

code: AUBRCC

Building contracts causing concern

The consensus was that a "one stop shop" approach to dispute resolution was preferable.

The *Building Bill* coined the title the Building Appeals Board which is the sole, primary and all-encompassing appellate tier to have jurisdiction over any dispute coming within the terms of the ambit of the Act, the Regulations or the *Building Code of Australia*.

The Board comprises referees, predominantly technically qualified, with provision for two legal referees.

The Supreme Court will retain its inherent overriding supervisory jurisdiction.

Private certification

Past building booms characterised by strong resurgent construction activity have revealed that local authority resources have been severely tested in respect of construction approval.

Delays are the inevitable result.

The *Building Bill* has a division dealing entirely with private certification, namely *Division 1 of Part 5 -- Permits etc by other persons and bodies*.

The applicant will have the option of either engaging a private certifier to certify all aspects requiring approval or opt for the traditional route of seeking approval through the local authority.

If the applicant engages a private certifier the applicant must stay with that method from initial application to the issue of a Certificate of Occupancy.

In extreme cases the applicant will be able to get written permission from the Director of Building Control to either engage another certifier or go to the local authority.

The Director may feel persuaded to sanction such an election if the private certifier has been negligent or ethically remiss.

Obviously the applicant would have

to indemnify the new certifier or local council against anything previously certified.

Clause 71(1) says:

"A building certifier may exercise any one or more of the following functions of a permit authority under this Act: (a) the giving of building permits; (b) the carrying out of inspections of building work; (c) the giving of occupancy permits.

"(2) A building certifier who exercises any of those functions is, for the purpose of this Act, taken to be the permit authority and is subject to the same duties and requirements as the permit authority in exercising those functions..."

The legislation will have mechanisms to provide for: random audit of private certifiers; an appropriate level of expertise; annual licensing; obligatory and comprehensive insurance.

It should be noted that the Northern Territory is intent on totally privatising all aspects of approval, thus the desire to take construction approval outside the jurisdiction of local councils.

The legislation has been drafted in a plain English user-friendly style; Dennis Murphy QC is well known for his skills in the area.

It should be noted, however, that with the exception of the abovementioned reforms, the legislative components bear substantial similarity to uniform features prevalent in the states and territories.

Future

The future of the model act is vested in the jurisdictional domains of each state and territory. Victoria and the Northern Territory are intent on legislative adoption in 1992.

In WA an Integrated Building Act Committee is assessing the principles of the model legislation and SA is using some of the concepts (in particular the liability reform proposals) to incorporate into its integrated development approval review.

Dear Editor,

You would be aware that for many years the Master Builder organisation has published a number of standard forms of building contract.

These forms of contract have been developed in conjunction with bodies such as the Royal Australian Institute of Architects, the Building Owners and Managers Association and the Building Industry Specialist Contractors Organisation of Australia Ltd. The most well known of these contracts are probably JCCA and B and SBW2.

It has come to our attention that some of these standard forms of contract have been transferred to word processing programmes to, first, facilitate the insertion or deletion of particular special clauses and, second, to enable multiple copies of the contract to be readily available.

This practice, if being carried out, is of grave concern to our organisation and the other parties to the agreed forms of contract for several reasons:

(1) the virtue of standard forms of contract is that they are *standard*. When standard clauses are modified and alterations printed in such a way that changes are not readily apparent then considerable difficulties can be experienced by the parties in determining the exact terms of the modified "standard" contract;

(2) by putting the forms on computer there is no technical impediment to the ability of contractual parties and/or their advisors to print any number of contracts without proper recognition of copyright.

I write this letter seeking to alert your members to the difficulties created by alterations to the contracts and to remind members that the contracts are the subject of copyright.

I also seek the views of your members on (a) the level of demand for contracts on disk and (b) any mechanisms used to limit the number of reproductions available on a disk.

John Murray
Executive Director
Master Builders.