



Legislative Assembly

Building Legislation Amendment (Quality Of Construction) Bill

13/11/2002

Hansard Extract

Second Reading

Mr AQUILINA (Riverstone—Minister for Land and Water Conservation, and Minister for Fair Trading), on behalf of Dr Refshauge [9.42 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce this important consumer protection legislation into the House today. In March of this year the Deputy Premier announced that the State Government had set up a joint parliamentary inquiry to look into the quality of buildings in New South Wales. The select committee was to look at the role that building certifiers should or should not be playing in ensuring the quality of workmanship in buildings across the State. It would examine what checks and balances exist to ensure that consumers are protected and that their homes are safe, properly certified and built to an appropriate standard. This was also to include examining the builders licensing scheme.

In July 2002 the joint select 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 was to improve its structure so that it would be more efficient, less complex and costly, and better understood by both builders and consumers. In recent years improvements in home building have focused on resolving problems occurring at the end of the building process, and therefore often too late and burdensome on all parties.

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. Concerns have been expressed about the present system being too centralised, with all disputes referred to the Building Conciliation Service branch of the Consumer, Trader and Tenancy Tribunal, which is based in Sydney. The third key challenge is to streamline co-ordination between government regulatory bodies involved in home building so that key functions are no longer fragmented. A need has been identified for the development of formal protocols for information sharing or regular liaison between bodies such as the Department of Fair Trading, PlanningNSW, the Department of Public Works and Services, and the Department of Local Government.

The New South Wales Government has responded to the committee's recommendations by introducing measures designed to improve the quality of residential buildings and the qualifications of people who build and certify them. These measures include both structural and legislative changes. The structural changes that have been announced do not form part of the bill. However, they are a key component of the reform package. A separate Office of Home Building within the Fair Trading portfolio, with regionalised service delivery and resources allocated on the basis of business activity, will be established. The Office of Home Building will be the main contact for builders, consumers and the industry on residential building matters falling within the Fair Trading portfolio.

A building professionals board is to be established. This will act as a single accreditation and registration body to register certifiers and design professionals. It will be similar to the existing Architects Registration Board. The board's establishment will be staged so that the four existing accreditation bodies are brought together, with council certifiers and lastly the building designers, such as draftspersons and designing engineers. The board and its members will report to the Minister for Planning. A building co-ordination committee will be established. The committee will remove duplication and improve co-ordination across the key government agencies—the Office of Home Building, the Department of Fair Trading, PlanningNSW, Public Works and Services, and the Department of Local Government—by identifying problem areas and focusing resources, providing a co-ordinated approach to problems in building quality, integrating and streamlining the building process from initial certification through to completion of construction, and developing protocols for the exchange of information between agencies.

The legislative reforms proposed in this bill also reflect the committee's recommendations. Dispute resolution functions will be focused on the building site, and will benefit consumers and builders with a timely, less costly and more personal service. When a dispute cannot be resolved in this way, it will be referred to a regionally based building inspector for on-site mediation between the parties. In the event that a mutually satisfactory resolution cannot be negotiated, the inspector will be empowered to make a rectification order against the builder, with the parties able to appeal decisions to the Consumer, Trader and Tenancy Tribunal. This will lead to more work

being rectified and reduce the demand on the tribunal.

A regionalised approach to enforcement will mean that building inspectors will be able to deal with routine enforcement matters in local regional areas, that inspectors based at regional offices will play a key role in resolving disputes and detecting breaches of the Home Building Act, and that the building investigation and inspections branch of the Office of Home Building will concentrate on major investigations and more targeted inspection programs. Obtaining and using expert advice will be simpler, cutting costs for consumers. The Consumer, Trader and Tenancy Tribunal will be able to accredit experts to report jointly to the parties in dispute. The expert report and the Office of Home Building inspector's report will be the only reports used unless the tribunal determines otherwise. This will help to cut costs in tribunal hearings. The Director-General of Planning will be able to take swift action against certifiers by being given the power to suspend accredited certifiers and to issue fines when they do not meet their obligations under the Act.

It will also become an offence for developers to improperly influence the decisions of accredited certifiers. Councils will no longer be able to rely on self-certification by building practitioners under the Local Government Act. A compliance certificate under the Environmental Planning and Assessment Act will now be required. The link between the certification process and the development consent will be strengthened by making it harder to start work without approval or without a certifier, linking the development consent to the occupation certificate and preventing transfer of title on new flats and house and land packages prior to the issue of an occupation certificate. The roles and responsibilities of certifiers will be clarified so that they must be appointed by the landowner and not the builder, they must inspect buildings at certain stages, such as framework and completion, they must take responsibility for enforcing development consents and they must ensure the building is the same building approved in the plans.

Consumers will have more control over who certifies their buildings because they, not the builder, will appoint the certifier. On-the-spot fines will be increased and additional penalties will apply for breaches of consents and fire safety requirements. The building licensing regime will be tightened. Builders will have to undertake a financial test to be licensed. Other reforms to licensing are already being implemented. Licensees will have to undertake mandatory continuing education in order to renew their licences. New criteria for the ratio of supervisors in large building companies will be established. Penalties for breaches will be increased. Building contracts will be made fairer. New prescribed standard conditions will be implemented. Work will have to conform to the Building Code of Australia and relevant standards. The final 5 per cent of the contract price will not be paid until the work meets the requirements for the occupation certificate. A pilot consumer advice and advocacy service will be established for building consumers, including information, advice, casework and advocacy. If the pilot is successful, consideration will be given to extending it on a statewide basis.

I now turn to the provisions of the bill. The bill will amend the Environmental Planning and Assessment Act and the Environmental Planning and Assessment Regulation to improve the way councils and accredited certifiers approve building plans and inspect buildings under construction. The role of certifying authorities will be defined and the powers of the Director-General of Planning will be increased to allow better investigation of the conduct of accredited certifiers and councils. The controls in relation to construction certificates and occupation certificates will also be improved. These amendments will contribute towards improvements in building construction quality through managing the certification and construction process. To improve the functions of certifying authorities, the role of the principal certifying authority, or the PCA, will be defined. This will ensure there is no confusion between accredited certifiers and council over who is responsible for a building during construction. The PCA will be responsible for ensuring that the building work has been approved, the builder is licensed and insured or that an owner builder permit has been obtained, the building is inspected at critical phases and the finished building is the same as the approved plans.

The bill will ensure that the same person who approves the plans for a building also approves any changes to those plans. The powers of the Director-General of Planning when investigating accredited certifiers will be made stronger. The bill will amend the Act to allow the director-general to suspend an accredited certifier where there is sufficient evidence that the certifier has acted improperly. The director-general will also be given powers to issue penalties to accredited certifiers who do not meet their obligations under the Act to send documentation to councils on time. The departmental auditors will be given power to audit the work of councils, as well as accredited certifiers. This will provide a consistent approach for all people who are certifying our buildings. This will ensure a level playing field, and provide the public with a level of confidence that councils and accredited certifiers are meeting the requirements of the legislation.

Accredited certifiers are controlled by both the Independent Commission Against Corruption Act and the Ombudsman Act. This ensures they are treated in an equivalent manner to council staff in relation to their conduct. However, they are not subject to the provisions of the Crimes Act in the same manner as council staff in relation to issue of improper influence, such as seeking or accepting benefits. The bill will introduce provisions that will make it an offence to influence an accredited certifier and for an accredited certifier to seek or accept any benefit. The maximum penalty for this offence will be the existing maximum penalty under the Act, being \$1.1 million with the option of two years imprisonment.

It is common for a person who designs a building, or part of a building, to later come back and inspect the building to ensure that it meets their design. The strict conflict of interest provisions introduced in 1998 to prevent self-certification by non-accredited practitioners have prevented this type of inspection from occurring. The Government believes that the most appropriate person to inspect a building they have designed is the designer. Therefore the Act will be amended to allow this inspection to occur and not breach the conflict of interest provisions,

so long as another certifier or the council has approved the plans and is acting as the 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. This amendment will ensure that certifying authorities seek compliance certificates under the Environmental Planning and Assessment Act, which ensures that the qualifications of the person issuing the certificate are adequate and that the person holds appropriate insurance. Many residential buildings are not presently required to have an occupation certificate before they can be occupied. The bill will amend the Act to ensure that all buildings, including dwelling houses, must have an occupation certificate. The maximum penalty for occupying a building, apart from a dwelling house, without an occupation certificate will be increased to \$110,000.

The bill will also amend the Conveyancing (Sale of Land) Regulation to ensure that new strata units and house and land packages cannot proceed to settlement unless an occupation certificate has been provided for the building. These amendments will introduce significant improvements which will make accredited certifiers and councils more accountable, give the public more certainty as to how buildings will be approved and constructed, and ensure the quality of buildings in New South Wales are of the highest standard.

The Home Building Act is to be amended to require the Director-General of the Department of Fair Trading to reject an application for a licence, or for the renewal of a licence, unless satisfied that the applicant meets standards of financial solvency set by the director-general. The director-general's decision as to such standards is not reviewable. The standards will be established following consultation with industry and the home warranty insurers. The introduction of solvency standards will tighten the licensing system by ensuring that only financially sound contractors can obtain and retain a licence.

The bill introduces a new process for the resolution of disputes. Building disputes will be notified to the Office of Home Building. If the matter cannot be resolved informally it may be referred to an inspector. The inspector will visit the site and conduct an investigation. After completing the investigation the inspector must prepare a written report and provide copies to the consumer and contractor. If the inspector is satisfied that the work is defective or incomplete, the inspector may issue a rectification order. The order may specify conditions, including the payment of money, to be complied with by the consumer. It will specify the date by which the order must be complied with. Failure to comply with a rectification order without reasonable cause will be a ground for taking disciplinary action against the contractor.

If either the contractor or consumer lodges a building claim with the Consumer, Trader and Tenancy Tribunal within the period of compliance given in the rectification order, then disciplinary action cannot be taken. This process enables the contractor or consumer to appeal against the inspector's assessment of the complaint. If a building claim is lodged by the contractor during the period of compliance and is later withdrawn, the tribunal may restore the rectification order. The new dispute resolution process within the Office of Home Building is intended to be the first step in dealing with all home building disputes. The registrar of the tribunal must not accept a building claim unless satisfied the process has been followed or unless the chairperson directs the building claim to be accepted.

In determining a building claim the tribunal may have regard to the inspector's report. An inspector may be called to give evidence in the proceedings only by the tribunal, although nothing prevents a party from cross-examining the inspector. The tribunal may appoint an independent expert from a panel of experts approved by the chairperson to advise the tribunal. In proceedings where such an independent expert has been appointed, no party may call any other expert to give evidence or tender any report prepared by another expert, except by leave of the tribunal. Subject to any order of the tribunal, the costs of an independent expert appointed by the tribunal are to be shared by the parties. The bill clarifies the Act to ensure that disciplinary action may be taken against members of partnerships or officers of corporations that hold or held a building licence. This will help to eliminate phoenix company activity and to prevent traders defeating disciplinary action by taking out licences under different corporate entities.

The bill makes amendments to the Home Building Regulation in relation to building contracts. New schedule 3A specifies conditions that must be included in building contracts. All work done will have to comply with the Building Code of Australia, all relevant codes, standards and specifications and the conditions of any relevant development consent or complying development certificate. All plans and specifications, including any variations to those plans and specifications, are taken to form part of the contract. Any agreement to vary the contract, plans or specifications does not have effect unless it is in writing and signed by the parties.

A new provision relating to final payment will also be introduced. This clause applies to work involved in the erection of a building for which an occupation certificate is required under the Environmental Planning and Assessment Act. The final payment, which must not be less than 5 per cent, does not become payable until the work satisfies all requirements that must be met by the work before an occupation certificate can be issued, in other words, the contractor has performed the work to the necessary standard that it meets the requirements for the issue of an occupation certificate. This provision addresses industry concerns that the issue of an occupation certificate may be held up for reasons beyond the control of the builder. The clause does not require the actual issue of the occupation certificate before payment can be demanded. This provision and the provision relating to the variation of plans and specifications will not apply to contracts between head builders and subcontractors or developers and to contracts for work not exceeding \$1,000 in cost. I commend the bill to the House.