

**CITY OF GOSNELLS ROADWORKS — INSURANCE LIABILITY**

*Grievance*

**MR P. ABETZ (Southern River)** [9.25 am]: My grievance is addressed to the Minister for Local Government and it concerns damage that has resulted from road duplication works on Warton Road in Southern River. By way of background, the City of Gosnells has been carrying out significant road duplication work on Warton Road since 2009. In early 2009 I began to receive complaints from residents in streets abutting Warton Road about substantial cracks and damage to their properties as a result of the vibrations from the roadworks. At my request, a representative from the City of Gosnells attended a meeting held by concerned residents at my office on 10 February 2010. Prior to the meeting, I received an email from the City of Gosnells advising that although the city council would not carry out repairs to damaged homes, it encouraged affected residents to make a claim against the city so that its insurers could instigate any investigations and, if agreed, repairs would be undertaken.

The day after the meeting, the city's engineering operations manager sent me an email confirming that the city's insurance officer was willing to meet with residents wishing to lodge damage claims. I also advised residents to take the matter up with their own home insurers; however, it turns out that vibration damage from roadworks is excluded from most standard insurance policies.

Last month I began to receive copies of a number of letters sent by the city's insurers, LGIS Liability, informing residents that the city denied liability for damages incurred to their properties. I then wrote to the insurers and the chief executive officer of the City of Gosnells to ask them to reconsider this matter. On 17 May, LGIS Liability replied to me confirming that, in its view, the City of Gosnells was not liable for the damage caused to homes because the road had been constructed according to Australian design rules. I am not sure what that has to do with damage to houses, but never mind.

I have been advised that the City of Gosnells did not carry out any dilapidation survey prior to the commencement of works, which I would have thought would be fairly standard practice. I have also sighted a report by Cunningham Lindsey Australia, chartered loss adjusters, dated 15 February 2010, that was prepared for one of my constituent's own insurers, advising that the damage suffered was the result of ground vibrations caused by earthmoving and compaction equipment. Some 20 residents have reported substantial damage to their properties. It shocks me that LGIS Liability continues to refuse to even send out an assessor to look at the affected homes. This is a situation in which the council has said that it acknowledges that there could be a problem and has advised residents to go to its insurers, but the insurer has refused to even look at the situation. I find that to be bordering on unconscionable conduct. LGIS Liability is owned by the Western Australian Local Government Association and thus owned by local governments. The affected residents are now mounting a class action against the City of Gosnells, because that is the only recourse they have, but it is a costly and time-consuming process. Section 3.2 of the Local Government Act 1999 provides that in cases of a dispute with a local government, the amount of compensation is to be determined by arbitration. The council has told the residents to go to their insurers, which is not unreasonable on the part of the council and I am not critical of it, but the insurers have refused to meet with the affected people and will not even look at the houses to judge whether the damage was caused by vibration. It is a clear violation of the intent of the Local Government Act that LGIS Liability is not even willing to look at the situation. Section 8.2(1) of the act states —

The Minister or Departmental CEO may in a written notice require a local government, a member of a council, a CEO or an employee to provide information of a kind specified in the notice concerning the local government or its operations or affairs.

I ask the minister to consider using that power to formally request the CEO of the City of Gosnells to provide reasons why no dilapidation survey was carried out prior to the commencement of such major roadworks. I understand that that is normal practice. I used to live in a house that backed onto what is now Roe Highway in Willetton. A dilapidation survey was done before those works were commenced.

I also ask the minister to request the City of Gosnells to inform the minister about the communication that the City of Gosnells has had with LGIS Liability asking LGIS Liability to deal fairly with the affected residents. Given that LGIS Liability is a wholly WALGA-owned business enterprise, can the minister investigate whether the operation of this insurer falls under the umbrella of the Local Government Act; and, if so, what steps will the minister take to prevent a repeat of such unconscionable conduct on the part of LGIS Liability so that in future residents do not have to go down the stressful path of having to hold meetings, organise lawyers, mount a class action and go to all that expense when there is a prima facie case of damage having been caused to their properties? These concerns should be addressed appropriately.

**MR G.M. CASTRILLI (Bunbury — Minister for Local Government)** [9.32 am]: I thank the member for Southern River for his grievance and for bringing this matter to my attention. The member is talking about the roadworks at Warton Road. I hope that some of the answers I give will assist the member and his constituents to

get a better understanding of the Local Government Act and, more importantly, the powers under the act. I support the member's view that the owners and occupiers of property that are affected by or impacted on by local government works, especially works of this magnitude and major works, should be consulted prior to the work being undertaken. That is a matter of straight-out commonsense and courtesy to the residents. Although that is best practice, there is no statutory requirement for local government to comply with and carry out dilapidation surveys on properties prior to the commencement of those major works. I am trying to make things better for local government. The member used the term "standard practice". I would have thought that it would have been best practice for local government to consult the community on major works that affect the residents. I think the member said that it affected about 20 residents.

Should an owner or occupier sustain damage to a property as a result of non-exempted works carried out by any local government, section 3.22(1) of the Local Government Act requires local government to compensate that person. Section 3.22(5) details the works for which compensation is not payable for damage incurred as a result of some of those works. Some of those examples include draining water onto land to the extent that the water follows a natural watercourse and also the closing of a road for not more than four weeks. They are just some examples. In order to activate section 3.22(1) to which the member referred, a formal claim for compensation must be made by the affected party. Based on the information that the member has provided to me this morning, it appears that the parties have made a general claim against the City of Gosnells for the damage to their property that they believe was due to the works. From what the member has said, the city's insurer, LGIS Liability, has denied liability for that damage. In my experience, insurance companies do that as a matter of course; that is just what they do.

The member also reported that LGIS Liability denies claims of any liability as the works have not been conducted negligently. However, a claim for compensation made under section 3.22 of the act is a statutory remedy, and I am advised that there is no requirement for negligence to be present. If the member knows any different, please let me know and I will double-check that. Section 3.22(4) of the act states —

A dispute about the amount of compensation is to be determined by arbitration in accordance with section 3.23.

Section 3.23 states that whether or not the parties have agreed to arbitration, arbitration is available under the Commercial Arbitration Act 1985. Because that act applies, a claim for compensation made under section 3.22 of the Local Government Act is a claim between the affected party and the local government and is subject to the conditions placed on it by the Commercial Arbitration Act 1985. Although I do not have any legal qualifications, I can see no obvious reason to conclude that this matter would not qualify to be dealt with under that process. It is open for each affected party to make a claim in accordance with that section of the act. My advice to the member's constituents is that their legal remedy involves seeking an arbitration decision under that act.

The member also asked me to seek information from the City of Gosnells about the communication it has had with its insurers. I do not believe it would be appropriate in this case for either me or the Department of Local Government to seek that information under the powers of section 8.2 of the Local Government Act because neither I nor the department has a determining role in that arbitration process. That is, in effect, a private civil matter.

**Mr P. Abetz:** That makes sense.

**Mr G.M. CASTRILLI:** That is what I believe. If the member wants to dispute that, let me know. Such information should be relevant under what is called "discovery" in the arbitration process.

In response to the member's third question about the operations of LGIS Liability, that does not fall under the umbrella of the act and therefore its operations are not matters for either me or the department. We cannot intervene in those matters. I hope that sets the matter straight for the member. There are a lot of issues similar to this. It is a difficult issue and I thank the member for bringing it to my attention and raising it with me. I hope that I have clarified a few provisions under the act and have been able to provide the member with some advice that he and his constituents can further investigate. I hope there is a successful outcome.