

CONSTRUCTION WORK — DAMAGE TO HOMES

Grievance

MRS L.M. HARVEY (Scarborough) [9.34 am]: My grievance is to the Minister for Commerce. I grieve on behalf of a number of constituents in the electorate of Scarborough whose homes have been damaged by construction works occurring on abutting or surrounding blocks. The houses built in the coastal areas of Scarborough and Trigg are predominantly built on sand dunes, which are quite unstable. With the ageing stock of houses, I expect that we will find more of the problem that I am about to highlight to the minister when the houses are slowly replaced and as Scarborough and Trigg become subject to further infill and revitalisation.

In order to illustrate this issue I will highlight the tale of one of my constituents. Fortunately, the constituent has recently settled a claim with the builders and the associated entities that caused damage to my constituent's property. I am somewhat limited about what I can say explicitly about this situation because of the confidentiality of the settlement. However, I can relate to the house the problems that were faced and the failure of both the local and state governments to assist my constituent through these problems.

In May 2008, my constituent—who, for the purpose of this grievance, I will name John—returned home from work as a firefighter to find that a quarter of his house had sunk due to the construction of a retaining wall by John's neighbour to allow further development of the site. The retaining wall was being built by a process called sheet piling. As a result of the pile driving, the foundations of his house were affected, which resulted in the back of the house cracking and sinking. On John's arrival home, he noticed a business card of the supervisor of the construction company on his door. The card gave the supervisor's contact details and assurance that the damage to the property would be fixed and that the builder's company was fully insured. Shortly after, John was contacted by the builder's insurance company, which indicated that it had accepted John's claim and would be working with him to proceed with the required remedial works. I saw photographs of the house that John had taken shortly after arriving home. Honestly, it looked as though an earthquake had occurred and that the house had been ransacked. All the memorabilia that had been hanging on the walls of the house had fallen off the walls and was smashed. His cupboards had fallen open and his crockery lay broken on the floor. The entire house was filled with concrete dust, sand and dirt. It was nothing short of appalling. I cannot imagine what it must have been like for John to come home and find his house in that state.

In the months that followed, John was led on by the builder's insurance company, which hid all of its communications with the words "without prejudice". In December the builder's insurance company advised that it would no longer accept responsibility for the claim as it was the fault of a subcontractor who was responsible for the pile driving. The subcontractor proceeded to blame the engineer who certified the pile driving solution, and so began a sorry tale of passing the buck. A lesser man than John might have had a breakdown. Eight months after the damage occurred he was nowhere near getting his house fixed and he was faced with the uncertainty of who was responsible. At this point John started contacting government agencies for help. He started with his local council. It inspected the property and wrote back to him and said that his home was structurally unsafe and that he had 14 days to rectify the situation and provide advice from a structural engineer that it was safe or the council would be forced to take action against him. The council did not take on the builder to whom it had issued the building licence. It did not request that the builder complete the retaining wall immediately to prevent further damage. In fact, the council defended the builder's right to complete the retaining wall at its discretion, as long as it was done within the two years in which the building licence had been issued. The council was more interested in John immediately fixing his property than it was in ensuring that the builder, developer and owner—the people who had caused the damage—were either held to account or made to remedy anything.

Having failed with the council, John contacted the Department of Consumer and Employment Protection. The department advised him that it could not do anything and that he should contact the Builders' Registration Board. John contacted the Builders' Registration Board, which simply said that it could not act because it only took complaints from contractual parties. It would not accept a complaint from John, as he was a neighbour. John, the innocent victim, was forced to hire a lawyer, which is an expensive and uncertain exercise. Some 16 months after the initial damage occurred, having spent hours and hours running around in circles and thousands of dollars in legal expenses, John finally settled and reached agreement with all the parties. His house will be fixed once the retaining wall is complete. Unfortunately, the time frame for the construction of the retaining wall did not form part of the settlement, so John will still need to wait for the completion of that wall, and no-one is forcing that upon the builder.

This case highlights a number of issues about the framework that builders currently operate under. It highlights how local governments may fail to adequately protect their ratepayers, even though they have the ability to force builders to act in the interests of public safety. It highlights that neighbours have no ability to make complaints against builders who cause damage to their property unless they take expensive and time-consuming legal action.

It highlights that some builders are willing to take advantage of the flaws in the existing framework and cut corners, knowing that there is no mechanism for redress or punishment. It is important to note that the builders in this case will never have to explain their behaviour to the Builders' Registration Board or anyone else. There is no doubt that a mechanism needs to be put in place to protect innocent neighbours from damage to their property caused by construction works on abutting or surrounding properties. It is totally unacceptable in my view that the only mechanism currently available is civil litigation. This places excessive and unwarranted stress on the victims. My concern is that if the government does not address this issue, my constituents are going to suffer needlessly into the future. I look forward to the minister's response.

MR T.R. BUSWELL (Vasse — Minister for Commerce) [9.41 am]: I thank the member for Scarborough for raising this issue. The member referred to a gentleman by the name of John. I did not hear whether that was a cover for the person. I assume the person's name is John. Is that the John who lives with a Jane—without trying to pry into John's affairs? I have some details about John and a couple of the other people whom the member has raised issues about. However, I do not think we need to go into that, because notwithstanding the impact that this case has clearly had on the chap whom the member has referred to as John, the issue here is far broader than the specific issues about this property.

The member for Scarborough mentioned that a lesser person than John might have suffered a breakdown when confronted with a situation such as this. I have dealt with a constituent in my electorate who went through a dispute with a builder through the Builders' Registration Board and who did have a breakdown. We have today acknowledged the tragedy of suicide. My constituent actually attempted to take his own life as a result of that dispute. It was a very distressing time for him and his family.

The member has raised some very important issues. Those issues are not just about the bricks and mortar of the building. They are also about the impact of the failure of the system to provide adequate recourse for people who are experiencing problems with building and construction works. In my view there clearly are issues in relation to neighbours, and I will talk about that specifically. However, more broadly, the current system administered by the Buildings Disputes Tribunal is clearly failing to provide adequate representation for consumers who are caught up in disputation with builders. I am sure most members of this house would get a significant number of complaints from their constituents about these issues. Those complaints are not so much about the builders, but about the process, because when we delve into the process, for most people it does not deliver what they would expect. The Builders' Registration Board has provided advice to me that, in theory, it can deal with complaints from neighbours, but, in practice, it does not do so. That means that if a person's property is adversely affected by construction works on an adjoining property, the only recourse for that person is—as the member for Scarborough has rightly pointed out—civil proceedings. That is expensive and time consuming, and often it does not deliver an adequate outcome.

Some significant reforms are being implemented to deal with these issues. I acknowledge that those reforms were instigated by the former government. Those reforms revolve around the establishment of a body known as the Building Commission. The current legislation that deals with issues such as the ones that the member has raised is contained largely within the Local Government (Miscellaneous Provisions) Act 1960 and the Builders' Registration Act 1939. The problem is that the current legislation does not provide protection to people that is reflective of what is happening in our suburbs. The member has raised a very important point. The increasing incidence of infill in our suburbs means that houses are being built closer to neighbouring properties—in some instances, right up against the fence. Many of the houses that are being built now are much larger than the houses that were built in the past. The current legislation was not framed in an environment in which this type of construction was taking place.

The second point I need to make—the member has highlighted this perfectly—is that consumers do not know who the heck they can turn to when they have a problem in this area. A plethora of government agencies are dealing with this matter—the Builders' Registration Board, the Building Disputes Tribunal, the Department of Consumer and Employment Protection, the Department of Housing, and local governments. That means that the consumer is caught up in what is almost a jurisdictional buck-passing exercise. That is not good. Our goals in implementing the Building Commission reforms are to address some of the legislative complexities in the system, and to provide a single point of contact for anyone involved in any form of dispute in and around the building industry. In terms of addressing some of the legislative complexities, the Building Commission was established on 1 July and is located in premises in West Perth. The Building Commission takes in the operations of the Builders' Registration Board, the Plumbers' Registration Board and the Painters' Licensing Board, which will shortly also be operating from those premises.

The Building Commission is currently developing a new building act that will replace many of the provisions that govern disputes between neighbours and contractual matters to do with the building industry. I am advised that that new act will provide a clearer delineation of the rights and responsibilities of builders when it comes to

boundary matters. Those matters include the requirement to notify neighbours before work commences, rules for entry onto neighbouring properties, rules for the removal of fences, and a requirement for protection works. It will also make provision for surveys of neighbouring properties. That is very important, because it is often the case that people cannot get remedial action taken because they cannot prove that the work has damaged their property. That was an issue in one of the other cases that the member has raised with me. The new building act will also protect the rights of property owners, in particular neighbours, by ensuring that builders who build on an adjoining property cannot, without agreement, build over a boundary line—I think that is pretty obvious; remove existing fences; impair the capacity of adjoining land; or affect the structural capacity of adjoining buildings. I believe that that more contemporary framework will help address a number of the issues that the member has raised. Again, this is not going to help John, but it is a step forward.

The new structure will also improve the way complaints are handled, because rather than have a plethora of different government agencies handle complaints, all complaints will be handled by the Building Commission. The major focus of the Building Commission will be to service consumers and provide a dispute resolution process. People will have a single point of contact. The Building Commission will have the power to order remedies. Those remedies will be enforceable by cooperation between the commission and local governments. That will be a great step forward in achieving a balance between the building and construction sector—which is a very important sector for Western Australia—and the rights and responsibilities of consumers. I appreciate very much the concerns that the member has raised and the stresses that individuals are subject to as a result of this process. I think it would be fair to say that I am confident that the reforms that we are bringing in will address many of those concerns. Of course in the interim my great concern is that there will still be people like John who are not able to get their issues resolved. However, I am confident that by implementing the reforms that were initiated by the former government, we will provide a legislative framework and a point of contact and support for consumers, and that will remedy many of the concerns that the member has raised.