

A meeting of the Society of Construction Law was held on 21 June 2000 on the occasion of a visit to London of Max J. Croxford, Building Commissioner for the State of Victoria in Australia. Mr Croxford was invited to address the audience on the following:

Australian registration insurance and liability reforms in the building industry – has Australia the answer to the “cowboys”?

The State of Victoria is at the forefront of liability and insurance, including registration and control.

The 1993 Building Act introduced an efficient, equitable system of building control and was the catalyst for organisations to set new standards in Australia and beyond.

Building is essential to the ongoing success of the economy: the industry generates AUS \$40B each year and represents 5-6% of GDP in a country with a population of 20 million.

There is a need to ensure regulation but not so as to stifle growth, together with an acceptable level of health and safety and amenity. In this regard Victoria has led the way by removing barriers but maintaining a community level of protection.

An inquiry carried out from 1987 to 1990 identified key issues to be addressed by future legislation. The primary issues consisted of major reform in the area of liability,

insurance and regulation. A regulatory framework was developed within the Model Building Act which created the following:

- The Building Control Commission (“BCC”)
- Private sector certification
- Limitation of liability
- Registration of builders
- Compulsory insurance
- Building levy to fund the BCC

The building levy is charged as a percentage of the overall value of a project, which is 0.00064%, and amounts to \$7m/year to fund the BCC.

The BCC provides administrative and technical assistance and guidance. It consists of a Building Advisory Council, a Building Practitioners Board, Building Regulations Appeals Council and Building Regulations Advice Committee.

The main function of the Commissioners is to

- To administer of the Building Act
- Conduct or direct research
- Advise ministers on improvements/amendments to the system
- Promote better standards and liaison with relevant organisations

- Assist in training and education

Registration

The training and education function is relevant to the registration of domestic builders. However, at the time the Act came into force, builders of a minimum 3 years practical experience were registered without having the required level of training and education. This process is known as “grandfathering”.

In Building Practitioners Board oversees registration. The Board can enquire into past conduct, possesses investigative powers and oversees the quality of work performed. It also has specialised investigators to enquire into suspected cases of unprofessional conduct, gross negligence, incompetence, fraud or misrepresentation etc. A builder found so guilty can be reprimanded, fined up to \$5000, suspended for a maximum of 3 years or have registration suspended or cancelled.

A hearing on a matter is subject to the rules of natural justice but the formal rules of evidence do not apply.

Compulsory Professional Indemnity Insurance

The system has also introduced compulsory professional indemnity insurance, to cover a period of 10 years, with the government minister having the power to determine the level of insurance required. It is an offence not to have the requisite insurance. The builder is

required to take job specific insurance for defects and non-financial damage lasting for a period of six and a half years.

Under the previous system of insurance for domestic builders a claim could not be made until the work was finished and paid for! That has now changed.

Limitation on Liability

Liability is limited to 10 years from the date of completion and joint and several liability is apportioned according to responsibility and not according to who has the “deepest pocket”. By limiting liability in this way insurers have been better able to calculate risk and offer more reasonable insurance.

Auditing of Building Practitioners

The Board has an auditing or investigations section made up of experienced practitioners and experts in the industry. Since 1996 specialist investigators have been appointed resulting in a significant increase in practical accountability as a result.

Investigation

Primarily the Board seeks compliance with rules through education and recognises the need for tolerance of some mistakes and errors of judgment.

The process of investigations consists of the collection of physical evidence and interviews. Investigators must be able to give competent evidence and survive cross-examination, and this requires specialist skills and training.

Investigation can occur anywhere and at any time. If a serious problem arises there will be an investigation or where no explanation is given for a problem arising, recording and monitoring will take place. Commonly occurring problems can be dealt with through education or legislative change.

Until recently the Board's investigators relied on complaints from members of the public but it now takes a more pro-active role. This has been achieved through Performance Audits to examine work being carried out and administrative procedures of the practitioner in question.

Private Sector Certification

Experience has shown that in the previous system when problems arose, they tended to be fixed "in-house". Furthermore, only those problems identified were fixed, leaving others under the surface. The result was little accountability and the remedy was often a cover-up rather than a solution. Accountability therefore had to be enhanced otherwise problems would remain as would the temptation to cut corners. It was considered to be a cancer on the integrity of the building control industry.

Therefore the various administrative rules were introduced. Documents have to be forwarded to local government offices within 7 days to provide a record of work done. This makes later “cover-ups” difficult. The practitioner must sign off each part of the work as compliant with the relevant standards.

Conclusion

The new system is not yet perfect but it is evolving as time goes by. The number of building practitioners has been reduced from 14,000 to 11,000 but it remains burdened by the “grandfathering” system whereby certain practitioners lack the necessary education, training and ethics. But in time they will go as practitioners must now be technically efficient. Through co-operation and education the practitioners have ownership of raising standards. In this way it is hoped the system will “rub out” the handful of abusers who still exist but it is anticipated this will not be a fast process.