

Building surveying fees and the race to the bottom

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If there is one profession that should have the power to charge healthy fees that are commensurate with the risk involved to practitioners, it is the building surveying profession. What other profession is legislated as an industry gate keeper? It is the building surveying profession that dictates when a building is fit for occupation; not the engineering profession, nor builders, architects nor other building practitioners. It is a critical profession, and is central to the fabric of the Australian building industry.

Builders cannot contend that a project is completed until the Occupation Certificate is issued. Projects can't start unless a building surveyor or a Principal Certifying Authority issues a building permit or construction certificate (depending on the state and territory).

Building surveyors have astonishingly unique powers. Yet again and again I hear of stories where building surveyors are undercutting or quoting too low. If the price is too low, the risk is too high and something will give. When something gives, litigation follows, and more often than not involves disciplinary censure.

What is alarming is that with the diminution in "new starts" there may be pressure brought to bear to cut costs on projects. Heaven forbid if more pressure is brought to bear to force down building surveying costs. That could be very disquieting. The industry needs to show more resolve in its refusal to price jobs in a fashion that does not equate with the risk involved.

Disturbingly the risk profile for building surveyors increased exponentially a few years ago when builders no longer were compelled to provide insurance cover for residential apartments exceeding three floors. It should have followed that the same amendment found its way into the building surveying fraternity's regulatory regime. Building surveyors would certainly have enjoyed the same accommodation. The fact that this did not occur meant that building surveyors were even more exposed and became even more attractive litigation targets.

Building Surveyors: Are they a Special Case?

It has always been the writer's view that building surveyors are a special case profession. If there is ever a profession where serious consideration should be given to the promulgation of a regulation that establishes a minimum fee that can be charged, then it is this one.

Why are Building Surveyors a Special Case?

There are many reasons why Building Surveying should be recognised as a special case profession. Firstly Building Surveyors are quasi-public servants. The NSW ICAC Act for instance defines an accredited certifier as being a public official of sorts. The ICAC recognises that as certifiers are performing statutory and regulatory functions then they are atypical of the private sector.

The ICAC is on the ball in this recognition. Ironically the ICAC pays homage to the critical regulatory role that the profession performs. As the role is so critical however it is troubling that there has been insufficient comprehension in certain sectors of the uniquely challenging aspects of the job. It is ironic that when the system was privatised, the

migration of much of the fraternity to the private sector meant that local government was able to cut the cost of government, not only in terms of salary overheads, but also by avoiding a risk ridden dynamic that was migrated to the private sector. It is common knowledge that building surveyors are very popular co-defendants and often are included in proceedings to make up the numbers. These costs, including the cost of litigation, the payment of premiums and the cost of practitioner misconduct advocacy are largely born by this tiny sector of the building industry. Frankly the burden is too great. There has been no "quid pro quo". The cutting of cost to government by virtue of a governmental regulatory task being privatised, has not culminated in sufficient consideration for the assumption of risk and accountability.

Anecdotally I am starting to hear that some regulators are worried about the fee undercutting in this sector, the race to the bottom if you will. Little wonder, the concern is warranted. If this occurs the as - built product will suffer, litigation will increase, insurance will go up, along with misconduct prosecutions. This in some jurisdictions could forecast the end. If the legislature however leaves the problem to market forces, the market will not, I surmise, provide the solution as markets don't operate like that. The special case of the building surveying fraternity, in light of its building officialdom and quasi-public servant pathology, is not well suited to the "cut throat" fee driven competition, because the cost of regulatory control cannot be forced below the price of guaranteeing regulatory control.

Let us not forget that there has not been a major recession in the construction industry since the early nineties. When Building Acts like the Victorian Building Act came into being the construction industry was encountering "lift off". Since then there have been an abundance of halcyon years, particularly in States like Victoria. Private Certification has not been tested by the pressures of recession, but the time is nigh.

Like it or not, it is time for some astute regulatory intervention. And I'm not going to run true to type as a lawyer and only identify the problem, because there is a solution. The cure is to regulate a minimum level of fee charge for building surveyors, that is "cpi'd" annually. This will bear testimony and recognition to the fact that certifiers are quasi-public servants, and they are most definitely statutory regulators as they are a creature of statute. Therefore they require special recognition and special accommodation. If the sector is allowed to race to the bottom in terms of fee competing, at least the bottom will be a fee that is carefully considered and regulated. A fee that ensures that the quality of the service will not be compromised, because it cannot be compromised, and as the economy is going south, it is high noon that the above type of solution should be considered.

For those who are antagonistic about the imposition of a minimum level of fee regulation I say this - when Building Surveyors are afforded time and resources to do the job properly, the as-built product will be superior. There will also be a lower risk of defects which will translate into a lower risk of litigation. It will all balance out in the end.