THE LICENSED BUILDING PRACTITIONERS SCHEME: 
FOUR YEARS ON

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Abstract The Licensed Building Practitioners Scheme (LBP Scheme), restricting certain aspects of the design and construction of residential buildings in New Zealand to licensed building personnel, was a Government initiative passed into law in March 2012. The Scheme was a response to a strongly critical review of the lack of quality inherent within the New Zealand building industry by the 2002 report of the Overview Group on Weathertightness of Buildings.

This paper will re-examine the original submissions and conclusions about the veracity of the Scheme from a qualitative survey conducted 6 months after the LBPS introduction in 2012 and will compare those results to a recently completed industry survey of prominently placed industry personnel, some 4 years on. The paper will test whether the legislative and educational systems needed to support the new roles, deemed essential in the original survey for the Scheme’s success, have had time to coalesce and prove their effectiveness in lifting the quality of design and construction necessary to meet the future challenges facing the New Zealand building industry.
1. BACKGROUND

1.1 Introduction

The introduction of the Licensing Building Practitioners Scheme (LBP Scheme) remains one of the more significant legislative changes made to the building industry in New Zealand since the introduction of the nationally based Building Code was introduced in 1992. For the first time in the history of NZ, certain types of building work became restricted to suitably qualified building personnel, and were no longer the domain of the non-qualified builder or the “do it yourself” home builder. Its introduction was flagged in the 2004 review of the Building Act undertaken as result of deficiencies highlighted in the 2002 Report of the Overview Group in Weathertightness [1], a report commissioned by the Government in 2002 to investigate the causes of building failure due to moisture ingress. The damage caused to the reputation of the industry, aggravated by, but by no means solely due to the presence of unqualified personnel, was evidenced by the financial loss to thousands of owners from poor performing buildings constructed over that period, and from which many problems still arise. Remedial work necessary to repair poor quality construction, in particular systemic leaking of installed cladding systems has cost the country billions of dollars and blighted the savings of many home owners. The remedial work is ongoing.

A “capable industry” and a “credible” LBP Scheme were seen by the industry as “key components to restoring pride in the industry and ensuring quality buildings.” [2] It was, until March 2012, a voluntary scheme that enabled builders and trades people with a genuine track record to have their skills and knowledge formally recognized, whether they are trade-qualified or not. With the schemes implementation in March 2012 the consequences surrounding licensing tightened, and since that date, persons not licensed are restricted from undertaking and signing off responsibility for certain types of building work, including work associated with the construction of the cladding system, the primary structure, including foundations and framing, and the design of certain types of fire systems in small to medium sized residential apartments. In 2015 this competency-based system moved to a qualification based one, with applicants after this date needing the appropriate trade qualification to qualify.

The scheme is administered by the Ministry of Business, Innovation and Employment (previously the Department of Building and Housing), who, as a part of their duties set the licensing standards, manage assessment, issue ID cards where necessary and maintain a public register. The Ministry, through an appointed Registrar, administers the LBP rules that determine the minimum standard of competence required for each license class, updates addresses, establishes processes for ongoing assessment of practitioners’ current competence, and the provision of ongoing skills maintenance programmes.

Applicants are assessed based on their ability to work within building categories of varying complexity. These range in general terms from simple single unit family dwellings (Category 1) to more complex single unit dwellings less than 10m in height (Category 2), eventually through to multi unit and commercial complexes greater than 10m in height.
1.2 Poor quality building

The events leading up to the advent of the LBP Scheme in March 2012 have been a difficult period for both the New Zealand building industry and for the many owners caught out with poor quality and leaking claddings, with costs to the industry and the nation in 2008 monetary terms estimated to be in excess of $11billion dollars. (Fig 1)

The construction of houses clad in traditional weatherboard and brick materials, common construction materials in NZ construction up to the 1980s, reduced as new and face sealed proprietary rigid sheet cladding systems came onto the market. The upsurge in the use of these “new” cladding materials coincided with other changes in the building industry. The running down of the apprenticeship programme, a rise in the number of apartment buildings under construction and a corresponding move away from traditional fixed price contracts to other forms of construction procurement to meet the rapid growth in this particular corner of the housing sector, all combined to create a period of uncertainty that saw many operators installing new systems and materials into often complex and environmentally inappropriate building forms, without the necessary expertise and training.

It is appropriate hence by way of background to summarize the history of the events leading up to the LBP Scheme in broad terms as follows:

- **1991.** The introduction of the National Building Code, a performance based code that replaced the many and varied regulations applying to each Local Authority.

- **1998-2000.** Increasing concern expressed by industry professionals regarding the quality of building construction and presence of moisture egress into residential buildings.

- **2001.** The Publication of the Auckland House Cladding Survey. This Building Industry Authority (BIA) report surveyed some 287 pre-purchase reports by a building survey firm. Results indicated a significant rise in cladding defects in the 10years since the introduction of the National Building Code in 1991. [4]

- **2002.** A commission of inquiry is set up to seek out the causes for this sudden upsurge in building failure. The 2002 report of the Overview Group in Weathertightness
highlights considerable deficiencies in the New Zealand building industry in areas such as contract documentation, trade skills, the quality of new materials and the quality of site supervision.

- **2002.** The Government sets up the Weathertight Homes Resolution Service Act 2002, initiating a framework for mediation and adjudication between owner, builder and other stakeholders to handle the significant increase in complaints over poor quality building.

- **2004.** The 1991 Building Act is rewritten as The Building Act 2004. This new legislation tightened up procedures and policies surrounding the implementation of building controls. Changes included re-introducing timber treatment requirements removed in 1996, upgrading the Acceptable Solution E2 to provide significantly more assistance in what constitutes good, standardized domestic building practice, and changes to Local Council requirements tightening the rules around Building Consent accreditation. The Act also signaled the impending introduction of the Licensed Building Practitioner’s Scheme, the main focus of this paper.

- **2009.** A report by Price Waterhouse Cooper indicating repairs for poor performing building in New Zealand to be in the region of $NZ11.3 billion. [5]

- **2009-2011** The introduction of the Financial Package Amendment Bill to assist the many New Zealand homeowners considerably disadvantaged financially by the unwitting purchase of leaking houses.

- **2009** A further review of Building Act, aimed at simplifying systems around the implementation of the Code to “…strike a better balance between the amount of control, the level of risk, and the capability and responsibility of those involved. [6]

- **2010** The Building Amendment Bill (No 3). This Bill signaled the Government’s intentions to strengthen consumer protection and lessen the reliance on the Building Consent Authority (BCA) in the “day to day” compliance for building work.

2. **THE LBP SCHEME: PAST APPREHENSIONS**

Of the legislative innovations put forward by the Government to address the issue of poor quality building, the LBP Scheme would be the most significant. To ascertain the ongoing effectiveness of the new legislation, a qualitative and detailed research interview was again undertaken with five building professionals in key Building Consent Authority and private building surveying positions, some four years after the introduction of the new LBP Scheme legislation in 2012. The survey is a sequel to a previous survey made in 2012; some six months after the legislation became law.

By way of introduction to this survey, it is appropriate to briefly summarize the submissions made to the Parliamentary committee at that time the new legislation was being considered.

2.1 **Summary of Submissions on the LBP Scheme from the Building Act Review of 2009**

Submissions on the merits of the proposed LBP Scheme, made in response to a request from
the Ministry for feedback to the Building Act Review in 2010, suggested many respondents wanted greater building controls and an effective licensed regime that would achieve it. The building communities view was that quality in building had fallen to an unacceptable low level over the last 15-20 years, and if raising it meant restrictions in the scope of work a “do it yourself” builder could operate within, then so be it.

2.2 Issues associated with the competency of LBPs

Whilst the general tone of submissions was in favour of the LBP Scheme, a number of submissions in 2010 expressed apprehension about the ability of the Scheme to deliver improved construction quality in the time allowed. The low quality of present day building consent submissions was seen as an issue:

Department of Building and Housing and IANZ have observed a poor quality of documentation accompanying building consent applications across the country. [7]

Some submissions were skeptical the LBP Scheme would succeed in eliminating the poor performing contractor. Whilst it may shift the burden of responsibility from Local Authority to site, the problem of quality would persist.

Without any actual rebalancing of responsibility, the behaviors that are currently demonstrated in the industry will not change. Builder LBPS will continue to fail and /or avoid liability by going out of business, or-more concerning-builders will not take up a license at all and exit the industry. [8]

The new licensing regime will not of itself eliminate ‘cowboy’ builders, because they will be able to do unlicensed work or licensed work under the supervision of an LBP. [9]

..there are insufficient highly qualified and experienced builders and designers in the New Zealand market who are prepared to take on the responsibility of managing their own work without third party review. The Council encourages a gradual and staged approach to the proposed changes. [10]

2.3 Consequences of a poorly implemented scheme

Submissions expressed the need for an overarching guarantee of quality amongst the building fraternity, and an instigation of a guarantee scheme that tied quality to contractors after the project was completed.

It remains to be seen whether the licensed building practitioner regime will ensure improved quality building work. If the LBP system is not robust and/or a warranty or surety system does not work then the reduction in BCA involvement make the situation worse for building owners. There is in fact a risk of a repeat of the leaky building crisis. [11]

2.4 Transfer of Responsibility:

The submissions made to the Department of Building and Housing in 2010 also contained mixed views on the feasibility of a “reduced role for Building Consent Authorities (BCA)” as a result of the LBP initiative (this being one of the stated aims of the Government in wanting
to review the Act). Apprehensions were expressed over the ability of the LBP to take over the role, and questioned how the BCA could limit its liability under current law.

Yes, limit BCA oversight proportionate to risk, but within a sensible framework aligned to a framework of proportionate liability. [12]

..there are in-sufficient highly qualified and experienced builders and designers in the New Zealand market who are prepared to take on the responsibility of managing their own work without third party review. The Council encourages a gradual and staged approach to the proposed changes. [10]

3. THE LPB SCHEME: 4 YEARS ON

Questions in this 2016 survey followed a similar pattern to the 2012 interviews, and focused on the effectiveness of the new legislation, with additional questioning design to seek out information on the validity of apprehensions voiced both to the Department of Building and Housing and to the Parliamentary Select Committee (as per the Building Amendment Bill) in 2010.

3.1 Question 1. Have you noticed an improvement in the quality of building consent application since the start of the LBP Scheme in March 2012?

The response was more mixed than the 2013 survey, with some acknowledging that there was “a small improvement” or, whilst there may be no any significant improvement -“people are [still] struggling to understand the system”- the quality of building consent applications was, at least, “not any worse.” [13]

Yes but limited. People are more cautious. Councils are improving [and] picking up more. [14]

For others the situation was no better that prior to the establishment of the LBP Scheme.

Short answer, no! Designers have CAD experience but often do not know what they are drawings. A lack of experience is evident. The list of queries is still large with details often conflicting. Says one thing on one page and a conflicting detail on another. [15]

Drawings out of Architect’s offices are still terrible in some cases. The trouble is there is no shared knowledge between Architectural firms, of for example, building details. Some [firms] technically are getting better. [14]

A designer respondent lamented the degree of documentation and complexity of detail now required to achieve a building consent in the present day environment. [16] There was frustration that the end result of the “leaking building” crisis was an (understandable) over zealounessness by Consent Authorities in ensuring all necessary (and unnecessary) information was present within the document set.

…Yes, Council is needed but when is comes to litigation Council can be vindictive and takes regulations very seriously. A problem is the Contracting and regulatory systems don’t mesh very well together. Variations take too long to implement. Emails often too big for them to receive and hence long delays. What was a 2 day process can
now take 10 days. [14]

3.2 Question 2: Is the LBP Scheme robust enough NOW, four years on, to warrant a limited degree of self-certification by individual licensed building practitioners?

Most respondents thought this was not a feasible option, though one interviewee conceded it could happen in certain works. Opinions from the others were similar to the initial 2013 discussion, with interviewees who believed the LBP needed to be much more accountable if ever the BCA was to withdraw from the consent process to any significant degree.

Not at the moment. Everything is so busy. LBPs are very busy and often get unskilled people to work for them but do not supervise adequately. I do not have much faith in the LBP. [15]

No! No self-certification possible. Too complex. Okay for specialist equipment such as lifts or electrical but not as yet for LBPs [and building]. Quality of on-site staff a problem. [13]

For some the warranty scheme similar to Britain still remained the best way forward. If added responsibility was to be given to LBPS, then a system that removed the incentive of companies to liquidate as a means to avoid the consequences of poor constructions was a step forward.

The British warranty scheme is still better. It has wide support here except from the Master Builders, who have their own scheme [and as such, need to support that]. [14]

3.3 Question 3: Is the Producer Statement (PS) process, necessary for a code completion certificate, working to your satisfaction?

The Producer Statement process places responsibility for certain works back to the LBP who undertook the work. This question was the least contentious, with the PS system seen as generally a positive outcome of the new legislation, although several commented on the fact that sign-off is often made by the installer without a full appreciation of what they are signing. “The PS is a good way of managing risk but often signed [by the installer/professional] without focus...you still have to inspect to sign off.” [13] There is a need for transparency in the PS system. “[There is a] need to know what the PS is stating and what the person issuing it is taking responsibility for.” [17]

4 DISCUSSION

4.1 Documentation Quality

The quality of Architects and designers building consent applications were again the subject of negative comment by the building officials. Even the most positive response suggested “no significant improvement” to date in the quality of submission to the BCAs, as compared to the period immediately prior to the inception of the scheme in 2012. The purpose of the LBP scheme was to license Architects and designers as competent persons capable of submitting documentation that complied with the Building Code. Apprehensions expressed
about the quality of LBP documentation in 2010, expressed again in 2011 to the submission process for the Building Amendment Bill, seem to be still valid today, 4 years after the scheme’s introduction. Examples were given of designers still not aware of their obligations as licensed design practitioners in signing the Certificate of Design memoranda. Building consent applications were still requiring considerable checking on the part of the local authority staff to achieve compliance. There continued to be a need for “…significant requests for additional information” when applications were processed. Comments were made that the BCA building consent process was, to some designers operating in a low fee competitive environment, a necessary quality back-up checking process that compensated for “hurried design details of poor quality.”  

4.2 The LBP Scheme and Self-Certification

One respondent offered the view that there was scope for LBP self-certification in limited situations and with low risk buildings. Most respondents however thought self-certification to be some way off. The pressure on builder LBPs to supervise to a quality necessary for compliance, without oversight by building inspectorate, was seen as not feasible, particularly in the high workload environment that operates at present. Given the complexity of modern day building requirements, LBPs, and even good ones at that, were often extended in their supervisory role to a level that would make accurate inspection of all the required items on a building site a very difficult task. “They are doing multiple jobs and lack the time to do each properly. [There are] lots of re-inspections.”

4.3 The Producer Statement

This question was the least contentious, with the PS system seen as generally a positive outcome of the new legislation in that it places responsibility for the work on the installers/designers who carry out the work. They sign off the work and hence take responsibility for any faults or failings made as a result of that activity. The advantages to the BCA lie in distancing itself from issues of liability that have dogged Local Authorities in the past.

5. CONCLUSION

The whole approach to minimizing risk, particularly risk to the Local Authority, was, to Respondent D, at the heart of the problem in 2012 and remains at the heart of the problem now, some 4 years later. The Government then was “focused on law and beating people into submission” to solve the problem of poor quality building. As a result Local Authorities (BCAs) were “demanding and pedantic” in their request for information, because (understandably) their own liability issues demanded this approach. The result is designers now, as they were 4 years earlier, are spending too much time providing information on “things that are not necessary.”

The consensus from this survey and other commentators indicates the requirements to progress a building consent remain complex and in many cases still challenging for LBP designers. From a BCA perspective, whilst the standard has not necessarily dropped, it has not much improved either. There are still too many issues in a typical application that require rectifying before the building consent can be issued. For the LBP builder self-certification, a
much hoped for Government goal, is “further away than ever.” [16] Sub-standard building practices, whilst not systemic, are still happening too frequently to justify LBP builders more responsibility. Trends in the failure rate fluctuate, suggest McCormick of Auckland Council, but are in general “getting a little bit worse” with site inspection failure rates in the order of “25 to 40 per cent.” [19]

The Ministry of Business, Industry and Employment is engaged with reviewing the inadequacies of the present LBP Scheme, with a view to simplifying the licensing classes and “enhancing the accountability” of a LBP when their actions bring the LBP Scheme in to disrepute. [20] New Zealand is not alone in the struggle for quality. Reports from Victoria, Australia suggest there are quality issues there in the building industry of sufficient concern to warrant high-level investigation by the Australian Auditor General, with consumer protection concerns prompting a raft of recommendations designed to lift the quality of both the overseeing Building Practitioners Board and the practitioners themselves. [21] Quality, suggests Respondent 3, has a tendency to “trend downwards unless positive corrective forces are applied.” [15]

It is hoped the additional measures promised, including a reform of the LBP Scheme’s Code of Practice, additional educational measures being initiated by the BCAs, and in particular issues clarifying individual warranties for LBPs, the subject of present investigation by the Law Commission, will enhance the legal framework necessary to ensure a responsibility focused and competent LBP Scheme becomes a reality.

5. REFERENCES


