

BUILDING BILL 2010

Consideration in Detail

Clause 1: Short title —

The ACTING SPEAKER (Ms A.R. Mitchell): Members, we are in consideration in detail of the Building Bill 2010. The bill has 203 clauses and there are some amendments listed on new version A of today's papers.

Mr T.R. BUSWELL: Madam Acting Speaker, by way of clarification and to assist the opposition, there is an alternative attachment with amendments. The amendments are basically on the notice paper, and one or two others have been circulated. The other amendments also contain the member for Gosnells' amendment. Effectively, and I am sure you, Madam Acting Speaker, will clarify it, the sum of amendments is the totality of the amendments on the notice paper plus a couple of others that we have just put on. I just draw that to the attention of members.

The ACTING SPEAKER: Yes, we have just asked for some to be circulated.

Mr T.R. BUSWELL: I thought I would raise it because we have proceeded through these bills dealing with issues in an appropriate way, and it would be fair and reasonable to make sure that all the proposed amendments are circulated so that we are up to speed; that was why I raised the issue. I understand that is now happening so I shall take this opportunity to thank the Clerks for circulating the documents and return to my seated position.

Ms J.M. FREEMAN: The short title of the bill is the Building Act 2010. I note, again, that this bill does not have objects. I note also that the minister said previously during debate on the other building bills that they did not contain objects because the long title of the bill setting out a number of dot points was sufficient. I note that one of those dot points states —

An Act to provide for the following —

- work affecting land other than land on which the work is done;

The minister would know that I have raised on two separate occasions now the issue of land that someone believes they own and then someone comes to take it. I have forgotten the term.

Mr T.R. Buswell: Adverse possession.

Ms J.M. FREEMAN: Adverse possession; I thank the minister. I have looked and cannot see where in the bill adverse possession is dealt with. Can the minister give me guidance on where I can see the adverse possession aspect in the bill, given that one of the objects of the bill is to deal with work affecting land other than land on which the work is done?

Mr T.R. BUSWELL: I can, member, and the guidance is that that matter is not canvassed or dealt with in this bill. That particular component of the long title on work affecting land other than land on which the work is done—and no doubt we will tease this out when we work through the clauses that deal with that specific area—is really when there will be work on one piece of land that has an adverse impact on a neighbour; for example, a retaining wall, a fence, a compaction that causes cracking and the like. I am not exactly sure which aspect of common law—perhaps one of the member's colleagues can help me—deals with the issue of adverse possession, but it most definitely is not the Building Bill. My understanding is it is the basic common law.

Dr A.D. Buti: It is common law.

Ms J.M. FREEMAN: It is common law; I thank the minister for that. It is something that I raised with the minister's advisers assisting him and was told simply by the advisers that in fact it would deal with adverse possession and make adverse possession claims through common law more difficult. I am just again clarifying for the record, what the minister has told me—namely, that this bill in no way deals with adverse possession.

Mr T.R. BUSWELL: Perhaps I can provide the advice by way of clarification. It will make it harder in the instance when someone has to get consent for an encroachment. So, if someone has consent for an encroachment, it will become a lot harder to pursue a common law action for adverse possession. I am happy to tease out that point in consideration in detail.

Ms J.M. Freeman: Okay; so, where is consent for encroachment? That is why I said I had looked through the bill.

Mr T.R. BUSWELL: I do not mean to be disrespectful, but the member did not mention consent for encroachment.

Ms J.M. Freeman: I was not told that at the time I got advice. I asked the question when I went to see the minister's advisers. I was never told that at the time.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr T.R. BUSWELL: My advice is that it is in part 6. If we flag part 6 as we progress through the bill, I am sure we will get to it.

Ms J.M. Freeman: Okay. Any particular area of part 6?

Mr T.R. BUSWELL: It is clause 76, no encroachment without consent or court order; and clause 77, other land not to be adversely affected without consent or court order et cetera.

Ms J.M. Freeman: Thank you.

Mr T.R. BUSWELL: No worries.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Terms used —

Ms J.M. FREEMAN: I am interested in the definition of adult, which reads —

adult means a person who has reached 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently 18 or more years of age;

Why was that definition necessary and who will make the judgement that an adult is apparently 18 or more years of age? I am at a loss to know why the bill would have as uncertain a definition as that. First, why was it required? Eighteen years of age is adulthood, so I get that. But why in the first instance was it necessary to have such a vague definition of “adult” and what impact will it have?

Mr T.R. BUSWELL: My understanding is that that definition is related to powers that are created under clause 100 of the bill, which the member will find on page 79. It is clause 100(2). Effectively it says —

The authorised person is not entitled to enter a part of a place in use as a residence, except —

This relates to entry powers for an authorised person, and paragraph (a) is with the consent of an adult occupier. The advice I have is that the clause is to deal with those circumstances. So, if the adult is a person over 18 or, in the absence of positive evidence, a person who is apparently 18.

Ms J.M. FREEMAN: Why is the following definition, “adversely affect land”, limited to the three points in paragraphs (a), (b) and (c)? Why did the minister in the drafting of this clause not include a provision that would not limit it to those three areas? Again I go to the adverse possession aspect of land and I note the areas are included in that definition. I suppose I am just asking for confirmation that by including those points, the definition is not limited to those three areas in paragraphs (a), (b) and (c).

Mr T.R. BUSWELL: My understanding is that these three inclusions in the definition of adversely affected land are included in relation to impacts that permanently affect the land and permanently affect the capacity to construct on the land. That is the advice I have, and that is why the clause is limited in that way.

Ms J.M. FREEMAN: Is it a limiting clause rather than an include but not limit-type of clause? I am asking about the clause’s construction.

Mr T.R. Buswell: No, it is quite specific.

Ms J.M. FREEMAN: Is it a specific term to limit the definition?

Mr T.R. Buswell: Yes.

Ms J.M. FREEMAN: According to the minister’s advice, how does that limited definition affect land that is in dispute? Does land in dispute under adverse possession not come under the definition of adversely affected land?

Mr T.R. BUSWELL: My understanding is that this would not have an effect on adverse possession.

Clause put and passed.

Clause 4: Meaning of independent building surveyor —

Mr T.R. BUSWELL: I move —

Page 6, line 11 — After “independent” to insert —
building

My understanding is that the amendment tidies up a compositional oversight by changing the reference from “independent surveyor” to confirm that it means “independent building surveyor”.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr M. McGOWAN: I am interested in an explanation from the Minister for Transport—perhaps one that is a little better than the one just provided. A number of amendments are proposed to this bill, and it is incumbent on the minister to provide us with better explanations than some of these very brief descriptions that he has given us.

Mr T.R. BUSWELL: My advice is that this provision defines the meaning of “independent building surveyor”, and the word “building” was mistakenly omitted from the clause. A building surveyor is an independent building surveyor as opposed to what is written in the bill. It currently states —

A building surveyor is an independent surveyor in relation to an application if —

The amendment ensures that we correctly identify the person to be defined, and that person is not an independent surveyor, but an independent building surveyor. It is simply inserting the word “building” between “independent” and “surveyor”. The title of clause 4 is “Meaning of independent building surveyor”. Hopefully, that explanation suffices.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5 to 19 put and passed.

Clause 20: Grant of building permit —

Dr A.D. BUTI: What I am about to say also refers to clause 21, but we are now dealing with clause 20. Clause 20(1)(j) states —

that the applicant satisfies any other insurance requirements prescribed by regulation or under any other written law in respect of the building work; ...

Under the Interpretation Act, written law refers to all other acts and also subsidiary legislation that may come into force at any particular time. Presumably, that would include the city’s town planning schemes, and thus would require local governments to check compliance with the requirements on behalf of all public authorities in the state. That is my interpretation. Could the minister provide some clarification of that situation?

Mr T.R. BUSWELL: The advice I have is that the issue that the member has raised is covered in clause 20(1)(n), which states —

that the applicant has obtained in relation to the building work each authority under a written law that is prescribed for the purposes of this paragraph; ...

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Time for deciding application for building or demolition permit —

Mr M. McGOWAN: I will talk about the clause for a moment. Maybe that will give us some parameters to what the minister —

Mr T.R. Buswell: Didn’t you have an amendment?

Mr M. McGOWAN: Yes, the amendment is still being prepared. I should have had it ready before now; I apologise.

Mr T.R. Buswell: That’s all right; I’m the same.

Mr M. McGOWAN: We are both in the same boat then.

This provision relates to time for deciding application for building or demolition permits. A further provision at clause 59 deals with the time for granting occupancy permits or building approval certificates. They are two separate things, but the provisions are similar in that an application will be deemed to be refused at the expiry of a certain amount of time. This is a point of contention. When someone has submitted a building application to a local authority for approval, a great concern is that it can often take a long time to make it through the building department of the local authority. It must be said that some local authorities, some councils, are very slack in dealing with approvals; they are very slow. Sometimes they may well be subject to outside pressures, which might be quite illegitimate, in slowing down some building approvals. We should have a streamlined and easy system, particularly with single residential approvals so ordinary families around Western Australia who want to get a house built can get their plans in, get them approved and get the house built quickly. It is simple. What is wrong with that?

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

It is a very slow process in a range of local authorities around the place, particularly in the western suburbs of Perth, though also in some areas outside the western suburbs of Perth. I saw some figures recently. My local authority in Rockingham and the one in the City of Swan had roughly a two-week turnaround period on building applications, which is fantastic. It is a simple, swift system. If one wants to build a single-storey residential house, it is a quick system. That is a good system. However, from memory, when we go to the shires of Claremont, Cottesloe, Subiaco or Fremantle, in the case of the first three I think the turnaround time was up to 40 weeks. I think the turnaround time in Fremantle is quite long. I recall that the turnaround time in the case of Stirling may be up to 20 or so weeks. That is too slow. People who want to build a house and fulfil the great Australian dream have to wait all that time. When they have to wait, that means that the costs go up. Whoever is building that house factors that into the cost structure before they start, most probably because they are aware of the expected time frame. When they provide a quote to build a house, they realise that whilst they quote a certain amount at the time they provide the quote, over the next year or so costs will increase. They have to factor that into the initial costs. It will cost the purchaser more money as time goes by. One of the most significant issues in housing affordability is the fact that for some reason a lot of local authorities—often quite deliberately—slow down building approvals, which impacts on families who want to build a house. I would like to see a system that speeds that up significantly.

Ms J.M. FREEMAN: I am very interested in hearing what the member for Rockingham has to say.

Mr M. McGOWAN: Through this legislation the government is putting in place a system which it says will speed up these approvals. It is basically saying that after 14 days, or 35 days—it is quite confusing—there will be a deemed refusal if a decision is not made by the local government. Is that correct?

Mr T.R. Buswell: Yes.

Mr M. McGOWAN: That means that a council will have to approve or not approve a building licence application within 14 days or 35 days, depending on what sort it is. That means that if the council does not do that, a building licence application is automatically refused. The applicant will then have to go to the State Administrative Tribunal to get the council decision overturned. The council will lose its fee if that happens. When an applicant goes to the State Administrative Tribunal, I assume the tribunal will retain the fee if the licence application is overturned. The big stick on the council is that it will lose its fee.

I have seen different systems in other states. They say that the expiry at the time is deemed approval. In the case of Queensland, there is a deemed approval. If a council does not make a decision within that period to approve or refuse, the application is deemed approved. We went the other way in Western Australia. This government has not gone for the more aggressive approach. I understand that the Queensland Labor government put that mechanism in place. New South Wales and Victoria went for a different system; that is, if it is privately certified, one does not have to go through the council process. I suspect that enables people to get away from those councils in Sydney that might make it very difficult for people trying to do anything. Here we have gone for the least aggressive approach out of the three states that I mentioned in getting those building approvals through. We are number four, even though we have the most modern legislation. I will seek an explanation from the minister as to why he has not gone for a more forceful approach in dealing with this issue, which would be a deemed approval system, as has been put in place in Queensland. That would naturally mean that local government has a far greater level of efficiency when approving or refusing building licence applications.

The ACTING SPEAKER (Ms A.R. Mitchell): Before the minister responds, I need to inform members that the minister wishes to move some amendments to clause 23(1) and (2) and the member for Rockingham wishes to move an amendment to subclause (3). We will deal with the minister's amendments first.

Mr T.R. BUSWELL: I was just going to suggest to the house that given that order in and around clause 23, it might be easier if I move the amendments on the attachment that has been circulated relating to lines 20 and 21 on page 20 of the bill. This amendment clearly relates to clause 23(1). Then we can discuss the member for Rockingham's proposed amendment to clause 23(3). My amendment significantly changes clause 23(1)(a) by removing the time period of 35 days. Rather than it being 35 days, it would be a period prescribed for the purposes of this subclause. In other words, the feedback we have had from industry is that 35 days is perhaps too long and we will require some flexibility in setting that period of time. That flexibility will be delivered by being able to, through consultation with industry, set that period of time by regulation. I would not suspect that that period of time would be longer than 35 days. I think industry's preference was for it to be significantly shorter, so this just gives us the capacity to negotiate a period of time under clause 23(1) which is less than 35 days. I move —

Page 20, lines 20 and 21 — To delete “not later than 35 days after the application is made; or” and substitute —

before the expiration of the period —

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

- (i) that is prescribed for the purposes of this subsection for the classification of the building that is the subject of the application; and
 - (ii) starting on the day after the application is made;
- or

Mr M. McGOWAN: This amendment relates to cases in which a local authority requires further information. As the bill was originally presented, the local authority could send the applicant away for a period of 35 days in which to provide further information. The applicant would then come back and, as I understand it, the two-week period starts again. On the last day, the applicant is sent away for 35 days during which time they can provide further information and come back and apply again, and it is two weeks again. That is 24 days plus 35 or thereabouts.

Mr T.R. Buswell: I am not disputing the thrust of your argument but it was actually 14 plus the 21, which makes 35. It was 14, 21 and 14. The 35 is the 14 plus the 21. I am not diminishing the thrust of your argument. I think the 21 days was too long, industry thinks it was too long and I assume you think it was too long.

Mr M. McGOWAN: I do think it was too long. In effect, the total is around 49 days or something of that nature. Industry understands that if a person is applying for a building licence under this new streamlined system, the local authority still has 49 days—that is, seven weeks—to consider the application before refusing it or approving it, but that activity can still go on during a period of seven weeks. Whilst it might speed up the process for councils—for instance, the ones I mentioned before, in which the average time taken for approval was 40 weeks—in the case of a lot of local authorities it is still a lot longer than the average time they spend considering an application anyway. Therefore, if the government wants to speed up the building licensing system, this amendment still provides huge scope for a slow approach by some local authorities.

The minister is proposing that the period can be prescribed by regulation, so that it is not 35 days; it might be less. But we do not actually know what the lesser period would be. This is an improvement, I assume, because the minister indicated that it would be a lesser time. Therefore, the opposition will support this amendment because it is an improvement. However, it does not deal with the point that I am making; that is, there is still the potential for there to be a seven-week period before a council is required to make a decision on a building licence application put in by someone for a single residential house. The systems in Queensland, New South Wales and Victoria are all far more efficient than this one. Queensland, New South Wales and Victoria all had Labor governments that put in far more efficient mechanisms than this model. In fact, the New South Wales system might even go back before the last Labor government, but I am not quite sure of that. But for a long time it has had a private certification system for single residential dwellings that is outside much of the control of councils.

I suggest to the minister that, although this is a slight improvement, there is still the potential for a long period of delay in the granting of a building licence by a local government council for an ordinary person building a house.

Amendment put and passed.

Mr T.R. BUSWELL: On the amendments sheet, I have four amendments that relate to page 20. I assume we just dealt with the first one.

The ACTING SPEAKER: Yes, we did.

Mr T.R. BUSWELL: So, as I understand it, there are three other amendments on page 20, and they are those that relate to lines 22 to 25, lines 29 and 30, and lines 31 and 32. Given that these amendments are effectively dealing with the same matter that we just dealt with, I seek leave of the house to move those three amendments en bloc.

Leave granted for the following amendments to be considered together.

Mr T.R. BUSWELL: I move —

Page 20, lines 22 to 25 — To delete the lines and substitute —

- (b) if there is a requirement under section 18(1) that is complied with within the specified time, before the expiration of the period mentioned in paragraph (a)(i) starting on the day after the compliance.

Page 20, lines 29 and 30 — To delete “not later than 14 days after the application is made; or” and substitute —

before the expiration of the period —

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

- (i) that is prescribed for the purposes of this subsection for the classification of the building that is the subject of the application; and
 - (ii) starting on the day after the application is made;
- or

Page 20, lines 31 and 32 — To delete the lines and substitute —

- (b) if there is a requirement under section 18(1) that is complied with within the specified time, before the expiration of the period mentioned in paragraph (a)(i) starting on the day after the compliance.

I apologise for not dealing with all four amendments at once. These amendments pretty much deal with the same issue that the member has raised. I think the issue the member for Rockingham has raised is very important. I have had some discussions with the building industry about this. I suppose again it is a matter of trying to find a balance between the professional advice from the department and the advice of the industry.

Mr M. McGowan: You've had discussions but you're not the responsible minister, are you?

Mr T.R. BUSWELL: I know, but, as the Minister for Housing, I often have discussions with the industry about a whole range of things, and it raised this with me.

Mr M. McGowan: Is the minister Hon Simon O'Brien? Is he the correct minister we are dealing with here?

Mr T.R. BUSWELL: Yes. I will mention one point that was made to me about the amendment relating to lines 31 and 32. I think the point the member raises is valid. If we follow it through, there was a period of 14 days, then a possible 21 days to provide new information, and, at the end of those 21 days, possibly 14 days to deal with it again. We have discussed previously modifying the 14 days and the 21 days—the 35 days. The fourth amendment states —

if there is a requirement under section 18(1) that is complied with within the specified time, before the expiration of the period mentioned in paragraph (a)(i) starting on the day after the compliance.

In other words, the day on which the information is provided is when that back set of 14 days starts. That means that the local government, just by asking for information, cannot apply the maximum period. It has to start to reconsider the application from the time the information it has requested is provided. To be frank, I am with the member. I am sceptical of some local governments. I think that some local governments will use any means available to them to try to dodge the intent of this bill, and that will not be limited to this sort of clause; it may also be limited to trying to pull building approvals back into the planning process so that a development approval is needed for a simple single residential dwelling effectively in a suburban area. I mentioned last night in my second reading response on this bill that we will be keeping an eye on any behaviour along those lines, because that would clearly fly in the face of the intent of the bill. I point that out regarding that fourth amendment to page 20.

Mr M. McGOWAN: As I understand it, under this amendment a council will have the 14-day period in which to approve or refuse the application, or seek further information. If the council seeks further information from a person applying for a building licence, at the point in time that that person provides that information, the second 14-day period will kick in. Therefore, there will be a potential truncating of the total period in which the council can consider the information.

Mr T.R. Buswell: Correct. Member, I will just add one other thing. The ability to set that 35-day period by regulation, as I understand it, will also reduce those original 35 days to a number yet to be determined.

Mr M. McGOWAN: This is potentially an improvement, assuming that the earlier prescription mechanism does not expand the number of days, but, rather, contracts the number of days.

Mr T.R. Buswell: There is absolutely no intent for that to happen.

Mr M. McGOWAN: Yes, but there is a form of words that could have been used. Hold on; it is not later than 35 days after the application is made.

Mr T.R. Buswell: Yes.

Mr M. McGOWAN: It just says that it is prescribed; okay. It actually provides the potential for it to be longer than 35 days, which was not in the legislation before. What the government could have done was draft the provision we passed a few moments ago in a way that ensured the period was less than 35 days to remove all doubt. But, having said that, I accept that the minister's intent is to reduce the time. Again, these are mechanisms

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

to try to reduce the time involved. This intent is good. It still does not deal with the issue I talked about before; that is, if no decision is made within the time frame, that issue is not dealt with by these amendments that the government is proposing.

Mr T.R. Buswell: That's correct.

Amendments put and passed.

Mr M. McGOWAN: I move —

Page 21, lines 1 to 4 — To delete the lines and substitute —

- (3) If the permit authority has not made a decision in the time mentioned in subsections (1) or (2), the permit authority is to be taken to have granted the building permit or demolition permit in accordance with the application.

This is an amendment that I have not had parliamentary counsel draft and I have not had a law firm draft. I had some help from the Clerk. The Clerk drafted the amendment to clause 59 and I drafted this one based upon his earlier work, with a couple of modifications. So it was not done by a Queen's Counsel. In any event, it is designed to point out the intent of what we are trying to do.

Mr W.J. Johnston: It was still done by a learned lawyer.

Mr M. McGOWAN: That is right.

Mr T.R. Buswell: You are only learned when you crack *Australian Story*, as I have found.

Mr M. McGOWAN: Yes. Maybe one day I will be on *Australian Story*, although I doubt it. Not many people have a double episode!

Several members interjected.

Mr M. McGOWAN: I missed the early part, but I saw the latter part. Seriously, I think he is —

Several members interjected.

Mr T.R. Buswell: Did you see him from the underwater camera? They had the underwater camera following him.

Mr M. McGOWAN: He is an amazing person.

Several members interjected.

Mr R.F. Johnson: I think it should have come with a warning against children seeing it; it could give them nightmares!

Mr M. McGOWAN: I think the member for Hillarys doth protest too much!

Mr T.R. Buswell: I think he has probably got a copy on his hard drive!

Mr M. McGOWAN: Yes! He has a photo on the wall of the member for Mindarie in the shower!

The ACTING SPEAKER (Ms A.R. Mitchell): Thank you, members!

Mr R.F. Johnson: Probably all the people walking along West Coast Highway saw him through the window! It was absolutely amazing.

Mr M. McGOWAN: Not only doth the member for Hillarys protest too much —

Several members interjected.

The ACTING SPEAKER: Members! The member for Rockingham.

Mr M. McGOWAN: I think he is a bit envious!

Mr R.F. Johnson: I promise you I am not!

Mr M. McGOWAN: I think the minister is! I am pretty sure they not going to do a double episode on the minister!

Mr R.F. Johnson: I would not want them to—not along those lines!

The ACTING SPEAKER: Thank you, members! I would like to give the call back to the member for Rockingham.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Several members interjected.

Mr M. McGOWAN: I think we all envy him, to be honest, but anyway.

Mr R.F. Johnson: I don't.

Mr T.R. Buswell: Did you like it when he put his feet on the table and did push-ups?

Mr M. McGOWAN: This is a bloke in his 60s, doing push-ups like that. That is impressive.

Several members interjected.

Mr M. McGOWAN: We should all be envious.

The ACTING SPEAKER: Member for Rockingham, your time has run out.

Ms J.M. FREEMAN: I am very interested in hearing the Member for Rockingham's actual point, and not the digression. That would be good.

The ACTING SPEAKER: Member for Rockingham, please get back to the subject.

Mr M. McGOWAN: Madam Acting Speaker, I would just remind you that I was not the one who took us off the subject.

In any event, the central point is about deemed refusals and deemed approvals. I alluded to that earlier. The people in the housing industry are not evil people.

Mr T.R. Buswell: That is not what the member for Gosnells said last night.

Mr M. McGOWAN: The minister is trying to take me off the point again. These are not evil people. Roughly 150 000 Western Australians work in the housing industry. It is a high-class industry, and it builds good houses. I have lived in other states. The houses that are built in Western Australia are as good as, or better than, those built in other states, particularly Queensland, I might say.

The industry in its residential sector employs roughly 70 000 Western Australians, predominantly in Perth. The housing industry is frustrated by some of the red tape that is tying it up. One of the things that is tying up the industry is the time that it takes for councils to grant building licences for residential dwellings so that people can build a house. I agree with the industry. That should not be happening. That happens for a range of reasons. First, I think that some people who work in local government—there might be some justification for the government's position—are taking a long time to make a decision. Secondly, a number of elected officials think that their role is to listen to the loudest complainer in relation to a building. If someone is building a house, and the neighbours object and complain and are able to get the local government councillors on their side, all hell is caused within the organisation about whether the house should be built in the way it is being built on that particular location. In those situations, the building may comply with all the R-codes and the building codes and so on, but the neighbours are unhappy with what is going on, and compliant, or perhaps even vexatious, local government elected officials are taking up their cause.

That issue needs to be dealt with. That is most prevalent, as I have said, in the more affluent areas. In my electorate of Rockingham, it is not a problem. Rockingham City Council is doing a wonderful job, and it has a very efficient planning and building section. It is the same in the City of Swan, and it is probably the same in the majority of local government authorities.

Mr T.R. Buswell: Busselton.

Mr M. McGOWAN: Not across Busselton. Busselton has a history of very poor local government councillors. But it has improved in recent times—in the last five or so years.

Mr T.R. Buswell: Not the one you tried to flog the foreshore off to! He has gone, old Wes!

Mr M. McGOWAN: The minister is ideologically inconsistent. In any event, there are a lot of problems with local government authorities. Some significant action needs to be taken to deal with this problem.

This legislation is an improvement on the existing situation. However, governments in other states have really bitten the bullet. They have said that at the expiry of the time within which a council can consider a building licence application, there will be a deemed approval if the council has not made a decision; therefore, the council needs to make a decision. What this government is saying is that, at the expiry of the time, there will be a deemed refusal. Therefore, this government is weaker than the governments in other states. This government is slacker and slower on cutting red tape than the governments in Queensland, New South Wales and Victoria have been. We are saying that the government needs to toughen up. This amendment gives the government the opportunity to be a bit tougher in dealing with councils that are slack and slow in making decisions about building licence applications. I believe the government should support the amendment. If the government does

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

not support the amendment, it should say why. The government has drafted the legislation in a way that will, I suspect, make this proposed amendment a bit difficult. If the government will not support the amendment, it should tell us whether it will amend the legislation, using the resources of the state, in the upper house so that this provision can be brought into effect. That is what I want to know.

Mr T.R. BUSWELL: Member for Rockingham, I have to say—I will get into strife for saying this—that I am actually very sympathetic to deemed approval. I think it has application in planning law, and it should have application possibly in this law. However, that is just my view. I am not the minister responsible for this legislation. The advice I have been given is that the minister's view—I am not using that as an excuse, but I am here representing the minister—is that he has considered the option of deemed approval as opposed to refusal, and has rejected it. It is not normally my nature to read out points, but it is important that I put these points on the record, because these are the points that have been provided to me.

Basically, the response is as follows. Clause 23(3) provides that if the permit authority does not either issue the permit or refuse the application within the prescribed period, the application is taken to be refused; that is obvious. This provides the applicant with a right to appeal to SAT as a last-resort mechanism to force a decision. The permit authority can continue to process the application and issue a permit, or a formal refusal, but must refund the permit application fee. This provides an incentive to process an application on time. The government does not support a change to deemed approval if the permit authority does not deal with the application within time. There will be no public record or documentation of a deemed approval. Subcontractors may be unwilling to work, and insurers may be unwilling to provide cover, if there is no evidence of an approval.

A deemed approval process would need a mechanism to provide evidence of a deemed approval, and to cancel the approval if the application is then processed and refused. This will load the approvals process with more, rather than less, red tape. The notes then go on to state that a possible concession may well be that clause 66(1) of this bill provides for regulations to prescribe that a building permit is not required for building work of a kind specified in the regulations. The regulations could provide that a building permit is not required for building work covered by a certified application when the prescribed time has elapsed and the permit authority has not issued a building permit or has refused the application. This concession will allow a builder to reliably plan to start work on site at the end of the prescribed time. If the application is processed within time and a permit issued, the builder can commence work on site as planned. If the application is not processed within time but a permit is issued at a later stage, the builder can still commence work on site as planned, without committing an offence. If the application is processed within time and rejected, the builder will not commence work. If the application is not processed within time but the application is rejected at a later stage, the builder must stop work.

As I say, this is one of those unfortunate situations for the opposition in which, notwithstanding some of the merits of what has been put to me, I am quite simply not in a position to accept, on behalf of the government, the amendment. That is really a matter that the opposition's upper house colleagues will have to tease out with the minister. I am sorry that that is the situation, but I have been advised that the minister's view is that deemed approval will not be accepted at this stage. As I say, I have long been an advocate of the application of deemed approval in certain areas, including in planning law, although some people have pointed out to me—this is not really on my notes—that if a deemed approval regime is created, then the easy thing for the approval authority to do is just simply refuse. The benefit of that is that it does start a process; however, I have read the advice I have into *Hansard*, and I would encourage the opposition to encourage its colleagues in the upper house to canvass this more thoroughly with the minister in the other place.

Mr M. McGOWAN: I have thought through the issue. Councils will be able to make a decision within the period—ordinarily two weeks—as to whether to approve or refuse. If, at the point in time that it expires—at the end of the two-week period—they have not been provided with information and they elect to refuse, there is still the right of appeal. The government is deciding to allow them to elect not to make a decision; whereas I am suggesting there should be a deemed approval system.

Mr T.R. Buswell: Member, just for clarification: you mentioned within two weeks, but of course there is a provision to ask for more information. So it is within two weeks, unless there is a request for more information. As we have talked about before, that period for more information will be less than the two weeks plus 28 days, which equals 35 days, by regulation, and the approval process will start again when the information is provided. So it is not necessarily within the two weeks; that would be the case only if there is no request for additional information.

Mr M. McGOWAN: I understand that.

Mr T.R. Buswell: It doesn't change your argument though.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr M. McGOWAN: I think it gives some scope to some councils to unnecessarily, on occasion, delay things.

Mr T.R. Buswell: I am not disputing that.

Mr M. McGOWAN: I think in the case of single residential dwellings that are certified and so forth, there should perhaps even be a different regime than that that applies to a twenty-storey building being built in the city. All I am saying is that I have considered the idea that a council may just refuse in order to comply with the law and prevent deemed approvals, but I still think that if a system of deemed approvals is put in place, it would force councils to actually make a considered decision in a quicker period of time than they otherwise would. I am saying to the minister that the system that the government is putting in place is weaker and slower than the system I am proposing, and I think, from the words the minister said, he agrees with me that that is a fact.

Mr T.R. Buswell: I think I said I agree with the principle.

Mr M. McGOWAN: Yes, the minister agrees with the principle. I heard what the minister had to say, and he essentially agreed with the principle and that the system being put in place by the government is slower and more cumbersome than would be the case had we gone for a deemed approval system, as is the case in the other states. As I said to the minister, as I understand it, in New South Wales and Victoria single residences do not even go before councils because there is a private certification system and some sort of record is provided and there is no building department decision.

Mr T.R. Buswell: In Victoria?

Mr M. McGOWAN: Yes, in Victoria; that is an even more efficient system than the deemed approval system, and out of the four states ours is going to be the most cumbersome and have the greatest amount of red tape. I think that is a fact; that is what the housing industry says, and I think it has been verified by what the minister has said. We are suggesting a way of at least making us equal to Queensland by allowing people to get their building approval through a council in quick time. Let it be on the record that the minister is saying to the house—even though it is not his view—that he will vote so that the system is tied up in a greater degree of red tape and is slower than the system proposed by the amendment I have put before the house. I want all Liberal Party members to understand that they will be voting for a system that will be slower and more cumbersome than the one proposed in the amendment before the house right now. So when people want to get a house built and a council is being unnecessarily slow, perhaps vexatious, perhaps obstropulous—whatever —

Mr T.R. Buswell: Obstructionist.

Mr M. McGOWAN: — and that; obstructionist—obstropulous.

Ms L.L. Baker: Obstreperous.

Mr M. McGOWAN: Obstreperous—that is it—and obstructionist, that the government members are voting for a system that allows councils to do that to a greater degree than it would have, had the government agreed with the amendment. I advised the housing industry that we were going to move this amendment, and I might say that they were quite supportive. I have moved it, and we will put this issue to the vote before the house tonight.

Mr J.N. HYDE: I also support this amendment, and I think two aspects of the minister's comments deserve comment. To abrogate his responsibilities and say "get it fixed up in the upper house" is a total cop-out. This is the house of government, this is where this amendment has been moved, and this is where this legislation has been introduced. The minister's argument that the result of having deemed approvals will be very quick refusals is not how the situation will work in reality.

Mr T.R. Buswell: I didn't say it would, I said it could.

Mr J.N. HYDE: Whether it was could or should, that was all the minister's comment was. The reality will be that we may have some lazy councils doing that. The applications will go off to the State Administrative Tribunal, which, in a minimal time frame, will turn it around and grant the approval, and bad councils with bad decision making will be exposed for what they are. This system has been tried and tested around the world and, to a lesser extent, elsewhere in Australia, and that is why the industry is onside with us, and, more importantly, consumers in Western Australia are onside with us. I urge the minister and other members of the Legislative Assembly not to think, "We'll just palm it off to the upper house". Let us stand up and do the job we are paid for and make the Assembly be a real house of decision making.

Mr T.R. BUSWELL: I am happy to argue the toss on all these points now; it does not worry me. I was merely trying to explain that, in principle, I am sympathetic to the arguments around deemed approval.

Mr J.N. Hyde: Well vote for it.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr T.R. BUSWELL: I am not sure the member for Gosnells would agree with me; he is a bit quiet up there! I will put the view of the government again: it is that we will not accept deemed approval. The opposition has painted the absolute worst case scenario, and we are trying to find a balance in a bill that is a vast improvement on the framework that currently sits in and around building in Western Australia. We have had to strike a balance between the views and position of local government and the views and position of the building industry in relation to this matter.

Mr J.N. Hyde: But it's a timid response.

Mr T.R. BUSWELL: It is our view that this represents a good balance. Members can stand in this place and paint the very worst picture of the very worst scenario to us, and on the odd occasion, if all of the factors were equal—as the Treasurer likes to say, “*ceteris paribus*”; I think that is the turn of phrase I learnt in economics 100, and it means all else being equal—the opposition may be right. I am not saying the member will definitely be right, and there is absolutely no suggestion that this will result in more red tape and more bureaucratic processes for the vast majority of building applications. I do not accept that view and the government does not accept that view, and we quite simply will not accept this amendment. I am happy for the member for Rockingham to bring it to the vote and I am happy for him to go back to the building industry and say, “Those ratbags in government did not support deemed approval”. I have a suspicion that when the building industry looks at the totality of the reform of which this bill is part, it will be happy with the outcomes that will be delivered.

Mr P. PAPALIA: I want to explore the explanation that the minister read that had been provided to him for not considering deemed approval. In particular, it was suggested that there might be some type of issue if the time expired, the deemed approval was given and the builders went ahead but the approval was subsequently denied. However, would deemed approval not —

Mr T.R. Buswell: Deemed approval just means you assume it is approved.

Mr P. PAPALIA: Does it just entitle one to assume that it is approved?

Mr T.R. Buswell: Yes.

Mr P. PAPALIA: The minister's suggestion was that there could be further complications and that, as a result of deemed approval being given, builders would go ahead and there would then be issues concerning the process later on. Which has the heavier weighting? What is the minister's greatest concern? Is it that councils will be encouraged to refuse automatically as a way of avoiding the issue, or that there will be complications because deemed approvals will be issued?

Mr T.R. BUSWELL: As I think I said, in my role in local government I canvassed deemed approval many times in respect of planning changes. One of the arguments that was put to me was that if we create a deemed approved mechanism, we will get, by default, more refusals. I do not know whether that is the case; in some cases, a refusal is not a bad problem because in a long, drawn-out planning process, it will at least get to a point of finality at which people can toddle off and deal with something else. However, that is not the government's main concern. As I indicated, the government's main concern is that the period would expire and the person would assume that they have an approval. If for one of a number of reasons the local government had not dealt with it, it may deal with it the next day, the next week or whatever, and then refuse it. The concern is that the person will assume that it has been approved and launch their building program or whatever else they want to do with their approval, only to discover at a later date that it has been refused.

Mr M. McGOWAN: That does not make sense because there is an expiry period. At the end of the expiry period there is a deemed approval; it is not as though they are going to make the decision the next day. I think I am paraphrasing the member for Warnbro, who set out the argument in a far lengthier fashion! All I am saying is that at the expiry of the period there is deemed approval, and as I understand it, that is what happens in Queensland. Now the minister is saying that it is all unmanageable, or he is being advised by the minister in the other place that it is unmanageable, but I do not think it is beyond the wit of the state of Western Australia to come up with a way of managing this.

Dr A.D. Buti interjected.

Mr M. McGOWAN: Exactly. If it is in place in other states and countries, surely there is a way of doing it here. In any event, I have set out the argument for members of the Liberal Party. This approach involves less red tape, less time and less cost for householders. Liberal Party members claim that they have the right to cross the floor on legislation; well, here is their chance. This is an amendment that will provide more certainty for householders, quick approvals and less cost. This is their chance to cross the floor. Let us see how well that rule in the Liberal Party constitution that allows members to cross the floor works in practice on something as clear-cut as providing more affordable houses for Western Australians, quicker approvals and less red tape for the building industry. We will see exactly how they vote on that issue.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr P. PAPALIA: As a result of the minister's response, I am interested to know whether he can find out from the advisers what research was done on the manner in which deemed approvals operate in other states, and how frequently those deemed approvals result in subsequent issues of the type the minister has indicated he is concerned about. How often does the deemed approvals process come apart subsequent to the expiry date and after the builders have gone ahead because they have assumed they have approval? How often is that a problem in states where deemed approval is exercised? Did we just assume that there was going to be a problem and that Western Australia was incapable of resolving it?

Mr T.R. BUSWELL: The advice I have is that it is difficult in all cases to compare what happens in Western Australia with that in other states, because the role of the building surveyor is different; the permit issuing authority here is the local government. It is our view that this gives a fair balance in attempting to reform the building approvals process, and it is an outcome that has been arrived at after what I can assure members has been a long and considered discussion with both local government bodies and housing bodies. As I said, their views are not entirely consistent on this. We think that this strikes a good balance. If members want my views on local government authorities, they should look at what I said at the end of my response to the second reading debate last night. I might not repeat my remarks now because it might just inflame further debate.

Mr M. McGowan: What did you say?

Mr T.R. BUSWELL: Not much, but enough.

Mr M. McGowan interjected.

Mr T.R. BUSWELL: Have a look; it was brief, but succinct.

Mr C.J. Tallentire interjected.

Mr T.R. BUSWELL: I said I would address issues that people had raised in consideration in detail, which is what we are doing. We have a point of difference on the amendment, and the government will not support it.

Mr P. PAPALIA: I take the opportunity to place on record my observation of the timidity with which the government—particularly the minister representing the minister in this place—is approaching this particular issue. It is completely at odds with the public persona that the Liberal Party seeks to cultivate in the media and elsewhere, and particularly with industry representatives. The government has been especially timid in its approach to this amendment proposed by the opposition. Normally, I would have thought that this would provide a wonderful opportunity for the government to advance its purported cause of cutting red tape and speeding up the delivery of housing to Western Australians. It strikes me as absolutely remarkable for this minister and all other members of the government to take this timid path, and to be led around by the nose by advisers or perhaps by vested interests—who knows? It is missing an opportunity to advance a cause that it often purports in the public arena to champion. I am disappointed with the government, but I am very happy to be part of the opposition proposing this amendment.

Dr A.D. BUTI: In one of the minister's responses to the member for Rockingham and the member for Warnbro in not agreeing to the deemed approval provision, he stated that, if a decision was not made, the application could be deemed approved, but the council could decide a day later that it has not approved it. I would have thought that that was not possible, unless the minister is saying that the council has the ability to retrospectively undo something that has been deemed approved.

Mr T.R. Buswell: You are right.

Dr A.D. BUTI: I thank the minister. If I am right, what is the problem?

Mr M. McGOWAN: We will conclude this amendment. Just so members fully understand, I will set out once again that the Labor opposition is proposing a system of deemed approvals. The drafting of this legislation commenced during the term of the former Labor government. I have spoken to the former ministers responsible for this area and they have told me that they are keen to progress the matter in this way. We have moved this amendment so that Liberal Party members can choose to either support or not support less red tape, quicker approvals and cheaper houses for Western Australians.

Mr T.R. BUSWELL: I will clarify one point. I picked up this bill when we came to government. As I understand it, this bill had been given approval to draft. The drafting instructions for this clause, which the former government had approved, have not changed. It is best to put on the public record, member for Rockingham, that, as I recall, and as I have been advised, the drafting instructions that produced this clause did not change following the transition of government.

Amendment put and a division taken with the following result —

Extract from *Hansard*
[ASSEMBLY — Wednesday, 6 April 2011]
p2514a-2529a

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Ayes (18)

Ms L.L. Baker	Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley
Dr A.D. Buti	Mr J.C. Kobelke	Ms M.M. Quirk	Mr P.B. Watson
Mr R.H. Cook	Mr M. McGowan	Mr E.S. Ripper	Mr D.A. Templeman (<i>Teller</i>)
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	
Mr J.N. Hyde	Mr A.P. O’Gorman	Mr C.J. Tallentire	

Noes (22)

Mr P. Abetz	Mr V.A. Catania	Mr A.P. Jacob	Dr M.D. Nahan
Mr F.A. Alban	Mr J.H.D. Day	Dr G.G. Jacobs	Mr D.T. Redman
Mr I.C. Blayney	Mr J.M. Francis	Mr R.F. Johnson	Mr T.K. Waldron
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	Mr A.J. Simpson (<i>Teller</i>)
Mr T.R. Buswell	Dr K.D. Hames	Mr P.T. Miles	
Mr G.M. Castrilli	Mrs L.M. Harvey	Ms A.R. Mitchell	

Pairs

Mrs M.H. Roberts	Mr M.W. Sutherland
Mr M.P. Whitely	Mr C.C. Porter
Mrs C.A. Martin	Dr E. Constable
Mr B.S. Wyatt	Mr J.E. McGrath
Ms R. Saffioti	Mr A. Krsticevic
Mr J.R. Quigley	Mr M.J. Cowper

Amendment thus negatived.

Mr T.R. BUSWELL: I move —

Page 21, line 22 — To delete “subsection (3),” and substitute —
subsection (3) and section 18(2),

This amendment simply makes a reference back to clause 18(2).

Mr M. McGOWAN: I am trying to work out what this means because the minister’s explanation was not very good. What is the practical effect of what the minister is proposing?

Mr T.R. BUSWELL: I understand that the amendment tidies up this clause, and ties clause 23(3) with clause 18(2). Clause 18(2) deals with requests for further information. The advice I have been given is that it basically ties those two together.

Amendment put and passed.

Mr T.R. BUSWELL: I move —

Page 21, line 25 — To delete “(2)” and substitute —
(2), or the time specified under section 18(1),

Again, clause 18 deals with a request for further information. This amendment simply ties the two clauses together. It is very similar to the previous amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 24 to 37 put and passed.

Clause 38: All demolition work to comply with applicable building standards —

Mr T.R. BUSWELL: I move —

Page 32, line 8 — To delete “demolition” and insert—
demolition

This is an amendment that deals with a very complicated issue; that is, the incorrect spelling of the word “demolition”.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 39: Non-application, modification of, building standards —

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr T.R. BUSWELL: I move —

Page 32, line 20 — To delete “specifed” and insert —
specified

Having just dealt with “demolition”, we are now dealing with “specified”. This is basically fixing up another spelling error. We are just addressing the term “specifed” and making it “specified”.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 40 to 58 put and passed.

Clause 59: Time for granting occupancy permit or building approval certificate —

Mr T.R. BUSWELL: I move —

Page 48, lines 6 and 7 — To delete “not later than 14 days after the application is made; or” and substitute —

before the expiration of the period —

- (i) that is prescribed for the purposes of this subsection for that kind of application; and
- (ii) starting on the day after the application is made;

or

This amendment is the same as the matter we dealt with before. Effectively, it is an amendment to prescribe the period provided to building permit authorities for deciding applications for occupancy permits and building approval certificates. Instead of mandating the period in the bill, this amendment gives us the capacity to determine that period through regulation. It is similar to the previous amendment we moved back at clause 23—so, same argument, same clause.

Mr M. McGOWAN: Perhaps I was not paying enough attention, but this amendment appears to me to be similar to the amendment we debated earlier. I think that is what the minister just said.

Mr T.R. Buswell: Yes.

Mr M. McGOWAN: There was a range of amendments in the earlier provision, whereas there does not appear to be on this one. There appears to be only one amendment. I am interested in why there is only one amendment, as opposed to a number of amendments in the earlier clause.

Mr T.R. BUSWELL: My advice is that this is for a certified application for an occupancy permit. Previously we were dealing with certified applications for building or demolition permits and uncertified applications for building or demolition permits. That meant we had to deal with a number of different clauses because the different clauses applied to certified building and demolition permits, and uncertified building and demolition permits. Before we were dealing effectively with four subsets: a certified building permit, a certified demolition permit, an uncertified building permit and an uncertified demolition permit. In this particular case we are simply dealing with certified occupancy permits or building approval certificates.

Amendment put and passed.

Mr T.R. BUSWELL: I move —

Page 48, lines 8 and 9 — To delete the lines and substitute —

- (b) if there is a requirement under section 55(1) that is complied with within the specified time, before the expiration of the period mentioned in paragraph (a)(i) starting on the day after the compliance.

This again is similar to the clause that followed on from clause 23, which dealt with the second period starting at the time at which information is provided, rather than at the expiry of the maximum period of time which is available to provide the information.

Amendment put and passed.

Mr M. McGOWAN: In relation to the amendment I circulated, I move —

Page 48, lines 10 to 24 — To delete the lines and substitute —

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

- (2) If the permit authority has not yet made a decision in the time mentioned in subsection (1), the permit authority is to be taken to have granted or modified the occupancy permit or granted the building approval certificate in accordance with the application.

This is similar to the clause we dealt with earlier about deemed approvals, but this relates to occupancy permits or building approval certificates, which I understand are a little different from the building licences that we were dealing with earlier. This is therefore a different division, if we like, of the legislation and it applies to different permits that councils might be required to decide upon that people undertaking construction work or moving into a property might need to obtain. We are faced with exactly the same issue as we faced before. Are people required to wait while a council dillydallies in making a decision or should we have a system that encourages swift, quick and effective decision making by councils with appropriate appeal mechanisms if an application is refused within that time period? That is the decision that has to be made by the house. The Labor opposition is on the side of swift, effective and quick decision making, not slower and more cumbersome decision making and more red tape. That is the decision that has to be made here. The Minister for Police is on the side of a slower decision-making process for people —

Mr R.F. Johnson: I just wondered whether you'd apply the same rules to the CHOGM bill. That would be great if you did. That is what I was smiling at.

Mr M. McGOWAN: In any event, the house needs to decide whether to support a quicker approval process for ordinary families attempting to obtain these approvals so they can build a house to raise their children and bring up their families in happiness and harmony. We on the Labor benches are on the side of happiness, harmony, housing and less red tape so that the ordinary mum and dad battlers out there in our community can get into their homes, enjoy their televisions and enjoy all that comes with that happy life that Western Australia offers to people. Their children can play in the backyard: they can swing on the swings and they can play with the dog. They can do all these things under us, yet they will be delayed in enjoying all those simple pleasures of life by the Liberal government if it refuses to back this amendment. That is what we are dealing with here—the health and happiness of ordinary citizens. We are on the side of families. We are on the side of people. We are on the side of ordinary Western Australians. The Liberals are on the side of slower development and less happiness for ordinary Western Australians. Let that be on the record.

Mr T.R. BUSWELL: I am struggling to lift myself off the canvas after that withering attack. I understand that the member for Rockingham's amendment to this clause will mean that householders can move into their houses quicker, that families can enjoy a run in the backyard in a more timely way and that they can enjoy the company of their dog and all those wonderful things. That would be true if this clause applied to residential dwellings, but it does not.

Mr M. McGowan: I was talking about the other clause!

Mr T.R. BUSWELL: I am sorry; I overlooked that. I understand that occupancy permits are required for only commercial buildings.

Mr M. McGowan: This relates to a building approval certificate as well.

Mr T.R. BUSWELL: People do not need one of those to move in, unfortunately. They are a retrospective approval. Notwithstanding that, I think the argument that the member for Rockingham put was fantastic. However, it does not quite get us over the line to support the amendments.

Mr M. McGowan: What do these deal with?

Mr T.R. BUSWELL: Occupancy permits are required before one can occupy a commercial building. A building approval certificate is needed if one needs retrospective approval for unauthorised building work.

Mr M. McGowan: Do any of these commercial buildings have housing attached to them?

Mr T.R. BUSWELL: Some may.

Mr M. McGowan: There might be a backyard.

Mr T.R. BUSWELL: It would be a multistorey building. If someone sends Lassie the labrador out to the backyard, they will hear a dull thud as Lassie is turned into a labrador pancake in the car park below.

Dr A.D. Buti: Where in the clause does it say it is exclusively for commercial use?

Mr T.R. BUSWELL: We deal with occupancy permits a bit later in the bill—in part 5.

Dr A.D. Buti: That provision does not give you any indication of that.

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

Mr T.R. BUSWELL: The member should hang on; he should cool his jets and not go into orbit. Part 5 deals with circumstances in which building, demolition or occupancy permits are not required. The specific section that deals with occupancy permits is clause 66(5), which states —

The regulations may provide that an occupancy permit is not required for a building of a kind specified by the regulations.

My understanding is that they are not required at the moment, and they certainly will not be required in the future.

Mr M. McGOWAN: Just so that I get it straight, we are dealing with occupancy permits or building approval certificates. I understand that the occupancy permit can be for commercial premises that might have some sort of residential dwelling attached.

Ms J.M. Freeman: Set out by regulations.

Mr M. McGOWAN: I am not sure. In any event, we are dealing with two different things—an occupancy permit and a building approval certificate. Forgive my ignorance on what the building approval certificate relates to, but does it have the capacity to relate to a dwelling in any shape or form? Does this have the capacity to slow down the approval for a dwelling in any shape or form if it is a strata development? Earlier in this division it refers to them being part of strata developments. As we know, strata developments are most likely to be residential dwellings. I am interested in what the building approval certificate applies to—dwellings or other premises?

Dr A.D. BUTI: Just by way of clarification, the minister referred us to clause 66(5) as it relates to occupancy permits. Clause 66(1) has the same wording for a building permit.

Mr T.R. BUSWELL: How about we deal with that when we get to clause 66? The advice I have is that occupancy permits are required for commercial premises and building approval certificates are not required but are available for houses when someone wants to ensure that the building is certified to comply with applicable building standards.

Mr M. McGOWAN: Was I correct when I spoke before about the health and happiness of ordinary families obtaining a dwelling?

Mr T.R. Buswell: No, because building approval certificates are not necessarily required prior to someone occupying a property. Therefore, people can still have enjoyment of their property.

Mr M. McGOWAN: Is that prior to obtaining a building approval certificate?

Mr T.R. Buswell: Yes.

Mr M. McGOWAN: But if one is not obtained, it is possible to lose enjoyment of the property; is that correct?

Mr T.R. Buswell: No, that is not an offence.

Mr M. McGOWAN: What is the point of a building approval certificate then?

Mr T.R. Buswell: If someone has built without proper building approval, that person can retrospectively have the building approved by requesting a building approval certificate, which is the current process.

Mr M. McGOWAN: Therefore, it can apply to a residential dwelling. If the retrospective approval is not obtained, I suspect there is some provision in the bill for an authority or council, at some point in time, to do something to that building; otherwise, why is the building certificate approval needed?

Mr T.R. Buswell: That is correct.

Mr M. McGOWAN: Therefore, it can be the case that the health and happiness of an ordinary family occupying their house and their yard, with their dog and their children, can be impacted by this clause. I reiterate that the Labor Party is on the side of families occupying their houses and, hopefully, having less red tape applied to the continued operation of their dwelling. That is what this amendment is about. Although I set out all the arguments before for a deemed approval provision, this amendment is merely a reiteration of those previous arguments and also applies to some commercial dwellings. I might add that I have a lot of sympathy for people building commercial dwellings—they take a risk, they go out there, they put their money out there and they hope it all comes off. We want to cut red tape for them as well. We are on the side of cutting red tape for people setting up small businesses and for householders who want to continue to occupy their houses into the future. Therefore, this amendment stands on that basis. We will proceed with it. The question of whether to support small business people and householders being able to occupy their premises is now in the hands of the Liberal Party. I do not

Extract from *Hansard*
[ASSEMBLY — Wednesday, 6 April 2011]
p2514a-2529a

Mr Troy Buswell; Ms Janine Freeman; Mr Mark McGowan; Dr Tony Buti; Acting Speaker; Mr John Hyde; Mr Paul Papalia

intend to speak on this amendment anymore unless the minister stands up and contradicts me. We are, once again, on the side of less red tape for people who want to get on and build something.

Amendment put and a division taken with the following result —

Ayes (15)

Ms L.L. Baker
Dr A.D. Buti
Mr R.H. Cook
Mr W.J. Johnston

Mr J.C. Kobelke
Mr M. McGowan
Mr M.P. Murray
Mr A.P. O’Gorman

Mr P. Papalia
Ms M.M. Quirk
Mr T.G. Stephens
Mr C.J. Tallentire

Mr P.C. Tinley
Mr P.B. Watson
Ms J.M. Freeman (*Teller*)

Noes (22)

Mr P. Abetz
Mr F.A. Alban
Mr I.C. Blayney
Mr I.M. Britza
Mr T.R. Buswell
Mr G.M. Castrilli

Mr V.A. Catania
Mr J.H.D. Day
Mr J.M. Francis
Mr B.J. Grylls
Dr K.D. Hames
Mrs L.M. Harvey

Mr A.P. Jacob
Dr G.G. Jacobs
Mr R.F. Johnson
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell

Dr M.D. Nahan
Mr D.T. Redman
Mr T.K. Waldron
Mr A.J. Simpson (*Teller*)

Pairs

Mrs M.H. Roberts
Mr M.P. Whitely
Mrs C.A. Martin
Mr B.S. Wyatt
Ms R. Saffioti
Mr J.R. Quigley
Mr D.A. Templeman
Mr J.J.M. Bowler

Mr M.W. Sutherland
Mr C.C. Porter
Dr E. Constable
Mr J.E. McGrath
Mr A. Krsticevic
Mr M.J. Cowper
Mr C.J. Barnett
Mr G.A. Woodhams

Amendment thus negated.

Debate adjourned, on motion by **Mr R.F. Johnson (Leader of the House)**.