BUILDING AMENDMENT BILL 2012

Second Reading

Resumed from 12 September.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [12.37 pm]: I note the enthusiasm of the Minister for Commerce for the Building Amendment Bill 2012. I rise today to offer the opposition's support for the bill. I note that the passage of the bill that it is amending went through this house only late last year. I had no involvement with that legislation at that time so this is all relatively new to me, but I understand it was quite a significant tranche of legislation that probably provided significant change to the building industry that had not occurred for about 50 years. Sometimes when that type of change occurs, whilst the bill may have been proclaimed, all the players take time to transition from practices that they may have participated in over that extended period to new ways of doing business. Perhaps that is part of the issue with which the government has had to deal. I note that there was a delay in the proclamation of the legislation from January through to April. When the legislation came into effect in April, it was noted that there was a reasonable downturn in the number of building approvals, which has bubbled away and is still taking some time to get back up to levels that the industry would like to see it at. While it has been interesting to go through some of the commentary from the various players, there are different views about why it has not occurred. Some of that blame game has been laid at the feet of local government. Certain players say that perhaps local government was not ready to deal with such significant change. There is a significant backlog in the number of approvals granted. In the briefing we received a week or so ago, we were advised by the Building Commissioner that the state government has spent a reasonable amount of money—I think about $40 000—to bring in external contract surveyors to help speed up those processes. I think that is an acknowledgement by the government that it is trying to assist the industry—it was an important decision to make—to get those building approvals resolved and signed off.

It would have been very interesting to the government to have to deal with this; since April we have seen a vast amount of commentary on this matter in the media. Sometimes, after legislation has passed through Parliament and is proclaimed, we just assume that it is all going to work out. Obviously, sometimes there are teething problems, but these teething problems were so apparent that the government had to make changes via regulation and spend additional money to assist the industry in clearing that backlog. I commend the minister for pulling together the working party; I think it is very important that he has reacted so swiftly to try to address these issues. The construction industry is a significant one throughout our state; it employs a large number of people not only in actual construction work but also in design and surveying. It also employs people in local government who are engaged in the planning and/or approvals processes. It is significant for small building companies, large building companies and developers; an interesting network of people across our state are involved in this industry, and it is not an industry in which we want to see slow-downs. It is also an important industry for consumers because it is the dream of all Australians to own their own home, and we all want to have our homes built very quickly.

Having built one of my own homes, I know it is very frustrating when things are slowed down. A few years ago I had the good fortune of commencing a renovation that has not yet finished, 15 years later! We are always doing something to the house; I used to have the builders turning up one day a month, so I have some appreciation of what consumers can experience in this industry. When these particular changes came through, I was in the process of getting a planning approval for a patio. I phoned up the fellow who was going to take the contract and said, "No, the legislation's passed, it's all okay. You don't have to wait all this time. I've been told you can just go ahead as though you've got the approval". He said, "Yes, that's what they might tell you and that's what the law might say, but that's not how it really works", so I ended up having to wait and wait. I have experienced some of those difficulties and must admit I made quite a few phone calls to that individual to ask when it was going to happen. I think that is only natural; once people make the decision that they are going to build or adapt their property, whether residential or commercial, they want things to happen fairly quickly and they certainly do not want bureaucracy getting in their way.

I will go through the changes shortly, but I think it is reasonable that there are only about half a dozen key amendments that flow through the legislation to try to address the ambiguities or grey areas that appeared in the act and the regulations. I do not know whether this legislation is the be-all and end-all for this industry in terms of what happens with the Building Act as it evolves; I understand from my discussions with some of the players that there is probably a range of other things they would like to see occur over time to improve how the industry operates, and I am sure that the minister is au fait with a number of those matters. I am quite happy to put some of those matters on the record as I work my way through this speech today.

I know that the minister is very keen to get this bill through the chamber today and to the other place so that it can be resolved fairly swiftly, so I propose to go through some of the matters that have been raised with me and a couple of key issues I have been asked to put on the record. Rather than having the minister respond to the range of matters I will go through, I would prefer to go into the Committee of the Whole so we can go through them when the minister has his advisers present; I actually think it might be faster to get responses through that process.

Hon Simon O'Brien: I'd be more than happy to do that, if that's the will of the house, so perhaps we can deal with the second reading fairly quickly and devote most of our time to the committee.

Hon KATE DOUST: That is fine. I just indicate to the minister all the green and red tags for the questions I have, but I will work through them quickly; it is not my intention to slow down the minister. Although he may think I am taking my time, it is just that I am working through the process.

It is fairly clear that there is a handful of quite significant changes in this legislation. Some of those changes include measures to address neighbour consent to work on property boundaries. In areas of new subdivisions where there is a lot of vacant land and, in some cases, constantly changing owners, problems can occur from time to time in obtaining consent from owners for developers or builders to access land for construction purposes. In some cases, a fence may need to be removed to build a wall or another structure on the boundary, if the wall has been properly authorised through building approvals. This bill removes the offence of accessing land without consent when the buildings or land are vacant. It also removes the offence of taking down a fence to build a boundary wall if a building permit has been granted to build a wall. It provides a head of power for regulations to prescribe the nature of the neighbour consent required for all work that affects other land. I must say, as I am about to get my neighbour's approval for a new boundary wall, I am hopeful that we get this legislation through quickly; nothing like vested interest to speed things along!

The bill also allows for a very new process of ministerial order to provide a rapid response when building permits cannot be obtained for reasons beyond the control of the applicants. I have some questions on this area. I can understand why that process would come into play in situations in which the owner may be overseas or difficult to contact or, for whatever reason, the builder may not be available. I know that Master Builders Australia's preference is to leave it as either/or rather than having a ministerial order put in place, so I might ask the minister to explain the circumstances in which that would occur. I would like to know what happens in situations in which the minister is asked to provide a ministerial order to enable a building permit to be obtained but there is a family or monetary dispute over the land, such as a divorce? Are there criteria that the minister must meet before signing off on that order? How would the minister resolve those sorts of issues which, although not the norm, may arise from time to time? If a ministerial order is granted in that situation, how will it impact on a builder who needs a building permit to get a progress payment from the bank? I suppose the question is: how does it provide assistance to builders who are denied a payment, even though an order has been authorised? I imagine these are issues the minister has worked through before this bill was introduced.

Hon Simon O'Brien: One of the circumstances we could not overcome with the ministerial order was the access to finance if it was contingent on obtaining a building approval, so you get into that vicious cycle. That is why we are trying to fix the whole system, rather than rely on the order.

Hon KATE DOUST: The Building Commission put out a media advisory note on this amending bill and it refers to the ministerial order regarding signatures and says that further consultation and consideration is needed to see if the requirement for owner and builders' signatures can be removed entirely. But the Building Amendment Bill will allow this requirement to be modified while industry and local governments are transitioning. Is the removal of the requirement for the owner and the builder's signatures something the minister will look to in the future? I would like the minister to explain to the house why he would want to go down that path and not leave in place the flexibility that existed previously of an owner or a builder signing. Whilst I understand that an owner may be absent, we would expect that the builder could be contacted and would be close at hand so they could apply a signature to a document. I am not sure why it would not be the fallback for the builder to sign that document.

Hon Simon O'Brien: I think your suggestion earlier that a lot of these questions are most easily dealt with in committee is very sound and I look forward to doing that.

Hon KATE DOUST: Okay; moving on. I understand that regulations will be created to clarify how permit authorities request missing information as an alternative to removing a deficient application. I understand that under the legislation that was passed last year if an application was put in and was found to be missing information, the clock would be stopped, and once the information was provided they would go back and start from day one. Under this arrangement, the clock will stop, whether it be for a certified or uncertificated application. For an uncertificated application it is 25 days for class 1 and class 10, which will affect predominantly residential owners, either single dwellings, or, in my case, a patio or shed or something like that.

All other classes will come under-certified, which will be 10 working days. The clock will stop and once that information has been provided, it will start from the next day and continue. That is a much more expeditious way of doing business. I do not think I received any negative feedback from the stakeholders I spoke to. There was bit of discussion around, "Could you stop at once or would it work better to allow the capacity to stop more frequently?" But I think it might be a case of try it and see how it works. I am sure the minister has the capacity to come back and deal with that. For people wanting to get on with the business, it is probably a much better way of doing it.

I note that from the minister's discussions a checklist has been worked up by the Building Commission to give advice on what needs to be included with the application. I do not know why this has not worked in the past, but one hopes that if someone puts in a building permit application, surely the person at the desk who receives it would go through a list and say, "You've got X, Y or Z and you are missing A", before they accept the application. I do not understand why it has not happened in the past and we have been compelled to get to this point. I see that that would be a very frustrating, time-wasting process for people who want to get on with the business. It will be interesting to see whether the checklist provides that assistance and the time frames change. That is a very sensible change.

I understand the other change is that local government will now have the power to arrange issue-compliance certificates. They can make arrangements with other local governments to provide these services and they can be named as a builder on the building permit within their local jurisdiction. Again, I am not sure why that has not happened in the past, but I suppose it is part of the evolution of these matters. In an article by the certified surveyors they talk about a number of things that could be improved. They suggest that local government could apply consistent and reasonable interpretation in line with government advice. They say that perhaps local government could revise and change processes to allow an efficient process for assessing and issuing approvals and, in many cases, there have been no changes to structure or staffing levels to cater for the increase in processing and issuing approvals. I know from one of the other stakeholders there was discussion about having uniformity across local government for dealing with planning or building permits and approvals. I am sure that is an issue that not only the minister in his role but also the Minister for Local Government would be trying to address. That has been an ongoing complaint from many people over time about the differences between each local government and how they perform tasks or process matters. That is valid commentary from individuals who have to engage with local government on a daily basis. Again, it would be frustrating and a timely and costly exercise for a developer, a surveyor or consumer who is building a property, be it commercial or residential in a range of locations, to have to constantly adapt to rules and processes.

An issue raised with me by Master Builders Western Australia—I said that I would take up this issue and certainly read in this information and, hopefully, get some feedback from the minister—is about, I think, clause 6, which has been amended. It is the clause that deals with Fire and Emergency Services Authority approvals. I understand Master Builders WA wrote to the Building Commissioner in April about its concerns on this issue. The Property Council of Australia has also expressed its concerns about this matter and the added layer of bureaucracy, if you like, and the issues it causes, perhaps not so much for the larger commercial fit-outs but certainly for the smaller ones. For the benefit of members I will read the letter Master Builders WA sent to the Building Commission in April. Perhaps after the lunch suspension, when we are in the committee stage, the minister can provide a response on how this issue has been addressed. The letter states —

> Master Builders is receiving numerous complaints from members regarding the delays experienced due to Building Regulation 2012 requirements for FESA consultation. In an effort to assist our members we recently met with representatives of FESA Manager Plans Assessment Mr. John McMillan and Fire Engineer Mr. Stephen Keel with a number of concerns we have with the requirements of Regulation 17(e).
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> Under previous legislation, FESA adopted a position regarding "minor work" that with the more relaxed approach with an old building control framework enabled work that FESA would not add any real value to provide comment on (i.e. small internal fitouts of existing buildings and new class 2—9 buildings with a floor area less than 50Dm2 that do not require any active fire suppression installations) to not require FESA consultation. FESA accepted applications of this nature, but did not necessarily provide comments.
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> The requirement for all Class 2 to 9 buildings to buildings to be provided to FESA for the 15 business day consultation period does not provide for any exercise of judgment on behalf of the Building Surveyor on whether this is appropriate. The provisions only allow judgment to be exercised by the Registered Building Surveyor once the 15 day period has lapsed from submission of plans to FESA.

> FESA is working with industry and is open to suggestions for improvements, however are bound by the requirements of the legislation to accept all the applications submitted. This means that valuable time is spent accepting, receipting, assessing, and filing, projects that potentially do not require a FESA assessment.
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> Minor projects that should have quick turn-arounds for assessment by the Private Certifier and then for the Building Permit, actually have the additional step of completing the FESA form, submitting hard-copy plans, and waiting 15 days before the Certificate of Design, Compliance can be signed.

Sitting suspended from 1.00 to 2.00 pm

Hon KATE DOUST: Prior to the break I was reading from a letter that had been given to me by the Master Builders Association. It continues —

> This effectly makes minimum processing times for minor work 25 business days as the processes cannot run concurrently with the 10 business days for the Permit Application.
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> Most importantly, the developments that need the time and assessment for the operational requirements of the brigade are not being assessed because of the backlog created from unnecessary applications being sent through to FESA for assessment. This leaves the Private Certifier with a choice to issue the Certificate of Design Compliance without receiving comments, or holding back the CDC and waiting for FESA to provide the comments.
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> As the processes evolve and projects that are still in the system from prior to 2 April will filter through, the systems FESA is implementing for projects that have Alternative Solutions, and those without will work well for all industry stakeholders. However, the officers at FESA cannot be expected to administer applications made that have no need to be assessed or delayed for 15 days because of these Regulation requirements.
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> The Regulations and forms need to be amended to reflect the intent of clauses for FESA to add value to the approval process and not further stretch their limited resources.
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> FESA play a pivotal role in the approval and commissioning of buildings in WA and need to be supported for the work they do to ensuring fire safety officer and occupant life safety and protection of property. Without their timely input, decisions may not be made based on incorrect assumptions that eventually cost time and money to rectify.

That letter goes on about the need to have an adjustment period with reform, and having identified the problem they are hoping to get some feedback.

Earlier, I also referred to an article in *The West Australian* of 11 July in which the Property Council of Australia reflected on the comments in this letter and raised its concern. I do not think anyone disputes the fact that there needs to be proper checks and balances, but its concern is about the impact on a small commercial building where the fit-out is purely internal, and the time delays and cost implications for that business. Given that this letter was sent to the Building Commission on 20 April, I am sure that the minister will explain what progress has been made to resolve those concerns. I wanted to put this letter on the record because when I had my discussion with the Master Builders Association on Tuesday, it referred me to this letter and I said I would raise it as a concern to get a response in the chamber. It may be that the minister can hopefully give us some good news of what he or his department has done to address this issue.

From the discussions I have had, people have canvassed with me that there could be a range of other things that flow on from this into the future. I met with some building surveyors and had quite an interesting discussion. One thing they canvassed with me was something that I had not even thought about, given that there is probably a potential future growth industry of certified private surveyors. I understand that, as a result of changes to this legislation, we are already seeing a shift away from surveyors being employed by local governments, to a growth in the number of surveyors in the private sector. The surveyors I met with said that currently there is no training opportunity in Western Australia for people who want to engage in that line of work. I know the minister is not responsible for training, but perhaps he could convey this matter to the Minister for Training and Workforce Development to see what can be done to address that niche market of training and education. Currently, there are about 200 registered building surveyors in the state, and at this point in time about 50 work in the private sector. There are no courses in WA. There are two qualification levels: an associate diploma level 1 and a degree. At the moment those qualifications can be obtained only in South Australia, New South Wales or Queensland. The degree qualification is a six-year part-time program. Given that there is talk of a shift to the private sector and the potential growth in the number of people wanting to engage in this work, what are the possibilities of looking at the provision of either a TAFE-type program or arrangements for a tertiary program in WA rather than people having to travel to the eastern states? I thought it was a very interesting point and worth raising.

At the briefing, I raised with the minister that one of my colleagues, the member for Balcatta, had sought some statistics on some fines or penalties. I ask that we receive that information. I do not know whether the minister will table that or provide it by email.

Hon Simon O'Brien: The department will provide that. I spoke to one of my advisers today and we will email it forthwith to Hon John Kobelke.

Hon KATE DOUST: That is fine. I will wrap things up soon because it will probably take us some time to work through those other issues—not too much time but it will take some time —

Hon Simon O'Brien: You can rely on me to be brief; you know that.

Hon KATE DOUST: How long is a piece of string, minister?

Hon Norman Moore: He is under instructions for the first time in his life.

Hon Simon O'Brien: All right; let us get on with it, shall we?

Hon KATE DOUST: The criticism of the bill has been surprising, given the extended period of discussion across the various tiers of industry about how the original piece of legislation would be put together. I suppose it has taken the government by surprise as well. As we listen to the media, we hear the strength of the anger from the various players about the problems incurred as a result of the enacting of the legislation. I read an article about a particularly well-known developer who talked about how the act created more red tape and cost more in time than what previously existed. There are a range of other criticisms from various players. I know the government has reacted in a positive and timely way to try to address these issues, but I am surprised that there was not some modelling done; or if it was done, the minister might explain to me the sort of modelling that was done and how they tried to work through the issues in the lead up to forming the legislation. The changes to the legislation, albeit only five or six of them, are quite substantial. I am surprised that those types of issues were not canvassed leading up to the other legislation, the Building Act 2011. Why were those potential problems not thought through in terms of the transitioning period to enable all the players to get themselves organised? I acknowledge that the government did delay the introduction of the bill slightly. But it obviously was not an appropriate period of time. I do not know what level or type of communication occurred during that period, particularly with local government, to ensure that local government was ready for the rollout of this legislation, and to try to prevent the problems that have occurred.

A range of issues leading into the future probably need to be addressed. They obviously will not be able to be addressed in this legislation. But I am keen to hear from the minister what else will be done by government to advance a range of issues that have been put forward. One of those issues is how the various players interact in this area—that is, how developers are treated, and how local government is dealt with. Another issue is the private certification system. Another issue is processing—which we have talked about already—across the spread of local government, and whether there is some way of putting in place a uniform system, and the attitude of local government to that. A range of matters will need to be canvassed in the future; but, as I have said, today is not the day to do that.

With those few remarks, it is probably appropriate that I wind up my comments and wait until we get into committee so that I can get some specific answers to my queries. These queries are not overly complicated, minister; some of them are just to seek clarification. I am just asking the minister to put some comments on the record so that people will understand the underlying reasons behind the decision that the minister has made. I do not anticipate that that will take too long. It is important that we get these changes through, because we certainly want the construction industry to move along quickly. I must say, however, that the changes in this bill deal very much with the developer side. That may be because of the types of issues that have evolved from the Building Act 2012. I could not find a lot in the bill—I am happy to be educated better about this—that was pro consumer, if you like. The bill is bent more towards assisting developers to work through the process.

So, with those words, the opposition supports this bill. We have a range of questions, and, depending upon the minister's response, we may or may not end up moving amendments to the bill as well. So I look forward to the minister's brief response in due course, and then our discussions during committee.

HON LYNN MacLAREN (South Metropolitan) [2.13 pm]: I also wish to make some comments about the Building Amendment Bill 2012. It is not very long ago that we were considering the Building Bill 2010 and its associated package of bills. The Building Act 2012 has been in operation only since April 2012, and, as is to be expected with reforms of this nature and scale, there have been some teething problems. I understand that following the commencement of the Building Act 2012, there was a steep decline in the number of building applications and permits issued, and that caused cash flow problems in the industry. Minister, can we fix it? Yes, I think we can. Although I commend the minister for his expeditious action in trying to fix the problems that have surfaced, I have some reservations, along with Hon Kate Doust, that maybe that action was a little too

expeditious and did not go through the wide and thorough consultation that was called for. In fact, I have learnt just today that it was only on 17 September that some councils got wind of this bill and received the consultation package from the Western Australian Local Government Association. As members know, we are only one week later debating this bill in the upper house. So there has been very little opportunity for councils to comment on the changes proposed by the minister in this bill. I have spoken to only two councils—one in the metropolitan area and one in the regions—about this issue, but I would be surprised if these are isolated cases. I know that the views of WALGA were sought, but WALGA cannot speak for all the councils without consulting them. In fact, even in the two councils that I consulted with, there were different responses to the proposed amendments.

I have some questions that I want to ask the minister and his advisers. In the spirit of what Hon Kate Doust has suggested—namely, that we merely canvass issues during the second reading debate and then allow time during the committee stage for the minister to address those issues—I will take some brief time now to pose my questions. As I have said, I would ask the minister to elaborate on the consultation that was undertaken on this bill. This is the fix-it bill. Because of the concern that I have, just from canvassing the councils that I have canvassed, and from my own analysis of the amendments, I have a terrible sinking feeling that we may be here again soon looking at the Building Amendment Bill part 3, because right now we are dealing with the Building Amendment Bill part 2. But I know that we want to get it right, and I would certainly support getting it right. That does not mean that at this point we do not support the bill. We do support the amendments as proposed. But I have some concerns that I want to flag to the minister.

My concerns are around seven issues. The first is the amendments to section 81, which deal with access to other land. The second is the amendments to sections 39 and 57, which deal with non-application or modification of building standards. The third is the amendment to insert a new section 67(2A), which deals with the ministerial order with regard to signatures that Hon Kate Doust has mentioned. The fourth is the amendment to section 23, which is about "stopping the clock", and the requests for information. The fifth is the amendments to sections 20(1) and 145A, which are about the powers of public authorities. The sixth is the amendment to section 80(1)(d), which deals with fences. The seventh is a quick question about local government and how this bill will be implemented.

Hon Simon O'Brien: Would you prefer to ask those questions at the committee stage, or do you want me to respond now?

Hon LYNN MacLAREN: The minister can respond at the committee stage, but it might be better if I just outline the issues now.

Hon Simon O'Brien: Okay, and if I can deal with them now, I will.

Hon LYNN MacLAREN: The first issue is access to other land. The bill permits a builder or surveyor to "go onto" adjacent land in certain circumstances, including if the land is "vacant land" or if "any building on that land is vacant". The term "vacant" is not defined in the bill. We brought up in the briefing the issue that there may be trees or other vegetation on the land. Some people have beautiful bush blocks, and those blocks may be considered "vacant land" but they may want to preserve them just as they are. So I would like the minister to address what is meant by the words "vacant". I would also like the minister to address what is meant by the words "go onto". Does it include storing building materials, mixing cement, or stirring up dust? I think that the more explicit we can be on this matter, the more direction builders will have in going forward. We need to make it clear that obviously nearby vacant land should not be impacted negatively. That should be made clear through the second reading debate, because there is no definition of those words in the bill.

Section 77 of the Building Act provides that the land must not be "adversely affected". But I want to be clear about whether this will provide sufficient protection. Will it, for instance, preclude a builder from leaving behind rubbish and builder's rubble? Where are the provisions to say that if an owner or an occupier objects to the access, the builder or surveyor will leave the land forthwith, unless access is pursuant to a court order? Where are the provisions to say that the land must be left in the same, or in better condition, than the condition it was in when the builder or surveyor went onto it, and how will this be evidenced? I am sure the minister can guess that people are concerned about the impact of building activities near their properties, whether or not they are living on those lands. I would also like the minister to explain what is meant by the words in section 81(7) of the Building Act 2011 —

> A person who is entitled to go onto land under an order under section 86(2)(e) or (f) may remove furniture and fittings that would otherwise impede the work or the survey.

Must the furniture and fittings be replaced if they are removed? If they are damaged, must they be repaired or compensation paid? The Occupiers' Liability Act 1985 might be relevant to that answer. How does the Building Amendment Bill 2012 affect that act? Under the Occupiers' Liability Act, an occupier of a premises has a duty of care to ensure that persons coming onto the premises are reasonably safe when using them. There is an exclusion of liability for trespassers, but entry onto the premises is authorised by the act. A worker or surveyor,

who are not trespassers, are not covered by that act and are not necessarily deemed to have willingly assumed all risks of entry under the Occupiers' Liability Act. An unintended consequence of this amending bill may be that if a worker is injured on the adjacent land by stepping into a pothole, tripping on something or hitting his head on a fitting, for instance, liability may arise under the Occupiers' Liability Act. That may be contrary to common sense. I can see that the minister is a bit bemused by that. As we know, the law and common sense are sometimes strangers. When we amend an act of this type without widespread consultation with local governments, surveyors and building officers, we can expect things like this to crop up. Therefore, it is important to specify at this stage of the debate whether these issues are serious.

The second matter I want to question the minister about is the non-application or modification of the building standards as specified in sections 39 and 57 of the Building Act. The explanatory memorandum makes it clear that section 39 allows the Building Commissioner to modify the way a building standard applies or to declare that a particular building standard does not always apply; but it does not explain why this is necessary. There are five questions about the modification of the building standards that I canvassed in the briefings that I had. Can the minister explain why and give examples of when the Building Commissioner might choose to not apply or modify a building standard? Is this a right that may be exercised at the sole discretion of the Building Commissioner, or do guidelines apply? What safeguards are there to ensure that the building standards are not compromised? In other words, does the commissioner have to give reasons for his decision in the interests of transparency? Finally, is there a right of appeal? We did say that these are unprecedented powers, so we need to be very clear about their range.

Proposed section 57(3) states —

> A certificate of building compliance … must state that the building or incidental structure substantially complies with each applicable building standard.

That is concerning, partly because "substantially" is not defined, which might lead to major variations and interpretation, and partly because it may be a lowering of the bar when complying with building standards.

The next section I will deal with is ministerial orders regarding signatures. Hon Kate Doust expressed her concerns about that and I put on the record that I share her concerns. I commend the government for resisting the pressure from the building industry to remove the requirement of section 16(b) that an application must be signed by the owner of the land on which the building or incidental structure is to be located. Every owner should have the right to either consent to or refuse work, or proposed work, to be done on their property. If the estranged partner of a person who co-owns the property wants to build a swimming pool, for instance, but the co-owner did not want that to happen, the estranged partner can build it without the co-owner's consent. That was one of the provisions in the Building Bill 2010 that we believed was a very good reform.

I can understand the imperative to find a solution to deal with an owner who cannot be found to provide the relevant signature. Members can see how that might happen because of fly in, fly out workers and property owners who are living overseas. However, I am not entirely convinced that proposed section 67(2A) provides a solution. This amendment was described to me as a rapid response mechanism to deal with an emergency. However, nothing in the proposed section limits the powers to be given to the minister in any way. The minister should exercise the exemption provided for in sections 16(b) and (c) only if the owner cannot be found or other pressing circumstances dictate that the consequences of holding up a development are more serious than proceeding without the permission of the owner. If the owner objects to the exemption order, will that be sufficient to cause the minister to revoke or amend the order under section 67(2)?

I cannot help feeling that we are developing a very cumbersome and labour-intensive process to solve the problem. It lacks transparency and a clear rationale. It may serve for the time being—I recognise that—but I hope that in due course there is a better and more measured way of dealing with this issue. Maybe we could educate the players in the industry to ensure that they obtain the owner's consent in the early stages of the development process, and that if an owner is not likely to be available throughout the development, a power of attorney can be provided to the builder at the outset. I did not canvass these solutions with the advisers when I had my briefing and I am just throwing these ideas out there as a potential solution. I have not consulted widely with the industry on that either. If the minister could explain the constraints around these powers, that would be great.

Section 23 relates to requests for information and stopping the clock. The provisions for stopping the clock apply, as is logical, to both certified and uncertified applications. There may be a problem, however, when a local government is under pressure to process a large volume of applications. If the local government manages to look at a certified application only on day 5 when the clock is ticking and raises a few informal inquiries initially but these are not satisfactorily answered, the local government may have to resort to a formal request after a couple of days have slipped away. If the formal request elicits an incomplete or unsatisfactory response, or if the council requests a modification, it is then included in a new application with other modifications that require

assessment, and the time frame may well be exceeded. In my view, there should be a procedure by which the builder and local government can agree to an extension of time so that they do not fall foul of section 23(3). If a permit authority has not made a decision in the time allowed, it is considered to have been refused and the application or demolition permit will not be granted. This could be contrary to the wishes of all the parties and would result in a waste of time, effort and money. Surely there must be a pragmatic approach to this problem, one that takes into account the reality that sometimes, notwithstanding the good faith and best efforts of all parties involved, it will not be possible to meet the tight timeframe for approval. Perhaps that was canvassed in the working party; if so, perhaps the minister can shine some light on why that kind of consent to extend the time will become allowable under the act and clarify why we are moving in this particular direction.

I refer to the powers of public authorities under proposed sections 20(1) and 145A. It appears that by virtue of the insertion of proposed section 20(1)(iiia), a local government may be both a builder under section 16(c) and the permit authority that approves the application. I think we discussed this in our briefing. On the face of it, that could give rise to a conflict of interest. While I understand that this will streamline the approval and execution of minor developments, such as a shed on council land, should there not be more stringent controls for more complex developments, such as a recreation centre or a town hall, to make sure that the building complies with the applicable building standards? The minister may have an easy answer for that, but the bill does not appear to differentiate between minor and major developments when local government is the developer.

I turn to proposed section 80(1)(d). Under this proposed section, fences may be removed without the consent of an adjoining owner if the removal is required for the construction of a close wall and a building permit for the close wall is in effect. A "close wall" is defined as a wall that is so close to the boundary that it is not reasonably practicable to build a separate dividing fence along the boundary. That is something that we face more and more as our suburbs become more dense. The aphorism that "good fences make good neighbours" is often quoted; indeed fence disputes are often heated, prolonged, expensive and ugly. In the debate on the Building Bill 2011, there was headline news about a resident who reported the overnight disappearance of his fence as theft to the police. I fear that proposed section 80(1)(d) may lead to similar problems. For instance, the amendment should at least address such issues as what happens to a fence on either side of a close wall—perhaps the definition of "close wall" should include a fence—and whether the builder must ensure that the close wall is in keeping with the existing fence on either side. Will the Dividing Fences Act apply and alleviate such problems? If we could put that on the record, it would clarify the situation.

When the Building Bill was debated in 2010, the Western Australian Local Government Association raised concerns about how the legislation would interface with other approvals, such as planning, R-codes, heritage and health requirements. This in turn raised concerns about the increased potential for disjointed applications, inefficiencies in referrals, adverse health, heritage and amenity outcomes, and a general lack of integration within the approvals process. There is a push from some parts of the building industry for further privatisation, even to the extent of moving away from the enforcement and inspection regime provided by local government. I hope this push will be resisted.

In conclusion, I confirm that in the interests of addressing the obvious problems that have arisen, and subject to the reservations I have expressed, the Greens (WA) support the bill. I am in favour of not only streamlining the approvals processes, but also the efficiencies and savings that that will lead to. I hope that this will lead to the provision of more affordable housing. However, the bill addresses the short-term problems with short-term solutions when what we need are long-term solutions. I commend all those involved for working towards those long-term solutions and fixing the problems that the sector identified after the passage of the first bill. I hope the minister understands that the purpose of my questions today was to finetune the bill so that it is an effective instrument for the new process we are putting through—working together, they can get the job done!

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [2.34 pm] — in reply: Hear, hear—let us get the job done! Those are very fine sentiments.

I thank members for their contribution but, more to the point, I thank them for the manner in which they have delivered their comments—they were constructive, thoughtful and sensible. Hon Kate Doust expressed the opposition's support for the bill, recognising that when there is a major overhaul of a system that has been in place since before the Leader of the House was a member in this place, there are entrenched cultural habits —

Hon Kate Doust: It was probably put in place when my great-grandfather set up his building company.

Hon SIMON O'BRIEN: Certainly the system for building approvals that we are replacing is a good 50 years old. We have not replaced it with an updated version; rather, we have turned the system inside out. The changes have long been demanded by industry and consumers and have been supported by all sides of politics. Indeed, the development of the legislation has continued over successive governments. Already a large number of positives are being delivered in the building sector as we speak. This bill is about necessary legislative change to address some of the problems that have been identified since implementation—that is, since our legislation was

applied in the real world and put to practical effect, we have teased out certain unforeseen circumstances that have led to unintended consequences and we need to correct those. I thank members for acknowledging my endeavours and those of my staff in moving quickly to address these emerging issues. Apart from ministerial orders, redoing forms and changing regulations to the act, some provisions in the act itself need to be changed, and that is why we are here with this amending bill. We are dealing with only a limited number of things. The vast scope of the new Building Act system is going very well and delivering real benefits. Let us not forget that.

However, as with any change of this sort, as Hon Kate Doust pointed out, there will be problems. We have a system in which the state legislates to regulate building approvals and, in most cases, it does this through the agencies of 130-something local governments. Members who observed during the course of the debate that not all local governments speak with the one voice are certainly understating the matter. We have dealt with different building departments in a variety of local governments, town and country, great and small, some long-established with built-out urban areas and others in rapidly expanding growth areas. A variety of circumstances and experiences exist and it has been an interesting experience, to say the least, dealing with this regime and the changes to it when there are so many different characters involved. Maybe I will touch on that in another part of the debate.

Hon Kate Doust pointed out that there were a number of things she wants to raise in the committee stage. I agree that that is probably a most convenient way to deal with some of the issues that she raised and some of the issues that Hon Lynn MacLaren raised, so I am keen, as they are, to proceed to the committee stage. I think it would be beneficial if we could have this bill dealt with this afternoon before we go to question time, acknowledging that there is other business for the house this afternoon—there are disallowances and what have you—but I think it would be convenient if we could do that. I do not know whether it is within the absolute requirement that the house give adequate contemplation to this matter, but I am hopeful we might be able to accommodate that timetable.

I will address a couple of matters Hon Kate Doust raised; firstly, the transition time. I was told by some in local governments that they did not think they had had adequate time to equip themselves for these changes. They said that to me and I said that there was no point in just ploughing ahead on something that should be a good innovation and having problems if the sector was not ready. Therefore, I provided for an extension and it was suggested to me that it might be a few weeks. I said, no, that we should make it over three months until 2 April—I checked to see what the first Monday was in April and it was indeed 2 April, not 1 April! In response to that there were complaints from some parts of the sector saying, "Why are you doing that? We are all ready to go; we want to get the benefits of this new system. Let's get on with it." So there is always that balancing of how we do things. Local government had plenty of time to get on with it. Some did not prepare themselves. I even had very senior people in local government confess to me honestly that they probably did not get ready as soon as they should have and that they then had to play catch-up; that is something that can happen. Hon Kate Doust is cognisant of that and understands it, as indicated in her remarks. She also understands that there can be genuine unforeseen outcomes, and we had that in one or two situations; for example, neighbours' consent was seen as a necessary and reasonable thing. But there are some changes that are necessary because there are some parts of the legislation where the wording has caused some real problems for certain parts of the building sector. In summary, the changes have been a challenge to many involved in the established ways of doing things, whether they are in local governments or they are building surveyors or they are part of other large bureaucracies. I refer here to the volume home builders who have systems for doing things with their planning departments and the systems they have for lodging forms with local governments and all the rest of it. People do not like change to their established way of doing things and there was resistance to change—there always is. There were inevitably predictions that this will not work. Frankly, some of them seemed to be a bit like Chicken Little saying that the sky is falling, and we have not seen the disasters that were indicated. However, there were some things that people expressed misgivings about and some of those were seen in practice not to work well. That is why they want to fix things.

I think the point Hon Kate Doust made about building surveyors obtaining their training is a good one for further consideration, but it is not within my ministerial bailiwick. Like me, the member has probably spoken to Terry Bush from the Australian Institute of Building Surveyors. He is their national president and he operates here in Perth and this is something that has been discussed. But Hon Kate Doust is right, the relevant minister might wish to look at this matter and I will refer it to him.

Hon Kate Doust: You might want to suggest to the State Training Board that it investigate that as a potential future training niche.

Hon SIMON O'BRIEN: It is something worth following up, but I know that the AIBS is looking at this as well.

In relation to the letter from the Master Builders Association, I have had great cooperation from the MBA before and since the introduction of the act. It is a very professional organisation and I thank it for its very constructive

assistance. The MBA represents two broad areas. One category is the house building area, and there are builders of all sorts of shapes and sizes in its membership in that category. The second category is what we might call the commercial sector. In relation to some of the problems we are fixing right here today, they are generally in the bailiwick of the housing sector—what are generally called class 1 and 10 buildings—whereas from builders of buildings classes 2 to 9, the commercial buildings in all their various forms, typically we have had rave reviews about the operation of the new regime; it is quicker, more efficient and all the other benefits that were aimed for. But there is one problem and it has been identified by Hon Kate Doust and was previously raised with me by the MBA and the Property Council of Australia, which was also very supportive of these laws, and that relates to the Fire and Emergency Services Authority consultation requirement. Again, how it has worked out is that if it is a requirement in order for an application to be lodged, that becomes a problem if someone does not already have a consultation or proof thereof. Clearly, in cases when there is something such as a shop fit-out in a building —

Hon Kate Doust: Or a parliamentarian's office fit-out perhaps.

Hon SIMON O'BRIEN: Something like that. It is clearly not the intention to hold up a building approval on that basis and we are in the process of changing that regulation. It is not something on our agenda for this afternoon, but it is something that is in process right now and has been for some time. There are some other matters we will talk about —

Hon Kate Doust: Minister, just before you move on, will that regulation look at the size—the square metreage—of the property that is being fitted out before there is a requirement to bring in FESA? Is that how the minister will remedy that issue?

Hon SIMON O'BRIEN: I take that question on notice and will get back to Hon Kate Doust. I do not think that square metreage is a consideration that we are expressing in the draft regulations. I cannot think at the moment how it is expressed, but I think more of a definition of the type of work will be used to decide whether FESA is needed or not. There are also a few other changes we are making and initiatives in the future will be taken regarding FESA consultations that are the subject for another day.

Hon Lynn MacLaren asked what consultation had happened to create this bill. When some problems became apparent, I pulled together a group that basically consisted of representative elements of all the stakeholders. They included a few different shapes and sizes of builders, my department obviously, some other people with standing and expertise in the areas of building planning and administration, and, of course, local government. We workshopped these things by firstly identifying the problems and then asking what the options were to deal with them. I challenged that group at length to come up with both of those elements. We did not get into a panic and try to rush something into Parliament with undue haste. We were better off getting these things right and that took some doing, because there were some calls for us to recall Parliament and what have you, which was never going to happen. We have to ignore those sorts of pressures and focus on what we are meant to be doing. So we took the time to do it right, though moving as quickly and expeditiously as possible. I then chaired a lengthy meeting, during which we canvassed final outcomes to ascertain whether it was agreed that these were the steps that would address the outstanding problems that had been identified, because I wanted to have a degree of confidence that we were not going to be back for part 3. There is not going to be a part 3 as far as I am concerned, because we are dealing with the matters now and I do not want to be coming back again and again. We will revisit the Building Act in due course, after it has had a year of operation. We will have our fingers on the pulse right the way through; as early as next week or the week after I am meeting with some people to discuss an examination of some further initiatives we might take—we certainly will explore them—to improve the processes in the volume housing approval area. The new system is working great for commercial properties, but we would like to see further benefits accrue to home builders, to put downward pressure on home prices and get all the other benefits we might obtain. But that is for another occasion.

I will try to deal with the questions raised by Hon Lynn MacLaren now to save time in the Committee of the Whole. The questions were many and varied, and some are probably best dealt with in committee. But I can respond to Hon Lynn MacLaren in general terms by saying each of the matters—I think the member raised six or seven—have been specifically considered and singled out for special action in an environment in which we are finding we have problems and trying to fix them. I assure the member that all matters have been explored. The member's shopping list of items she wanted to ask about is, in fact, my shopping list taken directly from the bill. That is why I think that if the member requires any points of clarification, it might be best to reserve them for the committee stage.

In terms of stopping the clock, the member asked what would happen if the local government is busy at a particular time—well, chew harder. Some standards have been set as part of a response to some longstanding problems—namely, the delays in processing building applications. That is what we are all about, so we make no apology for that. But I will say to Hon Lynn MacLaren that we want to create an environment with the cooperative approach that the member referred to. In everything we talk about in this place, we have to

simultaneously put ourselves out in the real world—at the front counter of the building department in the local government. That is where people go with plans and spread them out and need things stamped, dates stamped, boxes ticked and all the rest of it. That is the real world we are trying to encourage. If it comes down to stopping the clock, if local government officers are talking to building applicants and their first resort is, "Right; I'm going to formally invoke section 18 here and require, in accordance with the form and regulations, further information from you that you have to provide within such and such a time", there are problems with that local authority. People should be saying, "Look, I have your application here but there seems to be this one element missing; you haven't given me such and such a piece of paper. I can sit on it now if you like", and the applicant can say, "Oh, sorry about that. Yes, it's here on my desk; I'll get it down to you this afternoon." That is how the real world should work, and by and large that is how it does work.

If it gets to that stage when the clock has come to the end of its period, and has therefore stopped ticking, some things can happen. If the application has not been determined, an avenue of recourse is available under this act. But that does not mean the applicant and local council officer cannot communicate as human beings and say, "Look, sorry we haven't finished with your application yet; it's going to take another day or two. I know we're over the limit, but I promise we'll have it done by Friday." That can happen out there in the real world. If that is not acceptable to the applicant, they have an avenue of recourse; they can take their application and go off to the State Administrative Tribunal with it.

The ideal we want is not to have to worry about not meeting time limits. What we want to happen is happening in a lot of local governments right now, which is that they are not taking 10 working days or 25 working days; they are taking one or two working days and getting the application out. That shows that the system can work and that it is inhabited by good, professional people. I think that if we now equip them with the extra measures in this bill, we will make the system work a heck of a lot better by taking out those several aspects that are causing real problems. With those general responses, I thank honourable members for their support of the second reading.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Committee

The Deputy Chair of Committees (Hon Alyssa Hayden) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clauses 1 and 2 put and passed.

Clause 3: Act amended —

Hon KATE DOUST: I have a relatively simple question. A new definition will be inserted into section 3 of the act—"applicable building standard". Can the minister provide an explanation of why that was put into this amendment bill if it was not considered necessary for the earlier act?

Hon SIMON O'BRIEN: Clause 3 simply states, "This Act amends the *Building Act 2011*." I think perhaps we have —

Hon Kate Doust: No; "applicable building standard" is a new definition.

Hon SIMON O'BRIEN: With respect, that is not in clause 3. Is the member with me?

Hon Kate Doust: Yes. I am using the other document. Okay.

Clause put and passed.

Clauses 4 to 6 put and passed.

Clause 7: Section 20 amended —

Hon LYNN MacLAREN: This clause amends section 20, and it is that section that I referred to in my second reading contribution regarding the local government being both the builder and the permit authority. I sought some clarification on the possible differentiation between a minor and a major development. I can see that if the local council is doing a minor development, it could be the permit authority, but when it is a major development, perhaps there are some additional steps to go through.

Hon SIMON O'BRIEN: That is a good question. I will not answer it, though, in terms of major or minor development. The device contained in our act is such that the local government, as a permit authority, may issue a permit to itself for a building it proposes to construct, and that raises the questions that are in the member's mind. But the safeguard there is that the building surveyor who certifies compliance with the building codes may

not be an employee or an officer of that local government; he has to be independent. So, the local government could, in fact, get another local government to do it, although I cannot imagine that it would; civic pride might not lend itself to that. But that is the safeguard.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Section 39 amended —

Hon LYNN MacLAREN: I had a query about this clause and it is about section 39 amended. In that regard, it is about the non-application or modification of building standards. In my speech in the second reading debate, I had a series of questions. There were five questions about the examples of when the Building Commissioner might choose not to apply or to modify a building standard. Basically, are there guidelines for the parameters about when he can exercise his discretion? What safeguards are there to ensure that building standards are not compromised? Does the commissioner have to give reasons for his decision and is there a right of appeal?

Hon SIMON O'BRIEN: The first thing I will mention is that the changes to section 39 are, in my view, almost cosmetic in what we are doing in this bill. Section 39, which provides for the modification of building standards by the Building Commissioner, already exists. Does the member have a copy of the blue bill?

Hon Lynn MacLaren: Yes, I have a marked-up copy—page 29.

Hon SIMON O'BRIEN: None of the questions that have just been raised come into play in the amendments we are looking at today, those amendments are really about putting beyond doubt the future interpretation of section 39; and that was upon receiving some representations from the Minister for Heritage, I think it was. So, we have done that. Nonetheless, I want to reassure the member that, of course, there are all sorts of safeguards here. The Building Commissioner is required to receive an application from a person to modify building standards, so that gives rights to the owners of, for example, heritage buildings—I do not know; perhaps their doorways may not be as wide as is currently prescribed—to seek relief from having to comply with a code, which would mean, in effect, the demolition of parts of their very valuable building, or to not do any necessary modifications. So we have that safety valve. The application then goes to the Building Commissioner. The position of Building Commissioner is a very senior one and the appointment of the commissioner is approved by cabinet. Therefore, the commissioner is not an inexperienced young person on the front counter or anything like that. The decision has to be given in writing and is kept and made available, without charge, for public inspection and, of course, to be reviewed by bodies such as our Parliament and others. So there are safeguards in that. Reasons have to be given in a decision. In terms of the right of appeal or review, yes, there are review rights to the State Administrative Tribunal, which the member can find in section 120 of the act. Given some recent court decisions, I think that the Supreme Court would decide that it has the power to review decisions as well—but that is another story. For now, these changes affect none of that; that is already in place.

Hon LYNN MacLAREN: I believe that the minister was referring to Mount Lawley Primary School—was he?

Hon Simon O'Brien: No. What's happened there?

Hon LYNN MacLAREN: Was there not a —

Hon Simon O'Brien: I know it had a fire, but now what's happened in regard to the building laws?

Hon LYNN MacLAREN: Was something not tabled in the house that modified the requirements for rebuilding? I suppose it fast-tracked the primary school building.

However, my concern in regard to this clause—it is common to section 57, which is dealt with in clause 12—is to do with the powers of the Building Commissioner. I am merely trying to clarify the transparency regarding that decision making because that decision making is basically a wildcard. Although the Building Commissioner is a high-level public servant, they are basically empowered to bypass the system. In the case of Mount Lawley Primary School, we were advised that this Parliament had an advisory document tabled, so we knew that it had happened, but the advice that was tabled did not give the reasons and it did not refer in any sense to a process of decision making. My concern is for the future. My concern is that in future we do not have a system that is easily circumvented by a high-level public servant—that is all. Can the minister reiterate the failsafe mechanism that the bill will put in place so that these powers are not unfettered?

Hon SIMON O'BRIEN: I am more than happy in the spirit of this debate to entertain these questions and, hopefully, reassure the chamber. But I do have to say that we do not want to tax members' patience because these are matters that are not for a decision today; they are already in the principal act. If we were to reject clause 10, we would simply be left with what we have now, which is materially the same thing that we will end up with anyway. There is an open and transparent process. I might add that it is not cheap to put in an application, so we will not have frivolous applications and I cannot imagine any Building Commissioner having

the patience to contemplate frivolous or unnecessary applications. Knowing that there will be the scrutiny that is available, I imagine that any public servant in that position would take great care to make sure that they have observed the lawful requirements in the act that any modification has to be in the public interest and consistent with other laws. They are absolute requirements, and I think we can have confidence in our officers to do those things, because if they do not, we have other ways of dealing with them.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Section 57 amended —

Hon KATE DOUST: I think that I flagged my question in my contribution to the second reading debate and I have certainly had a discussion about it with the minister outside the chamber. My concern is the insertion of the word "substantially" into a number of paragraphs. It has been put to me that perhaps the use of this word may not provide the certainty that people want when they have their permits signed off. It was put to me that perhaps a better choice would be, rather than insert the word "substantially", to insert the term "in the opinion of the certified surveyor". I would appreciate an explanation of why this particular word was chosen to be inserted in this case, and whether there is another way to afford some comfort to people going through the process that when their permit has been signed off, they are actually very, very sure that all the checklists have been ticked off to reach the point at which they can confidently sign off that it meets all the requirements. I just find that the word "substantially" perhaps could be open to interpretation and may be a bit too vague in this situation.

Hon SIMON O'BRIEN: This is one of those examples of genuinely unforeseen circumstances in which we had under the former regime the use of the term "substantially complies" and everyone knew what it meant and there were not any problems. Then with the change here, we have found that there have been problems with, in some cases, what some might see as being overcautious in a way that was not contemplated by the authors of the new provisions.

Hon Kate Doust: Perhaps overcautious is the better option in terms of the type of work that's being done.

Hon SIMON O'BRIEN: We have to have a system that works. For the benefit of other members, the new provision would state —

> A certificate of building compliance that accompanies an application other than an application mentioned in —

A couple of other sections —

> … must state that the building or incidental structure substantially complies with each —

Applicable building standard.

Without having the word "substantially", we have found that some building surveyors have been loath to sign such a document and therefore we have a hold-up in the whole system. It is as simple as that. So, when I convened the group, which included building surveyors and local government people, this was seen as a real problem, whereas the previous wording had not been.

I do not know what else I can really tell the member, except that people are able to sign off on something the substance of which can be seen to comply, but they are loath to sign off on something that gives an unqualified certification that the surveyor would take personal responsibility for in its entirety. I must admit, I cannot see why it is that much of a hang-up, to be quite honest, but I am assured that it is, and the best remedy is the one that is before us now.

Hon KATE DOUST: I have never worked in this industry, so I do not know all the detail and I certainly do not know all the requirements that a building surveyor would have to go through to ensure that a building complies with an appropriate building standard. If, for some reason, the building surveyor was not prepared to sign off and indicate clearly that the building did not comply, that would be a good thing to know. As a client or a consumer, I would not want to proceed with a construction site if there were not the appropriate compliance. In a bad example of that very close to my home, perhaps if the certificate of building compliance had been signed off by a fully qualified building surveyor, the individual who owns that property would not have had three years of court processes and a highly dangerous property that she can barely reside in now. I would have thought that it is in the best interests of the consumer and the builder to ensure that there is accurate compliance with an appropriate standard. Rather than use a word that suggests that a person does not necessarily have to get to 100 per cent compliance, someone who is qualified should check that building to ensure that it complies 100 per cent with the requirements of the building standard. It would be in the best interests of everyone to have that clearly stated. The minister may suggest another way of managing this, but a provision outlining that a building surveyor can sign off that, in his opinion, the building complies with the appropriate building standard would provide relief for people. That is a more appropriate way of managing this. It may have been appropriate to use certain sets of

words 50 years ago when that language was first used, but it may not necessarily be appropriate in this day and age when there are better ways to ensure accuracy when complying with a standard. I would be interested to know the minister's view and whether there is another way of addressing that issue rather than using the word "substantially", which sounds as though the building does not necessarily have to meet all the standards. I would prefer the wording to be more concrete.

Hon SIMON O'BRIEN: The penny has now dropped. I have not referred to a critical bit of information, which the member can find in the blue bill. Division 3 in part 4 of the act refers to two concepts. One relates to a certificate of construction compliance; and in section 57, which is what we are talking about and where the change is being made, it is a certificate of building compliance. As a layperson, I would have thought that construction and building are terms that are pretty well synonymous. In this context, a certificate of construction compliance relates to a freshly built building, and it must accompany an application for occupation stating that the building has been completed in accordance with the plans and specifications and that the building otherwise complies with each applicable building permit et cetera—no qualification, no "substantially", and that is right.

The member said that she wanted to have confidence that if she moves into a building, it is properly constructed and will not fall down. However, section 57, which we are discussing and is to be amended slightly, refers to a certificate of building compliance when work has been done on an existing building.

Hon Kate Doust: So, a renovation or extension.

Hon SIMON O'BRIEN: Exactly, and it is in those circumstances—I can hear pennies dropping all over the chamber; I wish I had got to this earlier—that a surveyor might have concerns about guaranteeing the integrity of perhaps the 50-year-old framework of a building that has not been built just now. There are parts of the fabric of the building that he cannot examine even if he wanted to, but he can get to the requirement that of course is in section 57(2) that occupying or using the building in the way proposed would not adversely affect the safety and that it is suitable to be used in the way proposed et cetera. It is in that context that the term "substantially" is introduced. I hope that clarifies things for the member.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Section 67 amended –

Hon LYNN MacLAREN: Clause 14 amends section 67. The issues I have regarding section 67(2A) were canvassed in the second reading debate about the consent of coming onto property. I want to pose the question to the minister, because I do not think he had a chance to answer this in his response to the second reading debate, that if the owner objects to the exemption order—this is about exemption orders—will that be sufficient to cause the minister to revoke or amend the order?

Hon SIMON O'BRIEN: There might be a little misconception about section 67. Section 67 provides for ministerial orders to exempt the operation of certain provisions contained elsewhere in the act in relation to building work, some demolition work or other work. I employed this mechanism and I have tabled my orders that I gave on a couple of occasions. In relation to the matters we are now discussing, I put out an order to allow building to commence after an application was made, but before an approval was given in certain circumstances. That was alluded to in the second reading debate when we had problems with some financial institutions, so that was not a complete answer in many cases, but I did do that.

In relation to Mount Lawley Primary School, I believe I issued one order. That related to the erection of temporary structures—it was basically to fast-track the establishment of the temporary school. These are both good examples of where we need to have someone who has the power to say in particular circumstances, "If we use the normal procedures, that will not enable us to respond to the needs of the hour." Common sense tells us that we need to have a safety mechanism whereby someone—sure, an accountable someone—is able to say "On this occasion, we are going to temporarily exempt some requirements to enable a job to be done." There is very much a need for that in this sort of legislation, because the variety of circumstances that we can come up with is almost endless.

The further amendment relates to the requirement for applications to be signed. At face value, we would think, "Hang on. An applicant should sign their application." This is bureaucracy 101, is it not? We need to have someone sign the application. But in the group that I pulled together, some one month ago, we kicked around some of these questions. One of the problems that were being experienced was that builders were just trying to get on and do the job, but this requirement to get the owner's signature on certain documents was preventing them from moving forward with the whole process of making an application, getting an approval and all the rest of it. So that is why this is in this bill. This is an important thing to do.

The example that was given was a particular form that had on it a little box that said "Owner's signature". Someone said, "Why do we need this?", and nobody could come up with any better idea than, "It's the sort of thing that we have on a form, isn't it? It seems reasonable that an owner should have their signature on an application to build something on their land, doesn't it?" But think about it. It is just a squiggle. Who is going to verify that it is the owner's signature; and, if we are not going to verify it, why do we bother to have it? Is it enough of an owner's signature? Has it been subject to the 100-point check, and, if it has not, why do we bother to have it? Does anyone seriously think that a builder is going to put a fake owner's signature on an application so that they can go ahead and put up a $200 000 house against the owner's wishes? I do not think so.

These are the sorts of things that we have been reviewing and that we have come up with solutions for. This relates to applications to build. Builders probably do need the owner's permission if they want to apply to demolish a building. So we are not interfering with that. I guess the honourable member might ask, "Then why not just get rid of the need for these signatures? Why do we need a ministerial order to enable us to do that temporarily?" It is because we want to do this properly. We want to make sure that there are no unforeseen consequences, or exceptions, to the rule that we do not want unnecessary signatures. Therefore, I agree with the advice that I have received; namely, the best way to achieve this is to give a certain accountable person—in this case me, as the minister—the power to exempt the operation, in certain circumstances, of that part of section 16. This is how we will achieve it, and that is the reason for this amendment.

Hon LYNN MacLAREN: I appreciate that the minister has explained the context, because it does help to make it clear. But my question was about what would happen if an owner objected and did not agree with the ministerial exemption. If an owner did object, would there be any way to revoke or appeal that order?

Hon SIMON O'BRIEN: Given my explanation of the context, that question probably does not arise, because it is a general application across the board for owners, or their agents, to take advantage of. If owners do not want that exemption, though, there is already a provision to revoke or amend the order. The first thing they would do is they would simply not take advantage of it.

Hon KATE DOUST: I also have some questions around this issue. I listened to what the minister had to say about this matter being canvassed in his working group. Will the capacity to issue an order apply mainly to large development sites or a row of dwellings for which there might be multiple absentee owners or owners who cannot be contacted, or will it apply mainly to single dwellings? In what circumstances will this provision be used? Will there be a time frame before a ministerial order can be sought? Will there be something in the regulations to stipulate the steps that will need to be taken before people reach that point?

Hon SIMON O'BRIEN: The minister would be bound by the provisions in the bill as it is before us. That is at the minister's discretion, of course. A ministerial order is not given out willy-nilly just for the sake of it —

Hon Kate Doust: I am not saying it is.

Hon SIMON O'BRIEN: — and, also, it needs be laid before Parliament. A variety of situations may arise. An individual owner may have commissioned a builder to build their dream home, but the owner may be overseas or otherwise not contactable. Why should things be held up just to get a squiggle on a form?

Hon Kate Doust: Then why can the builder not sign on their behalf in that situation, if they have already entered into a contract to build?

Hon SIMON O'BRIEN: That is precisely the sort of thing that has prevailed in the past and that I would like to see prevail again. I just want to ensure that our legislation is equipped to do that before I take the final step, which will be taken next time we review the act, so that it is not an ongoing matter for ministerial order but will be a substantive change.

Another example that has been given is the construction of 14 houses in Halls Creek, which has been substantially delayed due to the complexity of who can sign as an owner, and whether it is someone in the Aboriginal community or the Aboriginal Lands Trust. That has resulted in huge costs to the builder in being able to maintain its capacity in a remote area; and of course the member knows what the builder would do with those costs—pass them onto the consumer. So, for all those reasons, this is the right thing to do, and I hope members will support this amendment.

Hon KATE DOUST: One issue that we canvassed during the second reading debate—I think Hon Lynn MacLaren asked a similar question—is what would happen in the event that a property was co-owned by different members of a family and there was a breakdown in that relationship, be it a marital breakdown or another type of breakdown, and one of the owners wanted to proceed but could not obtain the signature of the other owner. Would that be a circumstance in which an owner could seek a ministerial order?

Hon SIMON O'BRIEN: I think we are probably looking for a little too much in this than there really is. That would be a property rights matter, and all the owners would have to be party to decisions to dispose of property.

This is more about ensuring that we do not become unstuck with utilitarian functions that, by the letter of the law, require something that people have not been able to get out of in extraordinary circumstances; it is a release valve for the specific matter that has arisen.

Clause put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Section 76 amended —

Hon KATE DOUST: I have a fairly simple question. Proposed section 76(1)(e) "except in prescribed circumstances" relates back to the encroachment into or onto crown land. I assume that regulations will be put into place to deal with this. Can the minister indicate what will be in those regulations and what types of circumstances will be set out in them?

Hon SIMON O'BRIEN: That is a good question. The member has sensibly asked for a real example to guide us in this. A good example is when an awning or a veranda encroaches on public land in which a public entity, for example, the Department of Regional Development and Lands, has an interest. It is when public land is encroached on by a public entity. I hope that I have explained that; I think the sense of it is clear.

Hon Kate Doust: I am sure that it will make sense when I read it tomorrow.

Hon SIMON O'BRIEN: We will rely on Hansard's skill to do that!

Clause put and passed.

Clauses 18 to 20 put and passed.

Clause 21: Section 80 amended —

Hon LYNN MacLAREN: This amendment relates to fences. I canvassed these issues in the second reading debate. The minister might recall that after the first building bill passed, a chap's fence disappeared overnight and he called the police. The people next door were in the process of construction. We are keen to not repeat that same debacle. Does this amendment address what would happen to a fence on the other side of a close wall? Will the Dividing Fences Act apply and alleviate the problems that might be faced? This amendment states that fences et cetera are not to be removed without consent, a court order or other authority. The insertion of "other authority" is one of the amendments, so it broadens the ability to protect fences and inserts proposed section (2A), which defines "close wall". Our concern is what happens to a fence on either side of the close wall and whether the building must ensure that the close wall is in keeping with the existing fence on either side.

Hon SIMON O'BRIEN: There certainly are requirements to keep up standards when a close wall is approved. Yes, the Dividing Fences Act does apply and it is quite separate from this legislation. Often that legislation relates to standards and sharing of costs, as the member knows. That is different from some of the things we are talking about here. If someone were to put in a close wall, which by definition is a wall close to the dividing fence, and the neighbour had declined consent to remove the fence, the fence would have to remain. I encountered this when I undertook to build a wall at my place sometime ago to replace an asbestos fence that was falling apart. No-one else was particularly interested, but I sought everyone's permission to remove the fence, which they gave.

Hon Kate Doust: When you talk about "close wall", are you referring to a retaining wall? Is that the common language?

Hon SIMON O'BRIEN: There is a definition of "close wall" under proposed section 80(2A), which states —

> ***close wall*** means a wall, fence, post or column, whether free-standing or attached to, or forming part of, a building or structure, that is so close to a boundary of the land on which the wall or fence is located that it is not reasonably practicable to build a separate dividing fence along the boundary.

Section 88(1)(b) of the act states —

> (b) in respect of which building work, of a kind for which a building permit is required, is done on or after commencement day;

A "close wall" is defined. I think I have addressed the question the member asked.

Clause put and passed.

Clause 22: Section 81 amended —

Hon LYNN MacLAREN: This clause amends section 81 of the Building Act, which deals with access without consent on neighbouring land. Can the minister elaborate on the responsibilities of a developer when accessing land and trespassing or going through another person's land, and how the developer is obligated to maintain the

land to the existing standard, even if it is vacant? As I said in the second reading debate, when someone builds a house next door to a beautiful but vacant bush block, the owner of the bush block would not want the developer next door thinking that because the land was vacant, it could be destroyed. We want protections in place for vacant land and some guidelines for the developers who develop on adjacent land.

Hon SIMON O'BRIEN: The best I can work this one through with the member is to go to the blue bill to look at what is currently there, because that is the problem. The problem is that if a person goes on to other land for the purposes of building, that person commits an offence, with the penalty of a fine of up to $10 000 unless each owner of that land consents to the access and the access is in accordance with the consent. People who need to go about building—it might be a boundary wall in which case a person would reasonably need to get on the other side of the wall—are absolutely unable to access the land without committing an offence and, of course, in that circumstance the permission needs to be in writing from the owner, which leads to all sorts of problems. The reason for that provision is to respect the rights of those who are not having their rights respected by people who are trampling on their gardens and having unauthorised access and so on, which goes on. But without realising it, that provision has gone too far, and it has created an impediment for people in the real world. In the real world, a person might be building a house on a greenfield site and that site might be adjacent to several empty blocks. In that situation, who is the owner? Those same blocks might be individually changing hands to different owners at any time that the person is trying to make contact. How does a person identify and contact those owners? Local government cannot tell them because it is private information. How does a person building a house get in touch with the owners? When they are finally tracked down—it is a pity if it is a syndicate of a dozen people—each owner has to provide written permission. Hon Lynn MacLaren can imagine the problems with simple delays. Of course, some people have taken advantage by asking the person building a house to hand over $1 000 in exchange for permission to set foot on their land. That is the sort of nonsense that has been happening. Clearly, that is an overreaction that we do not want. That is the ill we are trying to address.

The provision to be put into the legislation gets back to the standard that if the land is occupied, the person building the house can knock on the door and tell the owner that he needs to enter their property to make sure that the bolts are fixed on their side of the fence. That is all right. The owner will say, "Sure." That provision was included to make sure that those courtesies are observed so that people who have accessed the land do not leave a gate open allowing a dog to get out or a kid to fall into a swimming pool and that sort of thing. The term "vacant" as it applies to vacant land has the normal common meaning. A crop of flowers might be growing deliberately; it does not necessarily have to be a building to not be vacant. The land might be being used as a garden or a market garden or for cropping or some other purpose. "Vacant" generally has the ordinary meaning. The member's example was a native bush block. I do not know how often a person would build up against a bush block. Again, to get in the real world, a person will have the authority to access the land, but he will not be able to do anything to whatever is on the block. A person accessing a block cannot chop down trees or dig holes or anything like that—he can only set foot on it. It is not about using the land as a dump for yellow sand, cement or tools; it is about setting foot on the property. I think the member should be reassured about that as time marches on.

Hon LYNN MacLAREN: The minister is, of course, correct in pointing out the intention of the clause. However, it is an additional provision to the Building Act. I refer to proposed section 81(2)(d), which adds to the legislation the phrase "unless the other land is vacant land, or any building on that land is vacant". Consent must be obtained if someone occupies the land. But if no-one occupies the land, or if there is an empty building on the land, a person does not have to get consent. That is what I am concerned about, because that is a new provision that we are adding to the legislation. My concerns were not entirely addressed by the minister's attempts to alleviate them.

Hon SIMON O'BRIEN: My view, and this government's view, is that it is reasonable that if a person is building on a block and he needs to set foot on or gain access to an adjacent block, it should not be done willy-nilly. The rights of the owner or occupant of the adjacent block have to be respected and regarded and can, in fact, be enforced. At the same time, we also recognise that there is a real world. If no-one is in residence on that adjacent land, if no-one is employing that land for any purpose for human activity and the builder cannot identify who the owner is because he is not present and there is no trace of him, it is not unreasonable for the person who is building to set foot on that adjacent block. That is this government's position, which reflects the real world position that has already existed in Western Australia. If that is something we have to put to the vote, so be it.

Hon LYNN MacLAREN: Perhaps there is somewhere in the bill where it is specified that consent must be obtained. From what I have learnt about this particular amendment, it is explicitly designed to lift the requirement for getting consent. It states that there is no access to other land without consent or court order and notification or other authority unless it is vacant land. It does not seem to indicate that there is a requirement to seek consent if it is vacant land. Perhaps Hon Kate Doust can see that in the bill. I do not see that. Further, I do not believe Western Australians think that that is fair enough. A lot of Western Australians own vacant land and

they would expect to be consulted if a developer was going to access it to develop adjacent land. This is not a reasonable amendment to the Building Act.

Hon SIMON O'BRIEN: I will have one more go and then I think we need to proceed. In the world that we all represent, there is a problem in some circumstances with neighbours' rights not being respected when building goes on next door. We set out to deal with that by creating an offence and requiring neighbours' consent to be gained before there was any access—we are not talking about encroachment or adverse effects or anything like that, just access to land without getting the person's consent. In fairness, I admit that I had a few people from the Housing Industry Association say, "Hang on; if it's not broke, don't fix it." It said the system now by which a builder knocks on the neighbour's door and asks if it is all right to do such and such was working. However, we proceeded with this change and this Parliament agreed with that, but in practice it just does not work. We are keeping, via section 81 of the act as I am proposing to amend it, a requirement to have regard for the rights of other landowners and to deal with matters of consent being required so that we do not have people having their property violated. The exceptions we have put in proposed paragraphs (a), (b), (c), (d) and (e) are intended to deal with all the situations that may arise, but to deal with them in a way that is acceptable and reasonable in the eyes of the Western Australian community.

Clause put and passed.

Clauses 23 to 25 put and passed.

Clause 26: Section 127 amended —

Hon KATE DOUST: Could the minister explain the real intention of this amendment to section 127?

Hon SIMON O'BRIEN: I understand the purpose of this amendment is simply an administrative efficiency which has been requested and which reflects the other arrangements for delegation in other statutes as they relate to local government, so we have modified the wording of the present section 127 to reflect that.

Hon KATE DOUST: I thank the minister for that. In terms of how local government manages its employment arrangements, I understand that in some areas of work, in planning or providing building permits or building inspections, for example, local governments may very well outsource that work in some cases—I am not saying they currently do—or have subcontractors or have people engaged via a body hire firm who are not direct employees of local government. In the case in which such people do work for that local government, are they deemed to be employees for the purposes of this clause?

Hon SIMON O'BRIEN: My understanding and advice is that this section 127 relates only to delegations to employees of the permit authority. Indeed, proposed subsection (3) states —

> A delegation of a local government's powers or duties may be only to a local government employee.

Hon Kate Doust: So it would not pick up a subcontractor?

Hon SIMON O'BRIEN: No, it would not.

Clause put and passed.

Clauses 27 to 38 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and transmitted to the Assembly.