

IMPORTANCE OF BUILDERS BEING REGISTERED

New Property - Building and the Law

By KIM LOVEGROVE

THE Building Act was proclaimed on 1 July 1993. It was hailed as a revolution in building control and by all accounts is living up to that exception. This act was based upon a national model building act and similar legislation now exists in the Northern Territory.

This legislation is attracting a lot of interest, not only in Australia but in the United States and Canada, because it contains a holistic set of reforms based upon world-best practices designed to improve building process efficiency, generate more equitable liability laws and increase consumer protection.

In the forthcoming weeks I will deal with the various impacts and features of this act, such as the new liability laws, building approval deregulation, the introduction of registration for building practitioners, and compulsory insurance.

Our first topic is the registration of building practitioners.

The Building Act requires all building practitioners, as defined under the act, to register with the Building Practitioners' Board. There are some 20,000 registered practitioners in Victoria, half of whom are domestic.

Building practitioners are defined under the act as builders, engineers, quantity surveyors, building surveyors, inspectors and draftspersons. All have to register with the board and it is illegal to hold out as being a practitioner in one of these categories unless one is registered.

Mandatory registration was introduced for a number of reasons. First, to establish a central body - the Building Practitioners' Board - to oversee the conduct of building practitioners in order to lift the benchmarks of industry professionalism and skills.

Second, registration was envisaged as being the only effective way to guarantee that practitioners carried the insurance required by law; compulsory insurance being a cornerstone of the act.

Third, it was considered important that the BPB act as a watchdog equipped to censure delinquent practitioners, hence improving consumer protection and enhancing the credibility of the industry.

Owners must only contract with registered building practitioners. It is wise to ask to see the current copy of the building practitioner's certificate of registration, which is issued annually by the board, as this is also a guarantee that the practitioner is insured.

Only natural persons (that is, flesh and blood, as distinct from corporate persons) can register. The registration prerequisites are appropriate qualifications and experience in the given discipline, complaint insurance cover, payment of an annual fee and good character.

It is sometimes difficult for the board to correctly assess an application where only sparse information is provided. Applicants therefore should produce a copy of the relevant qualification, evidence of prescribed experience, and a detailed resume containing a comprehensive work history that clearly elucidates the practitioner's specific experience.

The act provides the board with a potent arsenal of censure powers. It can fine, suspend or even cancel a practitioner's certificate. An aggrieved person can report the errant practitioner to the board. If the conduct is considered to breach the act, the board can investigate and interview the practitioner. There have already been a number of prosecutions. Penalties have mainly amounted to fines, with only one temporary suspension.

If the certificate has been suspended, it is illegal for that practitioner to practise and the insurance cover attached to him could be jeopardised. For this reason I always include a contractual provision in the building contract that imposes obligatory disclosure of any suspension of practising certificate.

In summary, the new registration system is an important step forward in terms of introducing tighter controls for the building industry. It has ostensibly already lifted the benchmarks of skill. In the past, literally anyone could set up shop as a builder and tender for major contracts. If the builder fell out of favor he could wind up the company and reappear under the guise of another name. This is no longer possible.

The entry point to the construction industry requires credentials of a given level of skill, insurance cover and good character. Furthermore, as the act requires that only natural persons be registered, errant practitioners can be tracked down, pursued and, if need be, kept out of the industry.

The question as to whether the existing benchmarks of skill are sufficiently high is too early to answer, although the bar has been lifted.