

SECOND READING SPEECH

Building Amendment Bill 2012

Mr Speaker, I move that the Bill now be read a second time.

This Bill amends the *Building Act 2000* to make miscellaneous amendments to that Act. It is over ten years since the Building Act was enacted by Parliament and over 7 years since the legislation commenced.

The Director of Building Control has received feedback from Local Government, building surveyors and other stakeholders in the building industry since then regarding the operation of the Act.

This Bill is the first opportunity to amend a number of provisions of the Act based on that experience of the Act's operation.

Mr Speaker, consultation on the Bill has taken place with key stakeholders including:

- the Building Regulation Advisory Committee (BRAC);
- the Australian Institute of Building Surveyors (AIBS); and
- the Local Government Association of Tasmania (LGAT).

A Building Industry Reference Group (BIRG) meeting of twenty-one key stakeholder building associations was briefed on the Bill and given the opportunity to make submissions.

I will remind honourable members of some of the objectives of the Act that were read in the Second Reading Speech made in the House of Assembly on 12 September 2000:

- to provide an efficient and effective system for issuing building, plumbing and occupancy permits and

administering and enforcing related building, plumbing and safety matters and resolving disputes;

- to enhance the amenity of buildings, to meet the social needs of people who use buildings; and
- to facilitate and promote the cost effective construction of buildings.

Mr Speaker the amendments proposed by this Bill are consistent with those objectives.

Many of the amendments proposed in this Bill are minor clarifications and corrections. There are seven areas of more significant changes.

Firstly, offences against building practitioner accreditation.

Builders and other accredited practitioners pay fees and insurance to become accredited – effectively they are given a licence by the Government to be in the business of building. They also have to undergo training to meet educational requirements to become accredited.

A builder who knowingly allows someone to use his accreditation number on building permit documents is allowing non-accredited persons to carry on the business of building. They may have no qualifications or insurance and have not paid accreditation fees.

The Director of Building Control is also concerned that some non-accredited persons have used the accreditation number and personal details of an accredited practitioner on documents. Yet that practitioner had no contract with that owner. As an accredited builder is responsible for the work that they carry out or manage, if their name or accreditation number is used on documents, they will be regarded as the responsible builder and will carry that liability for any defects.

Misuse of practitioner accreditation details undermines the accreditation system. It is unfair to other accredited builders and could result in consumers losing confidence in the building industry.

Mr Speaker, the Bill therefore addresses these problems by clarifying the existing accreditation provisions and the creation of some new offences. It will:

- strengthen the existing section that provides that a person must be accredited to perform certain work including entering a contract to perform the work of a building practitioner;
- clarify that accredited building practitioners must not lend, or allow others to use their accreditation particulars such as their licence number;
- prohibit non-accredited from using the accreditation details of a practitioner unless that person is working for the practitioner or their associated business; and
- stop non-accredited persons from purporting to be an accredited building practitioner in order to gain work.

Secondly, enforcement of the Act.

Control of illegal building work and ensuring high standards of construction are key functions of Local Government and the building surveying profession. An internal review by the Director of Building Control of the enforcement provisions of the Act has revealed that some of these provisions need clarification. The Bill provides for amendments for giving of notices and orders. There is a new process to deal with owners who have not completed building work within the two years specified by the Act.

Mr Speaker, this Bill will remedy these deficiencies.

Thirdly, performance audits of practitioners, Local Government and others.

Building work is a complex activity that involves a range of risks – financial, contractual and for technical aspects. It is important that all parties who have a role in the building process maintain high standards. The Act provides that the Director of Building Control is responsible for carrying out audits of the performance of building practitioners and also Local Government (permit authorities and general managers). The power to audit will be extended to cover the work or actions of plumbers, owners of land and owner builders.

Fourthly, investigation of complaints against Accredited Building Practitioners

The Government introduced building practitioner accreditation in 2004 to set standards of entry and regulate their conduct. It is a fundamental objective of the Act to protect consumers. Therefore, it is imperative that incompetent practitioners be identified and dealt with appropriately. The Director now has four full time Audit and Compliance staff specifically employed to investigate complaints against Accredited Building Practitioners and undertake performance audits. In the past 12 months there have been:

- 4 Audits of councils
- 41 Complaints against Accredited Building Practitioners received last year
- 8 Practitioners found not guilty
- 11 Practitioners found guilty of professional misconduct or unprofessional conduct
- 3 Practitioners who have had their licence suspended or cancelled
- 3 Practitioners ordered to undergo a re-training course
- 2 Practitioners fined

Practitioners subject to disciplinary action after being found guilty of unsatisfactory professional conduct or professional misconduct have included builders, building designers, engineers and building surveyors.

These investigation activities have identified deficiencies in some of the Act's processes and powers.

Mr Speaker, this Bill remedies those deficiencies and will enable a more thorough investigation of complaints and an increased level of compliance with the Act by building practitioners.

Fifthly, owner builders.

The Act allows owner builders to carry out specific building work as an exception from the system created for the accreditation of building practitioners.

Registration of owner builders was introduced in 2004 and some people have now reached their limit of two buildings in ten years. The number of owner builders is gradually declining. However, some owners want to continue building and have set up companies to acquire land, to further their aim of building while not accredited.

We want to deter individuals and companies that intend to build as developers on a commercial scale but masquerade as owner builders.

Changes to the owner builder registration system will cover these areas:

- Only natural persons will be allowed to build – not corporate bodies. Currently directors of private companies have the ability to incorporate new companies to own land and build more than two buildings in ten years.
- This amendment places the registration system within the Act and opportunity has been taken to simplify the registration requirements;
- All owners will be able to construct as many non-habitable buildings (such as small sheds or carports) as they wish without owner builder registration.
- The definition of an owner will be clarified and extended to persons with long leases and life tenants.
- Farmers will now be allowed to construct as many farm sheds (Class 7b buildings) as they wish without registration as an owner builder.
- A right of review is given to owners denied registration as an owner builder by the Director.

Mr Speaker, I would like to assure honourable members that the changes proposed will have little effect on genuine owner

builders. Tasmanians will continue to be able to build their own home, shop or office as an owner builder. Prospective owner builders only need be registered for building work over \$5,000 that needs a permit.

The amendment retains the same number and types of buildings or building work as is currently allowed for an owner builder. That is two buildings in a ten year period. That means, for example, two new buildings, or owner builder work on extensions to two existing buildings. Restrictions on owner builders in the Building Act are much less onerous than those imposed in most other states.

Mr Speaker, all applicants wanting to become an owner builder must be able to demonstrate their awareness of taking on the same risks and responsibilities as an accredited builder. Since 2004 owner builders have been required to sign a declaration that they are genuine owner builders and are aware of their responsibilities. But there is no way to actually test their awareness of the risks of building. In the interests of fairness, a prospective owner builder will now be required to demonstrate knowledge of their responsibilities by completing an awareness course. It would cover the same relevant information as is already published by the Director in a free 50 page Owner Builder Kit. It would cover subjects such as:

- The responsibilities that an owner builder takes on.
- Insurance and risk management.
- Workplace safety.
- Hazards of renovations such as asbestos and lead paint.
- Dealing with tradespersons working for the owner builder.

An awareness course is not training to become a builder. A person will be able to complete the awareness courses on-line, by post, or by face to face seminars. Owner builder courses are already mandatory in NSW, the ACT and QLD and are being introduced in WA this year. It would take about 5 hours

to read the entire course materials and complete a test of multiple choice questions. A certificate of completion of the test is submitted to the Director with their application to become an owner builder. There have been expressions of interest from course providers operating in other states to offer an awareness course in Tasmania, tailored to our legislation and requirements.

Sixthly, transfer of the functions of the Building Appeal Board to the Resource Management and Planning Tribunal.

The Resource Management and Planning Appeal Tribunal will assume the statutory review functions presently conducted by the Building Appeal Board. These functions will be incorporated as part of the general statutory powers created by the *Resource Management and Planning Appeal Tribunal Act 1993*. This will mean one less Government Board which as the House will know is a priority of this Government.

Mr Speaker, the rationale for incorporation is straight forward. The functions presently performed by the Board are complimentary and similar to those presently performed by the Tribunal. It will also allow for alternative dispute resolution to be carried out in relation to all Building Act appeals.

The main reason for this amendment bill is Disability - Access to Premises Standards

Mr Speaker, the Tasmania Government is committed to social inclusion and the rights of people with disabilities. Equal access to buildings is a fundamental human right. Amendments to the Building Act will incorporate provisions consequential on the commencement last year of the Commonwealth's Disability (Access to Premises – Buildings) Standards 2010. This is a major reform as the Premises Standards will for the first time set the minimum access requirements for people with a disability to publicly accessible buildings to meet the obligations of the Commonwealth's *Disability Discrimination Act 1992*.

The Access to Premises Standards includes codified requirements for physical access into and around buildings and access requirements for people with a sight or hearing disability. The technical requirements of the Standards have been incorporated into the Building Code of Australia. This significantly assists building owners in understanding how to achieve compliance with disability access laws.

The Building Act is to be amended to allow for the consideration of cases of unjustifiable hardship caused by compliance with the new Access to Premises Standards. An application may be made to the Resource Management and Planning Appeal Tribunal for a ruling on the non-application, modification or variation of certain provisions of the Building Code of Australia relating to the provision of access to buildings and facilities and services within buildings for persons with disabilities.

The wording in the new section 218A(4) of the Building Act is specific to the requirements of Access Panels under the “Access Protocol” published by the Australian Building Codes Board. This particular wording was developed by the Commonwealth Attorney General’s Department.

Finally Mr Speaker, there are a number of other miscellaneous amendments to clarify existing provisions in the Act and provide for consistency in the administration by council permit authorities and building surveyors.

The Government fully supports the introduction of the Building Amendment Bill 2012.

Mr Speaker, I commend this Bill to the House.