



Short Stay Accommodation in Tasmania

Submission to Legislative
Council Select Committee



Submission – Short Stay Accommodation in Tasmania

Contents

1. Terms of Reference (Point 4 and 5)	3
2. Determination is Ultra Vires and Invalid	3
i) The force of the Principal Act.	3
ii) Building Act 2016.....	4
iii) Parliament’s commentary on the Building Bill 2016.....	4
iv) Section 20(1)(e) and Regulation 8(l)	6
v) Conclusion	8

1. Terms of Reference (Point 4 and 5)

The terms of reference, Point 4 and 5, pertaining to the short stay accommodation industry in Tasmania by the Legislative Council Select Committee, established by the Legislative Council states are:

“ (4) Regulatory issues including customer safety, land use planning, neighbourhood amenity and licensing conditions compared to other jurisdictions in Australia and worldwide; and

(5) Any other matter incidental thereto.”

This submission will address these points by purporting the following:

‘Director’s Determination – Short or Medium Term Visitor Accommodation’ (Determination) which first commenced 1 July 2017 is ultra vires and invalid;

That the Determination attempts to reflect the safety features of a class 1B building as defined under the National Construction Code (NCC), but fails to clearly define its requirements

2. Determination is Ultra Vires and Invalid

i) The force of the Principal Act.

The principal act is a legislative instrument passed by the Parliament. Acts set out the broad legal/policy principles.

Regulations are commonly known as "subsidiary legislation". Regulations are the guidelines that dictate how the provisions of the Act are applied.

Determinations are commonly known as subordinate legislation or delegated legislation. Delegated legislation consists of instruments which lay down general rules of conduct affecting the community.

In deciding on the validity of subordinate legislation, the following must be determined:

The meaning and scope of the words used in the enabling Act of Parliament under which the delegated legislation is made.

The meaning and scope of the subordinate legislation

The subordinate legislation must come within the words used in the enabling Act. If it does not, the subordinate legislation is ultra vires and invalid.

Simply put, a Determination must be consistent with the Act to be valid.

ii) Building Act 2016

The Building Act 2016 (Act) objectives are laid out in section 3 of the Act.

Section 3(a) states:

“(iii) owners, building services providers, practitioners and councils comply with the requirements of this Act and the National Construction Code when performing work, or performing functions and exercising powers, under this Act; and”

Part 2 of the Act is dedicated to ensuring that all work must comply with the Act and the NCC. Work, building work, must comply with the NCC unless express consent is provided by the Act.

iii) Parliament’s commentary on the Building Bill 2016

Fact sheet (Appendix 1) on the Building Bill 2016 fails to refer to short term or medium term accommodation. Page 2 states:

“The new Building Bill expands the functions of the Director of Building Control in these areas:
Compliance auditing of standards and practitioners and others.

Ensuring that standards of work meet minimum the National Construction Standard.

Greater oversight of statutory functions of permit authorities and building surveyors and the collection of information about their activities.

Making of Determinations for miscellaneous procedural requirements.

Issuing of guidelines to assist in complying with this Act.

Specifying time periods and the documents required for making applications.”

It makes reference that the Director of Building may make “Determinations for miscellaneous procedural requirements”. It fails to make reference that the Director of Building Control may grant exemptions through determinations to building standards, or in fact, to any matter within the Act.

Page 3 expands stating:

“Objectives

The Bill includes a statement of objectives. This gives clear guidance to practitioners and the community on meeting expected minimum standards and ensuring work does not negatively affect the health and safety of persons.

Technical Standards

The Bill references the National Construction Code for all technical requirements of building and plumbing work. That code is the minimum standard for all work in Tasmania. The NCC currently consists of the Building Code of Australia and the companion Plumbing Code of Australia.”

Its made clear that the NCC is to be the minimum standard for all work to ensure the health and safety of persons are not affected.

Mr Brooks in his second reading of the Bill on 5 April 2016 stated:

“The bill references the National Construction Code - NCC - as providing technical requirements for all building and plumbing work in this state. The NCC consists of the Building Code of Australia and its companion, the Plumbing Code of Australia. It has been adopted by every other jurisdiction and provides consistent mandatory minimum standards for building and plumbing work in Australia. Recently a significant number of Tasmanian-specific variations to the NCC were removed to ensure we have an even greater uniformity of rules with other jurisdictions. It is this minimum standard which forms the basis of the building process in the bill, replacing the outdated concept of the permit issued by local government being the central plank of the building process.

This bill continues the statutory position of the Director of Building Control and provides for a range of functions for the director, including:

- ensuring that standards of work meet minimum mandatory standards of the National Construction Code through greater use of proactive compliance auditing of work standards and practitioners and others, rather than just reacting to complaints that are received;
- greater oversight of the statutory functions of building surveyors and permit authorities through the collection of information and statistics about their activities; and
- the director will publish determinations and guidelines for the guidance of practitioners and council officers to provide a better understanding of their responsibilities, for effective compliance with the act and, most importantly, to ensure that the building process is the same regardless of where you are building in the state.”

Again it is reinforced that the NCC is the minimum standard. Mr Brooks states the Director will publish determinations and provides some context. It fails to state that the Director of Building Control may exempt buildings or the use of buildings from the minimum standard adopted by the Act, that being the NCC.

In all my readings from searching Hansard on the Tasmanian Parliamentary website, all the commentary failed to address short term accommodation, not, did it provide the Director of Building Control any guidance that they could cause exemptions from the Act with the issuing of Determinations.

iv) Section 20(1)(e) and Regulation 8(l)

On 1 July 2017, 'Director's Determination – Short or Medium Term Visitor Accommodation' commenced with version 1.0.

On 1 July 2018, 'Director's Determination – Short or Medium Term Visitor Accommodation' commenced with version 1.1, replacing version 1.0.

The Determination was issued by the Director of Building Control, pursuant to section 20(1)(e) of the Building Act 2016 and regulation 8(l) of the Building Regulations 2016.

Building Act 2016, section 20(1) states:

"20. Director of Building Control may make determinations

(1) The Director of Building Control may make a determination in respect of the following matters:

(a) types of building work, plumbing work or demolition work that is low-risk work, notifiable work or permit work;

(b) when and where partial compliance with the National Construction Code may be consented to under [Division 1 of Part 5](#) ;

(c) hazardous areas and any additional requirements or obligations in respect of the design, assessment, construction, inspection, demolition or maintenance of work, or premises, in those areas;

(d) any matter that is to be determined by the Director of Building Control under this Act;

(e) such other matters as are prescribed."

Regulation 8(l) of Building Regulations 2016 states:

“(l) any additional requirements, or obligations, in respect of premises used, or intended to be used, for providing for consideration short-term or medium-term accommodation for persons away from their normal place of residence;”

An amendment caused regulation 8(l) to be applied 1 July 2017.

The initial five words of the regulation state “any additional requirements, or obligations.”

The Macquarie Dictionary defines ‘additional’ as:

“additional

/əˈdɪʃənəl/ (say uhˈdɪʃuhnuhl)

adjective added; supplementary: *She had imagined that marriage would change her subtly, invest her with additional perspective and potential but she remained *unaltered* –SUMNER LOCKE ELLIOTT, 1981.

–**additionally**, *adverb*”

The Macquarie Dictionary defines ‘requirement’ as:

“requirement

/rəˈkwaɪəmənt/ (say ruhˈkwuyuhmuhnt)

noun **1.** that which is required; a thing demanded or obligatory: *a knowledge of Spanish is among the requirements.*

2. the act or an instance of requiring.

3. a need: *to meet the requirements of daily life.*”

The Macquarie Dictionary defines ‘obligations’ as:

“obligation

/ɒblɪˈɡeɪʃən/ (say obluhˈgayshuhn)

noun **1.** a binding requirement as to action; duty: *to fulfil every obligation.*

2. the binding power or force of a promise, law, duty, agreement, etc.

3.

a. a binding promise or the like.

b. the act of binding oneself by a promise, contract, etc.

4.

a. *Law* a legal relationship between two persons, such that one person’s right entails the other person’s duty.

b. the document containing such an agreement.

5. a bond containing a penalty, with a condition annexed for payment of money, performance of covenants, etc.

6. any bond, note, bill, certificate, or the like, as of a government or a company, serving as security for payment of indebtedness.

7.

- a. a benefit, favour, or service, for which gratitude is due.
- b. the state or fact of being indebted for a benefit, favour, or service: **Obligation was the first detail erased by grief.* –SHIRLEY HAZZARD, 1980.
- c. a debt of gratitude: **I imagine he felt under some deep obligation to me because of what I had done to help Young Joe.* –GEORGE JOHNSTON, 1964.

[Middle English *obligacio*(u)n, from Old French]"

In summary, the regulation refers to adding a thing demanded or adding a binding requirement as to action. The regulation must be read in isolation. On reading the regulation, one does not conjure being exempt from requirements or obligations.

However, clause 3 of the Determination turns regulation 8(l) on its head by stating "there is no additional requirements under the Building Act 2016." This clause is outside the intent and actual meaning of regulation 8(l). This clause is outside the intent of the Act, as seen above when examining sections and parliamentary commentary on the building bill. It exempts from the obligation to comply with the NCC, which in circumstances as provided in clause 3 would require a change of use to a building class 1b. In my opinion, the Director of Building Control has used word trickery to provide a political outcome.

v) Conclusion

The misuse of regulation 8(l) means that 'Director's Determination – Short or Medium Term Visitor Accommodation' is ultra vires and invalid.



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Appendix 1

Page 1 of 5

FACT SHEET

Building Bill 2016 &

Building (Consequential Amendments) Bill 2016

The Building Bill 2016 is a new approach to building and construction in Tasmania. It is part of the revised Tasmanian Building Regulatory Framework which reduces unnecessary red tape and supports the industry, whilst providing additional support and protection for consumers.

Key features of the Bill include:

Accreditation of building practitioners moved to the *Occupational Licensing Act 2005*.

Building, plumbing and demolition approvals based on risk. Low risk work can be performed by a licensed practitioner without the need for a permit. Medium risk work, assessed by a building surveyor, can be performed by a licensed practitioner without the need for a permit, but the council must be notified. High risk work requires a permit.

The Director of Building Control may make Determinations to react to changing circumstances within the Building and Construction Industry (for example, the introduction of new technologies or materials).

The Director of Building Control will exercise greater oversight of permit authorities and building surveyors and increased compliance auditing of practitioners.

Greater clarity of role and functions of building surveyors and strengthened immunity from litigation when performing statutory role.

Owner builders are limited to two projects in a ten year period, residential only.

Clearer process for granting occupancy permits.

Improved process for granting temporary occupancy permits.

Clarified responsibilities for performance of maintenance of essential building services.

Building Levy replaced by Building Administration Fee of the same quantum, but now payable on building and plumbing work over \$20,000 instead of \$12,000.

Greater emphasis on rectification of defective work and responsibility for higher standards by responsible builders or plumbers.

Permit authority or building surveyor may serve Notices and Orders where illegal works have been performed, or a building is no longer fit for occupation.

Additional requirements for building in hazardous areas to be provided through building regulations.

Accreditation of practitioners

The accreditation of building practitioners will be moved into the *Occupational Licensing Act 2005* ensuring that the Building Act is about the process of building.

However the Building Bill retains the role of councils, building surveyors and the Director of Building Control to ensure rectification of defective work.

Regulatory processes for new building or plumbing work

The Building Bill proposes significant changes to the way building and plumbing approvals are made.

Previously all work required a building or plumbing permit unless it was exempted by the regulations. However that imposed high costs for some relatively straightforward work. For example, it was not uncommon for the cost of a building permit for a shed to exceed the cost of the shed itself.

Building, plumbing and demolition work have now been assigned to risk-based categories. The Director of Building Control will issue a comprehensive list of the type of work in each category. This list has already been shared with stakeholders and refined with their assistance and endorsement.

For high risk building or plumbing work the owner will need to apply for a permit from their local council, in the same way they do now. This will be referred to as "Permit" work.

For medium risk building work, a private building surveyor will be able to assess the proposed work, and if it is likely to comply with this Act, the building surveyor will be authorised to issue approval for the work to proceed. The building surveyor will then notify the council that this work will be undertaken, and then notify the council again when the work is complete.

This medium risk work which does not require a permit from the council will be referred to as "Notifiable" work.

For medium risk plumbing work, the council plumbing surveyor will give approval for the work to proceed.

For low risk work, no permit or notification will be required, but the work must be carried out by a licensed builder or plumber.

Director of Building Control

With the changes to building and plumbing approval processes, there is a greater role for the Director of Building Control in ensuring that standards are still met.

The new Building Bill expands the functions of the Director of Building Control in these areas: Compliance auditing of standards and practitioners and others.

Ensuring that standards of work meet minimum the National Construction Standard.

Greater oversight of statutory functions of permit authorities and building surveyors and the collection of information about their activities.

Making of Determinations for miscellaneous procedural requirements.

Issuing of guidelines to assist in complying with this Act.

Specifying time periods and the documents required for making applications.

Page 2 of 5

Building Surveyors

The Bill continues private certification of building work by a licensed building surveyor. However, there are significant reforms:

Clearer separation of private and council employed building surveyors to ensure no unfair competition.

Clearer performance standards to enable consistency of approach to performing statutory functions.

Higher insurance premiums and litigation against building surveyors have been of concern to the profession. The Bill provides clarification of immunity from litigation for building surveyors when performing their regulatory role, where they have acted in good faith with due diligence.

The Bill also allows building surveyors to grant Temporary Occupancy Permits, instead of councils.

Other changes Objectives

The Bill includes a statement of objectives. This gives clear guidance to practitioners and the community on meeting expected minimum standards and ensuring work does not negatively affect the health and safety of persons.

Technical Standards

The Bill references the National Construction Code for all technical requirements of building and plumbing work. That code is the minimum standard for all work in Tasmania. The NCC currently consists of the Building Code of Australia and the companion Plumbing Code of Australia.

Duties of Parties

The Bill allocates the responsibilities and duties of all participants in the building process including owners or developers, building and plumbing practitioners and local government.

Demolition work

A separate approval process has been introduced for demolition work, to avoid unnecessary steps that resulted from it being included with building work under the previous legislation. Demolition work will also be categorised as low, medium or high risk and therefore will be either no permit, notifiable or permit work. The focus will be on the safe performance of that work.

Required upgrading of certain buildings

Where new building work is performed on part of an existing building, the Bill clarifies when the whole building may need to be upgraded to meet current standards. Current or proposed new work, to more than half of the volume of the original building, will require the entire building to be upgraded to comply with current standards.

Council roles

The Bill retains Permit Authorities for granting Building and Plumbing permits for high risk work. Other changes for councils include:

More emphasis on risk based compliance and inspections.

Permit Authorities take on compliance functions from the General Manager.

Page 3 of 5

Council has wide powers for dealing with non-compliance with the legislation.

Occupancy permits

More certainty is provided for granting of these permits, which are required after new work is completed, or where the building has undergone a change of its current use.

Temporary Occupancy Permits

Temporary occupancy permits can now be granted by a private building surveyor instead of only by the council. This will streamline applications and reduce the administrative burden for owners and event managers.

The Bill also allows a temporary occupancy permit to be granted to a particular temporary structure allowing its re-erection at different locations, providing considerable savings in fees for owners.

Maintenance of Essential Building Services

The Bill provides the requirements for the maintenance of a building's essential services. The emphasis is on having a schedule of essential maintenance tasks and an audit regime which ensures that tasks have been undertaken.

Clarification that the maintenance responsibilities for a building are primarily with the building owner.

Building owner to have an up to date maintenance schedule and records of maintenance tasks available for inspection by an authorised officer or the Tasmanian Fire Service.

No longer a requirement to display an annual maintenance statement in the building.

Appeals

Any Decisions under the Bill affecting the rights or interests of parties may be appealed to the Resource Management Planning Appeals Tribunal (RMPAT).

Disability access Determinations

RMPAT continues in the current role of being an access panel for consideration of applications for modification of disability (access to premises) standards on grounds of causing unjustifiable hardship if the owner had to fully comply.

Building in Hazardous areas

The Bill provides for the application of additional requirements for the assessment of risks on building sites, design and construction requirements for building in certain areas, such as bushfire prone, landslip, erosion or flood-prone areas. Those detailed requirements are to be provided for in the building regulations, consistent with the current Building Act.

Regulations

The Bill provides for the making of building and plumbing regulations under the Act.

Transitional

Comprehensive transitional provisions are included in the Bill for a seamless change from the current Act and to facilitate moving accreditation of practitioners into the *Occupational Licensing Act 2005*.

Repealed legislation

The Bill repeals the *Building Act 2000*, and rescinds the *Building Regulations 2014* and the *Plumbing Regulations 2014*.

Building (Consequential Amendments) Bill 2016

Because the *Building Act 2000* and its regulations are referred to in many pieces of Tasmanian legislation, it is necessary to update these Acts to refer to the *Building Act 2016* and the new regulations. The Building (Consequential Amendments) Bill 2016 lists these changes.

Appendix 2

Page 1 of 18

DRAFT SECOND READING SPEECH

HON. ADAM BROOKS MP

Building Bill 2016 &

Building (Consequential Amendments) Bill 2016

check Hansard for delivery

Madam Speaker

As the new Minister for Building and Construction I am pleased to introduce the Building Bill

2016 and the Building (Consequential Amendments) Bill 2016. This Government is committed to ensuring that Tasmania has a vibrant and healthy construction sector. As evidence of that commitment it is the first time in decades that any Tasmanian government has appointed a Minister with a specific portfolio to cover Tasmania's \$1.30 billion dollar building and construction industry.

The purpose of the Building Bill is to provide the legislative framework for the approval processes and technical standards of all building and plumbing work in this state. It will replace the current *Building Act 2000* that has been in operation since 2004.

Because the *Building Act 2000* and its regulations are referred to in many pieces of Tasmanian legislation, it is necessary to update these Acts to refer to the *Building Act 2016* and the new regulations. The Building (Consequential Amendments) Bill 2016 lists these changes.

The introduction of the Building Bill represents the major element of the reforms arising from a comprehensive review of the Building Regulatory Framework announced by the Government in early 2014.

The reforms that will be introduced will stimulate this important part of the Tasmanian

economy and provide greater confidence for owners, developers and building and plumbing practitioners.

It also strikes a balance between ensuring that regulatory and administrative costs to business are minimised whilst providing appropriate protection for all users of the built environment and consumers of building services.

The reforms in this Bill, when put alongside the reforms underway to Tasmania's planning system, will mean that development in Tasmania will genuinely become fairer, faster, simpler and cheaper while continuing to be of the highest standard.

Drivers for change:

Considerable time has passed since the current Building Act was developed in the 1990s. We now have a very different regulatory environment with a national market for building products and services. There is a high level of demand for regulatory consistency across jurisdictions requiring all governments to provide administrative efficiencies and greater transparency across the current licensing and permit processes.

There are concerns by the building industry regarding the time taken for processing of approvals, and the necessity for removal of unnecessary delays that inevitably increase the cost of building projects. Consumer expectations of the standards of building work have also increased in the past decade.

And as Members would be aware there are concurrent changes underway with stream-lining of Tasmania's planning laws.

The package of reforms contained in the Building Bill 2016 addresses all of those policy issues and much more. Key responses are divided into three main areas:

Introduction of a risk based approach to the building and plumbing approvals process;

Faster and simpler approvals for small or lower cost projects;

Innovations in ensuring the required standards of work.

Page 2 of 18

The Building Bill is another example of this government's commitment to reducing red tape and demonstrating that Tasmania is open for business, which are key election commitments.

Consultation

Madam Speaker, this Bill has been widely consulted on and scrutinised by four Reference Groups established to guide the reform process during the Building Framework Review, these groups include membership from local government, consumers, practitioners and industry groups.

It was encouraging to see that the draft Bill released in November 2015 received broad support from industry and community stakeholders, including the Master Builders Association of Tasmania, the Housing Industry Association, and the Australian Institute of Building Surveyors, together with consumer and legal experts in this area.

The Government has also responded to matters raised during the consultation process and made changes to the final Bill, including:

Refinements of the new concept of a “notifiable work category” to ensure that this innovation is able to deliver savings for owners but will not deprive councils of the information they need to monitor the standard of work or rateable base in their area;

Flexibility in the application of building standards for farm buildings or historic buildings;

Clearer provisions for the legal protection of council staff and private building surveyors performing statutory functions under this Bill.

As mentioned, the reforms arising from the Building Regulatory Framework Review comprise an integrated package of three separate Bills, of which this is one. I would also like to briefly mention the other two complementary Bills that will make up the revised regulatory framework:

Page 3 of 18

First, debate has commenced on the Residential Building Work Contracts and Dispute Resolution Bill 2016 in this House. This Bill fills the need for better regulation of residential building contracts and expected standards of work. Its implementation will reinforce consumer confidence in this important sector by introducing stronger domestic building protection to avoid costly disputes;

Secondly, the Occupational Licensing Amendment Bill 2016 amends the *Occupational Licensing Act 2005*. It makes changes to the current system of accreditation of building practitioners and other types of licensed persons to remove duplication and improve efficiency. This Bill is of course cognate with the Building Bill and I will later on refer to some of the important licensing changes proposed and how they affect the Building Bill.

Madam Speaker, the Building Bill 2016 will provide for better regulation of the building and construction industry in a number of crucial areas.

For the first time in Tasmanian building legislation the Bill itself contains a clear statement of the broad objectives that are intended to be achieved by the new legislative arrangements created by this Bill and the other parts of the Framework Review.

The objectives are wide ranging and comprehensive, and provide clear guidance to practitioners and the community on meeting expected minimum standards and ensuring that work does not negatively affect the health and safety of persons.

The Bill also allocates the responsibilities and duties of all participants in the building process, including owners or developers, building and plumbing practitioners and of local government.

I am sure that members will agree that these objectives are sound and provide a solid foundation for community confidence and future economic growth of the industry.

Page 4 of 18

Madam Speaker, this is a large and complex enactment. I will therefore now separately provide details concerning some of most significant elements or reforms proposed in the Bill.

Consistent Technical Standards

The Bill references the National Construction Code (NCC) as providing technical requirements for all building and plumbing work in this State. The NCC consists of the Building Code of Australia and its companion, the Plumbing Code of Australia. It has been adopted by every other jurisdiction and provides consistent mandatory minimum standards for building and plumbing work in Australia. Recently a significant number of Tasmanian-specific variations to the NCC were removed, to ensure we have an even greater uniformity of rules with other jurisdictions.

It is this minimum standard which forms the basis of the building process in the Bill, replacing the outdated concept of the permit issued by local government being the central plank of the building process.

Director of Building Control

This Bill continues the statutory position of the Director of Building Control. It provides for a range of functions for the Director, including:

Ensuring that standards of work meet minimum mandatory standards of the National Construction Code, through greater use of proactive compliance auditing of work standards and practitioners and others, rather than just reacting to complaints that are received;

Greater oversight of the statutory functions of building surveyors and permit authorities through the collection of information and statistics about their activities;

Page 5 of 18

The Director will publish Determinations and Guidelines for the guidance of practitioners and council officers, to provide a better understanding of their responsibilities, for effective compliance with the Act and most importantly to ensure that the Building process is the same regardless of where you are building in the State.

Regulatory processes for new building or plumbing work

Madam Speaker, the Government proposes important changes to the way building or plumbing approvals are made and this Bill significantly changes the current system for the granting of permits.

Currently all new building work requires a building permit by default, unless it is of a type specifically exempted by the regulations from that requirement. However, this clumsy “one size fits all” approach imposes high regulatory costs for less complex work, such as for many smaller residential projects. This vague approach is also perplexing for owners and builders as to whether they could be breaking the law. It is a similar problem for new plumbing work, with even a simple connection of a downpipe to a rainwater tank currently requiring the council to issue a plumbing permit.

The Bill takes a very different approach. It divides various categories of building, plumbing or demolition work into three separate risk-based categories.

Draft Determinations of what are Low, Medium and High Risk Work have already been developed by the Director of Building Control and are being refined by focus groups of building and plumbing experts. This innovative new approach has already been widely supported by building and plumbing practitioners.

The risk level assigned to these three categories reflects the potential effects that could arise if that work was defective.

Page 6 of 18

In this Bill, only the work assigned as a “high risk” will need to undergo the full process of obtaining a council permit. The consequent costs and time taken for that approval is justified by the significant or complex nature of the work, such as for new work on significant commercial, industrial or public use buildings.

For all the “medium risk” building work (which is referred to in Part 8 of the Bill as being “Notifiable Work”) the entire regulatory process is handled by the private building surveyor and council permits are not required. Council will be notified of the work prior to commencement and when the work is finalised so that they remain the ‘keeper of the record’ for the long term.

The newly proposed “Notifiable Work” category will capture a very large proportion of lower risk residential building work, including additions and alterations. It will also apply to most pre-fabricated sheds, work on most farm buildings and some alterations and additions to commercial buildings, such as making them compliant with modern disability access requirements.

The great benefits of this system for notifiable medium risk work is that effectively, the entire building approval process is handled by one just regulator – the building surveyor - without a concurrent need to apply to the council, with associated delays. The consequent costs to owners of the time taken for approvals will be reduced.

The building surveyor will assess for work compliance with the National Construction Code, organise inspections and certify that work is complete. The responsible builder will also need to provide a Standard of Work Certificate to the building surveyor, stating that they have satisfactorily completed the work and that it meets the minimum standard in the NCC.

The Bill also creates a Low Risk category of work that an owner or a licensed builder/plumber may perform. The person doing the work is responsible for meeting the minimum standards of

the National Construction Code. The Low Risk work will include a range of specific small projects such as prefabricated sheds or garages, carports, pergolas or fences. Based on the feedback received through the consultation process this category will include more work than is currently listed in the exemptions from the permit process under the current Act.

Similarly for plumbing work, the low risk category will include works such as moving a plumbing fixture in the same room by a licensed plumber.

Madam Speaker, I would also like to assure the House that these changes to the current permit system as proposed in this Bill will in no way diminish occupant safety or the building or plumbing standards in Tasmania.

Demolition work

Approval for the demolition of any structure currently requires a building permit as if the owner was making an application for constructing a new building. This is unnecessary over- regulation.

Therefore the approval process for demolition work has been separated from new building work, speeding up the approvals and enabling a specific focus on safe performance of the demolition. Demolition work will also be divided into risk categories of low, medium and high risk types, with an appropriate regulatory oversight matched to each type. For example, demolition of a multi-storey commercial building is high risk work requiring an application for a demolition permit, whereas the removal of a backyard wood-shed is low risk and can be managed by the owner.

Building Surveyors

Licensed building surveyors play a pivotal role in the regulation of building work in this Bill. Their statutory functions include the issuing of certification, occupancy permits and performing

Page 8 of 18

inspections. Since 2004 we have had a system of full private certification of building work by building surveyors, with the retention of the issue of a building permit by the council. This system has generally reduced approval times with resultant financial savings to consumers.

Madam Speaker, this Bill continues with the private certification of work by those practitioners but with some significant reforms relating to building surveyors. Key elements are:

Clearer separation of private and council employed building surveyors to ensure there is real competition of services offered;

More oversight by the Director of Building Control of their statutory functions and associated business undertakings, through regular reporting of their activities and greater surveillance of the work they have undertaken;

Clearer performance standards to assist with consistency in the performance of their statutory functions such as certification and inspections;

Clarification that an owner can choose their building surveyor and that the building surveyor is to act independently of the designer, builder, or the owner's other contractors, while performing their statutory functions;

The Bill prohibits building surveyors acting where there is a conflict of interest;

Recently the resignation or retirement of some sole-practitioner building surveyor businesses has exposed their clients to delays in completing work. The Director will be given clear powers to deal with those situations to enable a straightforward transfer to another practitioner;

Where a private building surveyor has ceased to operate and has failed to make alternative arrangements, or the owner cannot find a building surveyor willing to complete the work, the Director may be appointed as building surveyor by the Minister.

Page 9 of 18

This reform will enable completion of the owner's building work. The Director will delegate the performance of practitioner functions to an individual licensed person, who is indemnified by the Director for that project;

The Bill also provides that building surveyors will regulate the temporary use of structures for public safety and amenity and will grant Temporary Occupancy Permits, instead of the council's general manager having this responsibility. This is a welcome reform comparable to the introduction of private certification of buildingwork;

In a closely related matter, the proposed Occupational Licensing Amendment Bill 2016 will provide for corporate building surveying entities to be licensed in their own right, with certificates issued by that corporate entity. When this occurs, a licensed natural person will still be required to exercise all the functions of the building surveyor.

Permit Authority and Council roles

The Building Bill retains roles for permit authorities, appointed by councils for the performance of important regulatory functions. These include the granting of building or plumbing permits and certificates of completion of work. Their roles for regulating building and plumbing compliance will be enhanced and expanded in the new Bill, while less types of work will require the full permit process.

The permit authority will have challenging roles including:

Taking over most compliance functions from the general manager;

An emphasis on a risk-based compliance approach with more scrutiny and inspections, in particular of higher-risk plumbing work.

For works in the “Notifiable Work category” (both building and plumbing) there is not expected to be a loss of revenue arising from the permit authority no longer processing and

Page 10 of 18

issuing as many building permits. Instead, a council may charge fees for receiving notifications of work from private building surveyors and at the time of the lodgement of documents that the council is required to retain.

A concurrent change is that the officers performing the permit authority role will be required to be licensed under the amended *Occupational Licensing Act 2005*. To facilitate a smooth introduction of this reform, transitional arrangements will apply and all of the existing persons appointed will be deemed to hold the necessary licence until the new changes are commenced. However, the groundwork for this change has already been made, as for the past two years the Director has been supporting officers and practitioners in Local Government to complete a Certificate IV in Government (Statutory Compliance) and that qualification will be a requirement for holding a licence as a permit authority.

When existing buildings require safety upgrading

Where new building work is performed on an existing building, including additions to the building, the Bill clarifies when the owner is required to upgrade that building to meet current NCC requirements. The current Act has left this issue unresolved by simply providing that all new work meets current standards, and failed to provide proper guidance to owners or designers as to whether any consequent alterations to the existing building are needed. This piecemeal approach to building compliance is unsatisfactory and could create future risks to building occupants and users.

The provisions of Part 5, Division 1 of the Bill apply to alterations of an existing building. Clause 53 requires that all new building work proposed to alter an existing building must comply with the current NCC, and that is the same requirement as now. The proposed changes go a step further as there will be specific threshold defined, whereby the remainder of the existing building, not originally intended to be upgraded, must also comply with the current NCC.

Page 11 of 18

The threshold is as follows: if the proposed alterations, together with any other alterations completed or permitted within the previous three years, represent more than half the original volume of the building then it will require further consideration as to whether the safety features of the entire existing building need to be upgraded to meet contemporary standards. That may include the access paths to exits, and fire safety equipment.

It should be stressed, however, that even if this threshold is crossed, the practical application of this new requirement allows for the licensed building surveyor to exercise their discretionary powers to consent to partial compliance with the current NCC. After taking into account the health and safety of the occupants, the structural adequacy of the building, and any measures necessary to avoid the spread of fire, the building surveyor may be able to determine that an upgrade of safety services or features may not be necessary in the circumstances.

This new approach provides the correct balance between ensuring older buildings are safe for use while justifying the extra costs of upgrading their services where they fall below acceptable safety standards.

Ensuring greater oversight of standards of building or plumbing work

The Bill will strengthen incentives for owners and building practitioners to ensure that the correct approval process has been followed for building or plumbing work, and that all work complies with the NCC, the Building Act, building regulations and a building or plumbing permit or similar approval for any Notifiable Work.

Rectification of defective or incomplete work

This Bill places greater emphasis on the correction of defective work and responsibility for meeting the minimum standards by responsible builders or plumbers.

Page 12 of 18

It gives building surveyors, permit authorities and the Director enhanced compliance powers to direct builders or plumbers to fix non-compliant work, and will strengthen the powers of these regulators to give directions.

It also places greater responsibilities on the relevant practitioners engaged by the owner to fix defects at an early stage before they become a significant issue of dispute.

The Director's powers in relation to disciplinary matters for building practitioners have been reformed considerably. These reforms, allied with more efficient and timely disciplinary processes in an amended *Occupational Licensing Act 2005*, will act as powerful disincentives to that extremely small number of practitioners who persist in doing the wrong thing.

Compliance and offences

The Bill continues with compliance and enforcement provisions based on the current Act, of serving directions, notices, and orders for defective work. Compliance is mandatory.

Part 18 of the Bill provides that the permit authority or building surveyor can also serve Notices and Orders where illegal works were performed without authorisation, or where a building is no longer fit for use or occupation.

The Bill also provides for infringement notices to be served on offenders as a monetary penalty, which is an approach consistent with current Building Act.

Madam Speaker, we are all aware of the risks that building in hazardous areas, such as in a bushfire prone region, can pose to owners and fire-fighters. Other natural hazard types include landslip areas and land subject to flooding.

Consistent with the current Act, the Building Bill 2016 provides that in certain hazardous areas additional building requirements, over and above the usual building standards, will apply. These include the detailed analysis of hazards on individual building sites, and special design and construction considerations before a building permit is granted for these high risk areas.

Page 13 of 18

Detailed provisions for necessary compliance standards will be prescribed in the building regulations and they will be broadly consistent with the current regulations.

Licensing of building practitioners

Consistent with the Government's approach of reducing red tape and unnecessary duplication of regulations, the requirements for the accreditation of building practitioners in the current Building Act will be moved to the amended *Occupational Licensing Act 2005*. That is why this Bill does not include any provisions for the licensing of persons who perform building work.

This reform will consolidate all licensing of building, plumbing, electrical and gas-fitting practitioners under the one Act and enable improvements to the governance arrangements for building practitioners' licensing and discipline. For instance, building practitioners will be able to elect to renew their licence for 3 years instead of the current one year cycle.

There will be much less overlap and duplication of virtually identical administrative requirements for obtaining and renewing a licence, insurance, continuing professional development and owner builder registration.

Complaints and practitioner disciplinary matters are other matters to be dealt with by the amended *Occupational Licensing Act 2005*.

As this new Building Bill focusses on achieving required standards and workmanship it still retains substantial complementary powers for the permit authority, building surveyor, or the Director, to undertake compliance actions. That includes powers to order rectification of defective work, in particular of defects discovered during inspections at the construction phase.

Maintenance of Essential Building Services

While the standards of the National Construction Code provide for the installation of safety features or services in all new building work to protect occupants, the value of such work becomes worthless if owners fail to keep these systems in proper working order during the life

of the building. Commercial and public building owners are currently required to maintain a building's essential services – that is, those prescribed systems or features for fire safety, occupant warning, emergency evacuation plans, and some types of plumbing installations.

For clarity, these maintenance requirements do not apply to a single detached house or unit.

All prescribed types of features or services are required by law to undergo periodic check-ups and maintenance. This obligation was introduced in 2004, and resulted in a large number of owners undertaking expensive yearly checks and work when that may not have been necessary.

At the opposite end of the scale, it also resulted in a very small number of other building owners simply paying lip service to the law, by publicly displaying a certificate of maintenance compliance that was practically worthless as the fundamental maintenance tasks had actually not been performed.

Therefore the maintenance provisions in the current Act have been reworked to ensure that the emphasis is on building owners having a schedule of essential maintenance tasks for each building. This means that owners will be aware of exactly what cycle of checking is required; so, for example, if the manufacturer requires that a fire extinguisher only needs to be checked every three years, then building owners will not be forced to do this more often, as is the case under the current provisions.

In this Bill, the prescribed features or measures are called Essential Building Services. This term covers the same items required to be maintained by the current Act.

The Bill carries forward from the current Act the audit regime for essential maintenance, but it will focus on the work in the schedule being done, rather than checking on the 'form in the foyer'. A commercial or public building owner will be required to create and maintain an up to date maintenance schedule and keep records of the maintenance tasks performed on those

Page 15 of 18

Essential Building Services, and make it available for inspection by an authorised officer under the Building Act or by the Tasmanian Fire Service.

The Bill clarifies that the maintenance responsibilities are primarily on the building owner.

Building Administration Fee

Madam Speaker, appropriate funding of the administration of the activities contained in this Bill has been taken care of as it provides for the payment by owners of a mandatory Building Administration Fee to the permit authority. This continues the practice in the current Act.

The fees are paid into the Building Administration Fund which is used to fund the activities of the office of the Director of Building Control.

The Building Administration Fee will be payable for building work when the cost is over

\$20,000. This threshold has been raised from \$12,000 in the current Building Act.

The fee rate in this Bill remains the same as the current Act, at 0.1% of the contract price of the building work (which equates to \$100 in every \$100,000).

I would like to stress that with the collection of this modest fee, the administration of the essential elements of the building regulatory framework is made virtually self-funding. The Building Administration Fee also protects the health and safety of the public by ensuring an adequate level of oversight of the building and construction industry and of the required standards of those who work in it.

Issue of Temporary Occupancy Permits

The current Building Act provides for the granting of this type of permit for a temporary use of a building or of temporary structures, such as for holding an event. Three significant reforms to this type of permit are proposed by the Bill:

Page 16 of 18

First, as mentioned earlier, this permit will be assessed and issued by a private building surveyor instead of the council general manager. Competition will streamline the applications process and potentially reduce costs to owners and event managers;

Secondly, once a particular temporary structure is certified as suitable then the permit may allow, subject to appropriate conditions, for erecting that same temporary structure anywhere in the state during the duration of the permit; providing considerable savings for community associations or owners who are currently paying the permit application fees;

Finally, the permit can be issued as applying for up to 3 years.

This small but effective amendment will cut red tape and help Tasmanian businesses operating at markets, sports carnivals and the like to reduce their operating costs. Owners of businesses are currently required to obtain a permit in every council area in which they operate – and I emphasise, there are 29 local government areas within Tasmania. This is an inequitable situation for these businesses or community groups, and an ineffective and unnecessary duplication of scarce council resources.

This Government has declared Tasmania “open for business” and that is another example of this legislation delivering on that statement.

There is no doubt that this Bill is an important component of our red tape reduction package.

It will make life easier for Tasmanians and provide a fairer, faster, simpler and cheaper path to get building underway.

It is a significant reform for the industry and will deliver real wins for home owners, businesses and building professionals alike.

I have said it on numerous occasions and I will say it again - red tape delays and deters

investment, costing the Tasmanian economy and frustrating everyday Tasmanians who are just trying to get things done.

Tasmania's building and construction industry is one of the most important sectors of our economy. It is worth millions of dollars in investment and provides thousands of jobs.

Therefore, it is incumbent upon this Government to support the industry by providing the most effective and efficient regulatory environment that we possibly can.

There is still much work to be done, but I am confident that this Bill is a huge step in the right direction.

Madam Speaker, I commend the Bill to the House.