ON PEANUTS AND MONKEYS: PRIVATE SECTOR INVOLVEMENT IN AUSTRALIAN BUILDING CONTROL

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Abstract

In response to issues arising from municipal led regulatory enforcement, governments in Australia have reformed their regimes of building regulation and control since the 1990s. Private certifiers have been introduced as an addition to local government building control. Based on a series of interviews with 56 insiders this paper addresses the implications of privatization of Australian building control by discussing its intended and unintended impacts. The paper concludes by drawing a number of case specific lessons and more general lessons on privatization of regulatory enforcement that move well beyond the field of building control.

Key words

regulatory regime, regulatory enforcement, local government reform, comparative policy analysis

On peanuts and monkeys: private sector involvement in Australian building control

Introduction

In 1993 building regulatory enforcement in the Australian state of Victoria was reformed. Building permit applicants were given the choice to seek service at the municipality level, the traditional way of applying for a permit, or to seek the same service from a private certifier. Other Australian states and territories followed this example. Yet, every state and territory introduced a slightly different regime.

This move towards private sector involvement in building regulatory enforcement fits within a global trend of local government reforms. These reforms have been undertaken to different degrees in building regulatory enforcement regimes in the US (LaFaive, 2001, Schmit, 2001); Canada (BCMH, 2007, Hemson Consulting, 2008, SCCA, 2003); New Zealand (Hunn, 2002); and different European countries (Imrie, 2004, Meijer and Visscher, 2006). In general, the private sector is given the expectation that it will make building regulation and enforcement more effective and efficient.

In past research, although not in the field of building regulation, it has been found that the introduction of private sector involvement does result in an increase in responsiveness to legitimate demands, or compliance with regulations, at the same or lower costs (cf. Baldwin and Cave, 1999, p. 126, Gunningham and Grabosky, 1998, p. 52, Price, 2007). In short: effectiveness and efficiency gains are reported. At the same time, however, unsought impacts might occur, for instance a decline in accountability (cf. Hodge and Coghill, 2007, May, 2007), equity (cf. Burkey and Harris, 2006, Lefebvre and Vietorisz, 2007) or a lack of public trust or acceptance of private sector involvement (cf. Baldwin and Cave, 1999, p. 130, Stoker, 1998, p. 20). Even more, tradeoffs between such competing values are sometimes expected to be inevitable (cf. Scholz and Wood, 1999, Winter, 2005).

The aim of this paper is to gain insight into the implications of private sector involvement in Australian building control. Two initial questions are: what impacts have occurred as a result of private sector involvement; and how have these become manifest? The paper begins by describing the main elements of change in Australian building control regimes. This change is experienced to fit within a global trend of local government reforms, which has gained growing attention from scholars in the field of public administration. Building control, however, appears to be an overlooked topic in this field. A supplementary question posed is therefore: to what extent does building control supplement or contradict existing findings on local government reforms?

In the second part of this paper the impacts of the changes are discussed. Referring to testimonials from interviews with over fifty key actors in Australian building control, the substantive part of this paper describes and evaluates the implications of private sector involvement for building control practice and process. The paper concludes by outlining the impacts of private sector involvement on Australian building control. In addition it discusses some specific findings that add to existing knowledge on local government reforms.

Introducing a concept: regulatory enforcement regime

Before moving to the actual discussion of changes in Australian building control and their impacts, it is helpful to discuss briefly one of the main concepts used throughout this paper: the concept of regulatory enforcement regimes.

It is generally understood that, in order to make regulation work, it has to be enforced. The whole of regulation and enforcement as a 'means for achieving regulatory goals' can be referred to as a 'regulatory regime' (May, 2007, p. 9). Enforcement itself is however often regulated and enforced as well – an 'enforcement regime'. To provide clarity in terminology, the term 'oversight' will be used as a term for enforcement of enforcement (cf. Cohen and Rubin, 1985, p. 176). As enforcement is an essential part of regulatory goal achievement, this paper pays particular attention to the organization and implementation of enforcement. By combining the concepts of a regulatory regime and enforcement, the concept of a 'regulatory enforcement regime' is posited. This regulatory enforcement regime is defined as: *an organizational structure of actors that have tasks and responsibilities regarding the enforcement of regulations, the relations between these actors, and the relation between the organizational structure and its context* (cf. Hood et al., 2001). As such, a regulatory enforcement regime builds upon three levels of responsibility: the responsibility for setting regulations; the responsibility for regulating and overseeing enforcement; and the actual enforcement of regulations.

Towards private sector involvement

In Australia the regulation of the safety, health and amenity of people in buildings is deemed the responsibility of the states and territories (ABCB, 2002). The Commonwealth Government has nevertheless drawn up advisory building regulations with the introduction of the performance-based National Australian Building Code (BCA). Currently all states and territories have adopted the BCA, most adapting it to suit local geological and environmental needs through state and territory variations. Each state and territory therefore has its 'own' Building Code, though based on the BCA.

Responsibility for enforcement of the Building Code lies with the state and territory governments. Traditionally, most states have passed on many of their building regulatory powers to their municipal councils, which effectively enacted their own building regulatory systems by way of council by-laws (Lovegrove, 1991a, Lovegrove, 1991b), whereas territorial governments set up their own building enforcement departments. Until the mid-1990s this resulted in a situation in which land use, planning, development and building regulations were enforced by local councils only: 'pure public' regulatory enforcement regimes. During the 1990s private sector involvement through certified building control made its entry into Australian building control (ABCB, 1999, chapter 7, PC, 2004). The Commonwealth Government played a strong part in introducing private sector involvement through the implementation of the National Competition Policy (NCP). The key objectives of the NCP were to develop a more open and integrated Australian market, to limit anti-competitive conduct and to remove the special advantages previously enjoyed by government business activities, where it was in the public interest to do so. The building industry had a central focus in this policy.

Yet, this 'top-down' introduction appears to have been preceded by a 'bottom-up' movement. Prior to the introduction of private sector involvement, local councils

were described as cumbersome, passive, monopolistic and sometimes having a bad name for slowing application processing times as a result of dictatorial employees (e.g. Nassau and Hendry, 1997). The public sector was furthermore said to be insufficiently qualified to carry out specialized assessment. As a result the development sector demanded a better and faster service (see also KPMG, 2002, PC, 2004, VCEC, 2005). Private surveyors started to carry out building permit assessment, which councils started to accept as complying with regulations. Nevertheless, regulations had to be amended in order to allow private surveyors to issue building permits, carry out on-site inspections and issue occupancy permits. This was supported through the NCP.

The first jurisdiction that actually opened up its building regulatory enforcement regime was the state of Victoria in 1993 (Nassau and Hendry, 1997). Other jurisdictions followed and currently all jurisdictions have either introduced private sector involvement or are considering introducing it. All jurisdictions have, however, implemented slightly different regulatory enforcement regimes.

The new regulatory enforcement regimes

In all jurisdictions a variety of enforcement tasks can be carried out by private sector actors. Tasks relate to building plan assessment, building permit issuance, on-site construction work assessment, follow-up enforcement tasks and occupancy permit issuance. These enforcement tasks can also be carried out by municipalities, which have additional responsibilities such as keeping records of construction and the responsibility for planning and land zoning assessment. The number of tasks private sector actors can carry out is the most important difference between the regimes. This will be referred to as ‘the amount of privatization’.

Private sector actors are generally referred to as private certifiers.¹ In order to be allowed to work as private certifiers, individuals have to meet certain criteria. In all the jurisdictions analysed these criteria relate to having a certain level of education and experience, and holding professional indemnity insurance. Private certifiers are furthermore subject to oversight.

This paper reports on three different regimes: the states of South Australia (SA), Victoria (VIC) and Queensland (QLD). These three states were chosen particularly as they show, relatively, the most mutual differences in regime designs (see table 1).² In SA (OCBA, 2006, PlanningSA, 2001), private certifiers are *only* allowed to carry out building plan assessment. Building permit issuance and all other tasks remain with the municipalities. Private certifiers are overseen by a pure public agency.

In VIC (BCV, 2003, BCV, 2005), private certifiers are allowed to carry out all enforcement tasks, with the exception of follow-up enforcement tasks. In Victoria private certifiers have to report violations to the Building Commission (BC), a state government agency, which then takes over follow-up enforcement. Furthermore, private certifiers are overseen by an agency that consists of private sector stakeholders: the Building Practitioners Board (BPB). The BPB is involved in setting criteria for private certifiers’ involvement in regulatory enforcement, and is authorized to oversee and discipline building practitioners, such as contractors and tradesmen. The BPB is administratively supported by the BC. As such, oversight in VIC may be understood as a public–private partnership.

Finally, in QLD (BSA, 2006, QLDgovt, 2002), private certifiers are allowed to carry out all the enforcement tasks mentioned. Note that they have to take up follow-up enforcement tasks when violations of regulations are found from on-site construction work assessment. This might even imply that private certifiers have to bring the violator into court. Private certifiers in QLD are overseen by a pure public agency.

Table 1 – Overview of key characteristics in the different regimes analysed

Tasks	Responsibilities (sector per case)					
	SA		VIC		QLD	
	public	private	public	private	public	private
<i>Setting building regulations</i>	X		X		X	
<i>Setting criteria for and overseeing enforcement</i>	X		X*	X*	X	
<i>Regulatory enforcement tasks:</i>						
- building plan assessment	X	X	X	X	X	X
- building permit issuance	X		X	X	X	X
- on-site assessment of construction work	X		X	X	X	X
- follow-up enforcement tasks	X		X		X	X
- occupancy permit issuance	X		X	X	X	X

* In Victoria the responsibilities in the level ‘setting criteria for and overseeing enforcement’ are taken up by both the public and private sectors: the BPB advises the Minister for Planning on criteria; the Minister sets the criteria. The BPB is administratively supported by the BC to oversee private certifiers.

Research design

Given the aim of gaining an understanding of how the privatization of the above-discussed enforcement tasks impacts on regulatory enforcement, a qualitative intensive research approach was chosen. Such intensive research typically focuses on a small number of cases, and the researcher examines these in depth (cf. Ragin et al., 2003, Steinberg, 2007). The unit of analysis here is the new regulatory enforcement regimes. A series of interviews were undertaken and interview data were analysed (following on from Dunn, 2003, especially chapters 6 and 7). In addition, secondary data were analysed. This process can be understood as triangulation, in order to strengthen the validity of possible findings (Brady and Collier, 2004, p. 18, Silverman, 1993, chapter 7).

Interviewees were selected using ‘snowball’ sampling (Longhurst, 2003). This sampling resulted in a pool of interviewees from various backgrounds, such as policy makers, municipal officials, private sector agents, architects, engineers, contractors, scholars and representatives of trade associations. Most interviewees (> 90%) had experience with both the *status quo ante* and the new situation. The pools of interviewees of all the cases showed comparable characteristics in size and variation.³ Semi-structured interviews were carried out in March and April 2007 with a total of 56

interviewees. Table 2 provides an overview of the pool of interviewees and the interviewees' role in the regime.

Table 2 – Overview of interviewees

Interviewees' background	Interviewees' role in the regime			
	<i>Setting criteria for and overseeing enforcement</i>	<i>Carrying out enforcement</i>	<i>Subject to enforcement</i>	<i>Other</i>
Public official	14	10		
Private sector representative	2			
Private certifier		9		
Architect/engineer			6	
Builder/contractor/developer			7	
Other professions			1	
Academic				7
Total	16	19	14	7
<i>Total number of interviewees: 56</i>				

The questions focused on the reasons underlying the introduction of the new regimes; the operation of the new regimes in daily practice; the interviewees' evaluation of the new regimes; and regulatory goal achievement as a result of the new regimes.⁴ The questions had a strong focus on over-time comparisons of the different regimes (Lijphart, 1971, p. 689). The interviews varied in length between one and four hours, and were mostly carried out with a single interviewee at the interviewee's office. The interviews were recorded and transcribed into an interview report that was returned to the interviewee for validation. Additional data, such as governmental inquiries, information booklets and practitioner literature, were collected (e.g. Allan, 2002, KPMG, 2002, PC, 2004, VCEC, 2005).

The data were processed by means of a systematic coding scheme (cf. Seale and Silverman, 1997) and qualitative data analysis software, the computer program 'Atlas.ti', was used to run queries. By using this program the data were systematically explored and insight was gained into the 'repetitiveness' and 'rarity' of experiences shared by the interviewees.

Experiences with private sector involvement

South Australia (SA)

*** Picture 001 about here; Figure caption: Street-view of downtown Adelaide ***

The accounts from the interviewees outline that in terms of assessment about 70% of all applications are being processed by private certifiers under the new SA regime. Most interviewees stated that the preference for private certifiers comes from the level of service they provide – greater speed, availability and specialization – and the relationships they have built with clients. Interviewees referred to these as efficiency gains. As such the interviewees' statements underline findings by, for example, Gunningham and Grabosky (1998, p. 52), who note that private sector involvement

‘offers greater speed, flexibility, sensitivity to market circumstances, efficiency, and less government intervention than command and control regulation’. Here it may be argued that a specific type of efficiency has improved, namely technical efficiency: efficiency gains due to a different approach private certifiers might have to enforcement tasks (cf. Leibenstein, 1966).

Little consistency was found in a perceived change in the level of compliance with building regulations after the introduction of the new regime. Interviewees generally valued the specialist expertise of private certifiers. It might be assumed that, as a result of this expertise, private certifiers can achieve a greater inspectorial depth. As one private certifier said: ‘If they are doing a hospital, they can pick someone who has done a lot of hospitals; that compared with perhaps getting a novice from a Council.’ This and comparable statements follow Baldwin and Cave (1999, p. 126), who note that corporate bodies ‘can usually command higher levels of relevant expertise and technical knowledge’ than public sector agencies. It could be assumed that, due to a greater inspectorial depth, compliance with regulations has improved (cf. Ayres and Braithwaite, 1992, p. 104).

A perceived negative impact appears to be related to a specific characteristic of the SA regime: the private certifiers’ assessment process was referred to as ‘a cog in a large governmental machine’. Some interviewees mentioned that permit issuance by the municipal building authority might undo the time gains of private sector involvement. This doubling of tasks furthermore appears to conflict with the potential allocative efficiency of the regime (cf. Leibenstein, 1966): welfare maximization could be further optimized if unique resources were used for unique goals. Finally, the doubling of tasks and related overlapping of responsibilities could result in liability issues when the municipal building control department issues a building permit based on a faulty private certifier’s assessment report. This is an issue comparable with ‘the problem of many hands’ (Thompson, 1980): many hands make light work, but scatter liability.

Another negative impact of the regime, which was found to be present in the other regimes as well, is accountability issues. Again these findings appear in line with other scholars’ work (cf. DeMarzo et al., 2005, p. 688, Gunningham and Grabosky, 1998, p. 52, Hodge and Coghill, 2007, May, 2007). When asked, most interviewees mentioned commercial pressure on the private certifiers and conflicts of interest as the major issues of the new regime. Private certifiers were said to be subject to commercial pressure due to the client–contractor relationship they enter into. Since the market is competitive, clients ‘can shop around’. Elsewhere it has been argued that competition for clientele might make a regime liable to regulatory capture (cf. Baldwin, 2005, pp. 129-130, Scholz, 1984, p. 401). Yet, private certifiers mentioned that they are strong enough to deal with these pressures. Public officials, however, fear that private certifiers ‘bend to their client’s will’. In general, agreement existed amongst interviewees that a strong oversight system, preferably auditing, is needed to maintain the accountability of the regime. Currently such a system is not in place in SA. A state official mentioned:

A number of the certifiers said to me they would be very happy when the auditing comes in. To them it’s an issue of competition; being on a level playing field. (...) From the way they see it, there are some certifiers that are cutting too many

corners. Doing things they don't think are correct. And auditing would expose those. They have actually lost clients, they have lost people to another certifier who ... is a bit more generous or a bit more lax in the way they [carry out assessments].

Competition for clientele appears to have resulted in another side effect: 'creaming' (cf. Bailey, 1988, Stoker, 1998). Most interviewees made reference to private certifiers' preference for major, profitable assessment jobs. Most public officials suggested that private certifiers have less of a preference for small construction work and type-specific applicants: the non-professionals, or 'mums-and-dads who built once or twice in their lives'. Here it is noted that within both the old and the new regime the fees that municipalities are allowed to charge are legally set, whereas private certifiers have the freedom to set fees. Municipal fees for minor construction work often do not cover the costs of the assessment work; major works have to cover losses. Furthermore, municipalities have to accept all the work provided, whereas private sector actors can choose their clientele. As Wilson (1989, p. 169) noted: municipal agencies often 'must cope with a clientele not of their own choosing'. A municipal official made clear: 'a consequence is that councils end up with the more difficult or problematic jobs ... they take more time to assess'. Private certifiers were generally said to charge lower fees for profitable major construction work than municipalities, and higher fees for type-specific or minor construction work. A state official noted:

What you quite often find is that that twenty per cent [of assessment work that is dealt with by] the council will normally be composed of the small works: house extensions, alterations, and small structures – those sorts of things. (...) The private certifiers don't want to know [the small works], because they're too messy and fiddly, and [they] would charge exorbitantly if you insisted on them doing [the small works] ... They really don't want the work.

However, during another interview a private certifier made clear:

It is not that we don't like to do [the small works]. We're doing anything if there's a dollar at. But the way fees are based on area ... If someone is doing a 50 square metre house addition and the council therefore has to do it for a hundred dollars; we just can't do it for a hundred dollars.

This creaming appears to have resulted in another negative impact: a loss of social equity (cf. Burkey and Harris, 2006). If municipal building control departments lose profitable jobs to private certifiers and have to assess loss-making minor jobs they face a decline in income. This decline is made up of general revenues from general taxes: the individual who involves private certifiers faces a speedier and cheaper assessment process than under the old regime, but the general taxpayer might face an increase in burden. Furthermore, municipalities lose well-trained staff to private sector agencies as these appear to provide better terms of employment: 'municipalities have become the breeding grounds of cadets', a municipal official mentioned. As a result municipal

building control departments might in the long term be less able to provide a level of service comparable with that of private certifiers.

Victoria (VIC)

*** Picture 002 about here; Figure caption: View over Melbourne from the Building Commission's office ***

In terms of work, about 75% of all building permits are issued by private certifiers under the new VIC regime.⁵ As under the SA regime, the preference for private certifiers was considered to come from the relationship private certifiers can build up with their clients; the high level of service private certifiers provide; and better accessibility compared with municipal building control departments. Some interviewees added to these reasons that councils might still be suffering from a past stigma of being cumbersome. As with the SA regime, little consistency was found in a perceived change in the level of compliance due to private sector involvement under the new regime. Again it could be assumed here that the private certifiers' ability to specialize in certain complex building types might result in more inspectorial depth, and therefore greater compliance in those projects. A representative of the Building Commission (BC) said: '... where councils are probably understaffed or they don't have the skills, you tend to find the private guys certainly to be very qualified building surveyors, possibly having done some post-graduate studies'. A private certifier's statement is illustrative here as well:

(...) the private system shows the best compliance. That's not to say that the council guys aren't good enough. If someone would say to me: 'Hey, check a house', I'd probably struggle; and if they would say to me: 'Hey, check a hospital' I wouldn't have a problem. And if [the private certifier and the council employee] swap around it [would] probably be the same thing.

Also, as in the SA regime, accountability was regarded as an issue. First, since private certifiers were sometimes regarded as keeping a business point of view in mind, they were considered to be less fanatical about acting in the public interest than public officials. Second, client binding was said to be a risk when a private certifier becomes too dependent on a client or a small number of clients – to keep a client, a private certifier might choose 'to cut corners'. Third, and finally, most interviewees noted that competition might erode standards as margins are small. A statement frequently made by both public and private sector representatives in this jurisdiction, but also in the other jurisdictions analyzed, was: 'if you pay peanuts, you get monkeys'. A director of a consultancy agency explained:

We're a very competitive industry. (...) So people are always looking for ways to get an edge. (...) I think boundaries are being stretched and sometimes being breached. (...) People think they can get away with it.

To monitor accountability a system of oversight has been introduced. As already illustrated, the Building Practitioners Board (BPB) has the authority to monitor and discipline private certifiers. Disciplining may be issuing fines or crossing out the certifier's registration, which in practice means the certifier has to quit his job. However, a majority of the interviewees looked upon this system of oversight as insufficient and the disciplinary measures taken as too weak. Most critics of oversight focus on the auditing system. Not only is the number of audits criticized as being too small – private certifiers interviewed recalled being audited once every seven to ten years – but the audits were also criticized for having too great a focus on procedures. These findings are in line with what Power (1999) refers to as 'rituals of verification'. It was found that audits were not focusing on the content of building permits issued and controls performed on-site, but on ticking boxes and following procedures. A private certifier explained: 'the lack of reliability of the auditing system makes people in the field [building control surveyors and builders] feel pretty safe'. Then, a municipal official noted:

The auditing is a joke! One of the problems is that it is easy to nail somebody for something that is easy [to find]. It is hard to know if someone has done something wrong when it is hard to find what is wrong. (...) [The auditors] come up and say: 'Oh, look he didn't sign that form, we've got him!', or 'He didn't lodge on a certain day, we've got him!' or 'He didn't do this or that ...'. I look at this plan that doesn't comply and have someone to technically check it. But that never happens. (...) They don't tackle the hard things.

Private sector representatives involved in oversight also made clear:

We can require them *not* to do something, but we can't require them to *do* something. Training is a classic example: 'Go and do a course on that and come back and demonstrate to us that you have.' We cannot do that.

Some interviewees made clear that private certifiers appear to fear the measures the insurance industry can take even more than the measures the BPB can and does take. If a complaint against a private certifier is lodged it might take up to several years before the process of investigation is finished and often the penalty is relatively low. To paraphrase Bardach and Kagan (1982, p. 10), complaint investigations are slow, expensive and chancy.

As Baldwin, Hutter and Rothstein note (2000, p. 9), 'Private or public insurers may operate to control risks by imposing conditions on the supply of insurance cover and by using economic incentives, such as deductibles, to encourage proper risk-reducing behavior'. This finding also holds true for the insurance industry in the VIC regime (cf. VCEC 2005, p. 250). Measures taken by the VIC insurance industry are often an increase in the private certifiers' insurance policy fees if an insurer has to pay out because a private certifier holding a policy is found to be responsible for an error. Also, when insurers have to pay out often because of repetitive issues, all private certifiers' fees are raised. Insurance fees thus appear to be a strong incentive, maybe an even

stronger incentive than audits or the disciplining powers an oversight body has. However, a Federal official warned:

The insurance companies have a lot of power. (...) [They] are smart. They look to get the legislation changed (...) If there is money to be made in the market, than they'll be in the market. But they want to get the market in their favour.

Nevertheless, a positive side effect of the regime appears to be related to its particular characteristic: the 'public-private partnership' of the BPB and BC, and the BPB's ability to monitor and discipline both private certifiers and building practitioners. A major advantage of this regime, mentioned by interviewees, is the authority the BPB has to discipline contractors. Certified professionals hand over enforcement tasks to their own statutory body when non-compliance is found. Since the contractor is often the certified professional's client, the private certifier's experience is backed up by the BPB when it comes to follow-up enforcement.

Furthermore, that the BPB mainly consists of private sector stakeholders may give the organization a credibility advantage of the private certifiers over the BPB's 'pure' public counterparts in the other regimes analysed. This reasoning is based on literature that finds that 'private' oversight bodies face fewer issues obtaining information from the field than public bodies, since the latter are regarded as 'not from [their] own body' by private sector agents (cf. Baldwin and Cave, 1999, pp. 38-39, Gunningham and Grabosky, 1998, pp. 44-47). Accounts of private sector agents in other jurisdictions on the advantages of the BPB and the BC compared with their own oversight bodies strengthen this reasoning. Yet, no evidence that proves the VIC regime actually to be more accountable than the other regimes analysed could be found. It could very well be that either the VIC regime's 'seniority' as being the first state to introduce private sector involvement or the publicity sought by the BPB and BC to promote their regime⁶ has created an expectation of quality and professionalism compared with the other regimes. A private certifier from another state complained about the oversight body and referred to the VIC regime as: 'supervision should be both proactive and reactive; educating and preventing, while also enforcing and penalizing'. Yet, as illustrated earlier in this paper, Victorian interviewees themselves expressed negative experiences of auditing and disciplining of private certifiers in the VIC regime.

Finally, for reasons comparable with those under the SA regime, a decline in social equity was mentioned as a negative impact of the new VIC regime: private certifiers have the ability to cream the market for profitable jobs and take over experienced staff from municipalities. Over time this might result in a situation in which municipal building control departments are less able to provide a level of service comparable with that of private certifiers.

Queensland (QLD)

*** Picture 3 about here; Figure caption: River-side Brisbane ***

The accounts from the interviewees outline that in terms of work about 70% is taken up by private certifiers. The reasons for the preference for private sector involvement were comparable with those in the other regimes analysed. A state official made clear: '[Private certifiers] just provide a better seamless service. They are more client focused, and I hate the term, but they are more of a one-shop-stop. (...) In essence that's what it is ... and availability.'

As in the other regimes analysed, the accountability of the QLD regime was generally mentioned to be an issue by most interviewees. Commercial pressure and potential conflicting interests were generally mentioned as the main grounds for these accountability issues. A private certifier described what to him is the order of the day:

[Clients] come to you last in the chain [and] they see you as the hurdle to get over before they can start construction. And if you find any faults in the design at that late state of the process, you are the worst bastard under the sun. You cost 'm their money, you cost 'm their time. [They say:] 'Who do you think you are? We don't even need you in this process. We've got these top architects; they know what they're doing. And you are just this lowly building inspector. And I wouldn't even come to you if it wasn't necessary. So what are you going to do for me? I'm paying you good money to do this and I need my plans approved by then.'

As in the other regimes, a statutory body oversees the work of private certifiers. In QLD this is a state government agency, the Building Service Authority (BSA). As in the VIC regime the BSA carries out audits; and, as in the VIC regime, these audits were criticized by most interviewees for having too strong a focus on process and too little focus on content. Also, here some interviewees suggested that a stronger position of the insurance industry might strengthen the regime, but also commented on negative side effects of such measures. An architect said:

[Private certifiers] are very concerned about their personal indemnity insurance. (...) And this is probably one of the side objectives ... they tend to be very conservative in a lot of their approaches because they don't want to get into trouble, or be penalized if they do anything wrong. (...) If [a private certifier] makes a mistake, gets fined it comes out of his personal indemnity insurance and his premiums go up, or he can even be ... and they are talking about substantial fines, like thirty thousand dollars for the first offence.

For reasons comparable with those under the SA and VIC regimes a decline in social equity was mentioned as a negative outcome of the new VIC regime. A representative of the BSA mentioned: 'The process got faster, but also [fees set by private certifiers] for larger projects went down, whereas the prices of the smaller domestic jobs went up. Small projects [and thus 'mums-and-pap' clientele] are risky and difficult for the private certifier to deal with.'

Finally, the regime's particular characteristic, the obligation private certifiers have to carry out follow-up enforcement tasks, was generally perceived as having resulted in negative side effects. Particularly, the obligation to bring an offender to court

was regarded as a 'flaw' in the regime design. This measure was criticized for two reasons. First, the non-complying actor is often the certifier's client. In practice this might result in situations in which the agent sues his principal. Second, a private certifier in Queensland who takes this measure has to pay for the trial. To avoid ending up in expensive lawsuits, private certifiers have taken provisions in contract to stay out of court, thus making it possible to end the contracts when violations are found. If the contract is ended the case moves on to another private certifier, or, if no certifiers wants to take up the job, to the municipality. The municipality can then find it a hard case to solve, with all its consequences.

Conclusion and discussion

Case evidence suggests that private sector involvement in the three Australian building regulatory enforcement regimes has resulted in more technical efficiency and effectiveness of regulatory enforcement. The analysis of all the regimes suggests clients appear to prefer private sector involvement to municipal involvement in their projects (cf. EI, 2002, p. 26, VCEC, 2005, p. 82). Furthermore, from additional data, it was found that the new regimes are perceived to have encouraged a cultural change in the industry and to have encouraged parts of the industry, especially building inspectors, to up-skill (PC, 2004, p. 221, VCEC, 2005, p. 82). A majority of interviewees stated that private certifiers are better able to specialize than their municipal counterparts, and are therefore better suited to assessing complex development work (cf. EI, 2002, p. 40). In all the cases analysed, private sector involvement was generally said to have made the assessment process more streamlined and resulted in time savings for applicants (cf. FRG, 1999, p. 82, KPMG, 2002, pp. 3-4, PC, 2004, p. 221).

These findings underline conclusions in other policy areas that private sector involvement has a positive impact on the effectiveness and efficiency of a regulatory enforcement regime (cf. Bruzelius et al., 2002, Cheyne, 2002, Christensen and Laegreid, 2007, Hodge and Coghill, 2007, James, 2000, Moran, 2001, Scott, 2003). However, interviewees' accounts also showed negative impacts as a result of private sector involvement. Competition amongst private certifiers and 'shopping around' for the cheapest private certifier by clients was experienced to sometimes result in a decline of standards – 'if you pay peanuts, you get monkeys'. Due to conflicts of interest and weak auditing a decline in accountability was perceived (cf. PC, 2004, pp. 207-208). Also, due to private certifiers' attitude to 'cream' the market, a decline in social equity was perceived. As such this research also strengthens findings from other policy areas that private sector involvement has a negative impact on accountability and social equity (cf. Burkey and Harris, 2006, Hodge and Coghill, 2007, Lefebvre and Vietorisz, 2007, May, 2007). It may be concluded that private sector involvement in Australian building control is a typical or representative case (Yin, 2003, p. 41) in local government reform literature.

Besides stressing findings in the literature sourced, this paper also adds to the existing body of knowledge. The specific set-up of the research provided the opportunity to gain in-depth insight into the effects of differences in regime design on the impacts of these regimes.

First, effectiveness and efficiency gains appear to be related to the amount of tasks private sector agents are allowed to carry out. However, a tipping point appears to exist after which no more gains can be expected. In the SA regime efficiency gains are partly undone by duplication. For instance, municipal officials have to redo a number of administrative tasks when issuing a building permit based on a private certifier's assessment documentation. Then, effectiveness gains might be undone when work that was carried out by a specialized private certifier is taken over by a municipal official later on in the assessment process. Knowledge gained from building plan assessment, which might be valuable for on-site construction work assessment, becomes lost in this transition. Here it appears that the more tasks private certifiers are allowed to carry out, the better. However, from the QLD regime it was learned that follow-up enforcement tasks were not experienced as adding to effectiveness or efficiency. These tasks do not seem to fit the specialism and expertise of private certifiers. This tipping point may provide a valuable addition to the oft-cited enforcement pyramid (Ayres and Braithwaite, 1992, p. 35).

Second, although the research indicates that tradeoffs were made between competing democratic values such as effectiveness, efficiency, accountability and equity, it appears that these tradeoffs are less inevitable than is sometimes assumed (cf. Scholz and Wood, 1999, Winter, 2005). The amount of privatization provides the opportunity to fine-tune a regulatory enforcement regime, and thus the tradeoffs that occur. For policy makers this implies that fine-tuning an existing regulatory enforcement regime might be preferable to 'copy-pasting' an 'exotic' regime (cf. Czarniawska-Joerges and Sevon, 1996). This research suggests that small changes to a regime might very well have major impacts on regulatory goal achievement.

Third, and finally, prior research often focused on situations in which private sector involvement replaced local government service delivery. This research provided insight into a situation in which private sector involvement is introduced as an addition to local government service delivery. Clients have been provided with the opportunity to choose between public or private sector involvement. As a result a relationship between the public and the private sector comes into existence. In Australia a competitive relationship was implemented by the Federal Government. It could be questioned whether this competitive relationship is the most adequate. As we have seen, due to this competitive relationship, private certifiers were given the chance to 'cream' the market at the expense of municipal building control departments. Topics for future research may be what other relationships are possible and if other relationships have a different effect from the competitive relationship discussed in this paper.

It has to be noted, however, that these findings are limited on the one hand by the methodology used and on the other by the topic chosen. Interviewees might very well 'game' an interview or provide information that does not necessarily stress their opinion. These methodological issues were overcome in part by interviewing a large number of interviewees from different backgrounds, most having experience with both the old and the new regime; by structurally treating and analysing interview data; by showing the richness of the interview data by reporting both 'repeating' and 'rare' findings; and by analysing and reporting secondary data to test the validity of the findings. The topic chosen, then, might also partly limit the findings. The building

industry is characterized by different highly specialized technical trades and materials coming together – partly in an ‘uncontrollable’ outdoor environment. It is furthermore characterized by a difficulty in enforcement: even the most perfectly engineered building design can only show virtual compliance on paper or a computer screen. It is the execution of the design that matters, but assessment of construction work is hindered as most building parts are covered in and behind walls, ceilings and floors.

Nevertheless, given these limitations of the methodology and the topic chosen, it can be concluded that private sector involvement in Australian building control provided a unique opportunity to gain insight into the impacts private sector involvement has on local government reforms. The different regimes analysed underlined findings on the impacts of private sector involvement from other policy areas. At the same time the differences between the regulatory enforcement regimes analysed provided detailed insight into how the amount of tasks that private sector agents are allowed to carry out affects the impacts of these regimes. As such Australian building control not only proved to be a representative case, but also proved to be a valuable case in the field of public administration.

Footnotes

1. In the different jurisdictions slightly different terminology is used to address private sector actors who work in the field of building control. For reasons of clarity, the term ‘private certifiers’ is used throughout this paper.
2. In addition, research was carried out in New South Wales and the Australian Capital Territory. The discussion was restricted to three states here due to limited space – a discussion of the other cases would necessarily limit the depth of discussion. The states of West Australia and Tasmania were not included in this research since these states were still reforming their regimes when the research reported upon was carried out. The Northern Territory (NT) was not included, since the budget allowed visits to a restricted number of jurisdictions only. Visiting NT would have meant sacrificing two other jurisdictions. As it was found that the NT and ACT regimes show much similarity, it was chosen to visit the ACT, given that South Australia and Victoria were included and the ACT then is ‘on the way’.
3. Due to space restrictions, an exhaustive overview of all the interviewees cannot be presented here. An anonymized overview of the interviewees can be obtained from the author. Please send an e-mail to the author.
4. Again, due to space restrictions a full overview of the interview questionnaires cannot be presented here. These can be obtained from the author as well.
5. See: <http://www.pulse.buildingcommission.com.au/> (accessed on 14 December 2007).
6. See for instance their website, www.buildingcommission.com.au, and the website of the QLD oversight body, www.bsa.qld.gov.au. Not only the ‘dot-com’ versus the ‘dot-gov’ makes the difference.

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