

## CHURCH V STATE

### Responsibilities of the Professional (Chartered) Person v Control by the State

2020 has certainly been a "strange" year. The world is struggling with a pandemic from which Australia and New Zealand seem to be at the forefront of recovery. Let us now hope that the new special injections now available elsewhere will prove to be successful because clearly the rest of the world have little interest in pursuing the same solution as ANZ.

In the meantime, the NSW Building Practitioners Bill (NSW BPB) has been progressing. Public comment is requested prior to 11 January 2021. I have been fortunate to have two meetings with the New South Wales Building Commissioner (BC) and I have no doubt that we have the right man for the job. One of his important initiatives is to introduce specialist diagnostic teams which is a really important step forward. There are far too many so-called experts getting involved in this sort of work who are not experts. When one thinks of the value of the asset belonging to the unit or house owner, it is so important that we have the highest level of diagnostic integrity to investigate any defect to protect the value of that asset.

However, reading the available documentation in relation to the NSW BPB, I am still not satisfied that State and Church are being properly linked as a team to control quality in building. Having spoken to the BC, I am aware of his long-term vision for the future of the industry and the importance of focusing on ensuring that our builders are of the highest quality, offering a level of warranty as yet not seen in the Australian marketplace. However, I have concerns with the lack of associated detail of the long-term vision for the actual design certifiers.

In 2012-2013, I was Chairman of an EA Committee entitled "Multi-Disciplinary Committee of Engineers Australia" looking at standards of certification in New South Wales. That Committee had some EA members, but the majority were specifically drawn from industry (including the builders) to ensure that every sector of the market was represented, both public and private. A draft report was submitted to the Government in December 2012, with a formal issue in June 2013. The key emphasis of that report was that the engineers responsible for the design (Chartered Engineers IEAust) must be accountable and that a proper service covering both the process of design and proper inspection was a fundamental part of any future building system for it to have any chance of success.

Governor Macquarie went home to Scotland in 1820. His famous architect was Francis Greenway. Based around UK rules at the time, the professional services of chartered persons were adopted. People forget in this day and age of "Design and Construct" (D&C) and "contract liability", that a chartered person has a responsibility to do the right thing by everybody. Note, not just to the person paying his bill, but to the person who will eventually own the building and the person who builds it. Maybe we need to remind industry of the basic ethical rules of being a chartered person.

The whole concept of D&C has slowly but surely undermined the ability of the professional person to carry out their duties in a manner as established by their peers. I know chartered engineers of my generation (let us say 1984 and before) have enormous pride in their status and serious respect for their responsibilities as defined in that era. I am not suggesting that chartered persons since 1984 do not have the same self-respect, but they must have serious issues of insecurity. Since 1984, I suggest the impact of D&C on professional services has never been properly addressed. A slow erosion of standards has occurred across the industry. For instance, the introduction of private PCAs has seen the previous supervisory role of the Council Building Surveyors (CBS) for the renovation market effectively disappear. Most of the CBS have become PCAs themselves. Council do not want to be responsible any longer for such work, although they do not publicise same. No one seems to have recognised this change. PCAs only turning up to site when the job is finished is of no real value.

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Supervisory control across the industry, be it a major project or a house conversion project, is accepted to be of a standard below that provided in the previous generation. The problem is not just in Australia. It is worldwide. I have been very fortunate to be involved in projects overseas and the problems in Australia are mirrored everywhere. We have destroyed the meaning of “chartered status – the Church” and replaced it with “the Contract – State”. Is it any wonder that we have such problems, when the only referee is a Contract, eventually enforced through the involvement of lawyers? The reality is that the interests of no party are protected and everything becomes emotionally and financially painful.

My concern with the NSW BPB documentation at this stage is that I can see no focus on the need for specific detail relating to professional persons carrying out their responsibilities in the correct manner. Instead, that responsibility is given to the Builder to ensure that the professionals engaged for the project carry out their responsibilities in the correct manner. However, who is defining the correct manner? It is an additional burden that an unscrupulous Builder will not address. Inevitably, it is put to one side to save costs. The diligent Builders are already overwhelmed with their responsibilities. It is important therefore that legislation relieves them of the burden of nominating exactly what the professionals need to do in order to give a meaningful service. We have to create a level playing field for professional services. A level playing field which means that the PCAs have no alternative but to recognise whether the certifying engineers have or have not done their job properly. It cannot be a simple meaningless two-line certificate of compliance.

We need to ensure that contractors have the confidence to price the job properly because the certifying system is rigid enough to eliminate bad practice, including professional services without meaningful certification. Meaningful certification involves both design and inspection, not just design. The separation by the NSW Government in 2005 between Design certification and As-built certification was a serious mistake. Design is not finished until “Practical Completion”. It has definitely led to serious malpractice. Specifications written by responsible professionals at the “Design Certification” stage are too often eventually only used as a veneer of respectability since actual construction does not comply with same. Subcontractor D&C teams too often make no attempt to match the original design specification because of cost and there is no in-built checking in the system to prevent the malpractice.

Today, construction is not a healthy industry in so many ways. The impact is at all levels. Tradespersons are not treated with the appropriate respect. The absence of the professionals on site means that young engineers and architects do not go to site to obtain site experience. In consequence, we are creating a generation of computer designers with no real practical experience. The longer the situation is allowed to remain as it is, the harder it will be to recover. As the experienced workforce grows older, so that connection with practical training becomes more distant.

I am a member of CROSS-AUS, an organisation of like-minded professionals, worldwide, who are concerned about this whole situation around the world. At a meeting on 7 December 2020, a discussion took place regarding the overall situation in Australia. One member who attended the meeting suggested that the Australian States are waiting to see how the Building Commissioner’s approach in New South Wales develops. That is not to say that other Australian States have not already developed valuable parts of the jigsaw for a proper system, but the jigsaw is not yet complete. (It should, of course, be one Australian system but that is asking too much of the colonies!!).

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As we reach the deadline of early January 2021, I ask that special focus is given to this key issue. I summarise as follows:

1. Competitive tendering is clearly an inherent part of any system of construction. With that comes the danger of avoiding certain key aspects of a process if it can be undetected. The industry worldwide has failed to recognise that the elimination of the separation of the Church from the Builder means that only legislative prescription can be the substitute. In the UK, my contacts within IStructE UK tell me that the problems of Australia are certainly replicated there, but not as severe.
2. D&C means that everybody works for the contractor. "He who pays the piper calls the tune". What has evolved over time is that we need a rigid set of rules for the person who pays the bills to protect that person as well as everybody else. You cannot simply rely upon eventual warranty.
3. The contractor carries ever increasing responsibility. They need legislation to give them the necessary meaningful support. That support has to be in the form of a clear explanation of not just the need for professionals to provide certification, but for that certification to be conditional on providing the evidence that indeed they carried out the levels of proper inspection required and that they were involved right up to "Practical Completion". In that way, certification is not simply a piece of paper. It is written evidence of a job well done to the nominated standard. This will give the Builder the support they need because they know that everybody cannot avoid paying for the nominated service of certification. If the PCA cannot show evidence that the nominated service was provided, then he will be accountable for the oversight.
4. A satisfactory system of building control cannot successfully operate if it relies only upon the responsibility carried by the builder at the end of the project. It is too late. The damage is done. The cost of repair of the building and the associated on cost (lawyers etc) is probably 5-10 times getting it right in the first place.
5. The Church must help the State. In order for the Church to help the State, we need a system that makes avoidance of the services of the Church impossible. Real design certification, by definition, means that works have also been constructed in accordance with good building practice and relevant Australian Standards, as well as the design being in accordance with same. To do that, the certifier in each discipline needs to be accountable not only for the design of the works in the first place, but that he has inspected the works, he has approved all variations within his discipline and he is now pleased to provide a design certificate covering "As-built works". That is what the Church provided until the onset of D&C. This has to be re-established.

I propose the concept that the Church is the body of professional people whose responsibility is to make sure that buildings are built correctly. To do that, they must have legislation to support them to allow them to carry out their responsibilities correctly in order to support the Builder and create buildings to Standard. To do this, the Church must accept their responsibility to create that legislation on behalf of the State. Chartered Professional persons of all disciplines need to stop complaining in private and mobilise their various representative industry organisations to work together to create that legislation. They fulfilled this role for over 100 years and it is time for them to again do so within the environment of D&C, assisting the Building Commissioner to fill the current void of incomplete professional services in the building industry of Australia.

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