

Environmental Planning and Assessment Amendment (Quality of Construction) Bill.

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ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (QUALITY OF CONSTRUCTION) BILL

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Bill introduced and read a first time.

Second Reading

Ms DIANE BEAMER (Mulgoa—Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)) [12.21 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment (Quality of Construction) Bill. This bill is important legislation relating to building quality. In March 2002 the Deputy Premier and then Minister for Planning, the Hon. Dr Andrew Refshauge, announced that the State Government had set up a joint select parliamentary committee, known as the Campbell committee, to look into the quality of buildings in New South Wales. The select committee looked at the role that building certifiers should play in ensuring the quality of workmanship in home building across the State. It examined what checks and balances there should be to ensure that consumers are protected and that their homes are safe, properly certified and built to an appropriate standard. The examination also covered options for improving the system of builder licensing. The legislative reforms proposed in this bill are reflective of the recommendations of the Campbell committee.

In July 2002 the Campbell committee released its recommendations on the changes it considered necessary to make the home building industry more responsive to the needs of consumers. In all, there were 55 recommendations relating to certification, licensing, dispute resolution, consumer education, building contracts, building standards and structural change. The select committee identified key challenges for home building in New South Wales. The first key challenge was to improve the structure of the system so that it would be more efficient, less complex and costly, and better understood by both builders and consumers. The second key challenge was to focus attention at the point at which homes are actually being built, with locally based building inspectors intervening when things go wrong. The third key challenge was to streamline co-ordination between government regulatory bodies with roles in overseeing home building, so that key functions are no longer fragmented.

The New South Wales Government has responded to the committee's recommendations by introducing measures designed to improve the quality of buildings, particularly residential buildings, and the accountability of the people who build and certify them. The Building Legislation Amendment (Quality of Construction) Act 2002, which was assented to on 18 December 2002, is one of these measures. It includes a wide range of provisions related to improving the quality of buildings in New South Wales. The Environmental Planning and Assessment Amendment (Quality of Construction) Bill will carry over provisions from the Building Legislation Amendment (Quality of Construction) Act, with some changes and introduce some new provisions.

Schedule 1 of the Building Legislation Amendment (Quality of Construction) Act makes changes to the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, which are administered by the Department of Infrastructure, Planning and Natural Resources [DIPNR], to make them work better, particularly in relation to the certification of building work and other development under part 4A of the Act. A small number of the provisions in schedule 1 of the Building Legislation Amendment (Quality of Construction) Act commenced in February 2003. However, the remainder of the provisions in this schedule did not commence because a number of the provisions required further refinement. The provisions of the Building Legislation Amendment (Quality of Construction) Act 2002 that amend the Environmental

Planning and Assessment Act and Regulation, which commenced in February 2003, primarily relate to technical and administrative matters, and amendments to the penalty infringement notice regime.

They include provisions that give principal certifying authorities [PCAs] power of entry to land on which they have been appointed to oversee building work or subdivision work, introduce a new penalty of \$1,500 for failing to comply with an order by council requiring a person to comply with a development consent, give power for DIPNR departmental auditors to be authorised to issue a new \$600 penalty on certifiers who fail to lodge copies of certificates that they have issued with the relevant council, introduce new cumulative penalty infringement notices relating to fire safety, allow an application to modify a development consent granted by the court to be submitted to the consent authority, rather than the council, clarify that requirements of the Environmental Planning and Assessment Act and Regulation continue to apply even after the time in which they were meant to be complied with has passed, and clarify that for every offence against the Regulation, a person is liable for the amount set down in the regulation, or where no amount is set, for a maximum penalty of 1,000 penalty units, that is, \$110,000.

Schedule 2 of the Building Legislation Amendment (Quality of Construction) Act makes amendments to the Home Building Act and Regulation. Most of the provisions relating to home building have commenced. The major initiatives now in place as a result of those amendments include a new dispute resolution process that has been in place since 1 July 2003 to help consumers and traders resolve residential building disputes. Where appropriate, the dispute can be referred to a building inspector or the parties advised of other avenues of resolution, such as an application to the Consumer, Trader and Tenancy Tribunal. Building inspectors can meet the consumer and trader on site, inspect the items in dispute, and assist the parties to achieve a suitable outcome.

An on-line register has been established where consumers can check whether their preferred contractor is correctly licensed before they actually sign the contract. A Standards and Tolerances Guide for building work has been produced to help ensure both consumers and traders know with certainty the quality standards that need to be met in cases where standards are not prescribed in the Home Building Act, the Building Code of Australia or the Australian Standards. Although the provisions relating to a home building advisory and advocacy service have not commenced, the Office of Fair Trading has established a Home Building Service to take responsibility for the licensing and regulation of builders and tradespeople in the home building industry and specialist contractors across all industries.

The Office of Fair Trading is currently reviewing the remaining uncommenced provisions of schedule 2, which are not affected by the new Environmental Planning and Assessment Amendment (Quality of Construction) Bill. It is anticipated that the uncommenced provisions of schedule 2 of the Building Legislation Amendment (Quality of Construction) Act will commence shortly, once the necessary regulations have been made. Schedule 3 of the Building Legislation Amendment (Quality of Construction) Act makes amendments to the Conveyancing Act. These amendments commenced on 1 July 2003 and have the effect of preventing vendors from completing the settlement of a contract for the purchase of a strata lot, a proposed strata lot, or a Torrens title lot that includes the future construction of a dwelling-house or a newly constructed dwelling-house until an occupation certificate has been provided to the purchaser.

Because a decision was made not to commence the remaining provisions of the Building Legislation Amendment (Quality of Construction) Act that amend the Environmental Planning and Assessment Act and Regulation on 1 July 2003, government approval for further amendments to the Act and Regulation was sought and granted. While most of the uncommenced provisions have been revisited, not all have been amended. However, both the revised and unrevised provisions have been included in the new bill for administrative convenience. The Department of Infrastructure, Planning and Natural Resources has revised some other provisions of the Building Legislation Amendment (Quality of Construction) Act after undertaking further consultation. Some of this consultation was undertaken in the form of 14 information forums that the Department of Infrastructure, Planning and Natural Resources held for stakeholders, including councils and certifiers, across the State during September and October 2003.

Stakeholders invited to the September and October 2003 development assessment and certification forums of the Department of Infrastructure, Planning and Natural Resources included all councils across New South Wales, the four New South Wales accreditation bodies, all accredited certifiers, the Australian Institute of Building Surveyors—which did a mail-out of invitations to all its members—the Housing Industry Association of Australia, the Master Builders Association and the Upper Parramatta Catchment Management Trust. A number of developers, lawyers and academics also attended. It should be noted that the 14 sessions held across the

State for external stakeholders were attended by a total of approximately 800 people. The venues for these forums were Sydney, with five venues, one for each of the sessions, Parramatta, Wollongong, Newcastle, Port Macquarie, Ballina, Queanbeyan, Wagga Wagga, Dubbo and Tamworth.

The feedback obtained from participants at these forums has helped the department to understand the development and building issues that councils and private certifiers are dealing with, and has informed finalisation of the provisions of the bill. The main purpose of amending some of the uncommenced provisions of the Building Legislation Amendment (Quality of Construction) Act, in so far as they relate to the Environmental Planning and Assessment Act and Regulation, is to make the provisions as clear and as easy to interpret as is possible. Amendments have also been made to create linkages between the roles and responsibilities of certifiers, builders and councils so that each is aware of the other party's role, and to better define terms whose interpretation has proved problematic.

The Environmental Planning and Assessment Amendment (Quality of Construction) Bill amends the Environmental Planning and Assessment Act and the Environmental Planning and Assessment Regulation to improve the way that both councils and private accredited certifiers approve plans for buildings and subdivision, and inspect buildings that are under construction. The uncommenced provisions of the Building Legislation Amendment (Quality of Construction) Act that have been transferred across to the Environmental Planning and Assessment Amendment (Quality of Construction) Bill include provisions that will make it an offence for a person to influence an accredited certifier and for an accredited certifier to seek or accept any benefit by introducing new penalties of 10,000 penalty units, which is \$1.1 million, or two years imprisonment, or both. The provisions for the improper influence of certifiers establish two penalties—one for persons found guilty of trying to influence a certifier and one for certifiers who allow themselves to be influenced.

The transferred uncommenced provisions will also give the departmental auditors of the Department of Infrastructure, Planning and Natural Resources the authority to audit councils acting as certifying authorities, in addition to accredited certifiers, and will require a principal certifying authority to be appointed, and council to be informed of the appointment, prior to work commencing; require occupation certificates for single dwelling houses and associated structures, such as sheds, garages and swimming pools, and introducing penalties of 5 penalty units, which is \$550, for not obtaining an occupation certificate before occupying or using these buildings. The maximum penalty for occupying a building, apart from a dwelling house, without an occupation certificate, will be increased to \$110,000.

The provisions also increase the penalty for unsatisfactory professional conduct or professional misconduct by an accredited certifier from 300 to 1,000 penalty units, or from \$33,000 to \$110,000, and allow a certifier, other than the principal certifying authority, to issue compliance certificates on particular components of a development if they were involved in the preparation of plans and specifications for those components of a development. This reflects current industry practice whereby building designers inspect a building during its construction to ensure that it meets their design. The provisions also allow proceedings for offences under the Act to be commenced up to two years after the offence was alleged to have been committed, rather than up to six months after the alleged offence as is currently the case and require the principal certifying authority for residential building work to notify the council of the details of the head contractor's licence and insurance, or the details of the owner builder's permit, as the case may be.

The provisions also require a replacement principal certifying authority to notify the consent authority and the council, if it is not the consent authority, of their appointment within two days of the appointment and set the procedure for replacing a principal certifying authority with another principal certifying authority. As part of this bill, the provisions of the Local Government Act that have allowed councils to continue to accept self-certification will no longer be saved under the Environmental Planning and Assessment Act. Other provisions have been amended to achieve the introduction of mandatory critical stage inspections for each class of building and require records of inspections to be kept by the principal certifying authority for at least 15 years. Certifying authorities will be required to inspect buildings at certain critical stages of construction, such as commencement, framework, stormwater and completion, prior to the issue of an occupation certificate.

The amended provisions will also clearly define roles and responsibilities during the construction process, particularly the responsibilities of the person with the benefit of the development consent, the role and responsibilities of the principal certifying authority, and some responsibilities for the head contractor or owner-builder. Principal certifying authorities must satisfy themselves that the relevant conditions of development consents have been complied with and be satisfied that the buildings being constructed are the same buildings as those approved in the plans. To

improve the functions of certifying authorities, the role of the principal certifying authority will be defined. This will ensure that there is no confusion between accredited certifiers and councils over who is responsible for a development site during construction. The principal certifying authority will need to be satisfied that the building or subdivision work has been approved, that the head contractor is licensed and insured, or that an owner-builder permit has been obtained.

The principal certifying authority will also need to be satisfied that the building is inspected at critical stages, that the finished building is the same as the approved plans, that an occupation certificate is issued for the building after the relevant conditions of consent have been complied with, and that the building is suitable for occupation in accordance with its class under the Building Code of Australia. The amended provisions specify that the builder may not appoint the principal certifying authority, unless the builder is also the landowner. This will reinforce the responsibility of the principal certifying authority to act in the public interest. This change addresses a concern of the Campbell committee that conflicts of interest can exist between builders and certifiers. The amended provisions also require signs to be placed on development sites showing the name and contact details for the principal certifying authority and head contractor, which will enable easy contact for people who wish to raise concerns about anything that is occurring on a development site.

The amended provisions will also make it clear that a notice of determination of a development application, an application for modification of a development consent, or an application for a complying development certificate must include a copy of any plans endorsed by the consent authority. This will prevent confusion and possible mistakes being made with council, the builder and the certifying authority relying on different sets of plans for the same development, and will require the classification of the building to appear on the construction certificate rather than on the development consent, except in cases where there will be no construction certificate. New provisions include those that require the principal certifying authority to notify the person with the benefit of the consent of the inspections, including any mandatory critical stage inspections required during construction, and for the person with the benefit of the consent to notify the head contractor of those inspections. They will also require the head contractor or owner-builder to give the principal certifying authority at least 48 hours notice before an inspection is required to ensure that the inspections are carried out at the right time, and that an occupation certificate will be able to be issued when the development is complete.

The new provisions will also give accreditation bodies power to place conditions on a certifier's accreditation; allow complaints to be made about, and action to be taken against, accredited certifiers who continue to do the work of an accredited certifier after their accreditation has lapsed; clearly define the difference between interim and final occupation certificates; allow an applicant for a construction certificate to withdraw the application at any time before it is determined; and allow councils to reject development applications within seven days if they do not contain the information required by schedule 1 of the Environmental Planning and Assessment Amendment Regulation 2000. This will help to alleviate the problems that consent authorities experience in having to seek further information from applicants.

Together, the commenced provisions of the Building Legislation Amendment (Quality of Construction) Act that amend the Environmental Planning and Assessment Act and Regulation and the provisions of the bill will ensure that the role of certifying authorities are defined and the powers of the Director General of Planning are increased to allow better investigation of the conduct of accredited certifiers and councils. The link between the certification process and the development consent will be strengthened by augmenting the provisions that require the principal certifying authority to be appointed before the subdivision work or building work may start. The Director General of Planning will be able to take swift action against certifiers who do not meet their obligations. The director general will be able to suspend a certifier where there is sufficient evidence of improper conduct and where the matter has been referred to the Administrative Decisions Tribunal.

The director general has the power to fine certifiers who do not send documentation to councils within the specified times. In addition, the Department of Infrastructure, Planning and Natural Resources will have the power to audit certifiers and councils, which will help to create a more level playing field. The controls in relation to the construction certificates and occupation certificates will also be improved. The requirements for issuing occupation certificates will be more strongly linked to the requirements of the development consent. These amendments will contribute towards improvements in building construction quality through managing the certification and construction process and making both councils and accredited certifiers more accountable.

The Department of Infrastructure, Planning and Natural Resources is also developing proposals

to implement other actions to address the recommendations of the Campbell inquiry. These recommendations include the establishment of a Building Professionals Board [BPB] to take over the role of accrediting and auditing certifiers who are currently accredited under four separate schemes administered by the relevant professional associations. It is anticipated that the BPB will be in existence to undertake some administrative functions from 1 January 2004. Together, the Environmental Planning and Assessment Amendment (Quality of Construction) Bill and the other initiatives that I have outlined today capture the essence of many of the recommendations of the Campbell inquiry and will improve the development and building certification systems in New South Wales for the benefit of consumers and other stakeholders. I commend the bill to the House.

Debate adjourned on motion by Ms Seaton.

Subjects: [Planning and Development](#); [Building Industry](#); [Safety and Standards](#).

Speakers: [Beamer, Ms Diane](#).

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