



No 15, December 2005

# **Special advice issue:**

## **How to deal with unwelcome Cocks, assault at work, dealing with dreadful Bankstown, WorkChoices (sic), some good news on fees and a great new competition!**

### **BPB turns their back on their legislated objects and sets their sights on Councils**

Imagine that. No sooner has the Building Professionals Board got its own legislation to operate under, to weed out dodgy private certifiers, to deal with the hundreds of complaints against them and to do some incidental other things, Director Neil Cocks decides he wants his staff to accompany you on building sites.

He would have to be kidding. depa has a long history of hostility to the ludicrous concept of developers being able to secure and pay their own person to certify that the work they do complies with council conditions of consent and the Building Code of Australia. This is a concept that makes no sense.

Nevertheless, when the NSW Government had its opportunity with the Campbell Inquiry in (insert date here), instead of finding that the whole idea was ludicrous and should be abandoned, the inquiry recommended the establishment of the Building Professionals Board, a proper accreditation system for certifiers of various professional backgrounds and the Board's penetration of local government to accredit council staff.

Since that time, depa and the Local Government and Shires Association have conducted a vigorous campaign to convince the government that there

already exist significant levels of oversight and accountability in councils. There is no parallel between an individual private certifier working for a developer with no control but the demands of the person who pays them and our members, onsite and assessing applications, with a variety of levels supervisors, team leaders, managers and directors making sure that the job is done properly and that only people with proper skill levels do particular types of work.

This sophisticated level of oversight, unavailable in the private sector, is presided over by a general manager and then a layer of elected councillors anxious to ensure that community standards are properly protected and expectations are met.

At this stage, the Government has not proceeded with the plans of the anti-local government zealots to get council staff under the control of the BPB. BPB Director Neil Cocks made it clear in a variety of industry meetings in 2004 that the BPB had to accredit council staff because the board could only properly function if it was funded by fees from councils! One of the things we like about Neil Cocks, is that he is often courageous in saying things that others might think twice about.

The BPB Act has now received royal assent and will commence its operations at various times in 2006. How extraordinary is it that in anticipation of having the Act enacted, and its existence

formalised, the BPB would direct a significant portion of its resources to pursuing council staff.

Members will be aware that depa placed a ban on the furnishing of information sought by the BPB in letters to metropolitan and significant adjoining coastal councils. A circular to our members is on the website (web connection)

In a letter date 21 November, Lee Miller, Team Leader – Investigations said:

“The Building Professionals Board (BPB) is expanding its investigations programme to incorporate site inspections of building works.

It is the intention of the BPB, as a function of its investigations role, to accompany council officers on selected critical stage inspections and to conduct post-occupation certificate site inspections.”

The letter continues and requests that the information be provided electronically “within **21 days**”.

We think Lee should get a grip and do what the Board was originally established to do – namely, continue to process the two hundred outstanding complaints against private certifiers. Given that the BPB processed one hundred complaints last year, this is almost two years work for them. Two years work plus the continuing flow of complaints that arrive at their office on a regular basis about dodgy practices by private certifiers.

After depa complained about this approach, further advice of 24 November was sent to the target councils but this time signed by Neil Cocks. Gee, this must really be serious.

Cocks detailed Section 118P of the Environmental Planning and Assessment Act 1979, which gives Department of Planning staff the ability to “investigate the work and activities of a council in its capacity as a certifying authority”.

Getting heavy, he detailed Section 118R which provides the power for a departmental auditor to direct a person to do a number of things. Take that. You have been warned.

Actually, you’ve been threatened.

The explanatory notes that accompanied the Bill listed five objects. None of them have anything to

do with councils or the role of council employees.

Significantly, there is no expressed provision in either the EP&A Act or the BPB Act that contemplates BPB staff (however qualified, accredited or experienced) attending sites with council employees. Neither is there any identified protocol or agreed memorandum of understanding between the BPB and local government about how such joint inspections (if they are ever to occur) should occur.

depa and the Local Government and Shires Association met with Cox and Lee and asked that the BPB agree not to proceed with this request until such time as their powers over councils are clarified and, if they have the ability to attend sites, that a process is adopted between us all to allow that to proceed smoothly. This request was rejected.

The LGSA raised the issue again in their regular liaison meeting with Department of Planning heavy Alice Spizzo. It was their understanding that the Department/BPB would rescind this request, let things settle and everyone could discuss it in a rational way in 2006. Much to the disappointment of the LGSA, this did not happen.

Unions NSW organised a meeting between depa and staff from Planning Minister Sartor’s office on 16 December. We met with the person responsible for the BPB Act and he knew nothing of this initiative. He was sceptical that the Board had the power to do what they wanted to do and he should know.

Apparently some of the information sought by the BPB has been supplied. This has generally happened at those councils where administrative staff are responsible for statistics and where the figures can be easily extracted and electronically supplied. This is a pity but we are pleased that the ban on the provision of the information has been, to this stage, supported significantly by members. We thank you for your help.

Section 45 of the Building Professionals Board Act expands the role of the BPB on investigations. Like Section 118P it makes it clear that the sort of investigation to be carried out by the BPB is a significant one. So significant, in fact, that the result of the BPB investigation must be delivered to the Directors-General of the Department of Planning and the Department of Local Government and the Council too within a certain time frame.

The provisions empowering the Department are so significant they are clearly intended in response to specific complaints and not as some sort of general power to allow BPB staff to pounce around on building sites doing whatever they think they can do.

Section 45 also provides the Board with more power than section 118P of the EP & A Act and allows them to tell councils what they should be doing if a council's response to their investigation of a complaint is found to be inadequate.

Who do these people think they are? A handful of employees, some with some useful local government experience, some with little useful local government experience and even some bad local government experience, wanting to be let loose and adjudicate on the quality of decisions being made by employees in councils who are both better qualified and more experienced.

The BPB sees itself as being some arbiter of building best practice. They are deluded, at best.

depa and the LGSA accept that the BPB will have a power to investigate complaints. If the Government thinks they should have a power to investigate complaints then it is appropriate that it be broad enough to allow the investigation to be carried out properly. The more significant are the legislative provisions regulating the investigation, to our mind, the more specific those provisions are to an individual complaint, rather than a general review.

As we enter 2006 we ask members to continue to comply with the ban and not furnish this information to the BPB. We know that the Local Government and Shires Association will be shortly writing to councils advising that there is a difference of opinion about what the BPB can or can't do and the circumstances under which they do it. We don't expect that there will be much in the way of pressure in councils from more senior employees trying to make our members supply the information.

In 2006 there will be further discussions with Planning Minister Sartor to clarify the BPB role.

The Sydney Morning Herald carried a report on the ban in the local government section on 6 December. You can find it at:

### **Sick of Bankstown, we file 13 prosecutions for breaches of the Award**

For most of 2005, depa has been pursuing Bankstown Council for breaches of the Local Government (State) Award. There are two areas where the Council has breached the Award – the size and composition of the consultative committee and salary systems.

The consultative committee provisions of the Award require councils to set the size and composition of the consultative committee by agreement with local union representatives. Bankstown did not do this. Significantly, a dispute filed by depa was conciliated by Deputy President Grayson in the Industrial Relations Commission and the Council is now moving to establish a consultative committee that complies with the Award.

They do this, despite their insistence that the Award was never breached. Never mind, at least they're doing it.

But they have been more reluctant to fix the salary system. Bankstown has **never** had a salary system that complies with the Award. In 2000, depa filed a dispute (which we liked to describe as depa vs. The Rest of the World) with 75 councils that had failed to respond to a joint unions/LGSA survey. Their failure to respond to a survey was a sign that they had something to hide.

Bit by bit, and over a period of more than two years, councils got their act together, set up proper salary systems and, in many cases, provided appropriate compensation or retrospective reviews and skills progression for staff.

The most common settlement reached in this dispute was that councils would pay two percent of annual salary to employees who did not get an annual review of their skills and the potential to progress in the salary system based on the acquisition and use of skills.

Unfortunately Bankstown slipped between the cracks in this dispute and it was only early in 2005 that we became aware that the Bankstown salary system provided neither annual reviews nor reviews based on the acquisition and use of skills.

To describe Bankstown's behaviour as being bloody-minded and disgraceful would be to flatter them. Deputy President Grayson, also conciliating this dispute, described their behaviour as unhelpful and impractical when the dispute was last before the Commission on 23 November.

We have not dealt with a more obtuse, offensive or imaginatively dishonest council before. While local government often plumbs the depths of poor industrial relations and human resource management practices, Bankstown goes so low that their responses beggar belief.

Imagine arguing that the Award only requires pay increases to the minimum entry levels and not to other levels in the salary system when Clause 40 (ix) says: "the increases in rates of pay provided by this Award shall apply to the rates of pay in council's salary system"! How stupid are these people?

Sick of wasting our time with people who wanted to argue that white was black, on 24 November we filed thirteen prosecutions – one for each of thirteen members employed by Bankstown and who didn't receive the annual reviews and the progression based on the acquisition and use of skills required by the Award.

Hearing dates will be set in 2006. When we last prosecuted a council for breaching the Award, Marrickville in 2003, the Industrial Court fined them \$5000. Half of that fine goes to consolidated revenue and half comes to us.

In the meantime we have decided to give you the opportunity of nominating councils that you think are worse. Keep reading.

### **What should a council do when an employee is assaulted?**

Unfortunately it is a reality of councils' regulatory roles that there are occasions when council staff are abused, threatened, intimidated or assaulted. Normally this sort of activity is dealt with in a positive way by councils by having the offender prosecuted under the appropriate legislation (eg, the Food Act as Campbelltown is doing at the moment) and by making it abundantly clear that that sort of behaviour is not acceptable. We were able to secure an apology from an offensive and abusive applicant at Strathfield last year.

Unfortunately, Canterbury doesn't believe in this. A member of ours was assaulted this year in a food shop and received a death threat over a mobile phone some time later from another person in an adjoining food shop. While the Council assisted the employee with counselling and time to make a formal complaint to allow prosecution by the police, the Council did not do anything else.

We have had some discussions with the Food Authority and also conducted a dispute in the Industrial Relations Commission about Canterbury's behaviour. It is clear that on occasions such as this there are three areas where things can be done:

Firstly, the thug should be prosecuted by the police under common law.

Secondly, the council should take action against the thug for the offences detected during the course of the investigations.

Thirdly, the council should make it abundantly clear that this sort of behaviour is unacceptable and that unless the person agrees not to do it again, then future inspections or council regulatory activities will be carried out with a police escort.

Canterbury failed badly in the second and third areas.

Despite there being clear and serious breaches of the Food Act, the Council elected to write them a polite letter a couple of weeks later, giving them notice that they would be back in a few weeks and they should clean the place up in the meantime. There was no mention of the assault.

We think they should have prosecuted them then and there but they reckoned that they had legal advice against this course of action because if they departed from their normal practice of tolerating and appeasing owners of filthy premises, then they would look vexatious and only retaliating against them because they assaulted their staff.

We also think that they should have taken every opportunity to prosecute the thug to the fullest extent of the law. Their "legal advice" was verbal apparently, so we couldn't examine it.

In dispute proceedings the Industrial Relations Commission recommended that they share this

advice with us and that we all meet with their lawyers. Canterbury rejected this recommendation.

But the Council also failed badly in the third area of potential action. A polite letter that didn't mention the assault and then, four weeks later a further inspection of premises that had, because of the polite warning letter, been cleaned up. Not even, in that four week period, a polite letter or advice that the Council really doesn't want this to happen again and would appreciate the thug keeping his hands away from the necks of their staff.

On 21 December we had a meeting of members before a fruitless meeting with management. Members were critical of the Council's failure to support staff abused or assaulted and one member had been assaulted in 2003 by the same person who this year had left the threatening text message. We wonder what might have happened this year if the Council had jumped all over him in 2003?

He had put a file note in but the Council had done nothing. Not surprising if he got away with it once that he would feel it okay to threaten another EHO.

This is a total abandonment of the Council's duty of care to staff and dangerously close to criminal neglect.

depa has now referred the Council's mishandling of their duty to protect staff to UnionsNSW for advice on breaches of the Occupational Health and Safety Act and the dispute will continue in the Industrial Relations Commission next year.

### **WorkChoices (sic) will hit us in March 2006**

Some minor amendments, mostly to fix problems arising from hasty drafting, and the WorkChoices (sic) Legislation has passed through the Senate courtesy of the boofhead who talks about family values but fails to see that the legislation will make life harder for all working families.

We have plenty of time to get ready for its immediate impact in March. Some provisions in the Award will automatically become unenforceable and our ability to run disputes will be significantly curtailed.

This does not mean that we will cease to have a role – it just means that our role will develop and change as we fight to protect member's entitlements in a different way. There are many rumours circulating

about things the NSW Government may be able to do in the Supreme Court to provide a jurisdiction for collective contractual agreements between unions and employers.

The NSW Government's application to the High Court has been filed and this will attack the Constitutional bona fides and whether the legislation is an abuse or consistent with the corporations power of the Constitution.

In the meantime, we are already sick of describing the legislation as WorkChoices (sic) and from now on will refer to it only as NoChoices. We suggest you do similarly.

We have already had some members panicking at the prospects of the new legislation and looking at whether it is a good idea to draft a list of things that might be prepared to trade away. We discourage this course of action and you should tell us immediately if this gets mentioned at your council.

It's a bit early to get down on our knees. We have not yet begun to fight.

The unions in local government and the LGSA met last Friday and are committed, as much as possible, to continue to manage industrial relations in the industry in a cooperative way and with proper dispute resolution mechanisms.

In February when we are fresh and rested we will advise members of the immediate impact of the legislation, what we have lost and what the ramifications are at work.

### **A New Competition!**

We are so sick of Bankstown that we think they should be given a special prize as the worst, most noxious and most pungent council in New South Wales.

In the depa office we think we have a pretty good handle on who is good to work for and who isn't, who has good HR policies and who doesn't but we thought we'd give you the opportunity of nominating someone else.

Part of this Bulletin is a nomination form which will allow you to nominate someone in our new competition "Is there anywhere worse than Bankstown?"

There are a number of questions which will require a fair amount of thought in this competition and even if you reply in the negative, you could still win!

The neatest correct entry (as they say) and the entry that most amuses the judge will win a \$200 gift voucher from David Jones. Anyone can enter apart from people sleeping with the judge – so that's Mrs Robertson out.

### **What, no fee increase in 2006?**

2006 will be the fourth year that depa's fees have remained at \$7.66 per week – an annual figure of \$398.48.

How can we keep doing this? In an industry where the LGMA and the LGSA seem to hand out awards for everything, how is it that we don't get, year after year, an award for financial management excellence.

No other union in Australia has been able to do this, certainly not in local government in NSW, and everywhere we go things just get more expensive. How fabulous that the Committee of Management is committed to keeping the fees where they are for as long as we possibly can.

We are able to do this, not just because of astonishingly competent financial management, but because we keep signing up new members.

And we can only keep doing this as long as new members roll in. Some months ago we announced prizes for the member who recruited the 1400<sup>th</sup> member. Just to remind me, if you recruit our 1400<sup>th</sup> member we will give you \$500 and the 1400<sup>th</sup> member themselves will get a whole case of wine.

Current members, who have enjoyed no fee rises now for four years, have a vested interest in making sure that they sign up as many members as possible.

### **Season's Greetings**

The depa office will close around lunch time on 23 December and will reopen at the normal start of business on Tuesday 2 January. Probably not too early and we will back at work in a January-sort-of-way after that.

We hope that you all have a fabulous break over Christmas and January and come back enthusiastic and excited to deal with all those challenges that 2006 will provide.

### **Bankstown Competition**

In the last twelve months we have been in disagreement or dispute with Bankstown over the following:

- Sacking a member who lost his license when they could have easily accommodated other travel arrangements.
- Breaching the Award by establishing a Consultative Committee with other people not agreed to by union delegates.
- Breaching the Award by not having a Salary System that provides annual reviews or progression based on the acquisition and use of skills.
- Sacking another member for losing his licence when they could have easily accommodated other travel arrangements.
- Making changes to the organisation structure, and refusing to have a meeting of members but offering individual meetings where management can stand over individual employees.
- Refusing, unsuccessfully, to allow a member part time work (even though they enticed him to come and work there on the basis that he could do this and even though he would do full time hours) to accommodate his family needs.

That sounds like a pretty crappy record of industrial relations and human resources practices but you might have a better nomination. There are a number of questions that will need to be completed to enter. Please see the attached entry form.

Please also note that we exclude that part of Bankstown known as the Civic Services Group from all of this unhappiness. Their separate and more benign managerial style makes that part of the business qualitatively different.

Kerry Hunt  
President

Ian Robertson  
Secretary

Fax your entry to depa on 9712 5427 by 20 January 2006.

**“Is anywhere worse than Bankstown?” Competition**

Your name \_\_\_\_\_ Council \_\_\_\_\_  
Contact Phone Number \_\_\_\_\_

1 Is there a more noxious, pungent, unpleasant and generally inhospitable council to work at than Bankstown?

- You would have to be joking.
- Yes and I attach a nomination below
- You have to joking. They are the worst by far.

If you answered yes, please detail your alternative nomination. If you need more space to vent, please attach further pages.

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2 While depa was able to make the council provide a member with family friendly work, the agreement is for twelve months. Will the Council:

- Do the right thing and show that they really care for family values?
- Continue to behave as if it's 1950?

3 Tick the box below that best describes Bankstown's human resources and industrial relations policies:

- Hostile
- Anti-Worker
- Belligerent
- Non Consultative
- All of the Above

4 In the interests of balance, in the space below list Bankstown's qualities and benefits:

5 In 25 words or less, what should happen to those responsible for industrial relations and human resource practices at the Council?

Eg. Community Service, being placed in a chain gang etc.

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