

Discussion Paper

Building Regulation

in the

Northern Territory

September 2009

Department of Planning and Infrastructure – Building Advisory Services



**Northern
Territory
Government**

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Introduction

General

This Discussion Paper raises a wide range of matters relating to the regulation of the building industry in the Northern Territory. The paper is divided into four parts.

Part A covers the Queensland Report.

Part B covers proposals by two statutory bodies, the Building Practitioners Board and the NT Build.

Part C covers matters that have been under active consideration by Building Advisory Services of the Department of Planning and Infrastructure.

Part D covers proposed miscellaneous amendments to the *Building Act*.

Part A Queensland Report

On 28 April 2009 the Minister for Lands and Planning, the Hon Delia Lawrie, tabled a report entitled *Review of the Northern Territory's Building Certification System* prepared by a team from Queensland. The full Queensland Report is at **Attachment A**.

The report reaches to almost every aspect of the administration of the building regulatory regime. It finds that the NT regime is akin to other regimes throughout Australia and is an adequate foundation on which improvements can be made. However, due to the limitation of time and resources, it proffers the improvements with little supporting justification on the basis that they will be tested locally before any implementation action is proposed.

The suggested "improvements" in the Queensland Report have been grouped in this Discussion Paper under the headings of **Certification, Registration** and **Administration**. The numbers have been retained for ease of reference with the full report. At this stage the Northern Territory Government does not have a preferred position on the report.

At the time the Queensland Report was tabled, the Minister announced a package of initiatives related to building certification. The package included:

- a 24 month moratorium period to allow owners of existing buildings in all declared building control areas with incomplete certification or that are unauthorised to obtain compliance, ending 30 June 2011;
- a subsidy for building certifiers to travel to remote building areas;
- a taskforce to oversee compliance of existing Government owned and leased buildings; and
- a cadet program to grow the capacity of the building certification industry.

The subsidy and the taskforce are now in place. A website has been created to keep industry and the community informed on matters related to the moratorium - www.nt.gov.au/buildingmoratorium.

PART B Statutory Boards Proposals

The **Building Practitioners Board** has placed before the Minister proposals on registration of practitioners in the building industry. The full paper prepared by the Board is at **Attachment B**.

NT Build is proposing an amendment to the *Building Act* to assist compliance with the *Construction Industry Long Service Leave and Benefits Act*. This is the outcome of recommendations in a report by the Auditor General.

PART C Projects in Train

Active consideration has been given to the matters of Building Inspector, Home Warranty Insurance, Consumer Relations, Substantial Compliance Certificates and Enforcement. Some matters overlap with Parts A and B.

Where the Northern Territory Government has preferred positions, they are stated.

PART D Miscellaneous

The proposed miscellaneous amendments to the *Building Act* are generally of a “housekeeping” nature and come from a review of the administration of the building industry reforms in the 2004 amendments.

The proposed amendments cover such matters as delegations, conditions on registration, term of registration and the removal of requirements to reside in the Territory.

Subject to any comments received on the Discussion Paper and subsequent policy decisions, the proposed amendments are supported by the Northern Territory Government.

Executive Summary

PART A Queensland Report

The following is an extract from the Queensland Report (the numbering is the same as in the full report at Attachment A):

“1.6 Executive Summary

The reviewers found that the NT building system broadly aligns with the building systems of other states and territories. Areas for improvements in regulation and service delivery exist and the system could be further tailored to meet NT circumstances. Specific emergent issues could be dealt with in line with the recommendations of this report however a number of recommendations will require a longer term strategic focus if improvements are to be made. Challenges faced in the NT include the difficulties of providing building control services in regional and remote areas, attracting and retaining qualified staff and providing an extensive range of services with small teams and limited funding. Key issues identified in this report include -

- **Un-finalised approvals**

Recent local media reports focused on owners or occupiers (including Government departments) taking up occupation of buildings without finalising the building permit process in breach of building legislation. While media reports appear to portray the issues in a way that may be out of proportion to potential building policy concerns such as safety, health, amenity and sustainability, the situation highlights reporting problems particularly in regional and remote areas along with enforcement deficiencies. For example, when a building permit lapses, buildings are commonly occupied and departmental resources do not appear adequate to systematically follow up on, or deter, breaches.

Buildings with un-finalised approvals should be inspected and approval processes should be closed off as soon as possible using the following procedure which is further outlined in this report -

1. Desktop risk assessment and prioritisation
2. Building Advisory Service Branch (BASB) to write to owners and relevant certifiers to encourage finalisation of outstanding processes
3. BASB to issue a practice note on a remedial approval process, including guidance on acceptable evidence and processes
4. BASB to engage suitably qualified building certifier/s to undertake inspections and gather relevant evidence as required such as practitioner / builder / tradesperson testimony or by using observation and remote sensing technologies where observation is impractical (in the short term BASB may need to seek assistance from Queensland through AIBS, Queensland Industry Associations and Building Codes Queensland to establish a small task force for this work)
5. Engage certifiers to document relevant evidence, requesting that owners undertake rectification works where necessary and begin enforcement processes where owners refuse
6. Make decisions and issue certificates if approved or undertake proportional enforcement action where buildings cannot be approved.

- **Building Advisory Services Branch (BASB)**
 The BASB is under resourced compared to its expected workload and current functions. With the lack of adequate resources, building policy is not being actively monitored and developed, and compliance and enforcement activities are inadequate. Also, with supplemented resources the department, through the BASB, should provide more extensive owner and industry education, regional training programs. The timely provision and publication of technical advice and greater oversight of the professional conduct of private certifiers to ensure that building policy outputs are aligned with the public interest should be provided.
- **Consumer Protection**
 Aspects of current approval practises appear to provide poor consumer protection and consumers reportedly receive highly variable service standards for building certification and inspections dependant on where they reside. Independent approval and inspections assist in protecting the interests of owners (present and future) and maintaining the quality and compliance of building work. Importantly, buildings are costly to build and more costly to alter for compliance purposes once finished. They are often a person's largest asset and they are regularly on-sold. Therefore, independent approvals and inspections should be used wherever possible.
- **Certifiers (Inspectors and Building Surveying Technicians)**
 The existing categories of building practitioners need review with the objective of allowing more trained persons to be registered. The categories of practitioners should be further reviewed to ensure the relevant qualifications are tailored to the services delivered for each category of work. This will ensure that a suitably attainable level of qualification exists for the high volume and lower risk work such as houses, and sheds. This may assist to reduce the cost of inspection in regional and remote areas which appears to be one of the problems for non compliance in these areas.
- **Key recommended improvements to the building certification system –**

 - *Prepare and implement a practical and proportionate building enforcement policy including immediate implementation in the use of on the spot fines for priority issues*
 - *Establishment of a default mechanism for un-finalised building work when the building permit lapses or the building certifier is unable to complete the building certification*
 - *New practitioner codes of conduct and enhanced public education and industry training role for BASB*
 - *New building practitioner categories and use of competent persons*
 - *Expanding the education and training provided to the building industry*
 - *New follow up rules for building permits*
 - *Require display of certificates of occupancy in commercial buildings*
 - *Consider using a final certificate process for houses and other structures such as fences*
- **Swimming Pools**
 For national uniformity and to allow the option of using the current pool fence inspectors in a wider role of building compliance the existing swimming pool safety legislation should be incorporated into the building legislation and administered by BASB. Swimming pools would require a building permit for the structure and fence and the builders and pool owners would be subject to the enforcement provisions of the building legislation. This could be seen as the first step to allow the NT to adopt the Building Code of Australia as the standard for swimming pool access.”

PART B Statutory Boards Proposals

Building Practitioners Board Proposals

The Building Practitioners Board is proposing that the current prescribed categories of registered building practitioners be more aligned with current building industry practices both in the Northern Territory and interstate.

In general terms the Board favours an approach that as far as possible is consistent with national directions for reform. In this regard the Board is aware of current proposals to review the registration requirements for plumbing and draining in the NT and as such does not propose any immediate substantial change to the Certifying Plumber and Drainer category. However, the Certifying Plumber and Drainer (Design) category which does not specifically require trade qualifications is included in this review.

Similarly, the national reform process is examining the requirements for registration of builders and, given the two building contractor categories were only established in the NT some 3 years ago, it is not proposed to make any substantial change to the requirement for builders at this stage.

An associated issue relating to all categories is that of implementing the continuing professional development requirements of the *Building Act*. The Board's preferred position is that all new registrations from a specified date be based on already existing national accreditation requirements for building certifiers, professional engineers and architects.

The Board proposes that the existing categories of:

- Certifying Engineer (Hydraulic)*
- Certifying Engineer (Mechanical)*
- Certifying Plumber and Drainer (Design)**
- Certifying Engineer (Structural), and
- Certifying Architect

be amended/replaced with the following categories of;

- Building Services Engineer (new)*
- Building Services Technician (new)**
- Structural Engineer (amended), and
- Certifying Architect (amended).

NT Build Proposal

The Auditor-General has recommended that NT Build seek changes to the "current building approval regime to include the payment of the levy" due under the *Construction Industry Long Service Leave and Benefits Act*.

NT Build proposes that the building regulatory provisions be amended to require evidence that a Project Notification Form has been lodged before a Building Permit is issued.

PART C Projects in Train

Building Inspector

A new category of Building Inspector is proposed by the Territory Government with sub-categories of Residential and Unrestricted, with the same prescribed related building works as for Building Certifiers. A Building Inspector would be able to carry out building inspections, including those mandated in the regulations, and issue building inspection reports under section 40 of the *Building Act* upon which the Building Certifier can rely.

At present the Building Certifier carries the responsibility for inspections and does the inspections personally or may engage others who are competent, either employees or persons under contractual arrangements, to actually do the inspection and report to the Building Certifier accordingly. This will not change under the proposal.

A Building Certifier may also rely on another building practitioner (eg a Certifying Engineer) who issues an inspection report under section 40 of the *Building Act*. A Building Inspector will simply be another building practitioner who can issue section 40 inspection reports upon which the Building Certifier can rely.

Home Warranty Insurance (HWI)

In 2004 the *Building Act* was amended as part of the implementation of Government policy on a wide range of building reforms. Most of the *Building Act* amendments were commenced in 2006. However, *Part 4c Home Warranty Insurance* was not commenced due to concerns with the insurance product within governments and industry around Australia, particularly in New South Wales.

In November 2008 a Senate Committee Inquiry recommended that mandatory last resort insurance be kept in place in order to provide some form of last degree protection for those consumers who are engaged in residential building works. It also recommended some changes to HWI.

The Territory Government proposes to commence the requirement for HWI, modified in accordance with the Senate Committee's recommendations.

The key points of the proposal are:

- a change of name to reflect that it is a guarantee of satisfactory completion of works in the event of the builder failing to complete the contract;
- a claim can be activated by the death, disappearance, insolvency or loss of registration of the registered building contractor (builder);
- the policy will only relate to residential buildings that are 3 storeys or less and for building works that require a registered builder;

- the policy will cover non-compliance (houses and flats) with building regulations and non-completion (houses only - except those built by owner builders and speculation builders) of building works;
- the non-completion component of the policy will apply during the construction stage and the non-compliance component will remain current for 6 years from the issuing of a builders declaration of completion;
- the policy will be mandatory in Tier 1 and voluntary in Tier 2 declared building areas;
- the policy will be taken out by the builder;
- the builder will need to satisfy the insurance provider of financial viability; and
- commencement will be subject to competitive insurance products being offered in the Northern Territory.

Consumer Relations

To give the consumer protection recommended by the Senate Committee referred to above, it is proposed to introduce a formal residential building dispute process and statutory warranties.

The key points of the proposal are:

- all building disputes will be lodged with Consumer Affairs;
- Consumer Affairs will determine if the dispute relates directly to the contract, building regulation non-compliance, a building practitioner's legal responsibility or the quality of the building work. If necessary Consumer Affairs will then engage Government agencies to assist in resolving the dispute;
- the **first stage** will seek to resolve the dispute by providing information to, and discussion with, the parties;
- if this is unsuccessful, the consumer will be required to make a written complaint and Consumer Affairs will carry out a site visit and consult the parties;
- if it is necessary to move to the **second stage**, a process fee will apply;
- technical experts from Building Advisory Services of the Department of Planning and Infrastructure will be engaged by Consumer Affairs in site inspections and consultation with the parties in seeking to conciliate an agreement;
- if no agreement can be reached, the Commissioner of Consumer Affairs will determine what action, if any, should be taken by the consumer and/or the builder;
- if necessary, the Commissioner of Consumer Affairs may issue a binding rectification order;
- in the **third stage**, either party may appeal to the Lands, Planning and Mining Tribunal;
- the Building Practitioners Board will have additional powers to limit the registration of a building contractor to existing contracts until rectification orders or appeal determinations are satisfied;

- an appropriate summary of the outcome of disputes will be placed on the public record to inform consumers and industry; and
- statutory warranties, prescribed by regulations, will be implied in all residential building contracts.

Substantial Compliance Certificates

Since the introduction of private certification in September 1993, departmental policy has been for the Director Building Control to issue certificates of occupancy for building works constructed prior to 1993.

There have been practical problems with the policy. The 2005 amendments to the *Building Act* addressed this matter. New Part 15B (sections 172C to 172G) removes the requirement for a certificate of occupancy. Under the provisions, if building works undertaken before 1993 were carried out in substantial compliance with the building permit, they comply.

Part 15B is yet to be commenced. The Part is being reviewed to ensure it is adequate in light of the issues around the Moratorium. The intention is to commence the provisions, amended if necessary, with supporting Regulations and Building Notes.

Enforcement

A current review of the enforcement provisions covers matters such as the penalty regime, nature of offences, infringement notices, and Part 10 (enforcement of safety and building standards) of the *Building Act*.

PART D Miscellaneous

Proposed miscellaneous amendments to the *Building Act* and Regulations will:

- a) enable statutory bodies to delegate;
- b) allow conditions on an applicant's registration;
- c) delete all references to "firms";
- d) make section 25A (notification of changes of nominee or director) apply to all building practitioner categories;
- e) allow for a term of registration of more than two years;
- f) add particular powers relating to the Deemed-to-Comply Manual; and
- g) remove requirements to reside in the Territory.

PART A Queensland Report

The full text of the Queensland Report is at **Attachment A**. Only the text of the “Improvement Ideas” is reproduced in this Part.

Part A groups the Improvement Ideas under the headings: **A1 Certification**, **A2 Registration** and **A3 Administration**. The same numbering as in the report is used for ease of referencing.

At this stage the Northern Territory Government has not determined a preferred position on the report.

A1 Certification

2.2.1 Dealing with un-finalised building work

1. Implement an inspection and risk assessment program for outstanding permits to assess their current status, the safety of the building/structure and that of the occupants based on the procedures recommended in this report.
2. Notify all owners and the respective private building certifiers that the building permits have not been finalised and that the NT Government has instigated a practical approval program to enable orderly completion of the necessary building work, including processes and inspections. Encourage the relevant private building certifier to finalise building permits wherever possible.
3. BASB to publish a practice note on the recommended remedial process including guidance on acceptable provisions and evidence gathering techniques.
4. Engage a specialist team of private building certifiers during the moratorium to inspect the outstanding buildings and finalise approvals where possible.
5. Monitor the program monthly and use notification processes to manage enforcement for owners of higher risk buildings that require rectification works.
6. BASB to prepare a practical enforcement policy designed to encourage finalisation of outstanding approvals in a timely and cost effective manner.
7. Amend legislation to require private building certifiers to notify the BASB when building permits lapse and provide guidelines on how to progress building work that remains unfinished due to stage certificates not being provided.

2.2.2 Provision of building certification services

8. Consider either amending building legislation to allow owners to request that the building permit for their home include certifier inspections instead of relying on the builder to undertake inspections in the Schedule 2 (Tier 2) areas (Katherine and Tennant Creek) or provide clear public guidance material for certifiers if the legislation is adequate.
9. Appoint a small departmental panel of building certifiers/practitioners to assist with the finalisation of lapsed building permits. Capacity needs to be built over the long term. Strategies should be put in place to provide stepping stone categories of work such as inspectors, competent persons, cadets and building surveying technicians that will encourage a wide range of local industry participants to enter the profession.

2.2.5 Preparation and submission of documentation for an application for building permit. Access to building and development information.

- 14 Undertake measures to remove the impediments for the preparation of plans and other documentation and the lodging of building applications in regional and remote areas. For example, consider providing remote drafting services, enhanced electronic access to building information, subsidising the cost of building permits and inspections.
- 15 Undertake a public awareness campaign/program for the building approval processes in regional and remote areas through the existing BASB office network.
- 16 Provide a regular on the ground presence through regular visits by departmental compliance inspection officers as well as education and training activities to provide assistance to applicants/owners and industry in regional and remote areas.

3.2.1 Finalisation of existing building work

- 21 Amend the building legislation or issue a building practice note to provide formal guidance on finalising approval processes where approved building work has been completed without the required mandatory inspections so that a Certificate of Occupancy can be issued.
- 22 Amend the legislation so that when a building permit lapses a mandatory notification to the BASB takes place. This will allow the NT Government to manage the provision of a substitute building certifier who can finalise the building permit and issue the Certificate of Occupancy. Ultimately, there must always be a person or body responsible for the approval.

3.2.2 Approval, inspection and finalisation of building work which has been built without a building permit

- 23 Amend the building legislation or issue building practice notes to formalise the process where building work has been completed without a building permit and inspections. This would allow building work to be approved subject to meeting other legislative requirements and allow Certificates of Occupancy to be issued.
- 24 Adopt a similar process to that employed by Queensland (refer Building Newsflash currently being revised).
- 25 This amendment is not to encourage illegal building work but to make a process available which could be followed to allow existing buildings to remain.

3.2.3 Building certifier of the last resort (Default rules)

- 26 Provide default rules to ensure there is always a certifier who is responsible for a building permit and consider amending legislation to allow the BASB to take over the building certification of a project when the building approval lapses or the approving building certifier is unable to complete the work. The BASB should determine the most efficient method of implementing this requirement. This could be achieved by using in-house building certifiers, overseeing contract using a panel of companies/individuals or a combination of available resources.
- 27 Consider amending legislation to ensure that the replacement building certifier is not liable for the previous building certification functions performed by the original certifier.
- 28 Consider amending legislation to allow the replacement building certifier to accept and, without further checking, rely and act on any inspection documentation given by or for the original certifier.

3.2.4 Self certification

- 29 Review the existing self certification process with a view to changing the conditions of approval and to require applicants to re-apply for a licence to operate on a set time frame basis.
- 30 Conduct a random audit of the work of existing applicants.

3.2.5 Self assessable and exempt building work

- 31 Consider expanding categories of building work which are self assessable (no building permit required but compliance with the relevant codes) and exempt (no building permit or compliance) to help foster a stronger culture of compliance for building permits based on higher risk/value work.

6.2.1 Building certifier's liability (Reliance on certificates)

61. Review the liability carried by the building certifier against that of other building practitioners. For example, if prior approval was granted for another building practitioner to undertake the mandatory inspections, the approving building certifier should not be responsible for the other's actions.
62. Amend legislation for building certifier to be able to rely on certificates issued by a registered building practitioner without further checking.

6.2.3 Certificate of Occupancy

- 64 Review the wording of the Certificate of Occupancy.
- 65 Create a new final inspection certificate in lieu of a Certificate of Occupancy for Class 10 buildings and structures (Certificate of Final Inspection) similar to that used in Victoria.

6.2.4 Display of Certificate of Occupancy

- 66 Amend the legislation to require the display of the Certificate of Occupancy for all Class 1b to 9c buildings which were approved post 1993 when private certification was introduced into the NT. A suitable phase-in period will be required for this action to enable owners and the industry to facilitate this requirement.

6.2.5 Engagement of building practitioners

- 67 Amend the legislation to allow an engagement for services and an application to be made to an individual or company but then allow the building permit and relevant certificates to be issued by the individual registered practitioner (building certifier).
- 68 Consider a proposal to allow through legislation, the transfer of engagement to another registered building practitioner within the company if the approving building certifier leaves, retires or is unable to finalise the building certification.

6.2.7 Mandatory inspections

- 70 Publish a practice note for the building industry explaining a process for situations where mandatory inspections have not taken place, to guide building certifiers in using alternative methods to satisfy them that the building work as constructed complies with the building permit.

A2 Registration

2.2.4 Building inspections

- 12 Consider introducing a new building practitioner category of “inspector” and using a system of deemed competent persons for independent inspections of all building work in building control areas.
- 13 Consider requiring building inspections to be paid for at the time the building work is approved.

5.2.2 Code of Conduct

- 44 Develop a Code of Conduct for all categories of building practitioners and review and revise the Code of Conduct for building certifiers.
- 45 Amend the legislation to stipulate certain breaches of the Code of Conduct, such as failing to act in the public’s interest, as professional misconduct.
- 46 Amend the legislation to allow a lesser charge of unsatisfactory conduct to be considered for minor breaches.

5.2.4 Accreditation, Registration and Continuing Professional Development (CPD) programs for practitioners

- 48 Consider requiring practitioners (building certifiers initially) to be accredited by an external body to facilitate registration.
- 49 The external body that will provide the accreditation service should be required to set continuing professional development programs for practitioners.

5.2.5 Adoption of the national accreditation framework

- 50 Adopt the national accreditation framework which identifies the building surveying profession by level (Building Surveyor, Level 1 & 2).
Building Surveyor, Level 1
Work Scope: Unrestricted
Qualifications: Degree in Building Surveying or equivalent
Experience: 3 years relevant experience
Building Surveyor, Level 2
Work Scope: Restricted to a max 3 storeys and max 2000m²
Qualifications: Advanced Diploma
Experience: 2 years relevant experience
- 51 Amend the legislation to allow for the registration of building certifiers in the new categories above.

5.2.6 Level 3 (Building Surveyor Technician)

52 Adopt the Australian Institute of Building Surveyors (AIBS) or equivalent third level of accreditation as a Building Surveying Technician.

Building Surveyor, Level 3

Work Scope: Restricted to max 2 storeys and max 500m²

Qualification: Diploma in Building Surveying

Experience: None (may change to 6 months)

53 Amend the legislation to allow for the registration of building certifiers in the new category.

5.2.7 Level 4 (Building Inspector Domestic)

54 Create a fourth level of building surveyor and negotiate with the AIBS or equivalent to develop accreditation requirements for this category.

Building Surveyor, Level 4

Work Scope: Restricted to inspections of Class 1a & 10 buildings

Qualification: Certificate 4 (to be developed, using 0.5 of the Diploma of Building Surveying as a base and also using recognition of prior learning (RPL) and work experience.

Experience: To be determined (1-2 years)

55 Amend legislation to allow for the registration of building certifiers in the new category.

5.2.8 Use of competent persons

56 Amend legislation to allow a competent person to be used to provide design and inspection help to the building certifier.

57 Using the Queensland building legislation (competent persons section is currently under review) as a basis, consider amending legislation to set procedures and practices required for a building certifier to deem a person to be competent for the purposes of the building legislation.

58 Consider amending legislation to allow a building certifier to accept and, without, further checking, rely on a certificate from a person deemed a competent person by the building certifier prior to the undertaking of the inspection work.

59 Decide on a time limit to review and revoke this provision once the supply of level 3 and 4 building surveyors reaches a suitable level.

5.2.9 Other class of practitioners

60 Consider reviewing the current categories of practitioners and consider the adoption of new categories. These categories include:

Fire Engineers (were shown in 1993 certification guide)

Commercial Builders

Pre purchase building inspectors

Trades including: Wet area and Termites

A3 Administration

A3(i) General

2.2.3 Provision of building certification services outside building control areas

- 10 Consider amending building legislation coverage to allow owners the option to elect for a building permit which would include the required mandatory inspections and the issue of a Certificate of Occupancy for all building work outside the building control areas within the NT, especially for Class 2 to 9 buildings.
- 11 Consider changing the current procedure to require BASB to accept record and maintain the records of building permits issued outside the building control areas.

4.2.1 Responsibility for enforcement (BASB/private building certifier)

- 32 Consider requiring building practitioners to issue a building notice when they are engaged to undertake building certification services and a breach of the legislation comes to their attention.
- 33 Consider requiring building practitioners to refer building notices to the BASB for further action (the issue of a Building Order, on the spot fine or Court Action) if the notices are not complied with.
- 34 Provide BASB with a suite of practical tools for enforcement action.

4.2.2 Cause of non compliance

- 35 Undertake ongoing monitoring of the causes of non completion of building permits, building work continuing without the mandatory inspections and building work without a building permit.

4.2.5 Introduction of penalty infringement-notices (PIN)

- 40 Introduce on the spot fines for owners and building practitioners.
- 41 For owners this would relate to breaches of the building legislation such as building without a building permit.
- 42 For building practitioners this would relate to breaches of the code of conduct and breaches of the building legislation.

6.2.2 Use of Government Gazette for notifications

63. Amend the provision in the *Building Act* which allows notification in the Government Gazette and make the amendments/notifications in the *Building Regulation*.

6.2.6 Temporary buildings

- 69 Require a building permit and a Certificate of Occupancy for temporary buildings, particularly in cyclonic areas.

A3(ii) Building Advisory Services Branch (BASB)

4.2.3 Building work without a building permit

- 36 Resource BASB to investigate the extent of building work undertaken without a building permit.

4.2.4 BASB role and procedures and the development of enforcement policy

- 37 BASB to develop a monitoring, compliance and enforcement policy for breaches of building legislation based on an ongoing assessment of risks.
- 38 Consider supplementing resources of the BASB compliance section to undertake compliance monitoring and enforcement on behalf of the Branch and the Building Practitioners Board.
- 39 Consider allowing Class 1a dwellings to be occupied without a Certificate of Occupancy and instead finalise approvals through final inspection certificates.

5.2.3 Auditing function (basis – complaints / systematic)

- 47 Consider a proposal to undertake more systematic audits against building certifiers focusing more on technical aspects. This would include aspects such as compliance with codes, interpretation of statutes in the public interest, building work adherence to plans and the quality of inspections rather than the usual process and administrative matters.

7.2.1 Resources / Funding / Role (policy / operational divide).

- 71 Review the BASB's target services and the resources needed to meet operational and policy needs and in particular consider introducing a levy on building approvals to support an expansion of BASB roles.
- 72 Expand the activities of the BASB in the areas of training and education, practitioner audits, finalising building permits, cadet building surveyor scheme, and monitoring and enforcement.
- 73 Consider the current operations of the BASB in regards to the desired level of policy and operational divide.

7.2.2 Location of offices and staff

- 74 Locate more technical compliance officers in the Katherine, Tennant Creek and Alice Springs offices to provide an on the ground presence and assist with the finalisation of incomplete building permits.

7.2.3 Cadet / Trainee program

- 75 Consider establishing a cadet building surveyor program within the BASB.
- 76 Consider establishing a cadet building surveyor program for private building certifiers. This may involve the NT Government providing a subsidy to the private building certifier to take on the cadet. This method has been employed in Victoria by the Building Commission but involved regional and country local governments.
- 77 Consider providing an indigenous training program which could be in association with local government to train local persons as building compliance inspectors in regional and remote areas. Stepping stones should be provided to encourage locals to articulate up through the registration categories.

7.2.4 Provision of 'call centre advice'

- 78 Consider the extent to which the BASB should provide call centre advice. Consider using local government offices to provide building and development information and advice.
- 79 Consider introducing a two tier system where the public is directed to written or online information and higher level personal and advisory service is provided to the building certifiers and government agencies.

7.2.5 Education and training

- 80 Review and update existing publications and provide regular newsletters/practice notes on the web and via email.
- 81 Provide regular training forums for building practitioners which could be in association with the Australian Building Codes Board and the AIBS.
- 82 Publish education materials suitable for the public on the building and development systems and the need to finalise building permits. This could be undertaken in association with local governments.
- 83 Consider providing training for associated professions such as lawyers and conveyancing companies about the need to obtain Certificates of Occupancies prior to building being occupied. This will also be important if these certificates are required to be displayed.

7.2.6 Records maintenance

- 84 Investigate whether the building records held by the DPI could be maintained and kept available in a cost effective manner (electronic storage) or outsourced.
- 85 Develop options to correct/finalise incomplete records and provide options to upgrade and finalise these where practicable. This can be undertaken in three stages (private certifier/NT Government/ Federal Government).

7.2.7 Reporting and records management

- 86 Consider requiring BASB to provide regular reporting to the responsible Minister on activities including numbers of un-finalised building permits, numbers of notices issued by private certifiers and the BASB, prosecutions. PIN issued (if introduced) and other actions.
- 87 Consider storing building records held by the DPI electronically.
- 88 Consider allowing on line access (fee payable) for building and development records.

A3(iii) Roles

2.2.6 Role of local government

- 17 Undertake measures to encourage local governments to provide building and development information for their residents from their Municipal Offices. For example, local governments should have readily available information brochures on public display, provide access to printed and written information and venues for training and information sessions. They should have customer service officers trained in providing basic over the counter and telephone advice to the public.
- 18 Build capacity in local governments to provide building and development compliance inspections on behalf of the DPI.

2.2.7 Role of other government departments

- 19 Although some other NT government departments employ people with relevant qualifications and experience who could provide some assistance in undertaking building inspections, it is not recommended that this proposal should be considered in the first instance.
- 20 The DPI's role as the central building policy agency should be maintained to avoid fragmenting policy advice. However, the DPI should consider providing more education and training to assist other departments complying with the building legislation. The Government should set an example for the construction and occupation of buildings. Examples of departments that may require assistance include liquor licensing and the health departments.

5.2.1 Role of the Building Practitioners Board - Complaint process

- 43 Consider separating the handling of complaints against building practitioners from the policy functions by having complaints administered and overseen by the Building Practitioners Board (Board) and the investigation process conducted by the compliance section of the BASB who report back to the Board for a decision.

8.2.1 Role of the committee (BAC)

- 89 Review the committee's current membership and role to ensure that it is fulfilling its stated roles which include advising the Minister on the administration of the *Building Act*.
- 90 Review the effectiveness of maintaining the NT product certification scheme.

8.2.2 Implementation of review

- 91 The committee (BAC) should investigate the findings from this report and recommend to the Minister improvement ideas that could be implemented and set priorities and timeframes for their implementation.

A3(iv) Co-operation with Queensland

10.2.1 Active collaboration on sharing guidelines, practice notes and policy research

Explore possible exchanges of material developed for newsletters, statutory guidelines and research that may be of interest across climate zones.

10.2.2 Possible staff exchanges/secondments

Officer secondments should be considered to assist in building capacity in both Queensland and NT by widening the available work experiences and building closer relations.

10.2.3 Joint training programs in partnership with AIBS Qld/NT Chapter

Participate in joint training presentation in association with the AIBS Qld/NT Chapter. This could also involve partnerships with building industry organisations such as Housing Industry Association and Queensland Master Builders Association.

10.2.4 Policy collaboration

Climatic / remote / geographic / issues (see report for full text)

NT, Western Australia and Queensland share similar subtropical/tropical climatic conditions in their region and remote parts of their areas. Also they share similar problems with the provision of building certification services and compliance in these regions. Papers and policies on the following matters may be of interest to the NT –

Outdoor living

Level 3 (Building Surveying Technician) and competent persons

Queensland Building Certification Review

Royal Institute of Chartered Surveyors (RICS) additional accreditation agency.

A3(v) Improvements Outside Current Review

(The focus of the Moratorium is to address the deficiencies in the current building regime and any expansion of the regime to cover swimming pools as suggested in the improvements below may be considered at another time.)

9.2.1 Legislation be transferred and be administered by the Department (DPI) and be incorporated into the building legislation

- 92 Consider transferring the administration of the *Swimming Pool Safety Act* and the *Swimming Pool Safety Regulations* to the DPI.
- 93 Consider amending the existing building legislation to incorporate the relevant requirements of the above legislation.
- 94 Propose to adopt the building enforcement provisions to apply to owners and builders of swimming pools for breaches of the legislation. This would include the use of penalty infringement notices (PIN).

9.2.2 Building permits required to construct a swimming pool and associated fencing

- 95 Consider amending legislation to require all swimming pools (in ground, above ground, indoor and spas) including the required fencing to be regulated building work and subject to the building permit process.
- 96 Consider amending legislation to require the swimming pool fence to be inspected for compliance by a building certifier prior to the filling of the pool to a depth exceeding 300mm.

9.2.3 Adoption of the Building Code of Australia (BCA) provisions for swimming pool access (Remove NT variation)

- 97 Consider adopting the Building Code of Australia (BCA) as the standard for swimming pool access with any required NT variations incorporated into the state building legislation. The adoption of the BCA would also allow the use of performance solutions in the assessment of pool fences for compliance when undertaken as part of the building permit process. Consider adopting the revised Australian Standard AS1926.1 & 2 – 2007 as the pool fencing standard for all new pools. As a long term goal consider the adoption of this standard for all pools in the NT.

9.2.4 Use of existing swimming pool fence compliance officers to act on general building compliance issues

- 98 Consider widening the role of the persons appointed to the current Swimming Pool Safety Authority to undertake broader compliance inspection activities as part of their role. These officers would be transferred to the DPI.

PART B Statutory Boards Proposals

B1 Building Practitioners Board Proposals

The full text of the proposals put forward by the Building Practitioners Board and the supporting discussion are at Attachment B.

The Executive Summary for Part B provides an overview of the proposals.

The currently prescribed building practitioner categories in the Territory are:

- Building Certifier (Unrestricted)
- Building Certifier (Residential)
- Certifying Engineer (Structural)
- Certifying Engineer (Hydraulic)
- Certifying Engineer (Mechanical)
- Certifying Architect
- Certifying Plumber and Drainer
- Certifying Plumber and Drainer (Design)
- Building Contractor Residential (Unrestricted)
- Building Contractor Residential (Restricted)

The Board is proposing replacing or amending some of the categories as follows;

Building Services Engineer (New Category)

Qualifications

Either

- (a) Membership of the Institution of Engineers, Australia as a chartered professional engineer eligible to use the post nominals, CPEng, combined with membership of the Civil or Mechanical College as appropriate;

or

- (b) a certificate of registration as a building services engineer on the National Professional Engineers Register (NPER) subject to confirmation that the registration was obtained on the basis of experience determined by the Board as relevant to the certification functions approved by the Board.

Subject to the specific endorsement by the Board of each function listed below, a building services engineer may certify the design and/or construction of;

- hot and cold water systems
- sanitary plumbing
- drainage
- on-site sewage treatment systems
- fire hydrants and fire hose reels
- fire sprinkler/suppression systems
- lift systems
- air conditioning and ventilation systems

servicing buildings and structures of all classes.

Building Services Technician (New Category)

Qualification

Either —

- (a) a Certificate III or IV in a relevant trade/discipline or other educational qualification determined to be equivalent by the Board plus at least 5 years practical experience in the area of practice for which registration is sought;

or

- (b) a Diploma in a relevant discipline plus at least 4 years practical experience in the area of practice for which registration is sought.

Subject to the specific endorsement by the Board for each function listed below, a building services technician may certify the design and/or construction of;

- hot and cold water systems
- sanitary plumbing
- drainage
- on-site sewage treatment systems
- fire hydrants and fire hose reels
- fire sprinkler/suppression systems
- lift systems
- air conditioning and ventilation systems

servicing buildings and structures of all classes unless otherwise determined by the Board.

Structural Engineer (*Amended*)

Qualifications

Either

- (a) Membership of the Institution of Engineers, Australia as a chartered professional engineer eligible to use the post nominals, CPEng, combined with membership of the Structural College;
- or
- (b) a certificate of registration as a structural engineer on the National Professional Engineers Register (NPER).

A Structural Engineer may certify the design and/or construction of structures in all classes of buildings, in accordance with the structural provisions of the Building Code of Australia.

Certifying Architect (*Amended*)

Qualifications

For the purposes of section 24(1)(c) of the Act, it is a condition for registration as a certifying architect that the applicant for registration -

- (a) is registered as an architect under the *Architects Act*; and
- (b) has had at least 2 years practical experience in designing buildings to meet the requirements of the Building Code of Australia in relation to all classes of buildings.

A Certifying Architect may certify that the design of any class of building meets the requirements of the Building Code of Australia.

Certifying Plumber and Drainer

As an interim measure, the Board proposes to seek some form of additional qualification such as a written acknowledgement by the practitioner of the special duties associated with certification. This could be in the form of a declaration with a commitment to practise within the practitioner's level of competence.

This would address some of the Board's concerns regarding relatively inexperienced tradesmen certifying more complex works that are increasingly found in modern multi storey buildings.

Introduction of Changes

The Board's preferred position is that all new registrations from a specified date should be based solely on already existing (or amended) national accreditation requirements for building certifiers, professional engineers and architects.

The Board's preferred position is that this requirement would also apply for all registration renewals in these categories lodged after a period of time, say a further 2 years.

The Board is aware that some individual practitioners may object to some aspects of these proposals and specific comment is welcomed in response to the matters raised above.

B2 NT Build Proposal

The portable long service leave scheme, managed by NT Build, began on 1 July 2005 with the commencement of the *Construction Industry Long Service Leave and Benefits Act*.

The Auditor-General is concerned about the uncertainty of the capture of all building projects that fall within the scope of the long service levy and has recommended that "the current building approval regime include the payment of the levy".

For the purpose of the legislation, construction work covers buildings, civil works, land draining and reclamation, earthworks, site restoration and landscaping. It also includes altering, repairing, restoring, maintaining, dismantling, demolishing and removing buildings.

The levy does not apply to work:

- on single detached dwellings, including related private garages, carports, sheds, or the like;
- for which the total contract price for the construction work is less than \$200,000 in value; and
- for not-for-profit organisations in respect of voluntary labour or donated materials.

NT Build proposes that the building regulatory provisions be amended to require evidence that a Project Notification Form has been lodged before a Building Permit is issued. Similar provisions exist in NSW and Queensland which are the only other schemes that use the developer levy system.

The building regulations could simply require evidence that an "approved form" has been lodged with NT Build before a building permit for prescribed works is issued. In practice building permits for Class 1a and Class 10 buildings and buildings for other classes that are obviously below \$200,000 will not require evidence.

It is acknowledged that at the building permit stage the "contract price" as required on the Project Notification Form may not be known. The approved form may be similar to the Project Notification Form without the requirement for the project cost and levy payment.

PART C Projects in Train

C1 - Building Inspector

It is proposed to amend of the *Building Act* to include another category of building practitioner, namely Building Inspector, to allow the following:

- **Building Inspector Sub-Categories.** It is proposed that there be two sub-categories, Residential and Unrestricted, with the same prescribed related building works as for Building Certifiers. A Building Inspector (Residential) could do inspections associated with Class 1 and 10 buildings. A Building Inspector (Unrestricted) could do inspections associated with all building classes.
- **Duties** A Building Inspector would be able to carry out building inspections, including those mandated in the regulations, and issue building inspection reports under section 40 of the *Building Act* upon which the Building Certifier can rely. (Other non-statutory work may be available for a Building Inspector. For example, it is common for a client to seek a building status report on the condition of a house prior to buying. A Building Inspector could do this work, as happens elsewhere in Australia.)
- **Requirements:** Qualifications are likely to be similar to those required elsewhere in Australia which commence at the level of a Diploma in Building Inspection equivalent to 2 years full time study and at least 2 years of relevant experience. A Building Inspector will be required to carry professional indemnity insurance.

Building inspections are an important component of the building control process.

At present the Building Certifier carries the responsibility for inspections and does the inspections personally or may engage others who are competent, either employees or persons under contractual arrangements, to actually do the inspections and report to the Building Certifier. Contractual arrangement is often the case in remote locations. Under these circumstances the Building Certifier carries the ultimate legal responsibility for the inspection.

A Building Certifier may also rely on another building practitioner (eg a Certifying Engineer) who issues an inspection report under section 40 of the *Building Act*. In this case the other building practitioner carries the legal responsibility for the inspection.

The proposal will not change any of the above.

A Building Inspector will simply be another building practitioner who can issue section 40 inspection reports upon which the Building Certifier can rely.

Like other Building Practitioners, a Building Inspector may operate as a separate business entity, be engaged by a building owner direct or a Building Certifier and carries the legal and professional responsibilities for his or her actions.

As the proposal provides an alternative path for inspections and does not adversely affect the work of persons currently doing inspections, transitional provisions are not required.

By way of background, concerns have been expressed for some time over the difficulties industry and consumers have in obtaining private building certification services. As is the case in other jurisdictions, there is a shortage of Building Certifiers in the NT. To some degree the 2006 building reforms have expanded the work load of Building Certifiers, adding to the demand. The reforms have been effective to the extent that Building Practitioners are more aware of their legislative responsibilities and have strengthened their processes accordingly.

The NT Branch of the Australian Institute of Building Surveyors is suggesting that the mandatory inspection regime introduced in the 2006 reforms is placing a great demand on the time of Building Certifiers which could otherwise be spent processing applications. The demand on their time for inspections may be alleviated with the introduction of another level of Building Practitioner, namely Building Inspector.

As a part of the 2006 reforms, the Act was amended to mandate an inspection regime for residential works. The Act had always made provision for a Building Certifier to require inspections but had never mandated specific inspections. The 2006 reforms strengthened this requirement by prescribing five mandatory inspection stages for residential works.

Formal Inspection Certificates were also introduced to be signed off by the Building Certifier after each inspection as a statement that building works up to that stage are complete and comply in all material respects with the regulations.

These legislative changes generally reflected industry practice which existed in the NT prior to the reforms and in other jurisdictions.

The words “in all material respects”, have been included in the inspection certificate and occupancy permit. These words were inserted to strengthen the certification process. They require a Building Certifier to be satisfied that all the important and essential aspects of the building works at the time of an inspection are in place and in accordance with the building permit and approved plan. The purpose of the reforms is to provide more confidence for consumers that, at the end of construction, the products they are receiving are fit for purpose.

Given the nature of the building industry in the Northern Territory, it is unknown whether a provision for Building Inspector would result in sufficient applications to make a real impact on inspection capacity.

However, it is suggested that as it would not restrict the current practices, any expansion of capacity would be beneficial and would provide another professional path for progression from inspector to certifier.

C2 Home Warranty Insurance (HWI)

In 2004 the *Building Act* was amended as part of the implementation of Government policy on a wide range of building reforms. Most of the *Building Act* amendments were commenced in 2006. However, *Part 4c Home Warranty Insurance* was not commenced due to concerns with the insurance product within governments and industry around Australia, particularly in New South Wales.

In the meantime the Home Building Certification Fund (HBCF) remains in operation under section 61 of the *Building Act*. This fund is managed by the Territory Insurance Office on behalf of the Northern Territory Government. It only covers non-compliance with the Building Regulations whereas HWI covers both non-compliance and non-completion. HBCF has served its purpose in regard to the transition to private certification of building works. However, it is inadequate in many ways for today's requirements and needs to be replaced. HBCF does give a wider coverage for non-compliance than HWI, particularly in the area of renovations.

In March 2008 the Senate established an inquiry into *Australia's Mandatory Last Resort Home Warranty Insurance Scheme*. In November 2008 the Standing Committee on Economics produced its report. The Senate Committee affirmed HWI as a valid consumer protection measure and made two recommendations on the product itself.

The first recommendation relates to the name of HWI. The Committee found that the name is misleading, since 'warranty' encourages a misleading analogy with consumer goods warranties that are not limited to cases where the seller is insolvent. Some terms used overseas are 'builder performance protection', 'building defects insurance' and 'completion insurance'. A suggestion made to the Committee was 'statutory default cover'. The name should reflect that the insurance product is a guarantee of satisfactory completion of works.

The second recommendation relates to the "triggers". The existing triggers are the building contractor's "death, disappearance or insolvency." The Committee is recommending that "loss of registration" of the building contractor be included.

The full report is available on the web at [www.aph.gov.au/senate/committee/Completed Inquiries then Economics then Australia's Mandatory Last Resort Home Warranty Insurance Scheme - 13 November 2008](http://www.aph.gov.au/senate/committee/Completed%20Inquiries%20then%20Economics%20then%20Australia's%20Mandatory%20Last%20Resort%20Home%20Warranty%20Insurance%20Scheme%20-%2013%20November%202008)... or www.aph.gov.au/senate/committee/economics_ctte/home_warranty_08/report/index.htm.

The national scene in relation to HWI is well covered in the Senate report. Tasmania has changed to make HWI voluntary. NSW has made changes recently consistent with the Senate recommendations.

Proposed HWI in the NT

The Territory Government proposes to commence the requirement for HWI, modified in accordance with the Senate Committee's recommendations.

The key points of the proposal are:

- a change of name to reflect that it is a guarantee of satisfactory completion of works in the event of the builder failing to complete the contract;
- a claim can be activated by the death, disappearance, insolvency or loss of registration of the registered building contractor (builder);
- the policy will only relate to residential buildings that are 3 storeys or less and for building works that require a registered builder;
- the policy will cover non-compliance (houses and flats) with building regulations and non-completion (houses only - except those built by owner builders and speculation builders) of building works;
- the non-completion component of the policy will apply during the construction stage and the non-compliance component will remain current for 6 years from the issuing of a builders declaration of completion;
- the policy will be mandatory in Tier 1 and voluntary in Tier 2 declared building areas;
- the policy will be taken out by the builder;
- the builder will need to satisfy the insurance provider of financial viability; and
- the commencement will be subject to competitive insurance products being offered in the Northern Territory.

Further Features of the proposed HWI in the NT

- Building Work

In the Northern Territory it is intended to require HWI cover for residential building work that requires a registered building contractor up to and including 3 storeys as follows –

- (a) Class 1a(i) (i.e. houses) – non-completion and non compliance cover.
- (b) Class 1a(ii) (i.e. townhouses) and Class 2 (Flats and Units) – non compliance cover only.

Generally building projects involving townhouses, flats and units are carried out by developers or builders who act out of commercial interest. Non-completion is therefore a commercial risk. Homebuyers purchasing a unit in a building no more than 3 storeys high will be protected from loss through non-compliance. HWI is not offered by insurers for buildings above 3 storeys. A body corporate or an individual may take civil action in the courts.

- Financial

Building contractors will need to meet financial security requirements set down by their insurers. The building contractor will be required to purchase the policy of insurance on behalf of the consumer and pass the cost on to the consumer through the contract price.

Building work over \$12,000 in value will require HWI. A limit on any payment of 20% of the contract price up to a maximum of \$300,000 is proposed.

A cap on payment in respect of all claims arising from the death, disappearance, insolvency or loss of registration of a single builder is proposed to be in the order of \$10 million.

- Insurance Period

HWI cover will be for non-completion during construction and for non-compliance for a period of 6 years from the completion of the building work.

- Owner-Builders and Speculation Builders of Houses

As owner-builders are responsible for their own building works and workmanship and ultimately for completion of the building project, owner-builders in the Northern Territory will not be required to take out non-completion insurance. However, they will be required to take out cover for non-compliance with the regulations for a period of six years after completion. This will cover any future owners of the property. The same applies to speculation builders.

- Australian Prudential Regulation Authority (APRA) Requirements

Insurers who wish to enter the Northern Territory market will need to meet the requirements of APRA.

The Insurance industry prefers harmonisation of the key features of the products which are being offered Australia-wide. The Northern Territory is a very small market for any of the insurance providers and it is doubtful that it could demand a product that is materially different from those available interstate.

Last Resort

All schemes elsewhere in Australia, except Queensland (which is Government sponsored), are “last resort” insurance schemes where the policy specifically provides consumers with protection against non-completion and non-compliance, but only when a builder has died, disappeared or has become insolvent and is no longer trading. The term “last resort” refers to the fact that the insurer will only pay if the consumer can prove the builder is unable to do the necessary work. The purpose of the insurance is to cover the additional cost involved in engaging another builder to finish the project. In circumstances where the builder is still around, the consumer is required to pursue the builder.

The change to “last resort” occurred as a direct result of the collapse of the insurance giant, HIH, in 2001. It was introduced firstly by Victoria and NSW, followed by other states, as a means of attracting insurers to the market by minimising the risk associated with this type of insurance.

Concerns by consumers and builders have led to many inquiries over the years that have re-affirmed the consumer protection value of HWI. The most recent inquiry was by the Senate Committee on Economics in 2008.

Although HWI insurance has attracted criticism that is understandable, it does provide a greater degree of protection than that currently available to Northern Territory consumers under HBCF. Consumers in the Northern Territory are currently not protected if the builder is unable to complete the work due to insolvency, death or disappearance.

C3 Consumer Relations

The Senate Committee referred to under HWI also recommended a best practice scheme of consumer protection in domestic building. It is proposed to give the consumer protection recommended by the Senate Committee by a formal residential building dispute process and statutory warranties.

The proposed key points are:

- all building disputes will be lodged with Consumer Affairs;
- Consumer Affairs will determine if the dispute relates directly to the contract, building regulation non-compliance, a building practitioner’s legal responsibility or the quality of the building work. If necessary Consumer Affairs will then engage Government agencies to assist in resolving the dispute;
- the **first stage** will seek to resolve the dispute by providing information to, and discussion with, the parties;
- if this is unsuccessful, the consumer will be required to make a written complaint and Consumer Affairs will carry out a site visit and consult the parties;
- if it is necessary to move to the **second stage**, a process fee will apply;

- technical experts from Building Advisory Services of the Department of Planning and Infrastructure will be engaged by Consumer Affairs in site inspections and consultation with the parties in seeking to conciliate an agreement;
- if no agreement can be reached, the Commissioner of Consumer Affairs will determine what action, if any, should be taken by the consumer and/or the builder;
- if necessary, the Commissioner of Consumer Affairs may issue a binding rectification order;
- in the **third stage**, either party may appeal to the Lands, Planning and Mining Tribunal;
- the Building Practitioners Board will have additional powers to limit the registration of a building contractor to existing contracts until rectification orders or appeal determinations are satisfied;
- an appropriate summary of the outcome of disputes will be placed on the public record to inform consumers and industry; and
- statutory warranties, prescribed by regulations, will be implied in all residential building contracts.

A study by Tasmania of the NSW building dispute process concluded that:

- Disputes need to be dealt with as soon as possible. The sooner the parties are able to get together to discuss their problems, the greater the likelihood of a successful resolution.
- Officers need to do a site inspection. The nature of building issues is that it is imperative that an officer visits the site to be able to appreciate the issue.
- A large number of disputes are about standard and quality of workmanship. This means that the rectification order is a powerful tool in establishing standards and resolving disputes.
- There is considerable value in making rectification orders enforceable.

Many jurisdictions use the Victorian Building Commission publication *Guide to Standards and Tolerances* to help assess quality of workmanship complaints (www.buildingcommission.com.au). The Northern Territory is likely to adopt this guide.

As noted by the Senate, Tasmania is bringing in its own unique framework. Tasmania has published a consultation paper entitled *A New Consumer Building Framework* dated February 2008. It is informative about building consumer issues generally and attached to the report is a comparison across Australia - *Attachment 2 Jurisdictional Analysis of Regulatory Frameworks*.

The report is available at -

www.consumer.tas.gov.au/data/assets/pdf_file/0008/94931/Consultation_Paper_Building_Framework_-_Final!.pdf

A three stage Building Dispute Resolution process

- **Stage 1 Information and Advice**

The initial stage is the receipt and handling of a telephone or other enquiry. All building related enquiries will be directed to Consumer Affairs who will provide specific information and advice to consumers and builders.

Consumer Affairs officers will initially identify the nature of the complaint and will follow guidelines set out in a documented procedure manual, including assisting the consumer to develop realistic expectations about the matter and ensure that he or she is informed about the dispute resolution process.

An option will be for consumers to access the Community Justice Centre which was established by the NT Government to provide mediation services to the community to help people resolve their own disputes without legal action. The service is free, confidential, voluntary, timely and easy to use

In some cases the Consumer Affairs Commissioner will refer the matter to another organisation. For example, in the event of a poor professional conduct issue, the matter would be referred to the Building Advisory Services of the Department of Planning and Infrastructure. If it is a complex contractual dispute it may need to be determined in the Magistrates Court.

The focus of the first stage is to encourage consumers to resolve matters themselves. If the consumer remains dissatisfied with any outcome from the above, he or she will be required to put the complaint in writing. Consumer Affairs will then visit the building site and consult with the parties in an endeavour to conciliate the dispute with minimum investigation.

- **Stage 2 Formal Complaint – Conciliation and Enforcement**

If stage 1 is unsuccessful, the consumer will be required to pay a processing fee.

The Consumer Affairs officer will formally notify the other party of the dispute and give that party an opportunity to respond, provide additional information or rectify the problem.

At an appropriate time, the Consumer Affairs officer and a technical officer from Building Advisory Services of the Department of Planning and Infrastructure will conduct a site inspection, with the consumer and the builder and other relevant parties invited to be present.

During the inspection the officers will assess the items listed on the complaint form and attempt to conciliate the matter by providing an opinion and discussing the workmanship and compliance issues with the parties. Where the parties reach an agreement the Consumer Affairs officer will issue a 'complaint inspection advice' which sets out the agreement that has been reached between the parties.

Non-compliance with the complaint inspection advice will result in the Consumer Affairs Commissioner determining what action should be taken by the consumer and/or the builder. This may be followed by the issuing of a rectification order. Similarly, where the parties cannot reach agreement a rectification order may be the outcome.

Rectification orders will be binding and may include details of works to be done and related payments that need to be made.

Officers may identify breaches of law during an inspection and may refer such to the appropriate authority. In many cases the officers may continue to deal with a dispute, although a serious breach may require that a matter is put on hold until other legal issues are resolved.

- Stage 3 Appeal and Other Matters

There will be provision for either party to appeal to the Lands Planning and Mining Tribunal. An appeal will generally be determined on the documents provided by the owner, builder and Consumer Affairs.

The outcome of disputes will be on the public record with appropriate editing in order to keep consumers and industry informed.

The Building Practitioners Board will be advised of matters relating to the poor performance of Building Practitioners. If a building contractor fails to comply with a rectification order or a determination of an appeal, the Building Practitioners Board may issue an order to "limit" the building contractor's registration to prohibit the builder from entering into any new contracts until the order or determination has been satisfied.

In any case the Building Practitioners Board may take action under Part 3 Division 3B of the *Building Act* relating to misconduct. The Board will take into account the outcome of complaints when considering renewal of registration.

Statutory Warranties

Statutory warranties strengthen consumer protection and are specific to the services provided between a building contractor and a consumer under a contract for residential building work.

Currently, in the Northern Territory there is no specific legislation which covers contracts for building related goods and services. The more general provisions are in the *Consumer Affairs and Fair Trading Act* administered by the Department of Justice.

As this issue relates directly to the protection provided by a contract between a consumer and a building contractor, it is proposed to amend *clause 41H Contents of Building Contracts* in the Building Regulations for prescribed matters under section 48B(2) of the *Building Act*.

An amendment is proposed along the lines:

“that the following warranties by a registered building contractor are implied in every contract for prescribed residential building work (generally new work over \$12,000):

- a. the work will be carried out in a proper and workman-like manner and in accordance with the plans and specifications set out in the relevant building permit;
- b. all materials supplied by the builder are to be good and suitable for the purpose for which they are to be used and, unless otherwise stated in the relevant contract, those materials will be new;
- c. the work will be carried out in accordance with all laws and legal requirements, including the *Building Act* and any regulations made under that Act; and
- d. the work will be carried out with reasonable care and skill and will be completed by the date, or within the period, specified by the relevant contract.”

Statutory warranties will ‘run with the building’ so that subsequent purchasers of a property have the same rights with builders for breach of warranties as if they were a party to the building contract.

The *Construction Contracts (Security of Payments) Act* was part of the 2004 building reforms. This Act has implied terms for construction contracts dealing with payment and the rights of the parties to deal with unfixed materials when one of those parties becomes insolvent during the course of the contract. While this Act has a much broader application for industry it does complement the existing and proposed provisions in the *Building Act* for the residential building consumer.

C4 - Substantial Compliance

The *Building Act* that commenced in 1993 replaced the *Building Act 1983*. However, the effect of transitional provisions contained in section 170 of the *Building Act 1993* is that the *Building Act 1983* continues to have general application in respect of building works completed between its commencement in 1984 and its repeal in 1993. It therefore controls the statutory requirements for building works during this period.

In particular, section 40 of the *Building Act 1983* provides for the Director Building Control to issue a Certificate of Occupancy, certifying that the building work has been completed in accordance with the building permit. Section 41 makes occupation without a Certificate of Occupancy unlawful.

Since the introduction of private certification in September 1993, BAS policy has been that the Director of Building Control would normally issue a certificate of occupancy for building works completed prior to 1993 subject to certain conditions. The conditions include that the works were covered by a building permit previously issued by the Northern Territory Government or the works were undertaken by a government body. In all cases, owners have been required to provide certification from private building practitioners that all works (structure, glazing, termite treatment etc) complied with the requirements of the day.

The Department has encountered many practical problems in implementing this policy. In 2005, amendments to the Act were passed by the NT Government in order to address the problems. New Part 15B (sections 172C to 172G) removes the requirements for a Certificate of Occupancy. Under the provisions, if building works undertaken before 1993 were carried out in substantial compliance with the building permit, they comply.

Part 15B is yet to be commenced. Draft regulations were circulated to industry for comment and as a result changes have been made. However, due to the other reforms industry was adjusting to, the matter was not progressed.

Part 15B is being reviewed to ensure it is adequate in light of the issues around the Moratorium. The intention is to commence the provisions as soon as possible, amended if necessary, with supporting Regulations and Building Notes.

C5 - Enforcement

The enforcement provisions in the *Building Act* and Regulations are under review, in particular:

- penalty units – penalties are currently expressed in dollars. In keeping with current policy, they are to be replaced with penalty units. The dollar value of a unit is set by other legislation and revised from time to time.
- regulatory offences – offences currently are ‘simple offences’. Legal advice is that it would be better for most of them to be ‘regulatory offences’. The difference relates to proof and process in that regulatory offences are more straightforward, such as traffic offences.
- infringement notices – these relate to offences being regulatory and are included in the Queensland Report.
- Part 10 of the Act – this part relates to the powers for enforcement of building and safety standards. The provisions are being generally reviewed in terms of their effectiveness.

PART D Miscellaneous

The following matters are proposed to be addressed through miscellaneous amendments to the *Building Act* and Regulations.

Power of Delegation

The Practitioners Board was re-established under section 12 in December 2005, in preparation for the legislative changes of July 2006. To streamline administration and move towards meeting less frequently, the Practitioners Board proposes that certain functions currently undertaken by the full Board be delegated to the Chairman for decision. The Practitioners Board considers that appropriate policies and standards have been established in its administrative processes to allow most applications and other functions to be considered by the Chairman, with assistance from the Registrar. There would be discretion to refer an application or a matter to the Board, should there be issues which require consideration by the whole Board.

There are no powers of delegation for statutory bodies currently in the *Building Act*. Other legislation for the registration of trades and professions do have such provisions.

It is proposed to enable the Building Practitioners Board, the Building Advisory Committee and the Building Appeals Board to delegate their functions and powers as appropriate;

Powers to Impose Conditions on Registration

The functions and powers of the Practitioners Board include registering building practitioners. When determining an application, the Practitioners Board has regard to the scopes of work it has set by policy as well as the requirements of the Act that the applicant is a fit and proper person and has the qualifications and experience determined by the Minister. If the applicant is able to satisfy all criteria, then the Board must register the person.

From time to time, the Practitioners Board is required to determine an application which might meet most, but not all, of the requirements. The Board does not have the power to place conditions on registration. Many statutes which establish registration for other occupations and professions enable the registering authority to impose conditions.

It is proposed to allow the Practitioners Board to impose conditions on an applicant's registration granted under sections 24, 24B and 24F if deemed necessary.

Firms

Section 23 provides for the application for registration by an individual (in all categories), a corporation (in all categories) and a firm (in all categories except building contractors). During the drafting of the provisions for residential building contractors, the decision was taken to exclude the registration of firms. This was because of legal advice that a “firm” is not a legal entity.

Currently, there are no firms registered.

It is proposed to delete all references to “firms” in section 23 and 24(2).

Section 25A of the Act to include All Building Practitioners

Sections 25(1) and (2) of the Act currently require that where a corporation is registered as a building practitioner, the functions of that category must be carried out by, or at the direction of, a person concerned in the management or conduct of the corporation who is a building practitioner in the relevant category.

In the case of a building contractor, at least one director or a nominee of the corporation must be a registered building contractor. Section 25A of the Act makes provision for a corporation in the category of building contractor to notify the Practitioners Board within seven days of any changes to the stated director or nominee of that corporation (or immediately if there is only one director or nominee). The changes can relate to ceasing to be a director or nominee acting for the corporation or registration that is cancelled or suspended or not renewed.

Section 25A only applies to building contractors. However, corporations in all the other categories are required to have a person in management who is a registered building practitioner. If there is a change in that person’s status, then the corporation is equally no longer meeting the requirements for registration.

It is proposed to make section 25A apply to all building practitioner categories and not only building contractors.

Term of Registration

Section 24D specifies that a building practitioner's registration remains in force for two years from the date it is granted or renewed.

The re-established Practitioners Board commenced processing applications for registration in all categories in February 2006, with increasing numbers of applications processed immediately before the commencement of legislation requiring registration of building contractors on 3 July 2006.

Due to the common registration date of 3 July 2006, the extension of transitional arrangements and the subsequent first registrations, a large number of registered builders in future will be seeking renewal within a relatively short time frame.

The preferred option is to change an applicant's renewal date to his or her date of birth. All persons registered as a Building Contractor whose registration first commenced between July 2006 and June 2007, as a one-off, could have their registration extended beyond the two year term to the date of their next birthday. Thereafter, any renewal will be for a period of two years from the date of birth. For corporations the renewal date will be the birthday of the nominee.

For Building Contractors who were first registered after June 2007, the renewal date of registration will be the date of approval by the Practitioners Board.

It is proposed to provide for a term of registration for building practitioners of more than two years to accommodate the above.

Functions and Powers of the Building Advisory Committee

One of the roles currently undertaken by the Advisory Committee under section 11(1)(c) is the granting of approval to building products or construction methods for inclusion in the Northern Territory Deemed-to-Comply Manual. This Manual is an acceptable construction manual for the purposes of meeting the Building Code of Australia's structural requirements as they apply in the Northern Territory.

Legal advice is that the Advisory Committee should have express power to assess and approve applications and a right of appeal to the Appeals Board should exist.

It is proposed to give statutory power to the Building Advisory Committee to assess and approve building products and construction methods for inclusion in the Northern Territory Deemed-to-Comply Manual and associated appeal rights.

Requirement to reside in the Territory

Legal advice is that sections 24B, 24C 24F and 25A which specify that a corporation registered as a building contractor must have a director or nominee who resides in the Territory are inconsistent with the *Northern Territory (Self Government) Act*.

The clear intent was to protect consumers of residential building services through on-site supervision of the building work of corporate registered building contractors.

It is proposed to remove all reference to residing in the Territory and to add a requirement for applicants to demonstrate their capacity to supervise building work and to require adequate supervision of building work.

CONCLUSION

The Discussion Paper covers a wide range of matters relating to the regulation of the building industry in the Northern Territory. Some are presented as suggestions and others as firm proposals.

All submissions are welcomed, whether they are specific to one matter or cover many or all matters. Information on how to make submissions is on the first page of this paper.

The submissions will be evaluated by the Building Industry Representative Group and reported to the Minister. The Minister and Government will then make policy decisions relating to administration procedures, resources and legislation.

Industry and the community will be kept informed on progress and outcomes and will have opportunity to comment further, particularly during any amendment to the *Building Act* or Regulations.

DICTIONARY

Act – *Building Act*

APRA - Australian Prudential Regulation Authority

BAC – Building Advisory Committee

BAB – Building Appeals Board

BAS(B) – Building Advisory Services (Branch)

BIRG – Building Industry Representative Group

BPB – Building Practitioners Board

COAG - Council of Australian Governments

CPD - Continuing Professional Development

DPI – Department of Planning and Infrastructure

HBCF – Home Building Certification Fund

HWI – Home Warranty Insurance

Queensland Report - *Review of the Northern Territory's Building Certification System*