



**National Council of  
Women of New Zealand**

Te Kaunihera  
Wahine O Aotearoa

National Office  
Level 4 Central House  
26 Brandon Street  
PO Box 25-498  
Wellington 6146  
(04) 473 7623  
www.ncwnz.org.nz

29 October 2003

S03.80

**Submission to the Government Administration Select Committee  
on the Building Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

NCWNZ was established with the purpose of promoting the wellbeing of the people of our country. We have always equated healthy buildings with the health and well-being of our citizens. The NCWNZ Conference of 1925 urged the Council to draw the attention of the Government the '*inadequate housing conditions prevailing throughout New Zealand*' which they considered a '*direct menace to the health and morals of the country.*'

Other resolutions related to specific components of buildings, which included one from 1979 which stated '*That NCW ask the Ministers of Housing and Internal Affairs to bring down regulations that all native sapwood timber used in buildings (except decorative timber) be appropriately treated as is pinus.*' Wise words in the light of today's 'leaky houses'.

We welcome the opportunity to comment on several aspects of this Bill. We are particularly encouraged with the purpose of this Bill which when it becomes an Act would provide regulations of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that there is greater consumer protection.

**Clause 3 Purpose**

The purpose of this Act is to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that-

- (a) people who use buildings can do so safely and without endangering their health; and
- (b) buildings provide an appropriate level of amenity for people who use them; and
- (c) people who use a building can escape from the building if it is on fire;
- (d) buildings are constructed and used in ways that promote sustainable development.

NCWNZ is encouraged that health and safety are paramount, and that building construction is to promote sustainable development something that we would see as extremely important.

**Clause 17 Chief Executive may issue warning about, or ban use of, building methods or products**

- (1) This section applies if the chief executive considers on reasonable grounds that the use of a building method, method of construction, building design, building component, or building material (a building method or product), has resulted, or is likely to result, in a building or building work failing to comply with the building code.





- (2) The chief executive may-
  - (a) issue a warning about the building method or product; or
  - (b) declare a ban on the building method or product.
- (3) The chief executive must publicly notify a warning issued, or a ban declared, under subsection (2).
- (4) The chief executive-
  - (a) may, at any time, amend or revoke the warning or ban; and
  - (b) must publicly notify the amendment or revocation.

NCWNZ would agree that the chief executive has the mandate to place a ban on a method or product. With technology advancing at a rapid rate the chief executive needs to be able to act quickly if a method or product is found to be unsatisfactory for the purpose it is being used.

- 3) We also agree that publication is necessary.
- 4) Also we feel that it is important that the chief executive may amend or revoke the warning or ban and that this also must be publicly notified.

#### **Clause 18 Effect of ban on building method or product**

- 1) A person must not use a banned building method or product.
- 2) A building consent authority must not grant a building consent or code compliance certificate for a building or building work in which a banned building method or product is used or to be used.

This clause obviously needs to be included if the chief executive is going to have any power.

#### **Certification of building methods or products**

##### **Clause 104 Expiry of product certificate**

A product certificate expires 3 years after the date on which it is issued, but may be renewed, before or after expiry, for further periods, each not exceeding 3 years.

NCWNZ members agree that a product certificate is necessary but are concerned that when renovating the single most expensive asset, our home, we need to be sure that the methods and products used are going to survive fifty years plus. Having a three year certificate is not very reassuring, even though the certificate is renewable.

##### **Clause 105 Revocation of product certificate**

- (1) A product certificate may, at any time, be revoked by-
  - (a) the product certification body that performed the certification; or
  - (b) the chief executive.
- (2) A product certificate may be revoked only if-
  - (a) the certificate has been obtained by fraud, misrepresentation, or concealment of facts; or
  - (b) the building method or product differs from, or fails to comply with, the specification of that method or product as at the time the certification was performed; or
  - (c) any certification, or similar authorisation issued or granted in respect of that building method or product, has been revoked or cancelled for any reason.
- (3) The product certification body or chief executive, as the case may be, may not revoke a product certificate unless the product certification body or chief executive has first given the proprietor of the building method or product a reasonable opportunity to be heard.

Our members have expressed concern that this does not take into account the 'what if' aftermath, a genuine unforeseen failure.



## Building consents

### Clause 128 Buildings not to be constructed, altered, demolished, or removed without consent

- 1) A person must not carry out any building work except in accordance with a building consent.
- 2) A person commits an offence if the person fails to comply with this section.
- 3) A person who commits an offence under this section is liable to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

The building consents process has been in place for many years and we believe that its administration has gradually been improving during that time, so we see this as a continuation of that process.

## Building Levy

### Clause 147 Liability to pay levy: territorial authority

- 1) A territorial authority, on issuing a building consent or on receiving all or any of the information specified in section 72(1)(c) becomes liable to the chief executive for the levy payable under section 141 in relation to the building work to which the building consent relates.

AND:

### Clause 148 Territorial authority may retain part of levy

- 1) A territorial authority may retain 3% of the levies for which the territorial authority is liable under **section 147**, in any month.

NCWNZ is looking at clause 147(1) and clause 148(1) together as we are concerned that the levy for consent must be paid to the chief executive of the Ministry, with the proviso that 3% may be retained by the territorial authority. We would ask what does the Ministry provide that needs 97% of any levy? Is this an appropriate ratio for the services provided by each of the authorities, local and central? 3% seems to us to be too small a proportion given the regulatory process expected to be carried out locally.

## Limitations and restrictions on building consents

### Clause 159 Building on land subject to natural hazards

- 1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if
  - (a) any land that is likely to affect, or be affected by, the building work is subject to 1 or more natural hazards; or
  - (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- 2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to-
  - (a) protect the building work or other property referred to in that subsection from the natural hazard or hazards; or
  - (b) restore any damage to that other property as a result of the building work.

Our members agree that the building consent authority must refuse to grant a building consent on land that is likely to affect or be affected by natural hazards, or that the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.



We would like to see very strict guidelines set before the building consent authority makes an exemption to clause 159 subsection 1.

**Clause 160 Building consent for building on land subject to natural hazards must be granted in certain cases**

**AND**

**Clause 161 Conditions on building consents granted under section 160.**

Again as in clause 159 subsection 2, we are extremely concerned that building consent can be given for land that is known to be a natural hazard, or have hazards. Natural hazards tend to get worse as years progress and so we have grave reservations with these two clauses.

**Building work must be carried out or supervised by licensed building practitioners in certain cases**

**Clause 172 Application of sections 173 to 175**

**Sections 173 to 175** apply to all building work under a building consent if-

- (a) The total value of all building work to which the building consent relates is more than the prescribed amount; and
- (b) The building work is specified in an Order in Council made under section 246 as work that must be carried out or supervised by a licensed building practitioner

Many of the women who are contributing to this reply were very concerned about whether the homeowner would be stopped from making renovations of their own home because either the work would have to be carried out or supervised by a licensed building practitioner. We would ask that the 'prescribed amount' stated in clause 172(a) be set at a level that would allow the home owner to complete reasonable renovations themselves.

**Access to buildings by persons with disabilities**

**Clause 201 to 204** Access and facilities for persons with disabilities to and within buildings

NCWNZ is anxious that these clauses be fully implemented so that the New Zealand Standard Specification No 1421 is met to the highest standard so that those with disabilities are not disadvantaged in that they are not able to access facilities.

**Licensing provisions**

**Clause 246** Classes of licenses may be designated by regulations.

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,-
  - (a) designate a class or classes of licence that may be issued under this subpart; and
  - (b) specify building work that must be carried out or supervised by persons who hold each class of licence.
- (2) An order may be made under subsection 1 may treat persons who are registered, licensed, or otherwise recognised under another enactment as if they hold licences of a class or classes specified in the order.

NCWNZ has a concern that this Bill may be passed without any class or classes of licence being identified. This has implications for the whole of the New Zealand do-it-yourself lifestyle. Getting consents for building work is not contested nor is the requirement for a certificate of compliance showing that appropriate processes and standards have been achieved but needing a licensed builder to do or supervise all work causes an imposition that is almost draconian.

The development of this Bill has been driven by the 'leaky building' syndrome, detected in high cost buildings understood to be architect-designed and contractor-built, some even with the



designation of Master Builder. Considering this the designation is not worth much when we look at the results, so what value will the proposed licences hold.

Currently builders and carpenters are producing good work, specifically in the low to middle range of buildings. Expecting them all to be licensed will have down stream implications, firstly on the costs of building and wages, both of which will be passed onto the customer and secondly when the consents and compliance processes carried out by the territorial authorities have all the checks and balances necessary.

NCWNZ would have a concern with the implications for **Habitat for Humanity**. This is a charitable company whose mission is to house the needy by building simple decent homes on a no-interest, no-profit basis. This is achieved through fundraising activities as well as corporate and private donations. The homes are largely built by volunteers, overseen by an experienced builder, often retired. Habitat policies require all laws of the country to be complied with so consents and standards are not compromised. This Bill would require the Habitat builder/supervisor to get or retain his/her licence after retirement, and we would submit that this is an unnecessary burden and cost.

We ask that the classes of licence be identified prior to or during the Select Committee process and that further submissions then be allowed to debate such classes of licence. We would further ask that consideration be given to allowing a waiver from such licensing for supervisors of charitable building projects as the existing codes of practice ensure compliance is achieved. We suggest that such a waiver may also be related to the final cost of the building, say \$150,000, but not including the cost of the land in any equation.

### **Implied terms of contract**

#### **Clause 349 Implied warranties for all building work**

Despite any enactment or law, in every contract to which this section applies, the following warranties about building work carried out under the contract are implied and are taken to form part of the contract:

- (a) That the building work will be carried out-
  - (i) in a proper and competent manner; and
  - (ii) in accordance with the plans and specifications set out in the contract:
- (b) That all materials to be supplied for use in the building work-
  - (i) will be suitable for the purpose for which they will be used;
  - (ii) unless otherwise stated in the contract, will be new:
- (c) That the building work will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, this Act and the regulations:
- (d) That the building work will-
  - (i) be carried out with reasonable care and skill: and
  - (ii) be completed-
    - (A) by the date (or within the period) specified in the contract; or
    - (B) if no date or period is specified, within a reasonable time:
- (e) That the household unit will be suitable for occupation at the time the building work is completed:
- (f) If the contract states the particular purpose for which the building work is required, or the result that the owner wishes the building work to achieve, so as to show that the owner relies on the skill and judgement of the other party to the contract, that the building work and any materials used in carrying out the building work will-
  - (i) be reasonably fit for that purpose; or
  - (ii) be of such nature and quality that they might reasonably be expected to achieve that result.



NCWNZ agrees with these implied warranties, but feels that there should also be specific stages in the construction of a building where it is inspected to see that these requirements are being carried out. It is all very well to have these warranties but the consumer needs to know that every stage of the construction was carried out to these specifications.

Also we are very concerned that these implied warranties do not cover developers and 'spec' builders. It is very often in this area that there are the greatest problems, when short cuts or inferior materials are used so that the developer can save money. We know that there is a Discussion Document 'Further Consumer Protection Measures For Homeowners' but would see this as a very essential part of this 'Building Bill'. If a home buyer purchases directly off a developer, then the contract should be with the buyer and the developer, and it should then be the developer's task to make sure work that they contract out to specific tradesmen/women is completed to the standards required. We do not feel that it is reasonable to expect the home buyer to chase after each sub-contractor to bring their work up the standard, or where required to have to take action out against a number of subcontractors, a process which could prove to be very expensive.

Beryl Anderson  
National President

Christine Rattray  
Convener, Social Issues Standing Committee