Building Legislation Amendment (Quality Of Construction) Bill

Second Reading

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Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.35 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

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 which 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, then council certifiers included and lastly the building designers, such as draftpersons 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 the issue of improper influence, such as seek 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 hold 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 the 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. A new schedule 3A is inserted in the regulation specifying 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.

The Hon. JOHN RYAN [8.36 p.m.]: It is a pleasure to address the Building Legislation Amendment (Quality of Construction) Bill. Indeed, the bill is a response to the recent report by the Joint Select Committee on the Quality of Buildings. While that report is referred to as the Campbell report, because the committee was chaired by the honourable member for Keira in the other place, I feel that a fair bit of my own sweat and blood has gone into the report as well. In many respects, I saw the report as vindication of many of the things I had been agitating and pushing for in this House for a couple of years. I am disappointment that to some extent the legislation has been rushed through both Houses of Parliament without the opportunity for an appropriate level of consultation.

Although there has been extensive investigation in terms of the legislation, some matters should be subject to further consultation. For example, the bill provides that a final payment of at least 5 per cent will be withheld until an occupation certificate is issued. I have been a strong advocate for home building consumers for a long time, but I am not sure where that recommendation came from. To the best of my knowledge, the Joint Select Committee on the Quality of Buildings did not make a recommendation to that effect. One difficulty with the provision is that it will severely disadvantage builders because it confuses two things. Occupation certificates, which I accept have been largely ignored and abused, are an important tick-off point to say that a home or project has been completed in accordance with the contract and conforms with the requirements of the development consent and the Building Code of Australia.

Before issuing an occupancy certificate, particularly for a new building, the local council may have a number of requirements that have nothing to do with the construction of the building itself. The difficulty is that the owner may intend to do many of these things after moving in. For example, an occupancy certificate may not be issued until certain forms of landscaping are constructed around the dwelling. Quite often, landscaping can be extremely expensive. The bill provides for 5 per cent of the contract payment to be withheld from the builder until the occupancy certificate is issued. The difficulty that raises for builders is that if the building has been suitably constructed—as happens in 98 per cent of cases—in conformity with the Australian Building Code and the consumer is happy with it and wants to move into the house and complete some of the other work afterwards, 5 per cent of the cost of the building would be held back for no good reason while the consumer completed landscaping works, and so on.

I understand the intention of this provision, but it seems to me that this might have been slightly ill-considered protection that needs significant review. That is just one example of where this legislation could have been enhanced by a little more consultation. I acknowledge that the Government is keen to act on many of the recommendations of the Joint Select Committee on the Quality of Buildings, but it may have been a bit too keen to introduce legislation at this point. Many honourable members may remember that this is the third or fourth occasion we have amended the Home Building Act. It was last amended in July 2001.

Many provisions included in the Home Building Act have yet to be proclaimed and implemented by the Government. We are still waiting, for example, on important matters relating to the regulation of the insurance industry. I am astonished that as far as the home warranty insurance scheme is concerned there are now only one or two home warranty insurers in New South Wales when previously there were five, and all the legislation that regulates insurers and provides for them to be fined for non-compliance with the law for failing to provide information to the Government about their profitability is yet to be proclaimed. There is practically a monopoly provider operating in home warranty insurance and there is very little regulation to control it or to find out about its operations.

There is not much point in passing strong and solid consumer protection legislation if the Government does not implement it.

I am worried that some of the legislation we are passing now may be in exactly the same position: We will pass it and nothing will be done about some of its benefits. As in the case of the Home Building Legislation Amendment Act, it is possible that nothing will be done to implement it for years. At this point I do not wish to be overly negative about the bill. A number of benefits to builders, consumers and the home building industry are worth pointing out. For example, the bill addresses itself to builders and consumers, and is a series of provisions amending the Environmental Planning and Assessment Act that largely relate to private certifiers and have more to do with multistorey dwellings that have recently been the subject of quite considerable controversy, particularly in metropolitan newspapers like the *Sydney Morning Herald*. The bill canvasses a wide variety of areas.

The bill requires certifiers to be appointed by the customers instead of the builders. The advantage of that is if the builder appoints the certifiers the builder will have a lot more control over the process. The Joint Select Committee on the Quality of Buildings and many people who made submissions to it were worried that if the certifiers were responsible to the builders, they would be inclined to please the builders in order to get more work. Some certifiers work exclusively for one builder. Imagine what might happen if the builder owned a council and was able to get the council to do whatever he wanted. That was one significant weakness with private certifiers: they could be owned by and become financially dependent—lock, stock and barrel—on the builder. The committee agonised over how to solve the problem. The Government has come up with a solution of its own, and it is a solution that is likely to work well.

The bill allows for the Department of Fair Trading to investigate the activities of a council or an accredited certifier. One of the things that worried me about certifiers or councils was that many were too inclined to accept pieces of paper as evidence that buildings had been completed properly rather than inspect them. It is important to have another body, such as the Department of Fair Trading or PlanningNSW, audit the work they do. Builders require a certain level of financial solvency before they can be licensed. I understand that provision and on the one hand I support it, but on the other hand I have reservations about it. The reason the committee recommended that there should be some consideration given to the solvency of builders at the licensing stage is that it makes sense for consumers to be able to check that the builder can complete the job and remain solvent throughout the work.

In Queensland, where there is no private home warranty insurance scheme, the Government underwrites and does what the insurance industry does here—collects information on builders before it gives them a licence. We are going to have something of a hybrid scheme, and it may prove difficult for builders. First, they will have to satisfy the Government to get a licence and then they will have to provide some other satisfaction to an insurer. I am not sure that is fair on builders. They may argue that it is better to have one and not the other. If the Government's financial solvency criteria were adequate, it ought to be possible for insurers to delete their requirements altogether.

The bill provides for disputes to be resolved with an on-site expert inspector as arbiter. I hope this will be one of the silver bullets of this bill which may well stop me from having to give speeches in this House about this issue into the future. It has always been my view that the best way to resolve home building disputes is to have an expert attend the site, examine the site and the building in question, discuss the issues with the builder and with the consumer, and work out whether there is a problem. The bill provides that when there is a dispute, instead of the parties going to the Fair Trading Tribunal, or the Consumer, Tenancy and Trading Tribunal as it is now called, and being involved in a legal dispute, the dispute is resolved by an inspection from the Department of Fair Trading. That is a wholesale improvement.

However, I have two problems with the proposal. One is that the Select Committee on the Quality of Buildings did not want this task to be carried out by the Department of Fair Trading. The reason for that is that we are generally concerned that the culture of the Department of Fair Trading has not been activist enough to carry out this duty. As people who have worked on committees will

know, often the first recommendation is one of the most important. One of the committee's very first recommendations was that the Government establish forthwith a Home Building Compliance Commission to oversight building regulation in New South Wales. The commission was to be separate from the Department of Fair Trading and responsible directly to the Minister for Fair Trading.

The commission's functions were to include builder and other practitioner licensing; discipline and auditing, including private certifier registration and auditing; industry practitioner licensing; establishing and maintaining industry-wide registries; establishing a front desk for consumer building complaints and disputes; providing policy advice and development; liaising with industry players and maintaining a high level of practitioner skills and qualifications. At the moment in New South Wales regulation of the home building industry is split between PlanningNSW and the Department of Fair Trading. People have to go all over the place, depending on whether the building involved is multistorey, a single unit dwelling that is a project home, and so on.

The builder is licensed by the Department of Fair Trading. He may be under a supervisor, a private certifier. He may have to deal with requirements placed on him by a local council or PlanningNSW. One of the problems is that everything is everywhere. We recommended the establishment of a home building compliance commission to bring all of these very complex issues into the one place and to have a group of public servants who had the appropriate expertise available to all the players. Most importantly to us, it was to take them out of the hands of the Department of Fair Trading, which we believed had been singularly unresponsive to the requirements of the home building industry.

The Opposition is extremely disappointed that the Government has not implemented this recommendation. Although it is a good proposal that a dispute should be resolved with an on-site expert inspector from the Department of Fair Trading, we believe the expert should be from a building commission. We tried as much as possible to recreate the old Building Services Commission without all of the conflict of interest problems that had attended that commission working as an insurer as well as a regulator. The bill introduces compulsory milestone inspections for home building work. This is a good thing. It seems strange that problems in the slab or the frame of a building are not picked up until the consumer finally takes occupation of the building. Having compulsory inspections of a home will make it more likely that, if things are going wrong, they will be detected at an early stage and solved at an early stage. I regard that as a huge achievement. I am proud that I advocated for it and I am pleased to see it now in the bill.

The bill requires that occupancy certificates are to be withheld if the building work has not been carried out in accordance with the relevant development and construction approvals. That is a good thing. Too often occupancy certificates are issued without important issues being addressed—frequently because councils are just slack or building certifiers are too compliant with requests from builders. The bill provides that 5 per cent of the final payment is to be withheld until an occupancy certificate can be issued. That is of questionable benefit and it is unlikely to be fair to good builders. Home building work is to comply with the Building Code of Australia rather than the rather odd requirements that are currently in the Home Building Act.

Whilst I think that is a good thing, one of the recommendations of the Joint Select Committee on the Quality of Building was that greater clarification was needed of the standards applying to home building than is provided by the Building Code of Australia. I recognise that this is perhaps a little dull, but the Building Code of Australia is an enormous library of requirements. A copy would occupy all the shelves behind the President's chair. It references large numbers of standards and it is extremely complex and difficult to understand. The other problem is that it is a performance code. In many cases difficulties can be proven to be a problem only when the building falls over.

I know many consumers who have taken action against their builders and engaged in lengthy litigation in the Fair Trading Tribunal only to be told that even though the builder did not construct the home in accordance with the plans and in accordance with their expectations, because the building was not going to fall over—that is, it met the requirement of the Building Code of Australia—they had no problem. The house might be said to be sound but I know one couple who have spent $100,000

reaching that conclusion because the standards are so unclear. The committee believed that greater clarification was needed. An important recommendation of the committee required this to be spelt out in more detail. We discovered that in Victoria a document called "Standards and Tolerances", a plain English document that is able to be easily interpreted by consumers, sets out the standards to which buildings are expected to conform.

By reading the document, which is only a few pages, consumers can quickly work out whether they have a legitimate complaint or a complaint that is ultimately going to fail. Consumers in New South Wales have no chance of reading or comprehending the Building Code of Australia. Therefore they really do not know where they stand until they have sought particularly expensive advice. The committee recommended that sections of the Building Code of Australia relating to residential buildings be drafted in plain English format to make it more user friendly to builders and consumers. Similarly, we also recommended that the application of the Building Code of Australia in New South Wales be refined to clearly prescribe performance requirements with measurable and objective criteria for certain elements of freestanding homes, to reduce disputes and uncertainty in home building matters.

I sincerely hope that the Government does not think that because it has now legislated that the Building Code of Australia is the benchmark for measuring the quality of buildings the issue stops there. More work needs to be done. It will not be work that comes to this Parliament, but if it is not clear we have simply provided a recipe for more disputes, not fewer. Finally, the bill provides for disciplinary actions to be recorded against individuals as well as corporations. This is aimed at preventing phoenix company activity. Penalties are to be increased. The Consumer, Trader and Tenancy Tribunal will be permitted to appoint its own building experts to give advice. I am not sure why this is provided in the bill; this has always been the case. The only thing that the bill adds is that the tribunal will now be able to charge the parties before it for the advice.

There is an additional rather neat idea: if the Consumer, Trader and Tenancy Tribunal appoints an expert to look at a building, that will be the only expert who looks at the building. No others will be permitted. That means that the expert will be independent and paid for by all parties. Because the Consumer, Trader and Tenancy Tribunal has had these powers for some time, I hope that rather than leave them dormant it will activate the proposal. The more that building disputes are solved at the building site with all the parties in attendance the less complex they will be, the more chance there is for agreement and the quicker the resolution will be.

The Opposition has attempted to consult with a large, wide variety of groups who are concerned with the home building industry. We have consulted B-FAIR, an organisation representing builders, the Building Action and Review Group, the Master Builders Association of New South Wales, the Housing Industry Association, the Insurance Council of Australia, Dexta Corporation and Royal and SunAlliance Insurance. Most of those groups support the bill but almost all of them are annoyed with some aspect or other of the bill that they believe would be refined if there was a little more time for consultation. It may well be that we do not go into Committee on the bill tonight and some of those things may be sorted out in a week or two. In fact, I have been telling some of my constituents that there will be time to sort these things out. I do not imagine that the Government intends to simply gun the bill through with less than a week's opportunity for the various organisations to have a look at it. I hope that is not the case.

Since we are on the subject of the Joint Select Committee on the Quality of Buildings, Mrs Irene Onorati was extremely concerned that nearly 50 per cent of the oral submission to the committee by the Director-General of the Department of Fair Trading was a critique of her and her dispute, and she had no opportunity to reply. She has supplied me with a letter that addresses many of the issues she wanted included in the committee's report, but that was not possible given the timing. However, I will read a letter given to her by Professor Stuart G. Reid from the Department of Civil Engineering at the University of Sydney that addresses some of the allegations made about her by the Director-General of the Department of Fair Trading. In all fairness, it is important that she and her supporters be given the opportunity to have their say because they thought some of the issues dealt with by the department would be kept confidential. It was a surprise to them that during an open hearing of a parliamentary inquiry some of the more detailed aspects of their dispute were aired.

Professor Stuart Reid responded to the committee as follows:

I am writing to the Joint Select Committee on the Quality of Buildings to respond to some incorrect and misleading statements in the evidence given by David O'Connor, Director General of the Department of Fair Trading, as recorded in the Transcript of Public Hearing No. 8 (Friday 14 June 2002). In particular, I am responding to Mr O'Connor's statements concerning the use and certification of safety glass, as I have special expertise and experience in this area, including 20 years' continuous service on the Standards Australia Committee responsible for the drafting of the Australian Standards for the safety and strength of glass in buildings. I must also point out that I (along with other technical specialists) have previously provided expert advice concerning safety glazing to Mrs Onorati, Chairman of the Building Action Review Group, in response to requests for truthful and independent advice.

In his evidence, Mr O'Connor refers to two issues in relation to safety glass—-one being Mrs Onorati's own case, and the other being the general use of safety glass in buildings. Mrs Onorati's own case was barely mentioned in the evidence presented to the inquiry by Mrs Onorati, but it assumes particular importance in the context of Mr O'Connor's evidence, because his description of that case impinges on the credibility of Mrs Onorati's (and his own) evidence.

Mr O'Connor stated that Mrs Onorati's case was referred to the Fair Trading Investigation Branch following the receipt from Mrs Onorati of a copy of test results which contradicted a certificate of compliance provided by Flat Glass Industries certifying that the glass conforms to the Australian Standard AS2208 (for safety glass). Mr O'Connor presents this as if it were a simple difference of opinion concerning the interpretation of certification requirements. He fails to note that the test result showed unequivocably that the glass did not satisfy the test criteria for safety glass, and he fails to note that the alleged certificate of compliance was not a valid document in accordance with AS2208 …

Mr O'Connor further states that the Department suggested that the dispute could be resolved by testing a piece of glass from the same batch … However, another piece of glass from the same batch could not be found, that the Department advised Mr and Mrs Onorati that a glass panel should be removed from their premises for testing by Mr Geoffrey Roberts of the CSIRO who had advised that he could carry out "the necessary test on the glass in question to determine if it complied with the required standard". Mr O'Connor states that Mr and Mrs Onorati consented to the testing of the glass, but subsequently withdrew their consent as they considered that Mr Roberts of the CSIRO was not suitably qualified to perform the test.

Mr O'Connor fails to note that Mr and Mrs Onorati withdrew their consent on the basis of independent expert advice that Mr Roberts of the CSIRO is not suitably qualified, and on the basis of expert advice (from myself) that there is no test that could possibly be carried out now (in the absence of appropriate quality assurance procedures during manufacturing) to demonstrate compliance with the standard.

The letter continues, but I have read enough of it to make the point that many unfair accusations were levelled at Mrs Onorati by the Department of Fair Trading. One of the things she was concerned about was that she wanted the glass on her property tested to ensure it complied with the standard. She was forced to sign a series of agreements that would allow the glass to be removed, crushed and the evidence lost. Her concern is that a supplier has provided inadequate glass to her and many other people in Sydney and will escape prosecution because the Department of Fair Trading did not have the courage or the will to ensure that the standards of law were met.

Mrs Onorati is not the only person who has had difficulties with the Department of Fair Trading. I could read many letters of complaint. However, I received a letter today that concerns me no end. It is from Mrs Kathy Nicoll. Mr and Mrs Nicoll of Parkwood Drive, Menai, own one of the properties that featured in the hearings of the Joint Select Committee on the Quality of Buildings. All committee members came to the conclusion that the construction of the Nicoll's house was less than satisfactory—in fact, it was appalling. I have described the condition of the house previously in this place, so I will not repeat myself other than to say that just one fault is that water pools underneath

the house to such an extent that Mr and Mrs Nicoll have had to hire a swimming pool pump to prevent constant flooding. Some weeks ago I attend an event that is staged regularly by the Building Action Review Group.

The Hon. Ian Cohen: What number was that?

The Hon. JOHN RYAN: It was No. 19, I think. The meeting was noteworthy for the attendance of a number of members of Parliament, including me, the Hon. Ian Cohen and the Minister for Fair Trading, the Hon. John Aquilina. Mr Aquilina was accompanied by a number of representatives from the Department of Fair Trading. One of the problems Mr and Mrs Nicoll have been experiencing is that it has taken ages for the department to make a decision about whether their builder should continue to hold a licence. While I was at the meeting, Mr Chris Hanlon from the department assured me and Mrs Nicoll that a decision on this matter would be made within a week of the meeting. I regret to inform the House that today I received a letter indicating that Mr and Mrs Nicoll have written repeatedly to the Minister but they have yet to receive any reply and the matter has still not been dealt with and finalised by the department. Mrs Nicoll has written to me as follows:

I refer to my letters dated 14 October & 12 October to which I have received no reply.

I must reiterate the protracted delay in the Department of Fair Tradings investigation into our builder's conduct. In January 2001 we first made contact with the Department of Fair Trading. In February 2002 inspections took place by Mark Tuckwell, investigator for the DFT and his assistant for two days. On the 29 July Mark Tuckwell, in our home took a statement from the builder lasting four hours. In August a show cause went to the builder and the report and recommendation for discipline by the investigator has been sitting on Chris Hanlon's desk since September.

As I said, Mr Hanlon told me that the matter would be dealt with within a week. It has been three weeks. The letter continues:

In evidence to the Joint Select Committee into the quality of buildings Chris Hanlon stated that it takes the department **three months** to complete these investigations. Why has there been **no action** in such a serious matter like ours. We have been living in our unsafe, uncertified house for over two years battling all authorities to see justice and resolution.

According to our independent report, council and insurer the builder has breached the Home Building Act Section 18b, AS & BCA but still today no action has been taken and he continues to build.

I am appalled by the silence and inaction of the government and I feel discriminated against when the Minister took action so quickly for Mrs Peter's of Seven Hills and had the investigation, show cause and removal of the licence of the builder within 2 months. But then I do not reside in the Minister's electorate.

Family, friends and other are astounded that we are still in this nightmare and our response now after continually knocking on doors is to think of us when it comes time to vote.

Please advise when you intend taking action and protecting consumers. It has come to my attention that the 24-29 November is Consumer Week, with a slogan "scam smart beat the cheats!" It's very hard for consumers to "beat the cheats" when the government allows them to continue.

Yours sincerely

Kathy Nicoll

I imagine that the letter is also from her husband. One can feel the frustration in that letter. The length of time it has taken the Department of Fair Trading to deal with such an obvious matter cannot be justified. On behalf of Mr and Mrs Nicoll, I appeal to the department to deal with this matter expeditiously. In addition, Mr and Mrs Nicoll will be affected by the next problem. Their

insurer has written to them outlining the outrageous argument that they are no longer covered by home warranty insurance because there was a discrepancy in the way the builder described himself on the contract and the certificate of insurance. It is appalling that Royal and SunAlliance is pulling that trick in order to evade its responsibilities. At the same time, however, I can hardly expect the insurer to do otherwise, given that 14 months ago this Parliament passed legislation to solve the problem and that legislation has not been proclaimed.

Mrs Nicoll contacted the Department of Fair Trading and an officer of the department—whom Mrs Nicoll named, but whom I will not embarrass by naming—told her that the legislation has not been proclaimed because the insurance industry asked that it not be proclaimed. I do not know whether that allegation is true. However, I checked the schedule of the proclaimed legislation that was tabled in this House a few weeks ago. I noted that not one single line of regulation that Parliament passed in July 2001 in the home building legislation has been proclaimed. Insurers do not have to provide information, they are not subject to penalties and fines, and this unbelievable loophole has remained uncorrected. I ask the Minister to attend to that matter expeditiously.

The Opposition is concerned about aspects of the legislation that do not respond to important recommendations of the Joint Select Committee on the Quality of Buildings. I draw the attention of the House to the committee's recommendation for the establishment of a community-based home building advice and advocacy centre, to be established as a non-government organisation to provide one-stop shop advice on home building disputes funded by the commission. The centre would have a consumer education role, provide access to licensed building consultants, and would be able to charge on a fee-for-service basis for advocacy and specific legal advice. There was an important reason why the committee wanted it to be a non-government organisation: we wanted it to be wholly and solely for consumers. The Government has offered an advocacy service, but it will be within the office of the Department of Fair Trading. The Department of Fair Trading will be required to advocate on behalf of builders as much as consumers. Builders have their representative organisations: the Master Builders Association and the Housing Industry Association of Australia. Insurers have the Insurance Council of Australia and an endless number of legal advisers. However, consumers are unable to be provided with expert legal advice and are unable to participate in policy forums.

I had in mind an agency that would represent consumers as Mrs Onorati has done on a volunteer basis for years: helping them with their submissions to public authorities and advocating for them. This cannot be done by a government department, and I ask the Government to address this matter and to establish a community-based advocacy centre similar to the tenancy organisations that represent renters with regard to tenancy arrangements. The Opposition believes the time has come to draw a line under the farce of the Home Warranty Insurance Scheme and establish a one-stop shop for advice on home building disputes. I understand that in the near future the Opposition may well make some radical announcements that represent a departure from what the Government has been doing in this regard. If we do that, I believe it would be commended. Nevertheless, the bill is an incremental step forward, it contains some benefits for consumers which are welcome, and in that regard I hope the House deliberates successfully on this legislation. The Opposition will not oppose the bill's passage through the Parliament, even though we believe we could do even better.

Reverend the Hon. FRED NILE [9.14 p.m.]: The Christian Democratic Party supports the Building Legislation Amendment (Quality of Construction) Bill, but shares many of the concerns raised by the Hon. John Ryan. Obviously, the Government's intention is good, in that this legislation has arisen from the joint parliamentary inquiry set up to look into building standards across New South Wales. Many consumers and those who have complained about major construction problems look forward with hope to the results of that inquiry and the policy changes that would result from this legislation. The Joint Select Committee on the Quality of Buildings looked at the role that building certifiers should not play in ensuring the quality of workmanship in buildings across the State. It examined why checks and balances exist to ensure that consumers are protected and their homes are safe, properly certified and built to satisfactory standards. This was to include a proposal for the restructuring of the Builders Licensing Scheme, which, as we know, has been a disaster.

Many consumers were misled into thinking that a builder who had a gold licence was an A1 builder, when this was not the case. The select committee released its report in July 2002. The

report contained 55 recommendations to improve the building regulation system and provide greater consumer protection. One of the problems faced by the Government is how to retrospectively resolve all the building construction disputes of the past, which in some cases have been dragging on for years. Many families are suffering heartache and distress because of the bad, corrupt or dishonest builders they hired and the buildings that were constructed, which in some cases have major defects. Indeed, some reports indicate that the buildings may even have to be demolished and replaced. Who pays for all those improvements and the establishment of new buildings? How does one force the relevant builder to come back into the picture again? Indeed, does the builder still exist? These are just some of the practical problems.

I was embarrassed and upset, as were other members of the crossbench, when Mrs Onorati briefed us, along with members of the Building Action Review Group [BARG]. Mrs Onorati was obviously greatly distressed about the way in which the Government had proceeded with this bill. She is not against such legislation. We were shocked to learn that her organisation, which is one of the major consumer organisations, had not been involved in consultation on the bill. In some ways, this seems to be a repeat performance by the Government, and even perhaps by various governments. Mrs Onorati only found out when a member of Parliament rang BARG for a comment that the organisation had not been consulted on the bill at all. Perhaps the organisation was hopeful that the Government would implement the recommendations of the committee, which it supported, and therefore the future looked rosy.

One could imagine the organisation's disappointment to find that even though a joint select committee comprising a majority of Labor members made strong recommendations, they were been completely ignored by the Government. I know that Mr Campbell, who chaired the inquiry, is greatly respected by the Government. Over the years the Government has referred to him in favourable terms, including during the period when he was the Mayor of Wollongong. Indeed, the inquiry has been called the Campbell inquiry, yet the Government virtually slaps the committee in the face by rejecting its major recommendations.

The Building Action Review Group advised us that something needed to be done. The Hon John Ryan made reference to it and witnesses gave evidence to that effect during the inquiry. Recommendation 1 proposes that a home building compliance commission be established. It was emphasised that such a commission should be separate from the Department of Fair Trading and be directly responsible to the Minister for Fair Trading. That is a black and white recommendation—the committee could not have been clearer as to what was required to avoid many of the previous problems. Yet this bill puts the Office of Home Building under the Department of Fair Trading. The Government totally ignored the committee's recommendations. Page 26 of the committee's report states:

As the Committee has already observed, it does not believe the Department of Fair Trading is performing an effective leadership role in the home building industry... the Committee does not see that it is an appropriate vehicle to implement the required changes.

Recommendation 3 states:

That a Home Building Advice and Advocacy Centre be established as a non-government organisation, funded by the Commission to provide "one stop" advice... similar to the Tenants Advice and Advocacy Service.

The State Government is establishing a "pilot advice and advocacy service for consumers on a trial basis run by professionals". This is contrary to the inquiry's call for a non-government organisation and gives consumers no guarantee that the service will extend past the trial stage. This most definitely is not similar to the Tenants Advice and Advocacy Service, so it is puzzling why the Government has moved in this direction. It is almost as if the Government wants to have a continuous problem with many of the consumers in the past, present and future—like a boil. The Government is not resolving the problem. The committee gave the Government a golden opportunity to put all the parts of the solution together to finalise this bill. We would then be saved from the very long but excellent speeches the Hon. John Ryan makes year after year, cataloguing all the faults of

the various government agencies in the building area.

BARG reminded us of some of the tragic cases. Mrs Onorati broke down in tears while she was briefing us. I think she is probably close to a nervous breakdown. She is stressed because people come to her seeking a resolution to their horrific situations. Some of the people who have come to her are suffering from various medical problems. Some people are in their senior years and should not be having all these problems at this time of their lives—they should be happy and relaxed, they should be enjoying their remaining years. Instead, they are involved in these terrible situations with seemingly no resolution in sight. As the Hon. John Ryan said, the bill should be adjourned before the Committee stage to allow us time to consider some amendments that might put the bill back on track and in conformity with the Campbell inquiry's recommendations. I have not discussed that proposition with anyone, but the Hon. John Ryan hinted at it. I imagine that the Government wants to rush the bill through the House, given its legislative program. However, there is certainly strong argument to adjourn the bill so that amendments can be drafted.

The Hon. Patricia Forsythe: What about the Hon. Ian Cohen? He wants to speak to the second reading debate.

Reverend the Hon. FRED NILE: Yes, I know. I am not seeking to adjourn the debate right now. The Hon. John Ryan said that he hopes amendments can be discussed during the coming week. I said that there will be no opportunity to discuss them if the bill proceeds now. Therefore, consideration of the bill should be adjourned.

The Hon. IAN COHEN [9.24 p.m.]: I support the Building Legislation Amendment (Quality of Construction) Bill. In doing so, I shall address a few of the comments made by Reverend the Hon. Fred Nile with respect to adjourning consideration of the bill. The Hon. John Ryan made some excellent points during his contribution to the second reading debate. If his suggestions were put forward they would gain the support of the Greens. Reverend the Hon. Fred Nile referred to remedying some of the bill's shortcomings. The Greens would very strongly support that proposal. Although this is a building issue, it is also a human rights issue. As Reverend the Hon. Fred Nile said, elderly people's lives have been ruined at a time when they should be able to enjoy their retirement and relax. They have had to suffer what is essentially a breakdown of systems within the Government.

Shonky builders did not start with the planning legislation that went through in 1998. However, privatising certifiers—the so-called cutting out of red tape—created an absolutely abysmal situation. I remember the night that the planning legislation passed through the House—we sat until about 6 o'clock in the morning. Unfortunately, the legislation was supported by the Government and the Opposition, so its passage was a fait accompli. However, we have moved certifiers away from public oversight—councils—and we have created situations where those certifiers are often hand in glove with the building industry. I am glad that the Minister is taking some small steps to remedy this situation. However, for many people it is too little too late.

It is a shocking situation. We have all heard various stories. The Hon. John Ryan talked about Defective Home Exhibition No. 19—there were 18 before it. I had a look at exhibition No. 19. I have a little bit of experience with building—I admit that I am a bit of a shonky builder when it comes to doing things around the house! Nevertheless, what I saw absolutely shocked me. I saw foundations that were not touching; I saw walls cracking, yet they were obviously all right before building started; and I saw steps outside without the proper stepping to keep the weather out of the house. This disgusting situation was foisted on a person who innocently wanted to have some extensions on a modest little fibro cottage in Seven Hills, in the western suburbs of Sydney. What the builder did was absolutely appalling: walls not joining, lintels not sitting, the whole house starting to sag at the front because of bad workmanship that allowed the weather in. It was absolutely appalling. I have the independent structural engineer's report on the house. It would be funny if it were not so tragic.

The structural engineer's report also found damage to water pipes, incorrect installation and no terracotta vents, caused by excess dampness and humidity under the floor area. End capping in the front of the house did not conform to the correct standard and joints were not soldered. Windows

were not installed correctly. I could do a better job of installing windows, yet this was done by a builder. In addition, wall bracing was incorrectly installed. Under the foundation at the back of the house I noticed that one bolt was used rather than the required two to connect the structural support. One such support structure did not even touch the house!

There have been repeated instances of builders taking advantage of inexperienced consumers, who have had little recourse to the law. The Labor Government's legislation in 1988 encouraged builders to rip off people in a cruel and blatant manner. The Hon. John Ryan, who has led for the Opposition in many building debates, has represented consumers well in this debate. The Building Action Review Group [BARG] and Irene Onorati have attended numerous crossbench meetings relating experiences of toilets that do not flush and toilets that leak. Retired people have to suffer the consequences of this poor workmanship.

I support the Hon. John Ryan in his call to establish an agency specifically for consumers. The Home Building Advocacy and Advisory Service, which is part of the Department of Fair Trading, advocates for builders as well as consumers. Therefore, it is appropriate for an agency to be established specifically to protect consumers against shoddy workmanship. A one-stop shop is certainly necessary. More strident penalties must be imposed on builders who give legitimate builders a bad name.

The Building Legislation Amendment (Quality of Construction) Bill seeks to remedy some of the many shortcomings of the original ill-advised, irrational and free market ideology legislation. If some of the many blatant rorts now available are foreclosed, the bill will have been worthwhile. It is an incremental step, but it does not go far enough. Anecdotes abound about the laughably poor standard of construction approved by some privateers. At present it is left to volunteer community groups, such as BARG, led very ably by Irene Onorati, to provide advice and guidance in the vacuum left by the rush to privatise yet another important component of our civil machinery.

I have always argued that, despite legitimate complaints about local councils, privatisation of the whole regime is certainly a step in the wrong direction. The Greens support the provision of an auditor but we are disappointed it is a discretionary provision and that appointments will be made only on a case-by-case basis. A permanent and accountable auditing body is required, with the obligation to systematically review the performance of the scheme and report publicly on that performance. The bill does not appear to establish this necessary function.

We note with disapproval that the bill gives barely a slap on the wrist to those who would thumb their noses at the need for a domestic certificate of occupancy—a ridiculous fine of only $550, which is less than the cost of an inspection. It lets the offenders off the hook. Successive governments have ignored obligations of stewardship of public interest. In 1998 the Carr Government amended the Environmental Planning and Assessment Act 1979 to significantly reduce the community consultation process provided under that Act. Environmental protection measures were also seriously eroded, and the concept of private certification was introduced into the planning process. Many development applications that were previously the domain of local councils may now be determined, and have been determined, by private certifiers and, in the case of applications with regional or State significance, by PlanningNSW.

The Greens policy on public sector social and environmental responsibility is that private certification should be abolished because it has failed to deliver quality outcomes or to protect future residents. The former Minister for Planning, Craig Knowles, refused to accept any of the 70 amendments moved by the Greens, the Democrats and the Hon. Richard Jones. I am appalled that the Minister has refused to take any responsibility for his actions, which have destroyed the lives of people and led to the improper oversight of the building industry.

The Hon. John Della Bosca: That's a bit unfair.

The Hon. IAN COHEN: The Hon. John Della Bosca was not even a member of Parliament at the time. We spent the entire night debating the bill, yet, in his typical macho, unconstructive manner, Craig Knowles would not back down. It was like the stand-off at the OK Corral—the people of New

South Wales have been devastated. Opposition members supported the Government, knowing full well it would come back to haunt it. Opposition members could have done something at the time.

The Hon. Rick Colless: We did.

The Hon. IAN COHEN: The Hon. Rick Colless was not in the Parliament. If Craig Knowles were ever to become Premier, the Greens would walk away from Labor forevermore—unless, of course, he was competing for the position with the Hon. Michael Costa. Craig Knowles would be the lesser of two evils.

The Hon. Rick Colless: Mussolini.

The Hon. IAN COHEN: You said the word; I did not. After hearing that the Hon. John Hatzistergos recommended that the Hon. Michael Costa take legal action against me for what I said, I will not say that word ever again.

The Hon. Rick Colless: Not outside the House anyway.

The Hon. IAN COHEN: That is right. One learns one's lessons, although my barrister said that my main danger would be if the Mussolini family finds out about Costa. I should not say more as it might be regarded as disrespectful.

The Hon. John Della Bosca: A member of the Mussolini family is a member of Parliament.

The Hon. IAN COHEN: Indeed, so I need to be careful. It is amazing how the plot thickens.

The Hon. John Della Bosca: I believe the member is Mussolini's granddaughter.

The Hon. IAN COHEN: Indeed. This bill still allows the developer to choose the certifying authority—a little like letting Dracula loose in the blood bank. Such an arrangement creates too cosy a relationship between developer and certifier, and should be avoided. The sole saving grace is that the bill does not allow the builder directly to make the appointment, but it is silent about the builder being able to influence a decision to appoint a certifier. The proponents of this bill are clearly not concerned about the obvious bias. The Greens policy on environmental impact assessment and pollution control has long heralded the manner of assessment as fundamentally flawed because consultants are chosen by developers or proponents of the project. Consultants who regularly produce adverse findings would be unlikely to prosper. Thus the current system inherently produces an environment of compliant consultants. We see evidence of that up and down the coast and throughout New South Wales: compliant consultants do the bidding of developers, resulting in poor quality dwellings and substandard activities that go unchallenged. That is why I support the establishment of a an advocacy body for consumers separate from the Department of Fair Trading.

Having said all that, I support this rearguard action. I see it as a significant step in cleaning up flawed legislation. However, it is a great pity that the bill does not go further. I should like to think, and I hope, that people like Irene Onorati of the Building Action Review Group [BARG] could be out of a job, that they could relax, step back and feel that the Government is looking after them. Nevertheless, in a report to the crossbenchers on 19 November the BARG stated:

BARG is very distressed that the **Building Legislation Amendment (Quality of the Construction) Bill** has gone through Parliament without Consumers and Builders consultation. Once again, (as it occurred in the past) BARG found out when a Member of Parliament rang us for our comments. This is of great concern that the most affected people were not given the opportunity to comment. This is unacceptable the way the government is going pulling the wool over our eyes consumer protection—justice are just words.

We have not read the Bill, but we have been advised it is about the recommendations of the Joint Select Committee into the Quality of Buildings. We have received the News Release issued by the Hon. John Aquilina, Minister of Fair Trading on 29 October 2002 announcing a number of reforms following the Campbell Inquiry.

Consumers and good builders are united in protest. The recommendations of the Joint Select Committee have been watered down and will only further undermine consumer protection. As stated in our News Release … BARG submitted a voluminous submission and 30 cases studies identifying the inherent weaknesses of the Regulatory bodies (as well as builders and other organisations).

The Campbell Inquiry acknowledged myriad of problems and recommended significant restructuring.

Due to time constraint we will comment only on 2 key recommendations …

Recommendation 1. stated that a Home Building Compliance Commission be established to be SEPARATE from the DFT and directly responsible to the Minister of Fair Trading.

The State Government proposes to establish an Office of Home Building UNDER THE DEPARTMENT OF FAIR TRADING UMBRELLA. Totally contrary to the Inquiry's recommendations. The Committee in page 26 of the Report stated:

"As the Committee has already observed, it does not believe that Department of Fair Trading is performing an effective leadership role in the home building industry … the Committee does not see that it is appropriate vehicle to implement the required changes."

and, Recommendation 3.

The Inquiry recommended that a Home Building Advice and Advocacy Centre be established as non-government organisation, funded by the Commission to provide "one stop" advise … similar to the Tenants Advice and Advocacy Service."

The State Government is establishing a "Pilot advice and advocacy service for consumers on a trial basis run by professionals". This is contrary to the Inquiry's call for a **non-government organisation and gives consumers no guarantee that the service will extend past the pilot/trial stage. This most definitely is not similar to the Tenants Advisory and Advocacy Service.**

The Hon. John Della Bosca: It is exactly the same.

The Hon. IAN COHEN: The Minister may think it is exactly the same, except this one will be run by the department.

The Hon. John Della Bosca: No, it will not.

The Hon. IAN COHEN: Perhaps the Minister can argue that way. I shall refer to only one of the cases outlined by Ms Onorati. The report further stated:

1993 C Frantzis, 113 Mariott Street., Redfern—sickness benefit pensioner—signed a contract to carry out additions and alterations to the rear of their existing terrace a kitchen and bathroom (a very small extension). Today after 3 builders she needs a fourth builder to rectify the serious critical non-compliances. No appropriate certification, no Council inspections, walls encroaching, toilet blocking …

Despite the owner commissioning an independent structural engineer to prove the non-compliances and breaches of BCA, AS and HBA, the Department's last correspondence dated 28/10/2002 states that:

"*I refer to your clam on the statutory insurance scheme administered by the Department of Fair Trading and subsequent concerns you had with plumbing, building work carried out by R Davey, an alleged encroachment on your neighbour's property and other issues.*

The department has fully investigated your concerns and is unable to provide any further assistance in these matters …

N.B. Home Owners Warranty Insurance on 40 defective items claimed approved only 8, advising that it was the responsibility of the Builder No 1 and No 2. Is the insurer correct? If it is shouldn't the BSC insurance cover these defects?

I suppose the Frantzis family is saying, "Thank you very much". There are many other examples but I will not go into any more detail because other honourable members have clearly indicated the shortcomings of this legislation. As I said, it is a small and significant step in the right direction but we have a long way to go in terms of consumer protection in the building industry.

The Hon. Dr PETER WONG [9.45 p.m.]: I add my concern about problems in the home building industry in our State. I fully endorse the statements of the Hon. John Ryan, and I congratulate him on the excellent speech he made. The building industry and consumers alike have been confronted with substantial increases in building costs. These costs are attributable to a variety of factors: shoddy builders, corruption at local levels, inadequate certification of all aspects and rising input costs, including insurance expenses. While this new bill aims to increase and refine oversight at each and every level of construction, the home warranty insurance debacle remains a key hindrance to any reform efforts. The bill itself does not allude to insurance, but many points contained therein are likely to exacerbate cost and quality issues.

In the other House Premier Carr said that "the building licensing regime will be tightened" and that "builders will have to undertake a financial test to be licensed". Those statements take a stern stance in theory but are problematic in reality. Granting licences on the basis of solvency is a very narrow approach. Based on this, shoddy builders can continue to wreak havoc provided they can prove solvency. The provision of consumer protection would be better served if expanded to consider a builder's industry reputation and his or her work record performance and contract history. As the Hon. Ian Cohen said, many builders and consumers have voiced concern about the lengthy process of redressing claims of faulty work with private insurers. Therefore, I do not believe that this bill, which was drafted in a hurry, will solve the problems mentioned by other honourable members.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.48 p.m.]: I am concerned about this bill because it was introduced so hastily. I am concerned also that the Building Action Review Group [BARG], which has been driving this action and giving advice to people who have been dudded by builders for so long, has not been consulted. The people of BARG, particularly Irene Onorati, have been giving advice for years to try to help people who have been dudded by builders. There are very good builders, there are very bad builders, and there are all ranges in between. Indeed, that has been the problem for a long time. Another longstanding problem is that people in the building industry have been reluctant to give advice to people who complain—it is not possible to make a living from giving advice to people who complain on the assumption that they will continue with their course of action.

It would be like a workers compensation doctor who merely examines patients and gives evidence on their behalf in court actions. People in the building industry did not think that they could make a living from examining buildings, finding them faulty and giving evidence on behalf of plaintiffs in the tort system. They knew that if they upset people in the building industry, they would be burning the bridges of contacts who might give them work. So there has been a shortage of people willing to testify on behalf of people dudded by bad builders. That has been an ongoing problem and it has been made far worse by the Government's foolish ideological stance in allowing deregulation and privatisation of the certification process, permitting the builder to choose the body to approve the work. Such a practice gives immense scope for the certification of substandard buildings. Many buildings, including large home unit blocks, cannot get certificates of completion.

I asked a question in this House about the number of unit blocks in Sydney that have not been given certificates of compliance and occupancy. Very soon after I asked that question legal action was commenced the Meriton group and the Lord Mayor of Sydney—I speculate that that was a pre-emptive strike as a result of a dispute over the certification of buildings. Those who bought units

in such blocks off the plan or paid their last payment before the building was completed were in an unenviable position. The building might have required a huge amount of structural work, but unfortunately they had already paid the builder, who had ridden off into the sunset. Similarly, the inspector who certified the work throughout construction had also pocketed his fee and disappeared. This was all so predictable.

A public inspectorate should be set up to provide a career path of building inspectors on a reasonable salary. Of course, we would still have to remain vigilant to ensure there was no corruption within that framework. Obviously, if builders can shop around for certifiers, there is an incentive to bend the rules to get the job, and that is a bad precedent and serves only to exacerbate problems in the building industry. The Campbell inquiry into the quality of buildings came up with some recommendations. The first recommendation was the establishment of a Home Building Compliance Commission as an advocacy service, separate from the Department of Fair Trading and directly responsible to the Minister.

The Government talks about operating an advice and advocacy service on a trial basis. That is not what was recommended. After speaking with Irene Onorati I prepared an amendment that will implement the spirit of the Campbell committee recommendation. There is no use in the Government setting up committees and not accepting their recommendations just because to do so would be inconvenient. I am disappointed that the two problems I have referred to—that of private certifiers and the establishment of an advocacy body—are not addressed in the bill. If the Government accepts kudos from setting up committees to investigate matters, it must accept criticism for not implementing the recommendations of the committees. The Government must adopt these perfectly reasonable recommendations, which are supported by the major advocacy and consumer groups.

The Government forgets that these safeguards are for the benefit of the consumer. It bows to powerful and money lobby groups and forgets the electorate. People want their elected representatives to advocate for them against money interests, against foreign powers and so on. Governments get their legitimacy from being elected. As the dominant force in Parliament the Government has that mantle and must perform its task. Those of us who are not in the government must keep the Government honest and ensure it advocates for consumers against other groups. Builders and certifiers want to be allowed to self-regulate, but as we all know that is regulation of the self, by the self, for the self. It is about not having any regulation—a practice that has existed for many years.

I was interested in self-regulation in the advertising industry, which is an obvious oxymoron. As soon as the threat of BUGA-UP was removed that industry demolished the farcical self-regulation system under which it operated and set up a new system. Unfortunately, the new system is an even bigger farce than that which existed in the early 1980s. Self-regulation does not work. All the corporate collapses are the result of self-regulation, with no iron fist in the velvet glove. At the end of the day there must be an enforcement mechanism and an advocacy mechanism. The Government has to redress the imbalance of power between consumers and builders. Builders build every day, and shonky builders build shonky buildings every day. Generally speaking, building a house is a new experience for consumers and they are inexperienced in choosing and supervising builders. Those who know buildings and builders will not get into difficulty, but those who are not builders often engage builders who are incapable of doing a decent job.

I have not addressed the private certification of builders but my amendment will address the setting up of a home building advisory and advocacy centre. That is extremely important amendment, and I am not persuaded by the Government's alternative, which it has brought in at the last minute. I do not understand why the Government wants to rush this bill through tonight. There are many bills to be dealt with but that does not mean that this bill cannot be adjourned so that we can discuss it with Irene Onorati and other groups. I am always concerned when the Government pushes legislation through at short notice. It is all about control. I am not willing to withdraw my amendment. The Government should adjourn this debate until a later hour so that the establishment of a real home building advisory and advocacy centre, as recommended by the Campbell committee, can be considered. This bill has some good features in it but it does not go far enough.

We will wait to see what the Government does to improve the situation in Committee.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.00 p.m.], in reply: I thank honourable members for their contributions to this important debate. A number of issues will be dealt with in detail in Committee. I will clarify the nature of the scheme as it seems that there may be some misunderstanding among crossbenchers and Opposition members. I have confirmed with the Minister that the department intends to establish a pilot advice and advocacy service modelled specifically on the Tenants Advice and Advocacy Service, as recommended by Campbell. It will be established on a pilot basis after a tendering process to identify suitable non-government organisations or individuals that can be funded to deliver the service. It will be an independent service not subject to government direction and not staffed by public servants. If successful, the pilot service will be expanded to the rest of the State. There will be funding guidelines in relation to operation of the service. The balance of matters I will leave to be dealt with in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

Bill Name:	Building Legislation Amendment (Quality Of Construction) Bill
Stage:	Second Reading
Business Type:	Bill, Debate
Keywords:	2R
Speakers:	Della Bosca, The Hon John; Ryan, The Hon John; Nile, Reverend The Hon Fred; Cohen, The Hon Ian; Wong, The Hon Dr Peter; Chesterfield-Evans, The Hon Dr Arthur
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