



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

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [6.17 p.m.]:
I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

Introduction

I am pleased to introduce the Environmental Planning and Assessment Amendment (Quality of Construction) Bill 2003 into the House today. This Bill puts forward important legislation relating to building quality. In March of 2002, the Deputy Premier and then Minister for Planning (the Honourable Dr Andrew Refshauge MP) 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.

The Campbell Committee Recommendations

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 Building Legislation Amendment (Quality of Construction) Act 2002

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 (the BLA Act), 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 NSW. The Environmental Planning and Assessment Amendment (Quality of Construction) Bill 2003 will carry over provisions from the BLA Act, with some changes, and introduce some new provisions.

Schedule 1 of the BLA 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 BLA 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, that commenced in February 2003, primarily relate to technical and administrative matters, and amendments to the penalty infringement notice regime and 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 \$1500 for failing to comply with an order by council requiring a person to comply with a development consent;
- give power for DIPNR's 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 EP&A 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 1000 penalty units (\$110,000).

Schedule 2 of the BLA 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 if 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.

While 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 BLA Act will commence shortly, once the necessary Regulations have been made.

Schedule 3 of the BLA 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.

The Environmental Planning and Assessment Amendment (Quality of Construction) Bill 2003

Because a decision was made not to commence the remaining provisions of the BLA 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 un-commenced 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.

DIPNR has revised some other provisions of the BLA Act after undertaking further consultation. Some of this consultation was undertaken in the form of fourteen information forums that DIPNR held for stakeholders, including councils and certifiers, across the State during September and October 2003.

Stakeholders invited to DIPNR'S September/October 2003 development assessment and certification forums

All NSW Councils
 The four NSW Accreditation Bodies
 All accredited certifiers
 Australian Institute of Building Surveyors (which did a mail-out of invitations to all its members)
 Housing Industry Association of Australia
 Master Builders Association
 Upper Parramatta Catchment Management Trust
 A number of developers, lawyers and academics also attended.

It should be noted that the 14 sessions were held across the State for external stakeholders were attended by a total of around 800 people. (Sydney (5 sessions), Parramatta, Wollongong, Newcastle, Port Macquarie, Ballina, Queanbeyan, Wagga Wagga, Dubbo and Tamworth). The venues for the forums were Sydney (5 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 inform finalisation of the provisions of the Bill.

The main purpose of amending some of the uncommenced provisions of the BLA Act (in so far as they relate to the Environmental Planning and Assessment Act and Regulation), is to make the provisions as clear and easy to interpret as 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 2003 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 BLA 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 (\$1.1 million) or two years imprisonment or both, for the improper influence of certifiers – one for persons found guilty of trying to influence a certifier and one for certifiers who allow themselves to be influenced;
- give DIPNR's Departmental Auditors the authority to audit councils acting as certifying authorities, in addition to accredited certifiers;
- require a PCA 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 (\$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.
- increase the penalty for unsatisfactory professional conduct or professional misconduct by an accredited certifier from 300 to 1000 penalty units (from \$33,000 to \$110,000);
- allow a certifier (other than the PCA) 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 where building designers inspect a building during its construction to ensure that it meets their design.
- allow proceedings for offences under the Act to be commenced up to two years after the offence was alleged to be committed, rather than up to six months after the alleged offence as is currently the case;
- require the PCA 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;
- require a replacement PCA to notify the consent authority (and the council if it is not the consent authority) of their appointment within 2 days of the appointment;
- set the procedure for replacing a PCA with another PCA;
- 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 following effects:

- introduce mandatory critical stage inspections for each class of building and require records of inspections to be kept by the PCA 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;
- 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 PCA, and some responsibilities for the head contractor or owner-builder - PCAs 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 PCA 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 PCA 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, that the building is inspected at critical stages, that the finished building is the same as the approved plans, and that an occupation certificate is issued for the building after the relevant conditions of consent have been complied with, and if the building is suitable for occupation in accordance with its class under the Building Code of Australia;
- specify that the builder may not appoint the PCA, unless the builder is also the land owner – this will reinforce the responsibility of the PCA 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;

- require signs to be placed on development sites showing the name and contact details for the PCA and head contractor, which will enable easy contact for people who wish to raise concerns about anything that is occurring on a development site;
- 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
- require the classification of the building to appear on the construction certificate rather than 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;
- require the head contractor or owner builder to give the PCA 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.
- give accreditation bodies power to place conditions on a certifier's accreditation;
- allow complaints to be made, 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 7 days if they do not contain the information required by Schedule 1 of the EP&A Regulation 2000. This will help to alleviate the problems that consent authorities experience in having to seek further information from applicants.

Concluding Comments

Together, the commenced provisions of the BLA Act that amend the Environmental Planning and Assessment Act and Regulation, and the provisions of the new 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 PCA 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, DIPNR will have the power to audit certifiers and councils, which will help to create a more level playing field.

The controls in relation to 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.

DIPNR 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 (the 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 2003 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 NSW for the benefit of consumers and other stakeholders. I therefore commend the Bill to the House.

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