is the reason behind that? It is hard to fathom, but it is not necessarily a reflection of size.

Those issues were raised during the third reading debate, and they are important issues. During the course of this debate, I received a letter from the City of Swan about the issues I have raised, and I will quote from it. Reference was made to the fact that the planning component for residential construction will often not run concurrently with the building component. A council can have an application come in and will go through the planning process first, and then subsequently go back to the start again to go through the building process. When

one thinks about that, one wonders what is to stop it from going through both processes concurrently. Some councils do run through both processes concurrently; other councils do not. One has to wonder why that is.

Mr T.R. Buswell: In some councils, certain dwellings don't require any planning approval. The totality of the approval is the building approval, so it is a bit of a mixed bag.

Mr M. McGOWAN: That is right, and I think that creates a lot of confusion and red tape for people who want to build a property.

Mr T.R. Buswell: It does.

Mr M. McGOWAN: I will read from the letter I received from the City of Swan, because I think it raises a matter that the minister will need to address. It states in part —

> At the City of Swan (and City of Rockingham) we choose to run these processes concurrently as we have found this saves the applicant time and money. Subject to meeting certain criteria, our Planning Schemes exempt single residential developments from requiring separate Planning approval, as do those of many other Councils.

That is a good aspect of the City of Swan. Further along, the letter continues —

> In our view the proposed Building Act seems to imply that an applicant must have all approvals in place prior to lodging for a Building Limit. This may prohibit concurrent assessment.

The letter makes reference to the explanatory memorandum of the Building Bill and indicates that, according to clause 16(d) and clause 20(1)(n), applicants may have to have all approvals in place, including any planning approvals that might be required, prior to being granted building approval. I respect the City of Swan, and according to this letter from its chief executive officer, Mr Foley, it may well be the case that this legislation will have the unintended—or maybe intended—consequence of requiring all the other approvals to be in place before the building permit process can kick in. If that is the case, what we are doing here will slow the process for many councils. This is not my imagination; it is indicated in a letter from the CEO of the City of Swan, dated 4 April 2011. I will be very interested to hear what the minister has to say about that, and perhaps it should be something that is examined in the other place, when the legislation goes before it, to see whether those particular provisions will in fact require the other approvals to be put in place before the building permit process can commence. If that is the case, and the legislation will rule out concurrent assessment, this bill is a waste of time. I am disappointed that this matter did not come to my attention prior to the third reading and that I was unable to deal with it during the second reading debate.

Mr T.R. Buswell: I thought you would've picked it up! I'm shocked!

Mr M. McGOWAN: I do pick up most things, as the Minister for Housing is no doubt aware, but this one escaped me! However, due to this excellent letter from the chief executive officer of the City of Swan, it has now come to my attention. I request that the minister provide a full and frank explanation to the house on that issue.

Mr T.R. Buswell: I think I'll have to get some additional advice. I probably won't have that today, but I'll ensure that that advice is available to the upper house when it considers the issue. I'll get a copy of the letter from you.

Mr M. McGOWAN: Okay; that is good. It might be worth providing that information in this house as well, in some manner. As the minister knows, the opposition agrees with the legislation, but if this is a potential outcome of a drafting mistake, the entire legislation may have to be withdrawn and redrafted. Unfortunately, that is the case; I am sure the minister would agree that he would not want to have in his legislation a requirement that the concurrent —

Mr T.R. Buswell: I'm sure if it is an issue, it can be dealt with.

Mr M. McGOWAN: If amendments are made in the upper house, we will have to deal with it again in this place, no doubt.

That is a particular issue for councils out there, particularly those that want to be more efficient and effective in getting streamlined building approvals. I am surprised that this whole issue has not been a matter of more public comment or public interest, but the entire set of legislation is a dry issue. One often finds that major reforms barely raise a ripple out there in public debate, and these sorts of meaty, substantial matters often go through to the keeper without anyone really noticing. But it is the business of ministers to get on and do what needs to be done, even if they do not get any attention; that is something that often happens. The Minister for Housing rarely seems to get any attention; he is very quiet and does not get much acknowledgement for what he does! In any

event, I look forward to hearing his comments in respect of the point I raised and the letter I received from the City of Swan. In overall terms, the opposition supports the legislation.

MR C.J. TALLENTIRE (Gosnells) [10.27 am]: I am very pleased to rise to contribute to this third reading debate on the Building Bill 2010. As a Parliament we can feel somewhat proud of some aspects of the debate and the developments that have occurred during the course of it. I refer particularly to the introduction of a six-star energy efficiency rating scheme and the government's commitment to ensure that it is in place for new homes in the future. That is a good step forward, and the opposition really deserves the most credit here because media releases put out by the opposition and comments made at a public forum by the member for Rockingham prompted the Minister for Commerce to proceed with a commitment to ensure that the six-star rating system would be phased in from 1 May 2011 and would be in place by 1 May 2012. That is very good news.

It is interesting to look at the mechanism that will be used for that system; it will be through the Building Code of Australia. This legislation will require that building licences are issued through the Building Code of Australia, that local governments respond to elements within the Building Code of Australia, and that the six-star energy rating system is the minimum standard for energy rating enshrined in the Building Code of Australia. It is a fascinating example of how the different layers of Australian government come together to produce a particular desired result—in this case, energy efficiency. That is very good news.

We also touched on the very important issue of improving the quality of our existing housing stock through the mandatory disclosure provisions in the National Strategy on Energy Efficiency. There was discussion about when the provisions would come into effect, and the minister said that he was unable to outline a particular time line. Before getting into that in any detail, there was one element that I think the minister was a little unclear on during the course of the second reading debate and consideration in detail; that is, he systematically referred to mandatory disclosure being applied at the point of sale of a property. It is very important to note that the National Strategy on Energy Efficiency puts equal weighting on point-of-lease disclosure and point-of-sale disclosure. Many people in rental accommodation are feeling the pinch from those dramatic 46 per cent electricity price rises that the Barnett government has imposed on Western Australians. When we consider that low-income earners in rental accommodation are the people who suffer the most, it is very important that mandatory disclosure is available to people looking at rental properties. That may have been an oversight by the minister; he might have been thinking just generically about point-of-sale disclosure. However, it is important to record that mandatory disclosure will apply to not only the point of sale, but also the point of lease. Therefore, people who are choosing between two rental properties will be able to consider the energy efficiency rating of those properties and take into account the implications that that will have on their budget. It is very important to record at this third reading stage that considering point-of-lease disclosure is just as important as considering point-of-sale disclosure.

I will go back to another aspect that the minister touched on regarding time lines. The minister said that when we are locked into a Council of Australian Governments–type process, there is sometimes a degree of vagueness or difficulty in meeting the time lines originally committed to. In this case, the Premier signed up to commitments for the July 2009 National Strategy on Energy Efficiency and there is a suggestion that we might not be quite ready for those time lines as they stand at the moment. The Minister for Energy, who is in the other place, commented on this issue in response to a parliamentary question from Hon Kate Doust about when the national framework on energy efficiency will be implemented. She specifically addressed the matter of mandatory disclosure, item 3.3.2, in the national strategy. The response from Hon Peter Collier, the Minister for Energy, was —

> There have been delays at the national level related to the regulatory impact assessment process for this measure, and it is now expected that the measure will commence in 2013.

The minister representing the Minister for Commerce dealing with this bill in this place perhaps did not have that information readily to hand, but I say it is of concern that the government is pushing this out to 2013. I do not think there is any justification for that at all. Clearly, the Minister for Energy may have certain views, but he does not have carriage of this particular area of government anyway. A delay in the implementation of mandatory disclosure to 2013 seems to me to be a dramatic slipping from the original commitments made by the Premier, which were for the mandatory disclosure mechanisms to be in place by May 2011. Therefore, I urge the minister representing the Minister for Energy in this place to perhaps present us with the time line that I requested at the consideration in detail and second reading stages. The only excuse that can really possibly be put forward for a delay is that there is a need for the regulatory impact statement to be released nationally. That is about to happen—we know our federal colleagues will be doing that very soon. After that everything will be in place to ensure that we have a system of mandatory disclosure. There will, of course, be a need to consult with the people who will actually do the work—design the sorts of forms to be used, design the process and determine

which computer programs might be used—but we need to get on with that instead of just saying, "Oh, we can't do anything until everything else is finalised in legislative terms."

I think that the benefits of this bill have been widely canvassed. We discussed how the issue of a building licence will be sped up and the many benefits that will obviously come with that. Other colleagues have mentioned how pleased the industry will be with that speeding up of the process and that it will result in time savings that translate into budgetary savings for people looking to build new homes. They will be able to get a building licence that enables them to get on with their project and have their works undertaken in a quick and timely manner. Therefore, this bill has many benefits and I look forward to seeing the fruits of it.

I conclude by thanking the people from the Building Commission who took us through the detail of the legislation and explained what the clauses really aimed to deliver. I think the work that they do is very important. They obviously face people in the industry who are very knowledgeable about how the industry works and who are often very forthright in their views. I imagine that working in the Building Commission is sometimes a fairly tough task; people have to be in a position to stand up to those who are not afraid to sometimes use bullying tactics. Therefore, I am keen to support the people in the Building Commission who go about the very important task of improving the quality of our Western Australian housing stock.

MR W.J. JOHNSTON (Cannington) [10.37 am]: I want to make some remarks about the Building Bill 2010. I have spoken about clause 77 of the bill, which is particularly relevant to a matter in Wilson, in my electorate.

This was one of the first issues raised with me as an incoming member of Parliament, and it relates to matters that happened from June to August 2008. I described during the consideration in detail stage how an excavation had occurred in a sandbank at the edge of the Canning River. It had been dug down by one and a half metres on one side and two and a half metres on the other side. As I explained, the two residents directly impacted by this matter were both civil engineers. One of those residents is a gentleman by the name of Geoff Rees, who is also the president of the Wilson Residents and Ratepayers' Association. Mr Rees provided me with very, very detailed notes on this matter. I will read into *Hansard* some of the matters that he has raised with me. I might, at the end of my speech, seek to lay on the table for the balance of this day's sitting the documents that Mr Rees has provided to me. I will do that at the end of my speech, so that I can continue to refer to those documents now. Mr Rees provided me with a briefing note, much of which is related to his particular issue, which I will not go into because I think it is not relevant to the third reading debate; however, I will go through some of the other issues that he has raised. He stated —

> The major Issues that we have with the manner in which Development approvals and works at this progressed are;
>
> **1. R Codes and Local Council Policies**
>
> The General Objectives and Provisions of the Residential Design Codes of W.A and Local Council policies / procedures permit a wide degree of variations in interpretation of the Design Elements and Acceptable provisions of the R Codes. This leeway, when combined with the broad interpretations permitted by Local Authority in respect to Opening vs Non Opening windows, the Length and height of walls used in determining side boundary set backs, over viewing and noise pollution, are a major issue that causes disharmony between neighbours, particularly when the neighbouring property's out door living areas are not shown on the development dwgs or are not given appropriate consideration

He then goes on to raise a series of technical issues about setbacks on boundaries. He then says —

> As there is **no third party right of appeal against decisions of this nature, there is need for over haul of the Local Authorities discretionary and delegated Authority Powers to include for penalties in instances where it can be shown that these design parameters have been changed with out due consideration of fairness and equity to adjoining ratepayers.**
>
> Alternatively these deign elements could be considerations could as a fix requirement and only changed after the written approval of the adjoining/affected owners.
>
> **2. Relevance of Building Code of Australia**
>
> State and Local Authority development approval documentation place an increasing reliance on the Builders to perform and supervise their own work to specified standards of the "Building Code of Australia" (BCA) which are also referenced under the R Codes.
>
> The R Codes in referencing to the Building Codes of Australia, do so to clarify that the R Codes Of WA, do not address the required standards to be adhered by a Builder in undertaking the "physical construction requirements or the internal requirements of buildings" as "these are matters controlled by

the BCA". As such the requirements of the BCA are relied upon by most if not all Local Authorities as setting standards for the design and construction of buildings through out Australia.

However in checking with Mr. Shane Keating, Project Officer BCA Development, Australian Building Codes Board, as to whether the inclusion of a clause such as: "All works including sub-soil drainage and retaining of soil at lot boundaries shall be carried out in accordance with. Building Code of Australia Part 3" does any thing to protect adjoining neighbours against

- the inappropriate actions/faulty workmanship of a Builder OR in defining a uniform standard for carrying out earthworks

or

- the design and installation of underground structures, such as garages, swimming pools and retaining walls on boundaries.

The minister might remember that I raised that specific issue during the discussion on clause 77.

He goes on to say —

We were advised that a Developer/Builders obligation under Building Code of Australia (BCA) for damaged are very limited in that:

- For Damage to an adjoining neighbours property by a Developer/Builder, their obligation is,

"To carry out the works in a manner that ensures any damage is minimized"

And

- For design/construction of structures on boundaries

"BCA do not specify any requirement for adherence to a recognized/acceptable design/construction manual or Australian Standard ". Nor in the case where the neighbour's structures are set back a distance equal to the height or depth of the structure, is there a requirement for the Developer to install an equivalent load bearing structure to that of the soils removed.

He then refers to some documentation that he will be providing, and that I will be laying on the table today. He goes on to say —

As a consequence of the above and in instances where:

1. A builder refuses to or does not under take timely repairs of damage to a neighbour's property or even to render an exposed brick wall on the boundary.

   "The neighbour must instigate at his Cost legal action" to have the work done. Local Authority do not wish to become involved,

2. Non load bearing walls/under ground structures on boundary.

   "Approval of the Development Dwgs. for these structures by the Local Authority automatically places a restrictive "no load bearing Caveat" on the rights of the adjoining neighbour to the use of that portion of his land is which is equal in length to and for a distance into his property, as the developers structure is long and it's depth respectively"

   Also, it appears that neither the Local Authority (the City Council) or the Developer are under any obligation to inform the neighbour of this caveat, as both the City and the Developer were very silent in imposing their restrictive caveat on the use of a strip of land which extends for some 90% of and for a distance of 1.5 m wide over the useable land along our boundary with No 9 Surrey Rd.

   In our case, according to notes on the Approved Development Dwgs, view by us in circa Jan 2009, we are not permitted to use this strip of land to construct a drive way or any other structure on it, with out first installing deep foundations at our costs along the boundary to replace the load bearing capacity removed by the Developer.

   The Developer, in building the No Load structure, is able to install a relative cheap structure, as compared to one that is designed to replace the load carrying capacity of the soil removed.

3. As for 2, but where faulty workmanship by the Builder/Developer, results in a structure that does not conform to the approved design, but can be classified as "Fit for Purpose", by the City's or the Developers engineer's.

The impact of the Builders faulty work man ships is

- As for point 2 above, an unadvised non load bearing Caveat, is placed over adjoining property land.
- The future owners of the developed property are left with the defective produce and to carry any and all future costs of maintaining these structures whilst the Builder, responsible its non conformance, walks away free of any obligation to rectify his faulty work.

To classify the defective works as acceptable, I believe the BCA requirements are for the City's Building surveyor to have quantitative records as to the extent/nature of the defects.

Although requested, the City to date, has been unable to provide us with this information or even a the panel and post walls retaining our northern property boundary. Their comment is that its been signed off "as adequate" by a Structural engineer and that's all we need.

Where this process is not done properly the Sign off, of the non conforming "Fit for Purpose" structures is open to dubious practices.

Members can see from that letter that my constituent has a very detailed understanding of the issues involved here. I am glad that this legislation deals with these issues through clause 77 and that there will now be an obligation for developers to deal with the loads and not just with the soil. Subject to the passage of the bill through the upper house, and the other legal requirements for the bill to come into force, developers will now have an obligation to maintain the integrity of neighbouring properties, and the first-mover advantage that is being complained about in this issue will be removed. However, two caveats will be placed on that.

The first issue that Mr Rees has raised is that just because a development has been signed off by an engineer, that does not make it right. An approval may be given to works that are defective, and it may not be until many years later that the defects and the consequences of those defects come to light. One way of dealing with that issue may be to require that when major structural work is done that results in a load-bearing issue, such as the one that I have described with the underground works at Surrey Road, there must be a higher level of inspection and a higher level of certification. If the wall of a building fails, that is terrible, because the building may fall down. But if underground works fail, the consequences are much more severe, not just for the property itself, but also for neighbouring properties. I think clause 77 is adequate. I am not suggesting that we need to amend it. I am just saying that in the process of signing off on these works, there needs to be more careful consideration by the authorities that issue the sign-off to ensure that the works have been done properly.

The second issue is that regardless of clause 77 and its consequences, we still need to ensure that people's rights are enforced. Many of the issues that are raised in Parliament are not about whether there is a right; they are about the enforcement of that right. We have been discussing commercial tenancies and small business issues, and we are now discussing this issue. We can put in place a set of regulations, but we also need to enforce the rights. One of the consequences of this bill is to increase the rights of people. However, I do not think the consequences are properly understood. I have just read Mr Rees's comments into *Hansard*. Mr Rees has a big problem. However, his neighbour has a much bigger problem, because it is his property that will be affected by the two and a half metre cut and the sheet piling. Effectively, his only recourse is the courts. Although this bill will improve his rights when he gets to court, he will still need to go to court. At some time we will need to consider access to justice in respect of not only the rights that we have developed in this bill, but also the rights that we have developed in other bills.

Everybody has legal rights and everybody needs those rights to be respected; that is a fundamental part of our system of government. But it would be good for us to consider how we can ensure that these disputes, which will inevitably arise, can be properly dealt with. I commend the portion of the bill that I am discussing, which is clause 77. It will introduce, for the first time, an obligation to retain loads as well as the earth itself. I am happy that the Parliament is acting in this way. I table the documents from Mr Rees for the remainder of the day's sitting.

[The paper was tabled for the information of members.]

MS J.M. FREEMAN (Nollamara) [10.50 am]: I will briefly speak on the Building Bill 2010. I thank the minister and his advisers for some of the discussions we have had to clarify matters concerning the Building Bill. It is always difficult when one has had experience in another sector to suddenly look at and get a clear understanding of a piece of legislation that is before us in the Parliament. It is important that we, as representatives of our communities, have an understanding of the Building Bill, because it will impact on many aspects of the day-to-day lives of people in our communities, especially if they are building their own property, a

property is being built next to them, or changes are being made in other ways to their community in terms of the buildings and structures that make up their urban environment. It is important that we ensure that our urban environment builds good, viable and harmonious communities.

One issue I have raised with the Minister for Transport, who is representing the Minister for Commerce in this instance, is the vast tracts of land in the area I represent that are owned by the Department of Housing and which continue to be undeveloped, even though they were acquired in the 1950s. That is having a massive impact on facilities in Mirrabooka and the perspective people have of that area. One example of that is in the new Mirrabooka regional development area. A huge upgrade is being undertaken, yet the piece of land owned by the Department of Housing remains undeveloped. Whilst I acknowledge that this bill does not deal with that matter in particular, it is important when looking at building bills and the urban facilities they create that we are cognisant of the difficulties faced in our communities, especially if they are created through the inaction of government departments.

One aspect of urban development that I think is important is to ensure that it responds to the needs of our community going forward, such as environmental sustainability. I note the issues raised during the consideration in detail stage about the six-star energy rating and mandatory disclosure, and the comments of the minister. Parts of my electorate are constantly being subdivided and under renewal because of the zoning there. These areas are an entry point to housing for many people, because the subdivisions provide some aspect of affordability close to the city for people. However, properties are being built without cognisance of energy efficiency measures. Whilst such properties might be affordable to purchase in the first instance, if they are not affordable to operate because they do not meet community standards in terms of the six-star energy rating, we are really placing people in very difficult situations in being able to afford to continue living in these properties. It is a bit of a myth that they are entering into something that is affordable because of the initial low cost of purchasing the property when there are additional costs involved in operating the house. The amendment proposed by the member for Gosnells on mandatory disclosure is extremely important in the areas I represent. Many of the properties are developed by developers. There is no doubt that there is a large financial benefit for developers to come into these communities, especially in Nollamara and Mirrabooka, which I represent, and develop large blocks with old houses on them into three dwelling units. This is very important for our community to stop urban sprawl, but in doing that, we need these new houses to be sustainable in terms of energy capacity, the way in which they are situated on the block and their access to services and roads. We also need to ensure that there is some continuity to the suburban environment and neighbourhood in these areas. The Minister for Transport, who is responsible for the bill in this house, and the Minister for Commerce in the other house, have been put on notice that this is a threshold issue for many members of this house. We wish to see further reform to ensure that our communities can meet their responsibilities to the environment and their broader neighbourhood in the future. We need to ensure that there are provisions that place responsibilities on the people who develop properties in the areas I represent.

I raised the issue of adverse possession during the second reading and consideration in detail stages. I know that I banged on about it a bit and repeated myself, but it is a major issue in my area. I note the undertaking that the consent form to enable the use of land on other properties will ensure that the person giving consent does so in a fully informed manner and is appraised of what the result of that consent could be in terms of their land and their possession of that land. That form will probably not come before the Parliament. I am not entirely sure whether it will come before the Parliament as a regulation. There needs to be some capacity for members on this side of the house to be satisfied that the undertakings made in this house are met. Equally, that would enable us to advise people, in the many ways that we do as local representatives of our communities. People at our local sportsmen's clubs raise issues with us about developers next door to them and their concerns about how a fence is being put in. We need to be able to make them aware that a set of procedures is in place concerning consent and that they need to be fully informed of those by the developer.

The other aspect of this bill that I welcome and think is a great addition to our community is that which requires developers, if they have caused damage or inconvenience to a property next door—a good example is the moving or removal of pavers when new fencing is put in—to make good neighbouring properties. I think that is very important. It is a shame that we have to put in legislation what builders, by normal standards and commonsense practice, should do. It is a shame that in our community we need to legislate for worst-case scenarios. When I asked a builder about this bill and outlined some of the issues it legislates for, his comment was, "But that is what you would do. If you built a fence, you would make good the pavers you damaged or disturbed in the neighbouring property." It seems that we now have to ensure that that standard applies throughout the building industry. Certainly, that has not always been the case for community members in the areas that I represent.

A major issue in this bill is the outsourcing of approval to surveyors, who will now ensure that buildings meet building code requirements. There is no doubt that, as representatives of our communities, we will need to assess that on an ongoing basis. It is a shame that the legislation does not contain a review period, thereby creating the necessity for a review of this legislation to demonstrate to the Parliament whether the changes have been successful and delivered on the objective of timely building approvals. I understand the point of the changes is to ensure the timeliness of building approvals so that people do not get caught up in long and procedurally bound issues. However, such change comes with risks; for example, the sweetheart deals and cosy arrangements that people enter into might just push the boundaries—excuse the pun—or even undermine the application of the codes, and surveyors, with their greater independence, might tick off things that would normally, with greater scrutiny, not be approved. I understand that under this bill it is intended that there be greater independence, but it could be difficult to maintain standards unless a public officer from local government, for example, is assessing those decisions. Therefore, I think it is important for us to revisit that change at some stage in the future to see whether it has been successful. From my perspective, that means talking to people in the community about whether the building next to them met those reasonable requirements and also checking that information with the local government. That will mean a lot more work for us, but I think it incumbent on all of us to ensure that this very radical change in procedure is assessed to determine whether it is a change for the better or is in fact a change that has not advantaged the people, or their neighbours, at whom it is aimed.

In closing, I again thank the advisers. I have found this to be a really interesting process involving some very complex laws. I thank the minister for his undertaking to ensure that people are fully informed about adverse possession, and I encourage all members to take an active interest in this matter to ensure that this bill is successful and that the quite radical changes that it introduces meet the points outlined in the long title—there are no objectives in the bill—and that the intent of the bill in the first instance is put into practice.

MR T.R. BUSWELL (Vasse — Minister for Transport) [11.04 am] — in reply: I will make some comments in the third reading debate on the Building Bill 2010. Firstly, I thank members opposite who participated in both the second reading and consideration in detail stages of the bill. I, too, found it a worthwhile process as we canvassed a range of issues pertaining to certain aspects of this bill. It is important to note that the Building Bill 2010 in conjunction with the Building Services (Registration) Bill, the Building Services (Complaint Resolution and Administration) Bill and the Building and Construction Industry Training Fund and Levy Collection Amendment Bill, which we dealt with previously, introduce some significant and fundamental reform of a building regulation regime that has been in place for a long time. As I recall, the Builders' Registration Act was originally dated 1939. This is historic reform. It has been a long time coming. Initiated by the former government, I acknowledge the work that was done and the amount that was invested in pursuing these changes.

I have indicated that one of the reasons it has taken a little while for the bill to be brought into the house is that the government insisted that this reform also deal with complaint resolution. That is why effectively the abolition of the Builders Registration Board and the replacement of that regime with one based initially around the Building Commission, and subsequently around the State Administrative Tribunal, has been introduced. However, this is significant reform. We have been challenged by the need to find a balance between the views and desires of the building sector and the views and desires of local government. By and large, we have found a landing point, although some aspects of local government involvement are still to be determined through regulation. I have some views about that, but I think that I will keep those private views to myself for fear of the member for Rockingham repeating them to me at some stage down the track. I will say, as the member for Rockingham highlighted, that one of the drivers for this change was a clear understanding that local governments—not all, but some—were clearly not fulfilling expectations in handling the building approvals processes. That is one reason that this change has been sought. It is change that has been sought in other jurisdictions.

Some of the features of the discussions that we have had have been in and around the introduction of the concept of private certification; that is, those persons who will be registered under the registration framework that will be put in place by the registration bill. I believe that private certification is an excellent idea. I understand the member for Rockingham's suggestions that we perhaps have not gone far enough, but, as I have said, we tried to find a balance between local government requirements and industry requirements on that issue. I know a number of very, very good building surveyors in local government who cannot wait to commence work under this regime, and good luck to them! Two in particular in my electorate, a Mr Paul Finucane and a Mr Rocco Gozzome, have met with me a number of times to discuss the progress of this bill, and more power to them. I am sure their business will flourish under the regime or the framework that we are putting in place.

There was some considerable discussion about the capacity of this bill to change the way in which neighbouring properties are protected; it was a very good discussion. While I acknowledge the member for Cannington's comments about effective enforcement, I think that this bill makes significant improvements by offering

protection for neighbours from the activities of building and construction on neighbouring blocks. The member for Rockingham raised an issue that, unfortunately, was brought to his attention somewhat late in the piece by the City of Swan. Member, I do not have a specific and detailed answer to that issue at this stage, but obviously we will be required to provide one when this bill makes its way into the upper house.

There was also some significant discussion, albeit about a change not in this bill, about the new role of the Building Commission that will replace the Building Disputes Tribunal. I think that change will deliver good outcomes. With the member for Gosnells in particular, we canvassed at length and in detail, but I think in an appropriate and effective manner, the issue of mandatory disclosure of energy efficiency. I appreciate and understand his commitment to that outcome. I am comfortable that this bill provides us with a framework to deliver on what the member wants. We will probably have ongoing discussions with different members of the government about an exact date. I note the point the member for Gosnells made about the Minister for Energy. I was not aware of that when we discussed the bill at the third reading stage. I know the member is saying that that is a cute face to hide behind and that I should just get on and do it; he is entitled to that view and that is fair enough. Having been involved with some of these Council of Australian Governments processes, they are sometimes unpredictable and working a way to an end point is not always as straightforward as one would hope or rationally think would happen. We deal with that in a whole range of areas.

I would also like to thank my advisers and in particular Mr Peter Gow, who I am now calling the Building Commissioner–designate, although I am sure there will be a process through which that position will be filled.

Ms J.M. Freeman: Not that you wish to influence a merit-based process whatsoever!

Mr T.R. BUSWELL: I made that comment a number of times. I am sure a process will determine who the Building Commissioner is.

Mr W.J. Johnston: We'll just refer that to the Office of the Public Sector Standards Commissioner.

Mr T.R. BUSWELL: Go for it. I have said it a few times.

I worked with Mr Gow for a deal of time on this bill and he has driven this relentlessly at the official level. This has not been an easy piece of legislation to bring forward.

Mr W.J. Johnston: Can I make an observation that under the Public Sector Management Act 1994 members of Parliament aren't allowed to provide a reference for a person applying for a public service job.

Mr T.R. BUSWELL: No, and nor am I.

Mr W.J. Johnston: You just be careful and make sure your words aren't construed as a reference.

Mr T.R. BUSWELL: I am merely providing my reflections on my engagement with Mr Gow.

Ms L.L. Baker: Did you say you are engaged to Mr Gow?

Mr T.R. BUSWELL: Not yet, but perhaps after this speech that may move a step closer!

Mr F.M. Logan: There is always hope!

Mr T.R. BUSWELL: We live in hope and, as someone once said to me, die in despair. We will see how that all transpires. I think Peter Gow and his team did an excellent job advising the house on the detail of this complex bill and working for different departments in difficult times. Let us not forget that Mr Gow and his team initially moved from the Department of Housing and Works into Treasury. The team then effectively became the Building Commission and were moved across into the Department of Commerce. The team has been on the move a bit within government, which is a bit unsettling for someone who is trying to lead a group. They are now firmly ensconced in their office in West Perth.

Mr R.F. Johnson interjected.

Mr T.R. BUSWELL: Really? Yes, Mr Gow speaks fondly of the time the member for Hillarys was his minister. I think it was one of the highlights of his period of service in the Western Australian public service! I secretly think Mr Gow longs to have the member for Hillarys back, but I know that the police would be sad to lose the Minister for Police and I cannot imagine that would ever be contemplated nor happen. Anyhow, I digress.

I thank all members for their contributions to four bills that, in effect, will drive fundamental reform of the building industry in Western Australia.

Question put and passed.

Bill read a third time and transmitted to the Council.