Bannermans Lawyers

Submission on Building Professionals Act 2005 & Position Paper dated May 2015

This is a submission from Bannermans Lawyers addressing issues raised in the discussion paper, based on our experience acting for strata schemes, community associations, lot owners, managing agents and contractors in relation to strata scheme and community association transactions and disputes. We will confine our submission to issues concerning strata schemes and community associations, i.e. the issues raised in section 1.6 of the discussion paper.

On the whole, the present system works well and there is no need for fundamental reform. This is particularly true when one takes into account the complexity of the relevant issues and the difficult balancing exercise required in relation to the competing interests of various stakeholders.

We have concerns in relation to one issue, where a better outcome could be achieved, namely critical stage inspections under Section 162A of the Environmental Planning & Assessment Regulation 2000 as applied to Class 2 Buildings under the Building Code of Australia, being "a building containing 2 or more sole occupancy units each being a separate dwelling". In relation to these critical stage inspections:

1. For Class 2 buildings, Section 162A of the Regulation provides for inspections as follows:

   (5) In the case of a class 2, 3 or 4 building, the occasions on which building work must be inspected are:

   (b) prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and

   (c) prior to covering any stormwater drainage connections, and

   (d) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

   (7A) Inspections of building work must be made on the following occasions in addition to those required by the other provisions of this clause for the building work:
   (a) in the case of a swimming pool, as soon as practicable after the barrier (if one is required under the Swimming Pools Act 1992) has been erected,
   (b) in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, after the commencement of the excavation for, and before the placement of the first footing.

2. This level of inspection is not sufficient, particularly taking into account:

   a. The complexity and duration of construction pertaining to most residential strata buildings.

BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
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b. The potential for safety hazards to arise, in a building which will be inhabited and visited by numerous persons.

c. The potential for building defects to be missed and only become apparent to subsequent owners much later, possible after limitation periods have expired

3. We suggest that consideration be given to requiring a greater level of inspection by certifiers, perhaps at regular calendar intervals.

Key takeaways

- The current inspection system for strata buildings is generally effective but has areas for improvement.
- There is a specific concern regarding the adequacy of inspections under Section 162A of the Environmental Planning & Assessment Regulation 2000.
- Increased inspection frequency could prevent safety hazards and building defects from being overlooked.
- The complexity of construction in residential strata buildings necessitates a more rigorous inspection process.
- Consideration should be given to requiring inspections at regular intervals to ensure compliance and safety.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers
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BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
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