

# BUILDING ACT PUBLIC COMMENTS SUMMARY

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## Administration of Building Control

### Management of Building Control Function

- While enforcement and compliance should almost certainly remain within local government (LG) jurisdiction, consideration should be given to opening certification up to industry competition.
- The complete building certification and approval process should be fully privatised, while still allowing local governments to compete.
- There is a need for LGs to generally be obliged to provide a full building certification and approval service.
- Country Licence Issuing Authorities (LIAs) need to be able to provide a complete 'one-stop' package service.
- Any proposal to outsource assessment and certification should be carefully considered to ensure current funding arrangements are not affected.
- The distinction between the certification service and the LIA role must be clearly regulated.
- There could be an administrative law implication where there is no separation of functions (i.e. in relation to an agency issuing approvals to itself).
- There could be a potential conflict of interest where LGs and State Government departments act as LIAs and have a business unit employing registered consultant building surveyors.
- LGs should not have a legislative function regarding building control and matters of concern to such authorities should be referred to the State Government for consideration.
- The powers of delegation given to a LG under the Building Act should reflect the process prescribed under the *Local Government Act 1995*, namely that the Council delegates to the Chief Executive Officer (who may then on-delegate his/her power). In addition, LGs should be able to delegate responsibilities under the Building Act to a regional council.
- The transfer of the building control function to the State Government is not supported, as it will result in an increased bureaucracy.
- The Victorian Building Commission would be a good model for Western Australia to follow.
- A single entity model is supported.
- Registration of practitioners should be managed by a single entity such as a Western Australian Building Commission.
- The State Government should establish a well resourced Building Commission to perform the following functions – auditing (of compliance certification process), practitioner registration, dispute resolution, public education, and so forth.
- A separation model, with suggested amendments, is supported.
- All building industry-licensing bodies should be brought under ambit of one department and one Minister.
- The Department of Housing and Works (DHW) should direct funding to their building control area, for the employment of suitably qualified building surveyors, to provide assistance on a range of functions (upon adoption of the new Act and thereafter).
- The Council opposes any ability that the State Government may gain under the proposed new Act to override a decision made by Local Government on building matters.

### **Auditing & Appeals**

- The body responsible for licensing/registering the certifiers should also undertake the auditing of certifiers.
- The State Government will need to fund the appointment of at least twenty qualified auditors to independently audit building approval contractors, and to ensure that privately certified work is undertaken in accordance with statutory compliance and industry standards.
- The auditing function should rest with a central agency.
- The requirement to be audited by the State Government is unacceptable.
- Certifiers should be responsible to professionally manage conflicts of interest without external monitoring.
- A third party appeal system under the State Government is preferred prior to any appeal to the State Administrative Tribunal.
- The Queensland appeals process is a very good system, which is supported by industry and provides guidelines and consistent information.
- The State Government could audit LIA performance determinations (with the LIA auditing a percentage of deemed to satisfy submissions).

### **General Comments**

- There should not be any significant change to current legislative framework.
- A party to a State Agreement should not be accountable to another approval authority, such as a LG.
- The proposed changes are too costly.
- Building Act proposals must be moderated to reduce any impact on regional communities.
- The input of building surveyors into the planning process will increase with the advent of the Building Act. Problems are envisaged with respect to issue of planning approvals by LGs.
- The proposal for LGs to engage a registered building surveyor is supported.
- Industry guidelines based on cost versus benefit should be developed and promoted.
- It would be more appropriate to include building industry regulation under the Minister for Planning's portfolio.

## Application of the Act

### Binding the Crown and State-wide Coverage

- The Crown being bound by the Act is supported.
- The Crown should be bound by the Act and come under the control of local authorities.
- The State Government should be allowed to be a building approval issuing authority, only.
- It is not clear whether the LG can provide input or be part of the building licence approval process of the Crown and public authority buildings within its jurisdiction.
- The Crown should not issue its own building licences and approvals, unless it has consulted with LG beforehand.
- The State Government should only issue building licences where a matter of national or State security is concerned.
- The State should be subject to the same process as all other building owners/developers.
- There is a need for the State Government to confirm that state approvals will still be subject to LG input, in the particular LG area where the building is to be constructed.
- Copies of plans for public buildings should be submitted to the relevant LG for recording.
- There is a need to confirm that in binding the Crown the processes involved with the *Town Planning and Development Act 1928* are adhered to, where applicable.
- Covering the State, with no exemptions, is problematic (eg, with respect to the travel time required to inspect farm buildings).
- Application of the Act across the State is supported; however, the proposed administrative processes appear to be more onerous.
- Currently, the Shire does not require buildings outside of townsites to have licences, and it would prefer to have the option to exempt areas in the district.
- A clear resolution is required as to whether buildings that are leased to private persons by the Crown, are exempt from the requirement to obtain a building licence.

### Definition of a Building and Exemptions

- The definition of a building should include 'structure attached indirectly to land' (eg, tree house).
- The definition of a building should include non-structural work such as partitions and office fitouts; as well as address temporary works such as ground anchors.
- The Act should only apply to buildings where the Building Code of Australia (BCA) is relevant and applicable.
- A nationally consistent definition of a building should be considered as part of this review.
- The inconsistency between the proposals to exempt certain works and to also bring public authorities under the jurisdiction of the Building Act should be resolved.
- Class 10 buildings should not be exempt from having to submit plans and receiving a building licence. There is an associated public safety issue for these types of structures (ie, sheds, patios, fences, etc.).
- Some other minor structures should also not be exempt.
- A dividing fence should be exempt from the definition of a "building".
- Direct exemptions remove the ability to ensure the minor works do not impact on other properties. There is a need to ensure that the LG can protect the amenity of the area and determine acceptable materials even for exempt constructions.
- There is no clear definition of building in any of the current legislation.
- The definition of "building" will have different meanings for different purposes (eg, from obtaining a building licence to the definition for builders' registration purposes).

- It would be more appropriate to establish a comprehensive schedule of exempt buildings in regulation.
- Consideration should be given to a blanket exemption for some buildings that do not have to comply with the BCA; and another option would be to include a regulation-making power to exclude certain buildings from the definition of a building.
- Exempt works must not conflict with the Planning Act or *Residential Design Codes 2002* (R-Codes).
- Industrial buildings should be controlled by the Building Act.
- Mining operations should be exempt from building controls.
- The industrial and mining sectors have encountered problems in relation to whether or not building licences are required in respect of their construction activities.
- Minor structures should not be exempt from requiring a building licence.
- The proposal to treat masonry fences and retaining walls along the same lines as party walls is unacceptable.

### **General Comments**

- There should be some resolution of the differences and overlap with respect to the Health Act, Public Buildings Regulations, etc.
- There is a potential conflict of interest where the LG provides a certification service.
- If the proposed new Act covers the whole State, does this mean that existing exemptions (eg, for Classes 1 & 10 buildings) will be removed?

## BCA/Building Standards – Certification of Compliance

### Private Certification; Risk Management

- There are not enough sound reasons to introduce private certification.
- Private certification is not supported and building surveyors should remain within the realm of LG.
- Local area knowledge is required in order to ascertain the degree of documentation needed to demonstrate compliance.
- Assessment of the design should not be the responsibility of the LIA.
- Private certification will increase costs. The requirement for a Certificate of Design Compliance (CDC) will result in a significant cost increase to the consumer.
- By using a certifier, the owner's cost of having building plans approved will increase, as they need to pay the certifier's fee plus any fees for compliance certificates, plus the building licence fees.
- Should councils opt out of the building certification service altogether, the public will be forced to pay consultant fees for services currently provided to the community for free (or at a minimum charge).
- The requirement for a building owner/builder to coordinate registered certifiers will most likely cause delays.
- The LG should not be involved in risk management of certification of compliance or random audits of the entire process.
- The method of LIAs approving certifiers is not supported and will not assist in the prevention of conflicts of interest.
- The risk assessment process seems to be overly complex for the majority of buildings.
- The duty to monitor a possible conflict of interest of the person/s providing certification would be a difficult, if not impossible, role for LG to administer.
- Certain issues (eg, monitoring what constitutes a conflict of interest) need clarification in relation to the risk management approach.
- Standard certification regimes are supported, subject to a cost-benefit analysis being undertaken (with the results supporting the need for an increased inspection regime).
- The compliance certification framework proposal is supported.
- The cost of private certification will result in increased illegal construction, as individuals will not want the burden of inspection costs that are currently accepted and worn by LG.
- Deregulation of the design certification process would assist in overcoming a shortage of suitably qualified and experienced building surveyors.
- There should be a clear separation of the builder and owner from the certifier to ensure there is no conflict of interest.

### Role of Professionals

- The standard of documentation and standard of professionalism of designers and architects is not sufficient to currently allow for private certification.
- Architects should be able to self-certify compliance with the BCA. They should also be able to issue overall compliance certificates.
- Builder self-certification is not supported during construction; especially as builders are generally not expert in the interpretation (and application) of the BCA.
- Self-certification should be restricted and independent inspectors should verify compliance of works under construction in specified instances (i.e., primarily for domestic works).
- In the case of habitable buildings, a person registered as a building surveyor must provide certification of overall design compliance.
- External persons should not be able to approve or certify buildings, as they will generally not be aware of local circumstances.

- Independent certification (of overall BCA compliance) is required.
- Building surveyor overall certification should be required for Class 10 buildings; and the Act needs to be clear with this provision (especially in relation to which Class 10 structures do not require overall certification).
- There is no mention of hydraulic designers or electrical engineers, who can have significant effects on services & equipment, and health & amenity.
- Self-certification by builders could present problems later on; especially in relation to those builders who regard the BCA as non-mandatory.
- The table on page 97 (of the discussion paper) should be amended to reflect that, for habitable buildings, the certifier must be registered as a building surveyor.

### **Documentation; Liability & Responsibility**

- The main issue with our building industry is the provision of poor documentation and a lack of knowledge (by the applicant) of the BCA, acts and regulations.
- The proposal to issue certificates of compliance, and so forth, cannot be endorsed unless there is (firstly) an opportunity for the wording of such certificates to be reviewed.
- Where an alternative solution is proposed, a CDC should only be issued by registered building surveyors and fire engineers.
- The purpose of the Certificate of Construction Compliance is questioned.
- A compliance certificate for each part of construction work should be required - but not for all building work.
- The Act should provide for regulatory authorities to retrospectively require BCA compliance in certain types of buildings (eg Class 9 buildings). This could be managed through the issue of Certificates of Occupancy.
- The proposal for a CDC is supported.
- 'Soundness' should be included in the CDC.
- Prior to construction, all structures should have a certificate demonstrating compliance with the relevant town planning scheme and R-Codes.
- The certificate formats for the various certifications required should form part of a Schedules component (within the Regulations).
- Mandatory standard forms should be created for all aspects, including certificates, approvals, notices, etc.
- Liability certificates are supported (eg, Certificate of Design Liability - CDL), if they can simply be part of the licence application (and minimal paperwork is ensured).
- It is difficult to see what is intended by a CDL, since compliance certificates already exist. It should instead be referred to as a Certificate of Design Responsibility.
- The building owner should not carry responsibility for the 'soundness' of the design.
- The CDL should be omitted in favour of a statement of the design team's responsibilities.
- It is unclear as to how the CDL would sit with other legislation (eg, the *Occupational Safety and Health Act 1984*); where a designer has a statutory duty of care to all building users. Regulations should prescribe mandatory wording of the CDL.
- A CDL should be incorporated into the application form.
- The proposal for a CDL is supported; however, an appropriately registered person must provide certification for controlled aspects of some buildings.
- There is an opportunity for the Act to clarify issues of responsibility and liability for occupational safety and health, for building works.
- Liability should ultimately rest with builders and design engineers. In addition, the proposal to issue a building licence to a building owner will spread liability from the builder to everyone involved in the building process (i.e., from the issue of the licence issue to completion of the process).
- Could liability be incurred by a LG if it fails to identify any plan assessment issues that may have been missed by the consultant building surveyor?

## General Comments

- LIAs should not be required to double check a private certifier's interpretation of the BCA.
- The Act and Regulations must clearly state when certification by registered practitioners can be refused by an LIA.
- If the BCA is incorporated into legislation, then guidelines should be issued on how the codes may be applied and interpreted at LG level.
- The State Government should set up a review panel to provide advice to local authorities and certifiers on the interpretation of building codes and standards.
- Construction in bush fire prone areas should meet Australian Standard 3959 (*Construction of Buildings in Bush Fire Prone Areas*).
- The checking process is severely weakened by the new proposals.
- Determining and certifying compliance with planning, health and heritage requirements should remain the responsibility of the relevant authority.
- There needs to be specific guidelines and requirements for acceptance of fire engineered and other performance based solutions. [In such circumstances, a higher application fee should also apply.]
- The proposed *Electricity (Licensing) Amendment Regulations 2006* insert two new regulations, which will require that appropriate documentation (i.e., to ensure the design is safe and complies with relevant standards) accompany the design.
- To avoid additional work and cost, it would seem sufficient for the builder to send a copy of the Notice of Completion to the LIA on the understanding that this notice would have initiated an inspection in accordance with the Network Operator's approved Inspection Plan (and that any defects would have been remedied pre-installation).
- E-lodgement for licence applications and certificates should be considered.
- Public education will be required if the owner of a building is required to demonstrate compliance.
- There are some anomalies in the certification matrix.
- The restriction on LGs, to vary building standards without Ministerial approval, should be extended to cover other authorities involved in the land development industry.

## Licence Issuing Process

### Timeframes

- A reduced timeframe for the issuing of a licence (eg, 5 days) is supported.
- A 14-day period for an LIA to verify the compliance processes undertaken by the property owner and agents is acceptable.
- If areas of non-compliance are discovered during the LIA assessment, and highlighted to the applicant, the timeframe for an approval should cease and only apply again upon re-submission.
- Performance submissions should have a time limit (for the issue of a licence) of 35 days or so; and if the LIA doesn't provide a decision in the specified time period then it should be deemed that the LIA has "failed to perform" - with all fees refunded and the applicant able to go to any LIA (including the State Government LIA).
- It is unclear whether the 14-day period for the issue of a building licence will apply, regardless of the value of the complexity of the project.
- Varied time limits should be introduced for the issue of building licences (i.e., commensurate with the complexity of the project).
- A 14-day time period to issue licences is not supported, as the timeframe is too short for under-resourced councils.
- If a licence has not been processed by the LIA within 14 days, it should be deemed approved rather than rejected.
- The auditing process and checking of other statutory requirements (eg, health & planning) would need to be staffed adequately to meet the proposed statutory timeframe of 14 days. Consideration should be given to providing a realistic timeframe.
- The legislation should clearly identify whether the 14-day period is based on consecutive or working days.

### General Comments

- The proposal for the LIA to check for conflicting interests is not supported and is considered a waste of time.
- The proposal states that a LIA must have good reason to refuse a certificate from a registered certifier. How can a local authority really check on conflict of interest issues, with a certifier, besides checking registration details?
- It seems unjustified to empower LGs to object to a registered practitioner.
- A dual approval process is not supported.
- The concept of LIAs is supported (only in respect of issuing approvals).
- There are certain efficiencies associated with the current approvals system (eg, billing arrangements between LGs and builders).
- A clear guideline or code of practice must be established with respect to conflict of interest matters, as LIAs cannot be expected to provide verification that certifiers/building practitioners do not have any conflicting interests.
- LG needs to have powers to challenge State Government LIA decisions (eg, the issue of a building licence within a particular local government area).
- Council does not support the employment of contract/consultant building surveyors to carry out LIA duties, for this will add to the cost of service provision.
- The Discussion Draft is unclear as to what will be required in terms of risk management.
- Careful consideration must be given to the formulation of any guidelines and regulations in order to mitigate any potential liability that the proposed risk assessment might attract.
- Country LGs are likely to find building licences for their districts being issued in the city and, hence, a diminished building control role may occur.

- Changing stationery and software to accommodate new processes may require additional expenditure by LGs.
- A lodgement and recording fee should apply for all simple structures.
- Increased administrative duties may result in an approval system that is less efficient, slower and more expensive.
- The keeping & recording of plans for minor structures seems counter-productive.
- E-lodgement of building plans and certificates should be an option.

## Building Approval/Licence

### Building Approval Stage

- The legislation should contain a provision that LG can conduct a final assessment and require changes to the documentation.
- There should be suitable deterrent measures in respect of the lodgement of incomplete applications.
- A mandated, consistent approvals process must be in place for all LIAs, with no local variations.
- A staged approval process is supported as it could result in reduced processing times.
- The building approval stage is not supported.
- The proposal to approve unauthorised building work is supported. This should be at the discretion of the LIA.
- Building approval should specify the class and use of building, as detailed in the CDC.
- At present, a landowner receives a planning approval (i.e., "Approval to Commence Development"), which is understood by many to be an approval to commence construction.
- Building approval should be referred to as 'preliminary approval'/'approval in concept'/'approval in principal'.
- Approval prior to issuing a building licence should be called 'preliminary approval'.
- Where a builder is yet to be nominated, a 'Notice of Compliance' (or similar) should be issued by the LIA.
- Building approval should be required for any works that may impact on BCA compliance.
- Building approval should also be required where changes in the use of the building are contrary to building approval conditions, or which exceed BCA alternative solution limitations.
- Home Indemnity Insurance should be provided for retrospective approvals.
- It may be more appropriate to issue a retrospective approval (rather than an ordinary approval), with respect to the exercise of emergency powers.
- The management of building approval amendments will need to be carefully considered, whether the variation is minor or not.
- Only the owner should obtain approvals, as agents can act in their own interests.

### Other Required Approvals/Referrals

- Will the Fire and Emergency Services Authority (FESA) be a mandatory reporting agency? If so, will there be a time limit on their response?
- Prior consultation should occur with a planning officer, in some instances, before building approval can be granted (eg, change in the use of a building).
- The contracted building surveyor will not consider planning, health or engineering issues in the assessment of building plans, which may cause problems after approval is granted.
- FESA should have a head of power to enable it to assess and ensure its operational needs.
- The role of the FESA and other agencies should be well defined, including the circumstances requiring comment from agencies (and also what type of comment is required).
- A mechanism should be provided that would allow consideration of health requirements at the LG level before a building permit is issued (with respect to a structure).
- Where building approval/licence applications are not consistent with other approvals, the LIA should be required to ensure that a process is in place for the timely notification

and resolution of such matters.

- FESA requests the ability to appeal the issue of a building approval/licence (if it is issued ignoring FESA advice).
- The level of interaction of the LIA and FESA is to be clarified. [FESA should be a mandatory referral authority in some instances.]
- It is not clear what role FESA plays in recommending advice to the LIA.

### **Building Licence Stage**

- A building licence should be issued to the builder, not the owner.
- The *Builders Registration Act 1939* may require amendment to permit an LIA to issue a building licence to an entity other than a registered builder.
- The issuing of building licences to building owners is not supported. In addition - (a) the issuing of a building licence to a registered builder is not supported because there are cases where a registered builder is not on the building project; and (b) the builder must still be responsible for his/her work, as this is a means of sharing liability if something goes wrong.
- A registered builder should receive the licence; with acknowledgment of the owner's commitment.
- The ability to re-issue a building licence to another builder is supported; provided a new building licence is issued and the previous licence is retained (i.e., with records detailing the extent of works covered by the initial builder).
- The process for issuing a building approval/licence will increase the administrative burden. In addition, the fees set for such work should reflect the actual cost of the work.
- The approvals process is complicated by the fact that some LGs take the view that building licences are not required for structures related to mining operations. In some cases they are either not resourced and/or not willing to assess and approve such structures.
- The Building Act should clarify that demolition licences may be refused in relation to heritage places; subject to the Heritage Act or listed in the LG's own heritage list.

### **Minor Works**

- Class 10 structures should be assessed and managed in a similar way to other classes of structure.
- The notification process for minor works is not supported; particularly for cyclone or flood-prone areas.
- The notification process should apply to short-term structures placed on mining tenements.
- Some minor works could perhaps require a building approval (rather than a building licence).
- A building licence should be obtained for buildings with impervious roofing (eg, sheds and patios).
- The exemption of prescribed minor works is likely to result in poorly constructed minor structures and damage to other people's properties (because of poor construction).

### **General Comments**

- The Building Act proposal would potentially result in a need for a minimum of three applications in the domestic sector, rather than one (as is the current situation).
- It is essential to have a common legislative framework that assists in the streamlining of the total approvals process, as has already been adopted in some LGs (i.e., through the application of town planning legislation).
- Some small changes in the building approval/licence issuing process could be implemented by amending existing legislation and processes, which would have a

much less disruptive and cost prohibitive outcome on the local building industry.

- There should be regulations established for licence and approval fees and "service of notices".
- Civil works (eg, roads and tunnels) should not be treated in the same way as building and structures.
- Erectors of fences in cyclone-prone areas should be required to obtain an approval/licence to ensure adequate structural integrity.
- The process for issuing an approval and licence for building demolition should be simplified.
- The BCA appeals processes should be transparent and decisions made publicly available.
- Consideration should be given to either including or making reference to legislation pertaining to maximising the energy efficiency of the building design.

# Construction & Inspections

## Inspection Regimes

- Mandatory inspections are warranted. However, the number of inspections should not be at the sole discretion of a building surveyor; and an individual involved in the construction process of that particular building should also not undertake inspections.
- There is a need for a standardized risk analysis approach to the determination of inspections.
- Risk-based inspections should be specified in the legislation, as well as the power to require additional inspections.
- Inspection regimes should be at the discretion of the registered certifier.
- Risk-based analysis for Class 1 building inspections should be included in the legislation.
- An inspection regime carried out by independent inspectors should be mandated, particularly in the residential sector.
- The discretion to apply building inspections should only be in relation to Classes 2 to 9 buildings.
- A more practical approach may be to require certain classes of building (eg, Class 10 buildings) to have certain inspections carried out.
- There are concerns about self-certification by builders.
- The builder should be responsible for ensuring inspections are carried out.
- Independent inspections should be maintained.
- Inspections should be against approved plans that, in turn, should have to demonstrate full BCA compliance.
- Consideration needs to be given to whether the Act should just set out inspections on footings and the final inspection, as the inspections that are mandatory.
- Inspections should ensure that engineering details have been complied with; and the average regional building surveyor performs these inspections currently.
- The design of regulatory requirements should take account of the existing statutory inspection requirements for electrical and gas installations.
- Regulations or best practice guidelines should dictate the timing of inspections.

## Liability

- It is unclear what risk level exists for LIAs when assessing a building for compliance failure.
- Clarification is required as to how the LIA can be expected to undertake the setting of inspections and also be immune to attracting liability, should a civil action arise as a result of a building defect.
- Due to liability issues, it would be too difficult for the LIA to assess the potential for compliance failures.
- The legislation must absolve a LG and its appointed persons from any litigation as a result of an objection to a person nominated (by the owner) to undertake inspections.

## Cost & Resourcing Issues

- Inspection services will be restricted from occurring, in the future, or made much more expensive for councils to maintain.
- Inspections in rural areas will discriminate against people who live there, as costs will be higher.
- Inspection requirements discriminate against rural areas.
- Inspections may be difficult in regional/remote areas and will affect the options

available to prospective building owners; who may be forced toward simple building design, as a result.

- Lack of availability of building inspectors in regional/remote areas will affect the timing of building projects.
- There is sufficient expertise within the ranks of registered builders to certify compliance with building standards, and to check the work of others.
- Considering that average mileage costs and wages will continue to escalate, the estimated cost of inspections would be measured as up to \$500 per inspection.

**General Comments**

- Liaison with the LG building surveyor must take place prior to any variation to approved plans.
- Variations of buildings during construction is supported; however, clear guidance is needed as to what constitutes a minor variation.

## Enforcement

### Responsibility

- Enforcement responsibility should not be on the approving authority.
- The LIA should only be involved in enforcement if problems associated with construction are not able to be corrected (and verified by subsequent inspection).
- The power of LGs is unclear, with respect to proceeding with enforcement action without a court order.
- The power for the State to intervene is supported; subject to there being no conflict of interest in the State's powers and duties.
- It may be appropriate to give building certifiers notice-serving powers as a first step, before referring the matter to local government for enforcement.
- If private certifiers are to take over the assessment role, then they should also deal with breaches.

### Penalties

- There should be a disincentive for undertaking unauthorised building work.
- On-the-spot fines and other cost effective deterrents will be required if the LG has to take on an increased enforcement role. A substantial modified penalty should apply, rather than the requirement to undertake court action.
- A penalty unit system is favoured over quoting a dollar value, as this allows the penalty to keep abreast of inflation.
- Issuing infringement notices for many issues of non-compliance should be considered as an option.

### Notices & Orders

- The proposed system of enforcement of building orders and stop work orders is supported.
- Clarification is required as to how a LIA should determine when to serve a building order in extreme circumstances.
- The discretion to lift a stop work order should remain with the LIA.
- A time period of 48 hours for effect of a stop work order is unachievable; and no time restriction should be set.
- Notices in relation to incomplete buildings should be included in the powers of the LIA.
- The requirement to lodge a building notice before a building order will be time consuming.

### Powers of Entry

- The legislation must provide adequate powers of entry.
- Powers of entry provisions should not be watered down to require prior notice to owners.
- The new powers of entry should not expand on the access to construction sites, so that the duty of care of local authorities is not expanded by the legislation.

### General Comments

- A consistent approach should be adopted by both special authorities and LIAs, regarding enforcement of compliance for illegal building work in the local authority area.
- Enforcement action should be extended to contravening an occupancy certificate.

- Enforcement issues will arise where local governments do not require the submission of plans for farm sheds and residences built on farms.
- How does the power to take enforcement action for work that "departs from the approved plans and specifications" sit with the allowance in section 1.3.3 (of the Discussion Draft) for "minor changes" to not require approval?
- Fees should be appropriate in order to ensure that local governments are not discouraged from taking enforcement action.
- If the building certifier refers an issue to the LG and they refuse to take action, there should be a right of appeal/complaint by the certifier against the LG's decision.
- There needs to be a provision in the building regulations for local authorities to be able to audit existing building stock and request upgrades. A State Government panel may need to be established for making such determinations.
- Will there be provision for cost recovery and training in specific audit techniques (i.e., to support the process of auditing to ensure compliance)?
- Councils will have to bear the financial cost of addressing, controlling, managing and prosecuting for any non-compliance.
- How will compliance of exempt works (with the relevant standards) be enforced?
- The enforcement requirement could be greater if self-certification is allowed.
- A simpler procedure is needed for lower level decisions and minor disputes (i.e., along the lines of the Construction Contracts Act).

## Boundaries

### Roles & Responsibilities

- An LIA should only issue an approval where written consent has been granted.
- LGs should not be forced to make judgements on disagreements between property owners.
- The LIA role should be limited to ensuring adequate design, documentation and certification in relation to protection works.
- The review could give consideration to strengthening requirements on builders who cause damage and nuisances to neighbouring properties.

### Neighbouring Properties

- Guidance is needed as to what degree of encroachment is allowed, with respect to use of ground anchors or pilings in a road reserve.
- The proposal for reasonable notice to be given for access to adjoining land, for construction purposes, may be in direct conflict with the R-Codes.
- An adjoining owner's overriding right of appeal is not supported.
- There should be an appropriate legislative process developed for the resolution of disputes between neighbours over cross-boundary access during construction.

### Amenity

- Amenity matters, associated with planning requirements, should not be referred to in the Building Act.
- It may be more appropriate if this section is included in the planning legislation, as an encroachment needs to be approved at the planning stage.
- The word "amenity" may need to be replaced with a more appropriate word.

### General Comments

- The wording "on a boundary line but entirely within its own land" is confusing, and could be replaced with "up to or adjacent to the boundary line".
- How will issues relating to absent owners (and people who may have some disability) be addressed, in situations where a lack of response is deemed to be consent?
- How does the concept of requiring your neighbour's consent sit with the Dividing Fences Act?
- In situations where building works have the potential to cause damage to an adjoining property; will the builder be required to demonstrate that he/she has a minimum level of insurance?

## Occupancy Approval & Maintenance

### Certificates of Occupancy

- Allowing private certifiers to certify compliance with other approval conditions (eg, planning), prior to occupancy, does not work well in other jurisdictions (eg, New South Wales).
- The proposal to introduce Certificates of Occupancy is supported.
- The Certificate of Occupancy (CO) will possibly affect the State Government's interest in facilitating affordable housing. It should not be imposed on Class 1 buildings.
- Certificates of Occupancy should be issued for partitions and fitouts (as they can have an impact on life and safety).
- There should be a requirement to revoke old certificates where there is a new consolidated certificate (eg, if a building is completed in six stages, a new consolidated certificate should be given for each stage).
- The CO must be issued by the LIA that granted the original building approval and building licence.
- The requirement to coordinate and audit all Certificates of Inspection against building licence approval conditions, and then issue Certificates of Occupancy, will add to current workloads.
- For large and complex buildings, a CO could include a requirement for a safety inspection (approximately every ten years) of the complete electrical and gas installations.
- It may be best to specify a timeframe for the issue of a CO (i.e., assuming there is total compliance).
- There should be a maximum timeframe applicable to the issue of a CO, similar to the issue of a building licence.
- It might be better to set parameters in regulations, rather than specify timeframes in the occupancy certificate.
- A fee for issuing a CO should apply.

### Roles & Responsibilities

- Enforcement of maintenance will increase current workloads and costs, and should not be the responsibility of the approving authority.
- The role of the LG in ongoing monitoring of building maintenance requires clarification.
- The responsibility should rest with the owner, to ensure all essential services have been maintained.
- Clarification is required in relation to the LG's liability/responsibility where a building is completed and an owner doesn't contact the LG to obtain an occupancy approval.
- The crossover of responsibilities for certain premises and public buildings, which are normally inspected by environmental health officers (EHOs) - particularly in metropolitan and large rural areas - requires consideration.
- The role of auditing building usage and essential services maintenance can also be carried out by private sector building surveyors/inspectors.

### General Comments

- Consideration should be given to combining the declaration (or 'certification' of construction compliance), from the builder, with a CO.
- An annual fee would be required to cover administrative costs for monitoring the maintenance of essential services.
- Retrospective BCA compliance could be managed through a CO for existing buildings, such as multi-storey apartments, all short-term accommodation and all Class 9

buildings. This would need to be renewed annually, regardless of the age of the building.

- There are already statutory avenues in place for enforcement of maintenance compliance.
- Regulations or best practice guidelines should dictate the timing of maintenance inspections.
- There should be a reasonable fee for yearly (maintenance) checks of essential safety provisions.
- Australian Standard 1851-2005 (*Maintenance of fire protection systems and equipment*) should be adopted in the new Act.

## Registration of Practitioners

### Model

- A legislative framework that requires licensing/registration of operatives within the building construction sphere, and a separate system of licensing/registration of the same operatives when working outside the building construction sphere, would lead to needless expense and confusion.
- Building practitioners need to be registered and tightly controlled. It is suggested that the BRB should be abolished and the issue of certificates be managed via a website.
- A new system for the accreditation of building and construction practitioners will ensure that new buildings are safe, properly certified and built to an acceptable standard.
- Registration should cover the whole of the State, with special consideration for remote areas.
- A regulatory impact statement should be developed, to ascertain whether it is appropriate to embark upon a single registration framework for all certifiers.
- Registration should be managed by a single entity (eg, a Western Australian Building Commission).
- A co-regulatory approach is supported; that is, where the profession takes responsibility for assessing candidates for registration, with government retaining control of the disciplinary function.
- A separate Acts model is favoured. This should also apply to the registration of building surveyors.

### Practitioners/Professionals

- Regulation of project managers is essential.
- The current system of registration, for building inspectors, is sufficient.
- Registration of architects by the Architects Board may be evidence of suitability for registration by a State-administered body.
- Registration of engineers should be via a State-based board.
- The proposal for registration of engineers through an Engineers Act is strongly supported.
- Registration of engineers is supported, but not the introduction of an Engineers Act. A single registration system is supported.
- There should be a robust system for the registration, de-registration and auditing of private certifiers, to ensure high standards are maintained.
- Building designers should also be subject to legislated control (i.e., along the lines of an Engineers Act).
- In order to ensure fairness and equity, it is essential that building designers and draftspersons not be brought under the purview of the Architects Act.
- There is a strong objection to the use of the word "paraprofessionals", when referring to building designers. It is not a term used in other state legislation relating to building practitioners.
- Other professionals should be registered and tiered similar to the proposed registration of building surveyors.
- Qualified tradesmen do not necessarily need registered professional engineers to certify their work (i.e., tiering of competence).
- Only building surveyors should be registered certifiers, and not everyone needs to be grouped under the title of "building certifier".
- There should be a review of the proposed certification capability for different categories of registered practitioners.

- The Act should require professional engineers and builders to be aware of improvements and innovations in building materials and construction methods.
- Registration of design professionals (eg, architects) should be based on a grading system, which takes into account the classes of buildings appropriate for each level of registration and the type of activity the person is registered to achieve (eg, registered for design of certain classes of buildings and contract administration of any building up to a certain class).
- Licensing and accreditation of fire safety practitioners is supported.
- The Act should address the critical need for proof of competence from tradesmen and subcontractors, as well as designers.
- Issues arise in relation to owner-builders - especially where there are no registered builders in a particular district (eg, regional areas).
- Wider registration of practitioners could be advantageous in instances where the building surveyor may not be able to determine a fire engineer's level of competence.
- There needs to be registration of practitioners to use the R-Codes.
- Many EHOs working in regional Western Australia have substantial experience and are aware of more stringent regional requirements than most metropolitan-based building surveyors.
- Building designers should not be restricted from providing services in the arena of commercial and industrial buildings.

#### **Qualifications and Accreditation**

- It is recommended that participants who have completed their graduate certificate course be certified to sign-off on specialist designs for mechanical systems (for non-domestic buildings).
- Existing building surveyors with the currently required Municipal Building Surveyors Certificate of Qualification and considerable on-the-job experience should be granted level 1 status.
- Existing building surveyors working in local authorities across the State must be recognised as either level 1 or 2 officers, dependent on experience not qualification levels. A previous agreement that was made with LG (i.e., that building surveyors and EHOs with two years' experience will be recognised at level 1 or level 2) requires confirmation in the Building Act draft - and should also be reiterated to LG.
- Level 1a could be introduced where it is necessary to assess complex alternative solutions requiring demonstrated knowledge of the BCA and fire engineering principles.
- All building surveyors should be assessed by the DHW and recognised at level 2, irrespective of qualifications or experience. They should also not be required to apply for Recognition of Prior Learning.
- Current LG employees who are assessing Classes 1 & 10 and Classes 2-9 buildings and have years of experience will need to be given a straight transfer (to level 2), with no conditional time period to upgrade qualifications.
- All current practitioners with a minimum of three years' experience should be accredited automatically as level 2 certifiers.
- Existing officers should continue to approve up to two-storey dwelling houses and sheds, with more complex structures referred to qualified contracted building surveyors.
- There should be a three-tier qualification system for building surveyors.
- A third tier of building surveyor qualification should be introduced (i.e., a 'building technician' who approves single storey Class 1 and 10 buildings).
- A third level building surveyor qualification should be available in respect of LIAs that have a population of less than 15,000.
- A level 3 building surveyor category is not supported.
- The discussion paper has drawn a "line in the sand" so that adequately

experienced EHOs can no longer do the building-surveying portfolio of their employment, of which some (EHOs) have more than 20 years' experience.

- Building professionals (other than building surveyors) should be required to obtain a postgraduate diploma-level qualification in building surveying in order to be registered as a BCA certifier.
- The move to upgrade building surveyor qualifications is accepted, but not at the expense of existing building surveyors.
- Building surveyors accredited to approve performance solutions should be required to have a postgraduate qualification in performance-based building and fire codes, or equivalent.
- Clarification is required in relation to the level of qualifications likely to be required for the licence-issuing role in a LIA.
- A building surveying undergraduate degree should be implemented in Western Australia.

### **General Comments**

- It is suggested that an independent study be undertaken in relation to the placement and qualifications of all practising building surveyors within Western Australia, and that the results be compared with the outcomes of the proposed Australian Building Codes Board framework.
- The Discussion Draft does not specify previous agreements between the Department of Local Government & Regional Development (DLGRD) and LG, which were negotiated when the qualification issue was first discussed across the State, five years ago.
- The "grandfather" principle agreed to with DLGRD is being set aside to the detriment of local communities.
- Unlicensed/unregistered persons should still be able to carry out basic work, due to lack of available licensed persons in regional areas.

## Miscellaneous

### Fees

- A major concern is the proposal to replace the current regulated (lodgement fee) system.
- All building-related processes must be taken into account when setting fees.
- Building fees should reflect fee for service.
- If regulating fees, careful consideration would be required to ensure that neither private certifiers nor property owners are disadvantaged.
- Costs to be covered by the fee structure must include administration and licensing, document storage and licensing.
- LGs should set their own level of fees.
- A reduction in licence fees is not supported.
- A low (regulated) maximum fee that meets the uniform administrative costs of LIAs is supported.
- Fees should be set as minimum (and not maximum) fees.
- Statutory fees should be kept at a minimum level, to enable effective market competition for certification services.
- If a fully privatised system is not introduced, then a prescribed maximum fee for the non-competitive functions is supported.
- A significantly higher fee should apply for retrospective approvals, to discourage unapproved building work.
- Consideration should be given to regulating for a different/separate fee for performance-based solutions, compared to deemed-to-satisfy solutions. Additionally, the applicant should bear the cost of any peer review.

### Costs and Resourcing

- A State Government-LG strategy needs to be developed; to adequately address issues such as cost, funding and availability of qualified staff.
- Careful consideration needs to be given to whether or not LGs would be able to finance the proposed functions (eg, monitoring building usage). They would also still be expected to provide an information service.
- The cost of building control for both LG and consumers needs to be considered.
- The proposed legislation will cause staffing issues for LGs.
- High building activity and additional costs, arising from a new regime, will impact on the issue of affordability.
- There is concern that the public will be further disadvantaged under the new proposal due to extra costs incurred, and also due to the fact that subsidised services will not be provided.
- Licensing and registration processes will come at a cost to consumers.
- Costs to owners will increase accordingly, mainly due to private indemnity insurance for individuals.
- The process will be open to market forces and, therefore, will increase costs for people intending to build.
- Additional costs will be incurred in regional/remote areas.
- LG planning costs are likely to increase as LGs extend their planning schemes to include development approval on single residential units.

### Proportionate liability and Insurance

- Disagree with "proportionate liability".
- Disagree strongly with "proportionate liability", which will only increase costs

across the building industry.

- It remains unclear as to what the LG's duty of care is and therefore its exposure to legal liability.
- A building surveyor is protected under Section 9.56 of the *Local Government Act 1995*, against any civil action for anything he/she has done in good faith in the performance of his/her functions.
- Insurance will be a limiting factor for boutique building surveying companies setting up private services.
- Legal responsibility for design liability should remain as an issue of contract law.

#### **Other Acts**

- It is recommended that urgent consideration be given to ensuring that the provisions of the Building Act are in conformity with current and future health legislation.
- The outdated provisions of the *Health Act 1911* should be brought up to date as a matter of urgency, in order to correct inconsistencies with the BCA.
- The DHW should refer to the *Magistrates Court (Civil Proceedings) Act 2004*, with regards to the problems a LG would face in the recovery of costs (where the total is less than \$7,500).

#### **General Comments**

- The proposed Act should recognise and facilitate online lodgement of building applications.
- The new Act should embody a specific directive for integrating sustainable practices into construction and demolition projects.
- All building officers should be kept up to date with developments and have a 'centre of excellence' to refer to for advice.
- Future trends and potentially different modes of accommodation and living need to be considered in the drafting of the Building Act. Additionally, choices of modes of living and possibilities of climatic change need to be covered by the Act.
- A public education program, on requirements for submission of plans, will assist the proposed new processes.
- The proposal, in its current form and context, exposes LG to unacceptable risk.
- Before proceeding with this legislation, the State Government needs to prepare and publish a comprehensive public benefit statement.
- The preparation of new building legislation is supported; however, there are a number of concerns that need to be addressed.
- A critical review of other states with similar reforms should be undertaken.
- Further case studies of what may be expected for the relevant stakeholders would assist in further understanding the proposed changes.
- The detail of accompanying regulations, codes, etc, should also be subject to broad consultation.
- The Building Act proposal does not address the problem of deliberate neglect of heritage buildings, as a pretext for demolition approval.
- It is the LG planning (not building) services that are directly to blame for delays in the development process.