Speech by

HOWARD HOBBS

MEMBER FOR WARREGO

Hansard 3 December 2002

PLUMBING AND DRAINAGE BILL
Second Reading

Resumed from 29 October (see p. 4145).

Mr HOBBS (Warrego—NPA) (9.30 p.m.): It is my pleasure tonight to support the Plumbing and Drainage Bill 2002. The National Party opposition will be supporting this bill. The bill provides for the introduction of a new Plumbing and Drainage Bill 2002, which establishes a legislative framework for plumbing and drainage and on-site sewerage facilities in Queensland and repeals the Sewerage and Water Supply Act 1949. It also implements the outcomes of the national competition policy review of the act, contains amendments to the Building Act 1975 and the Integrated Planning Act 1997 to improve the performance of the private building certification system and implements the outcomes of the NCP review of the Building Act. It also makes amendments to the Local Government Act 1993 relating to the transfer of controls over stormwater drainage from the Sewerage and Water Supply Act to the Local Government Act and implements a competitive neutrality complaints process for selected local governments to apply building approval services. The bill also provides for a number of minor amendments to these pieces of legislation as well as the Water Act 2000.

The minister has noted in her second reading speech that the bill intends to modernise the regulation of plumbing and drainage in the state. While this is a function of local government that we may not always give too much thought to, it is an important one that, hopefully, protects the environment and public health and safety as part of the development process in Queensland. The proposed Plumbing and Drainage Bill will replace the existing Sewerage and Water Supply Act. The purpose of the bill will be achieved through the licensing of plumbers and drainers, the approval and inspection of plumbing and drainage works by local government and providing for regulations containing the technical standards for plumbing and drainage.

In summary, these provisions contain the update of existing provisions about the licensing and regulation of plumbing and drainage practitioners. As the minister noted when introducing the bill, local governments will continue to be able to determine which work requires the prior approval of plans before work commences and which work can be approved on site. This will allow local governments to offer the plumbing industry a highly efficient approval service, particularly for straightforward work. The new Plumbers and Drainers Board replaces the existing Plumbers and Drainers Examination and Licensing Board, with this new board being given the powers and funds to be more proactive in disciplining and prosecuting in the industry. The National Party does not consider these changes to have any implications on local government so we are in favour of the amendments that have been proposed by the minister.

Part 5 of the bill relocates the statewide regulatory provisions about on-site sewerage facilities from a regulation where they presently reside—under the Standard Sewerage Law—to legislation. The regulation of these installations is important and has been of concern to local councils. We support this being made part of the legislation. However, there is an issue that I would like to raise that has come to the attention of the LGAQ—the Local Government Association of Queensland—and this relates to the fact that a number of councils have had a process in place where they impose or purport to impose conditions of approval on private sewage treatment plants by which the council, firstly, either itself

inspects the plants on an annual basis to ensure compliance with the approval and required standards or, secondly, charges the owner an annual fee to cover the cost of that inspection.

There is some doubt under the existing laws as to whether the provisions permit the imposition of those conditions. Under the existing legislation there is no provision for any renewal process which will enable the councils to take this type of enforcement action in the event that these annual fees are not paid. Perhaps the minister could in her summing up give us some indication as to her thinking on this. Does the legislation expressly recognise this existing practice of many councils to undertake an annual inspection of on-site sewerage installations and impose an annual fee in that regard?

One of the key intentions of the bill is also to amend a number of problems with the system of private certification. The Integrated Planning Act and the Building Act introduced the private certification of building work in 1998, allowing applicants the choice of obtaining building approvals and inspections from either local government or accredited private certifiers. The key changes proposed in the system of private certification in the bill include improving compliance with planning schemes by ensuring that private certifiers have the necessary regulatory skills; improving the efficiency and effectiveness of the disciplinary system by having the Queensland Building Tribunal hear complaints of professional misconduct, and allowing local government to lodge complaints directly with the QBT rather than through the Building Services Authority; addressing concerns regarding the potential conflict of interest between certifiers and builders by ensuring owners are aware of who is doing the certification work for their building; ensuring that consumers are protected from faulty work by providing the BSA and QBT with increased powers to make orders requiring a certifier to bring work into compliance with the legislation; and improving the safety of young children by introducing more stringent requirements for inspecting swimming pool fencing.

Given the significance of the amendments made in the bill, I wish to briefly address a couple of these issues. Firstly, it is disappointing but worth noting that the Australian Institute of Building Surveyors had to go to the Minister for Public Works and Minister for Housing to seek assurances on important parts of the bill, because the minister apparently was not available to meet with it. I am not sure why. Perhaps the minister has some explanation for that. But given that this bill has been led by the Minister for Local Government and Planning, I would not have thought it unreasonable to meet with the integral body that is listed in the explanatory notes as having been consulted. There seems to be a breakdown in the system somewhere.

The Local Government Association of Queensland, the peak representative body for local government in Queensland, has not been consulted on occasions in the past. This is very important. We have had a few bills go through this House in recent times where less and less consultation seems to have been undertaken. It is important that we make sure we consult with broader community groups. We do not want to get into a practice where bills are going through this place like a sausage machine and the community is not brought up to speed with what is being proposed for an industry.

The Australian Institute of Building Surveyors will take on the job as the new accreditation standards body for building certifiers, replacing the Building Certifiers and Allied Professionals Accreditation Board, which was to be wound up in July. Given that we are now into December, it is vital that this replacement body is in place as soon as possible to ensure that it does not affect the reaccreditation or any legislation licensing building certifiers.

Part 6 of the proposed bill relates to investigations, enforcement and offences that can be applied by local councils. Clause 115 of this part of the bill refers to show cause notices. This new provision will require local government to invite a person to show cause through a written notice as to why an enforcement should not be given to the person, with the exception of where a defect constitutes a danger or health risk. There is a view that these matters are for the most part small and technical and it might not be necessary or appropriate for councils to go through the administrative costs to issue a show cause notice on any occasion on which they wish to issue an enforcement notice. Perhaps there could be an adjustment down the track in relation to this issue. We believe that in some cases it is a fairly small issue and we might not need to go through the whole process. This process is an important part of procedural fairness in relation to enforcement notices under the IPA and the Building Act, but may also place financial implications on both local councils and a person who is required to undertake significant building or development work. I also hope the minister during her summing up on the debate will take some time to discuss this clause and any concerns she has received.

Part 5A of the bill deals with complaints investigations and disciplinary proceedings relating to building certifiers. Under this proposed legislation, local councils will have express power to start their own disciplinary proceedings about private certifiers' misconduct before the Queensland Building Tribunal. I think there is a legitimate question here as to whether these changes may result in the BSA being more reluctant to expand its own resources in pursuing local government complaints which may require these councils to spend more of their own resources than is presently the case. In other words,

does the minister think that the BSA might let the local governments carry the burden? I hope the minister will address these issues in her summing up to the debate.

Before concluding, I wish to mention a further issue which has been brought to my attention by both private certifiers as well as builders regarding this legislation. Under this legislation I believe private certifiers will be required to receive confirmation from a local council before they can move on to and lodge the relevant approval documents for their respective client.

The concern being expressed here is that, given the time and workload constraints that already exist for local councils, a certifier may not receive confirmation for a lengthy period of time. This will disadvantage the private certifier's business and, importantly, the building industry. The inability of councils to give confirmation expeditiously will have a substantial impact on the work able to be undertaken by builders. Growth in the building industry is often used as a measure of how our economy is progressing, and on this basis it is important that this legislation does not act as an impediment to these processes.

The Scrutiny of Legislation Committee has also raised a few issues about this bill and I wish to briefly comment on those. Part 4 of the bill deals with compliance assessment, which basically refers to a plan of the proposed regulated work to be assessed for compliance with the standard plumbing and drainage regulations and for a compliance plan and certificate to be issued. Clause 83 of the bill refers to the fact that a person must not carry out regulated work unless the person has a compliance permit to do the work. There is a maximum penalty imposed of 1,665 penalty units, or $124,875, for carrying out regulated work without a compliance permit.

Clause 226 and clause 248 of the bill also impose maximum penalties for discharging a prohibited substance or trade waste into stormwater drainage and for polluting water in a service provider's water service or for taking such water without approval.

The issues that have been highlighted here could have some serious repercussions for a consumer of local government services, as well as ensuring that all proposed work is complying with the regulation in place for plumbing and drainage works. We have to have these maximum penalties in place to deter irresponsible workers and people who do not want to comply with procedures that are in place. However, I also believe that these penalties should not be used as a standard practice which could see an overzealous person impose this type of penalty on someone who has not actually broken the law. That is the point. There could have been just a misunderstanding. It is important that we place a value on these penalties and recognise that they should be applied only when the law has been definitely broken.

Part 8 of the bill refers to the way in which legal proceedings are undertaken. The Scrutiny of Legislation Committee has alluded to clause 140 in regard to the conduct of representatives. In this legislation, 'representative' of a corporation means an agent, an employee or executive officer of the corporation or an individual, agent or employee of the individual. This clause provides that in a proceeding for an offence against the bill the state of mind of a person's representative, acting within the scope of their actual or apparent authority, is deemed to be that of the person. The state of mind of a person includes the person's belief, intentions, knowledge, opinion or purpose and the reasons for the belief, intentions, opinion or purpose. Further, conduct engaged in by a person's representative within the scope of the authority is taken to have been engaged in also by the person. It is going around in circles and it becomes a little bit complicated. We have to make sure that people are not penalised when in fact there has just been a misunderstanding.

In relation to provisions of this type, the committee considers that this creates a reversal of the onus of proof. This is explained on page 5 of the explanatory notes as follows—

> To ensure there is effective accountability at a corporate level, it is appropriate that a corporation be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation.

With regard to the reversal of the onus of proof, the committee goes on to note that, while it is appreciative of the difficulties surrounding this issue, particularly in relation to corporations, it does not generally support the use of such provisions. I think this clause does have the potential to create a dangerous precedent for prosecuting an offence. We really need some clear indications from the minister in the summing up as to how this process should occur.

I can well understand the intention, which is obviously to ensure that at a corporate level the appropriate people are doing their job in ensuring that their employees are in compliance with the legislation. But again it concerns me as to how far this law may be taken insofar as good managers being prosecuted for an employee's deliberate misconduct. That is an issue that needs to be taken into consideration. If somebody is trying to do somebody over, or do over a corporation, they may well succeed in having an offence brought against them, but the person who is officially breaking the law is the employer.

In circumstances where this is deliberate, how can the manager have taken reasonable steps to prevent, or have some influence over, the person's conduct. That is the point. In this position, the onus of establishing this defence could be nearly impossible for a manager.

I think it is important for the minister to clarify, firstly, why this clause has been included within the bill in its current form, given the concerns expressed by the Scrutiny of Legislation Committee and, secondly, to explain how it would work in practice—with an example. Overall, the amendments in the bill to a number of acts will improve delivery and management of these local government services that we have been referring to. I commend the bill to the House.