

1 August 2018

Ms Beth Warren
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Department of Justice
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Dear Beth

Submission on the Consultation draft of the Building Legislation (Miscellaneous Amendments) Bill 2018

Thank you for giving the Local Government Association of Tasmania (LGAT) the opportunity to provide feedback on the Consultation draft of the *Building Legislation (Miscellaneous Amendments) Bill 2018*. LGAT has provided the Bill, along with the Fact Sheet and Explanatory Notes provided by Consumer, Building and Occupational Services (CBOS), to our member councils for feedback.

We have previously noted in other communications the extremely short timeframe provided by CBOS for feedback on this suite of amendments and take the opportunity again to remind CBOS of the problems this creates for all stakeholders – councils, LGAT and CBOS and, the opportunities that are lost by cutting this timeframe short.

In their responses and through phone discussions with LGAT, councils have expressed their disappointment in the short timeframe provided and the difficulties this has caused them in providing meaningful, considered responses. Some respondents felt their responses were qualified by having insufficient time to have their comments endorsed by Council. Many felt their analysis was cut short; one officer had leave arrangements that further shortened their time and LGAT had our General Meeting and Annual Conference during the end of the consultation period. Many were only able to review the Fact Sheet or Explanatory Notes, rather than interrogate the detail of the amended clauses of the Bill themselves. All of this diminishes the quality of responses, the effectiveness of engagement and places pressure on all parties involved. A considerably diminished timeframe is a signal to respondents that their input is neither important nor valued and that the consultation provided is tokenistic and fulfilling a procedural requirement, rather than designed to materially improve the outcome.

Councils are at the coalface of using this legislation and achieving its objectives. Council officers use the tools provided and liaise with community stakeholders in executing its processes, managing outcomes and monitoring performance and deficiencies. This makes councils uniquely placed to inform CBOS's work in improving building legislation and its outcomes for communities. Effective communication and consultation with council officers is an opportunity to refine your work.

We note that CBOS offered to specifically brief LGAT on the changes in an effort to overcome the short response timeframe offered. However, this misses the mark in a substantial way. Briefing LGAT is not where CBOS consultation efforts should be focused: LGAT is not an authority for building permits or matters under the *Building Act* and does not operate the legislation. Councils execute this role so effective consultation needs to connect effectively with councils.

The Statewide Partnership Agreement on Communication and Consultation¹ is specifically designed to solve these problems through commitment to a number of actions, chief among them being a 5-week minimum period for consultation. Other agencies integrate this period into their project timelines without issue, even when their parliamentary schedules constrain their delivery. We ask that CBOS do the same and reread the Statewide Partnership Agreement on Communication and Consultation. LGAT will always be ready to assist CBOS achieving their delivery timeframes while also achieving the bare minimum of consultation required.

Overview

LGAT received responses from 12 of our 29 member councils, which is a substantial response given the very short timeframe for submissions. This indicates a high level of council interest in any changes to the Building Act. Given that councils are utilising this legislation on a daily basis, their keen interest in ensuring its functionality and outcomes is not surprising.

Many councils took this opportunity to comment on matters that are not covered by the current proposed Bill. Prime among these were repeated concerns regarding the Expiry of Permits recently communicated by CBOS in a Fact Sheet, published July 2018. LGAT will deal with this issue separate to this submission but notes that there is significant concern in the sector for public relations issues likely to arise from this matter.

¹ See Department of Premier and Cabinet website:
http://www.dpac.tas.gov.au/divisions/local_government/statewide_partnership_agreement_on_communication_and_consultation

Councils were generally supportive of the majority of amendments to clauses but provided a number of very specific comments. Occasionally individuals had contrasting opinions. These are detailed below.

Issue 1 – Definition of “owner” to include occupier

Building Act 2016, Section 4 – Interpretation

Some councils supported this change. One council voiced concern that an occupier, who may be a tenant, could be held responsible for defective work that was undertaken or commissioned by a third party.

Issue 2 – “Like for like” repair work for natural hazard damage

Building Act 2016, Section 53 – Existing building to be upgraded if altered

Councils were generally very supportive and complimentary of this as “a smart initiative”. One council felt that some means of post-work notification to Permit Authorities is warranted to enable the public record to reflect that work has been carried out to a building and to ensure that the work undertaken was carried out by either licensed or suitably competent persons.

Issue 3 – Discretion to issue certificates of completion without prior certificate in certain circumstances

Building Act 2016, Sections 104, 115, 127, 152, 153, 178, 202, 203

A significant number of councils voiced concern over, or very clearly did not support, the amendments relating to discretion to allow the issue of certificates of completion where previous standard of work certificates could not be obtained. All of these councils understood the purpose and reasoning of the proposed changes, however they were concerned that risks may not have been adequately dealt with.

Councils generally understood the administrative difficulties that may be faced in obtaining a standard of works certificate where those responsible for the work are unable or unwilling to provide the certification. However, in their experience there are other licensed operators who are willing to undertake the necessary enquiries and inspections to certify the works are compliant with requirements.

Several councils noted the following:

- The standard of works certificate is the only document which certifies that all the works have been completed in accordance with designs and national standards (at least for plumbing). In the absence of such certification, there is no mechanism for ensuring all works (and not just the works subject to an inspection by the Permit Authority) have been completed to the appropriate standard.
- Although the proposed amendments retain a discretion for the Permit Authority to refuse to issue a certificate of completion in the absence of a standard of works certificate, it is expected that owners will place significant pressure on a council to issue a completion certificate without a standard of works certificate, rather than take reasonable steps to obtain a standard of works certificate from another licensed practitioner.
- There are times when a builder or plumber will not issue a standard of work certificate for good reasons, such as the owner interfering with their work.
- Sometimes disreputable builder/plumbers deliberately make themselves uncontactable because of the uncompliant nature of their work.
- Building surveyors and Permit Authorities should not be obliged to issue certificates of completion in these circumstances, that is where they feel there is an unacceptable level of risk. These sections should be written to explicitly state no obligation (e.g. "to remove any doubt, a building surveyor is not obliged to issue a certificate of completion").
- Because of the risks involved in certifying work performed by another operator, one council felt that the authority to issue certificates in these circumstances should be an option available to Permit Authorities only.

In general, there is a general sense that some of the potential adverse outcomes have not been fully scoped and dealt with so outstanding risks remain that will fall on councils to manage.

Issue 4 – Temporary swimming pools

Building Regulation 2016, Section 4 – Temporary structures

Council responses indicated a lack of clarity in this provision. For example, one council supported this provision, if it is designed to allow for a temporary occupancy permit to be issued instead of permits for temporary pools and their barriers. However, if it is in conjunction with the existing process it is considered too cumbersome and unwieldy.

Issue 5 – Definitions

Building Act 2016, Sections 11, 288, 290 and elsewhere

Use of the term “substantial progress” does not appear to be defined. Use of subjective or imprecise terms such as “substantial” or “reasonable” is very problematic for practitioners and should be avoided, defined, or provided with clear criteria to make practical determinations.

Issue 6 – Extensions

Building Act 2016, Section 147 – Extension of duration of building permit

It was felt that building surveyors will require more notice than five days, particularly with the upcoming expiry of old permits on 1 January 2019.

Issue 7 – Fee for service

Building Act 2016, Section 258 – Application for permit of substantial compliance

If this change diminishes Councils’ existing ability to charge a fee for service under this section, then it is not supported. It is requested that this change is removed if that is the case.

If you have any further questions, or wish to contact submitting Councils directly, please contact Michael Edrich, Senior Policy Officer, on 6233 5966 or michael.edrich@lgat.tas.gov.au.

Yours sincerely



Dr Katrena Stephenson
Chief Executive Officer

