

## Councils to lose monopoly powers

Insurance change will protect rights of owners

# Shakeup in building regulations

By DAVID ELIAS

The deep-pocket syndrome, in which the owners of faulty buildings must search out someone with enough money before they sue, will come to an end under Victoria's planned new building controls.

Under the sweeping insurance reforms to be included in the new laws, the blame will be apportioned by the courts and compulsory insurance will ensure that the victims of building industry disasters receive compensation.

Everybody involved in the process, from the architects, project engineers and builders on the job, through to the surveyors and local government departments who issue the permits and carry out the inspections, will be forced to carry professional indemnity insurance.

At present there is no such cover available for builders beyond the House Builders Guarantee Fund. A taskforce made up of Government, the construction industry and the insurance industry is attempting to fill the gap with insurance cover for commercial and industrial builders.

According to the solicitor responsible for the draft building bill, Mr Kim Lovegrove, the doctrine of joint civil liability, known as the deep-pocket syndrome, meant a disproportionately high burden of cost fell to local government authorities or their insurers.

This was because practitioners could disperse assets into a family trust and hide behind a \$2 company from which no plaintiff could extract damages.

Under the doctrine of joint civil liability the court would determine the amount of damages due and then this would have to be shared between those with the money or the assets to cover the debt.

A paper released by the Department of Planning's division of building control earlier this month blamed delays in the building approval process on fears of litigation. It said that council officers had become particularly cautious in exercising their responsibilities and discretions, in order to minimise the prospect of litigation.

The same paper says there is a widespread myth that there always is a financially viable defendant with a deep pocket. "The day is nigh that the deep pocket is becoming the empty pocket."

"In many legal proceedings the plaintiff's solicitor is unable to join a financially viable defendant. In many cases an award is made out against defendants but none of them have the capacity to pay."

The reforms will force the courts to apportion the level of damage attributable to each defendant and nobody will be required to make up for the inability of other parties to pay their share. If a party has somehow failed to comply with compulsory insurance provisions they will still be liable.

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Sweeping reforms that will open up building controls to competition between local government and private enterprise will be introduced by the State Government.

The reforms, designed to eliminate construction delays, will allow developers, builders and even home owners who want to do any sort of building to avoid dealing with local councils.

They will be able to employ consultant surveyors to issue building permits, carry out statutory inspections and approve occupancy certificates, all of which are now the preserve of municipal authorities.

Local councils will be allowed to retain their role in building control and even extend operations outside their own municipal boundaries — but only in competition with private surveyors.

Councils will have the right to set competitive fees, join forces with other municipal authorities, or employ their own private enterprise contractors to do the work for them.

They may also opt out of building control altogether, a proposition that might be attractive to authorities who find it niggardly, and the cause of intense pressure from the industry and ill feeling from ratepayers.

The Minister for Planning, Mr MacLellan, today will announce a legislative program for the plan, and on Friday the Minister for Industry and Employment, Mr Gude, will explain its impact to the annual conference of the Master Builders Association.

Mr MacLellan intends to introduce a new Building Bill, to replace the 21-year-old Building Control Act, later in the autumn session of State Parliament. The bill will be debated early in the spring session.

Legislation based on similar principles is likely to be introduced in every state of Australia, under an agreement between federal and state planning ministers and their department heads, sitting as the Australian Uniform Building Regulations Coordinating Council.

The new system will be a huge step forward in micro-economic reform, with implications for the insurance industry as well as local government.

For the first time, all players in the building industry, from the architects, engineers and surveyors down through local government to the builders, will be

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forced to carry professional indemnity insurance.

There will be a new 10-year statute of limitations on legal actions over faulty buildings, operating from the date of the issue of certificates of occupancy, and new laws relating to apportionment of blame by the courts.

Construction industry sources say the elimination of procedural delays, especially in busy boom periods, could save hundreds of millions of dollars a year and will far outweigh any possible increases in council or professional fees or extra costs of insurance premiums.

It is expected that many qualified surveyors in local government will make the leap into private practice as the pace of economic recovery picks up and the construction industry needs grow.

Mr Paul Gardner, director of the Gardner Group, a Melbourne and Geelong-based firm of building surveyors and development consultants, said firms like his would benefit from the changes. Most of the industry was behind the plan, Mr Gardner said, but some local-government employed surveyors opposed it because they would lose the security of employment that they had enjoyed for years.

Mr Kim Lovegrove, the assistant director of Building Control in Victoria and a partner in the legal firm of Home, Wilkinson and Lowry, said three years of consultations, between governments of all political shades and industry organisations, had gone into the plan.

He said that in boom times the construction industry had suffered from unnecessarily high interest costs and other costs because of delays caused by the logjam in town hall building departments. Councils were unwilling to increase their payroll because once the boom ended they were saddled with excess staff.

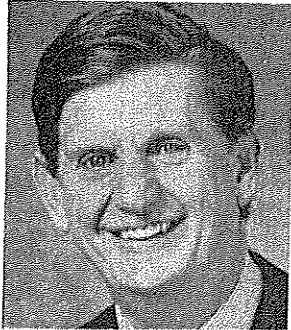
Under the new scheme of private certification, such backlogs would be unlikely to occur because private enterprise could more readily employ and release qualified staff to meet the ebb and flow of demand, Mr Lovegrove said.

"The real expense is the time cost money factor and the benefits of this will be felt from the first home buyer to the builder in Bourke Street."

Mr Lovegrove said surveyors would sometimes have to issue compliance orders against clients but the proposed legislation carried safeguards against undue pressure and corruption.

A new building industry commission would have the power to impose stiff fines, Mr Lovegrove said, and to order suspensions and expulsion from practice of surveyors who did not act professionally.

Mr Lovegrove, who is responsible for preparing the legislation, said he expected local government to come out fighting. "You will see a new dynamism at the local government level. Some councils will be highly efficient competitive machines."



Mr MacLellan: announcement today.