



New South Wales
Government

REVIEW OF LICENSING IN THE NSW HOME BUILDING INDUSTRY

ISSUES PAPER

March 2006

FOREWORD

On 2 May 2005, the NSW Government announced a Review of Licensing in the NSW Home Building Industry and specified the Terms of Reference the Review will address. The Reviewers appointed are Irene Moss and Kevin Rice.

In preparing this Issues Paper, the Review has consulted with and sought submissions from the building industry, insurers, government agencies and other interested parties in relation to the Terms of Reference.

The Review has to date consulted with 24 key stakeholder groups and held four regional meetings with interested parties in Dubbo, Wagga Wagga, Penrith and Tweed Heads. Sixty-six submissions have been received and their comments have been taken into account in the preparation of this Issues Paper.

The Review has also taken into account the Council of Australian Government's (COAG) decision on 10 February 2006 to implement a package of measures to underpin a genuinely national approach to apprenticeships, training and skills recognition designed to alleviate skill shortages. These measures include more effective mutual recognition arrangements across States and Territories, implementing a new streamlined and robust off-shore skills assessment process and a set of measures to encourage the take-up and completion of apprenticeships in skill shortage trades. The Review welcomes any comments that stakeholders may have on the implementation of the COAG measures, where applicable. Submissions received by the Review will be forwarded to COAG.

Comment will now be sought from stakeholders and other interested parties on the key issues raised in this Paper. A number of options have been developed in relation to each issue in order to assist stakeholders in formulating their views. A Final Report will be produced detailing the Review's findings and recommendations.

How to have your say

There is no specific format for a submission. Submissions may range from a short letter outlining your views on a particular topic to a substantial document covering a range of issues. Where appropriate, you should provide evidence to support your comments, such as practical examples or documentation. Although every submission is welcome, multiple, identical submissions do not carry any more weight than the merits of an argument in a single submission.

To assist with the assessment process it would be helpful if, where applicable, you make reference to the relevant issue number/s in your submission.

Written submissions should be emailed (preferred), faxed or posted to:

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The closing date for submissions is Friday 21 April 2006.

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TERMS OF REFERENCE

Background

Although a number of inquiries in recent years have examined such issues as home warranty insurance and the quality of construction there has not been a fundamental review of licensing of builders and tradespeople since the inception of the licensing regime in 1972. The report of a review of licensing undertaken in accordance with the National Competition Principles Agreement and finalised in 1998 while supporting the retention of licensing did not examine in detail the operation of the licensing system. A review of the *Home Building Act* was also undertaken in 2004. The purpose of that review was to assess whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. While the review found that the terms of the Act still remain appropriate it did not examine in detail the operation of the scheme or the administrative arrangements that underpin the scheme.

It is evident that the housing and construction industry is going through major change and the licensing regime in New South Wales needs to operate having regard to that change and modern licensing practice. It is, therefore, appropriate and timely to undertake a systematic review of licensing, including competency standards in the housing construction sector and also determine whether licensing should extend to the wider construction industry as in some other Australian jurisdictions.

Scope of the Review

The Review is to inquire into and report on existing arrangements for the licensing of builders and tradespeople in the New South Wales building and construction industry, the regulation of owner-builders in the residential sector and make recommendations based on its findings to improve the effectiveness of licensing for all stakeholders.

Without limiting the scope of its examination, the Review is to:

1. Consider the coverage of licensing and assess whether:
 - 1.1. the range of building activity covered by licensing is appropriate;
 - 1.2. the monetary threshold (\$1,000) for requiring residential building work to be contracted by a licence holder is appropriate;
 - 1.3. the discrete licensing of individual, partnership and corporate entities is appropriate;
 - 1.4. licence categories should be aligned with building types such as those referred to in the Building Code of Australia (e.g. low, medium and high-rise);
 - 1.5. the licensing of persons not contracting directly with homeowners is appropriate; and
 - 1.6. licensing should apply to the broader construction industry.
2. Assess the adequacy of entry requirements for licensing purposes including:
 - 2.1 training and education of industry participants;

- 2.2 competency standards; and
 - 2.3 the role of licence testing and accreditation.
3. Examine the appropriateness of existing legislative conditions placed on licences and other authorities (including the period that authorities remain valid) and whether there is scope for commonality.
 4. Consider the need for differential fee structures for the issue and renewal of licences and other authorities.
 5. Consider systems for performance management of licence holders including the introduction of a demerit points and/or a rating system as part of the existing disciplinary regime.
 6. Assess the appropriateness of continuing the owner-builder permit regime in its current form having regard to the potential for corrupt or illegal activity in relation to that regime.
 7. Consider National Competition Policy principles and mutual recognition issues

Issues such as home warranty insurance, workplace relations, security of payment, dispute resolution, the approval, design and inspection of building work, taxation or workers compensation arrangements, land development issues and responsibility for the administration of the builder licensing system are outside the scope of this Review.

Review Process

The Review shall consult with and take submissions from key interest groups including service providers, industry and consumer organisations, homeowners, owner-builders and other interested parties. The Review is to release an issues paper, which seeks submissions from interested parties on the key issues to be examined and produce a final report.

The Review should take into account any substantive inquiries, reports, studies or developments in New South Wales or elsewhere as well as contemporary licensing regimes operating in jurisdictions of comparable size to New South Wales that may help in the provision of advice and recommendations.

EXECUTIVE SUMMARY

For the majority of consumers, the purchase or construction of a home is the most significant financial decision they will undertake. In order to provide some guidance and assistance to consumers, the licensing of builders in New South Wales commenced on 3 April 1972 under the *Builders Licensing Act 1971*. Licensing of trade contractors (such as carpenters and bricklayers but not electricians and plumbers) commenced in 1977 under the same legislation.

While the nature of the home building industry has changed dramatically since the introduction of builders' licensing in 1972, the basic principles of licensing have remained unchanged in relation to work which licensing applies, the entities required to be licensed and the entry criteria. Developments on a national level in relation to mutual recognition and the development of national training packages underline the timeliness of this Review.

In addressing the Terms of Reference outlined by the Minister, the Reviewers have sought to identify the issues that affect industry and consumers and outline options for addressing these issues. In formulating these options, the Reviewers have attempted to outline a clear logical path for home building licensing by focussing on licensing objectives and reducing duplication and unnecessary costs for industry and consumers.

By outlining a range of options in relation to each issue and Term of Reference, the Review is seeking to gather a range of opinions from industry, consumers and other interested parties.

List of Issues and Options

Coverage of licensing (page 14)

Issue:

The coverage of each trade and occupation in the home building industry by a uniform licensing regime may be restrictive and may add costs to the home building industry and in turn to the consumer. While licensing may be appropriate for some trades and occupations, there may be scope for other trades to be subject to lighter forms of regulation (such as registration or accreditation by industry bodies) in order to reduce some costs without compromising consumer protection.

Options:

1. Retain present system - licensing covers all trades and occupations engaged in 'residential building work'.
2. Apply different regulatory responses based on risk - Only areas which pose a significant risk to consumers would be subject to the most restrictive level of regulation, such as licensing. Areas which do not pose as great a risk could be subject to lighter forms of regulation, such as accreditation or registration by industry bodies, or no regulation.
3. Remove licensing - all licensing requirements would be removed, but consumer protection measures such as dispute resolution and redress through the Tribunal would be retained.

Monetary Threshold (page 14)**Issue:**

Costs to consumers may be minimised by identifying an appropriate financial threshold for the requirement for licensing while retaining other forms of redress for the consumer that are more appropriate for problems with low value work, such as access to inexpensive dispute resolution.

Options:

1. Retain present system - Retain the present threshold of \$1,000.
2. Remove the threshold - All persons undertaking residential building work, regardless of the value, would be required to be licensed.
3. Raise the threshold - Raising the monetary threshold would mean that an increased range of trade work would not require a licence. The threshold is \$5,000 in Victoria and Tasmania and \$12,000 in Western Australia. When licensing commences in the Northern Territory the threshold will be set at \$12,000.

Licensing of entities (page 19)**Issues:**

1. Identifying competency - Companies and partnerships, as non-personal entities, cannot demonstrate competency. Only an individual person can demonstrate that they have the required competency, as defined by the licensing requirements, to operate in the particular industry.
2. 'Phoenix companies' - On some occasions directors of companies have avoided liabilities by winding up and re-establishing themselves under a new name and licence. The new entities are often referred to as 'Phoenix companies'.
3. Two licences to contract - The hybrid nature of the licensing system, being a combination of business and occupational licensing, has led to some practitioners paying two fees in order to be allowed to operate in the industry.

Options:

1. Retain present system - Retain the current arrangements whereby contractor licensing is a hybrid between occupational licensing and business licensing.
2. Limit business licensing to companies with a capital base over \$500,000 - Only license corporations if their capital base is above \$500,000.
3. Only license individuals - Companies and partnerships and other business arrangements could continue to operate in the industry provided that a director of the company or one of the partners in a partnership has an occupational licence.

Alignment of builder licence categories with the Building Code of Australia (page 24)**Issue:**

The 'general building work' category of licence in NSW does not take into account the different levels of complexity involved with the construction of different buildings.

Options:

1. Retain present system - Retention of the status quo whereby a 'general building work' licence is issued to all builders but the types of work that a builder can undertake (e.g. single storey, multi-storey) is regulated through the conditions imposed on their licence or the

market.

2. Alignment of licence categories to complexity of the work - Align the types of licences that are issued in the building category to the complexity of the work. A method which has been employed in other jurisdictions has been to align licence categories to the classes of buildings in the Building Code of Australia, with the addition of a height restriction.

Licensing of persons who do not contract with a homeowner (page 27)

Issue:

In any dispute over residential building work, the homeowner can only pursue the principal contractor (the person who has signed the contract with the homeowner) for a remedy. Therefore, from a consumer protection viewpoint, there is minimal justification for subcontractors to be licensed and some cost savings may be achieved.

Options

1. Retain present system – Retain the present system where a subcontractor must possess a contractor licence to do residential building work.
2. Remove requirements for subcontractors to be licensed - Only persons who sign contracts directly with homeowners would have to be licensed.
3. Licensing based on risk - If the coverage of licensing is limited to areas of significant risk, subcontractors working in these categories would still have to be licensed. This would be similar to the situation that applies in relation to the specialist trades.

Whether licensing should apply to the broader construction industry (page 30)

Issues:

1. Given the movement of builders between the commercial and residential sectors, and the fact that all Australian jurisdictions, other than the Northern Territory, license commercial builders, it may be useful to consider whether there is some utility in requiring commercial builders to be under the same regulatory regime as the residential building sector. This could increase compliance by individuals and entities who move across industry sectors and would bring NSW into line with most other Australian jurisdictions.
2. It can be argued that multi-unit and high-rise residential developments are in essence commercial in nature, being built for unidentified users and for profit. As such, partial regulation through licensing already operates in the commercial sector.

Options:

1. Retain present system - Retain current arrangements whereby licensing of building contractors is restricted to the residential building sector and specialist work.
2. Licensing system apply to all builders - Licensing, as a way to ensure better performance by building practitioners, would apply to all builders regardless of the sector in which they operate.

Adequacy of entry requirements for a licence (page 32)

The Council of Australian Governments (COAG) has reached agreement on measures to implement full mutual recognition of skills qualifications across all States and Territories. These new measures will enable people with trade qualifications to move more freely around Australia without undergoing additional testing and registration processes. Initially governments will work

with employers and unions to put in place more effective mutual recognition arrangements across States and Territories for electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters and joiners and bricklayers (skills shortage trades) by June 2007 and by December 2008 for all licensed occupations where people normally receive certificates and diplomas.

The Review considers that COAG's agreement on measures to implement full mutual recognition of skills qualifications across all States and Territories overlaps significantly with this Term of Reference. Given that the NSW Government has agreed to implement these measures, the Issues Paper does not suggest any reform options. However, the Review would welcome any comments that stakeholders may have on either the discussion outlined above, or the COAG measures in relation to this issue. Submissions received by the Review on this particular issue will be forwarded to COAG.

Appropriateness of existing legislative conditions on licences (page 35)

Issues:

Conditions limiting work

1. The concept that a licence can be tailored to an individual's skills means that the licence applicant is not required to meet an externally established standard.
2. The use of conditions to define permitted work, places a greater burden on a consumer to check detail about a prospective contractor and for the consumer to make enquiries about the interpretation of the condition.
3. The proliferation of licences restricted through the use of conditions jeopardises mutual recognition objectives because the conditions are individual and do not correspond to an external standard.

Period of authority

4. Licences and certificates that are issued by the licensing authority are not consistent because the period that they remain valid differs, for example, contractor licences are issued for a period of one year while tradespersons' certificates and supervisors' certificates are issued for a period of three years.

Options

Conditions limiting work

1. Retain the present system - Under the present system some licences are issued with conditions that restrict the licensee in the type of work they are allowed to undertake.
2. No conditions limiting work - Licences would only be subject to the general conditions contained in the Regulation or imposed following disciplinary processes. A transition plan would be required to bring existing holders to the standard and if this was not possible, existing licences with conditions would need to be continued for specific holders.

Period of authority

3. Retain the present system – retain current arrangements whereby contractor licences are renewed annually.
4. Three year licences - Increase the period of the authority to three years.

Fees – structure for issue and renewal of licences (page 38)

Issues:

1. Duplication of fees in some licence categories.
2. Anomalies the fee system.

3. Small and large business enterprises pay the same annual fee.

Options:

1. Retain the present system – retain current arrangements for setting fees
2. Modify the present system - All authority holders would contribute toward the maintenance of the licensing system. Certificate holders would be charged the cost of processing their renewal and restoration applications.
3. Set fees based on size of business - Licence fees could be proportional to the size of the business. This recognises that larger businesses, who are exposed to more homeowners and have a higher potential for disputes to arise, may have a greater call on government services for resolution.

Performance management of licence holders (page 42)

Issues:

1. The existing disciplinary system is principally reactive, following complaints, while the proactive compliance regime is seen by industry as inadequate.
2. Process of complaint resolution and action against an offender can be protracted and expensive.
3. The current performance management tools are punitive and do not acknowledge or recognise good performance.
4. Effectiveness of Continuing Professional Development as a performance management tool is not measured and has been criticised by licensees for being of limited relevance, costly and of limited accessibility in rural and regional areas.

Options:

1. Retain the present system – retain current complaints-driven performance management system.
2. Institute a demerit points system - A demerit points system could be used for certain and specific breaches. Licensees would be allocated points for breaches of their licence conditions or for breaches of the Act. A licensee could face suspension or have their licence revoked if they reached a certain number of demerit points.
3. Support a consumer-driven builder rating system - A builder rating system based on structured feedback by consumers could be an effective performance management tool as an incentive to raise standards. An incentive scheme could complement the regulatory scheme to improve licensee performance. While there is a public website containing certain information about a licensee, there is currently no mechanism for capturing positive experiences with builders from clients in real time.

Owner-Builders (page 47)

Issues:

There is scope for the owner-builder regime in NSW to be improved to prevent abuses of the system. The Review has heard evidence that:

1. the owner-builder system is being used to disguise unlicensed contracting;
2. contractors who are unable to obtain home warranty insurance sometimes persuade homeowners to apply for owner-builder permits, where the value of the work exceeds \$12,000, in order to circumvent the home warranty insurance requirement;
3. some owners apply for permits under different names with the intention of building dwellings for commercial purposes and / or obtaining more than one permit in a five year period.

Options:

1. Retain the present system – retain existing arrangements allowing individuals to apply for an owner-builder permit upon completion of an approved owner-builder course.
2. Discontinue the owner-builder system.
3. Strengthening the system – enhancements could include:
 - Ensuring that the permit is issued in identical names to those shown on property title while maintaining issue in personal, not body corporate names. Enhanced identity checks to connect property ownership with applicant could also be carried out;
 - Applicants for an owner-builder permit having to sign an affidavit or other formal document acknowledging their responsibilities (such as OHS and home warranty requirements) under the owner-builder permit;
 - Making approved owner-builder courses more robust, being offered only through Registered Training Organisations, and evidence of attendance to the course mandatory; and
 - Increased compliance checks for unlicensed contracting by Fair Trading.

CONTEXT OF REVIEW

History of builder's licensing

The licensing of builders in New South Wales commenced on 3 April 1972 under the *Builders Licensing Act 1971*. Licensing of trade contractors (such as carpenters and bricklayers but not electricians and plumbers) commenced in 1977 under the same legislation.

Electricians, plumbers and gasfitters had been licensed by special industry boards, local government and energy authorities since early last century. Licensing in these trade areas was introduced as a public health and safety measure. Licensing of air conditioning and refrigeration mechanics was introduced in 1992 also as a health and safety measure. Licensing of these trades (collectively called 'specialist work') is not restricted to the residential sector and applies to all work. It is an occupational licensing regime in that it applies to all persons carrying out such work, not only to contractors.

On 1 July 1987, the Builders Licensing Board was amalgamated with the Plumbers, Gasfitters and Drainers Board to form the Building Services Corporation. In 1989, the Corporation also assumed responsibility for the licensing of electrical contractors and electrical mechanics which had been undertaken by the Department of Minerals and Energy. The licensing provisions are now contained in the *Home Building Act 1989*.

In October 1995, the Building Services Corporation was amalgamated with the Department of Consumer Affairs, Office of Real Estate Services and Registry of Co-operatives to form the Department of Fair Trading. The Office of Fair Trading, which is now part of the Department of Commerce, currently has responsibility for the administration of the *Home Building Act* including the licensing provisions. The Home Building Service was established in February 2003 within the Office of Fair Trading to undertake this role.

As at 28 February 2005 there were about 170,000 individuals, partnerships and corporations holding current licences and certificates under the *Home Building Act 1989*. This includes about 120,000 current contractor licence holders.

Snapshot of the current home building industry

The nature of the home building industry has changed dramatically since the introduction of the licensing of builders in 1972. During the intervening 34 year period till the present time, there have been some changes to the licensing regime, but the basic requirements of licensing have remained unchanged in relation to work to which licensing applies, the entities that have to be licensed, and the entry criteria. The report of a review of licensing undertaken in accordance with the National Competition Principles Agreement in 1998 supported the retention of licensing, did not examine the basic requirements of licensing in detail.

An example of the change in the industry is the engagement of trade workers by builders on a sub-contract basis rather than as employees. In recent times those trade contractors sub-contracting work from builders have themselves engaged workers on a sub-contract basis. This has seen a substantial increase in the numbers individuals and entities that require a contractor licence. The number of licences and certificates has increased from 16,000 issued by the Builders Licensing Board in 1973 to the current level of 170,000.

The NSW residential building market represents approximately 21 to 23 per cent of Australia's residential building activity. New South Wales has more residential building activity than any other State or Territory.¹

Most of the new housing will be provided in the form of multi-unit dwellings. In 2002 the Department of Planning estimated that in the five years (to 2007), 66 percent of forecast new dwellings in the Sydney Region would be multi-unit residential buildings and 86% of these would be in the inner and middle ring areas of Sydney.² Housing demand in the Sydney Region is driven by two key factors, population growth and decreased household size.³

National perspective

Every State has a form of licensing in the building area although there are significant differences between them and these are referred to throughout the Paper. In general terms the differing licensing systems between States makes it difficult for builders and tradespeople to move easily between jurisdictions in search of work. Mutual recognition, where a person holding an occupational licence or registration in one state/territory is entitled to an equivalent licence or registration in another state/territory, on lodgement of the proper notification fee, assists to some degree but workforce mobility would benefit from the harmonisation of licensing regimes in all states.

Additionally, while there are nationally agreed standards in the vocational education and training sector, these standards are also not yet uniformly in use. This may mean that a carpenter qualified (but not licensed) in the ACT may need to undertake additional qualification requirements before they can obtain a licence in NSW.

The Council of Australian Governments (COAG) has reached agreement on a package of measures designed to underpin a new genuinely national approach to apprenticeships, training and skills recognition and alleviate skill shortages currently evident in some parts of the economy. Key initiatives which will impact on this Review include more effective mutual recognition arrangements across States and Territories, implementing a new streamlined and robust off-shore skills assessment process and a set of measures to encourage the take-up and completion of apprenticeships in skill shortage trades.

COAG has agreed that governments will work with employers and unions to put in place more effective mutual recognition arrangements across States and Territories for electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters, joiners and bricklayers (skills shortage trades) by June 2007, and by December 2008 for all licensed occupations where people normally receive certificates and diplomas.

Further details on the COAG agreement can be found on the COAG website at <http://www.coag.gov.au/>.

Consumer views on licensing (focus groups)

In order to gather information on consumer needs and expectations, an independent agency conducted focus groups with consumers who had been through or were going through residential building work or who were considering or about to engage a contractor to perform building work.

The key findings of this qualitative research were:

1 NSW Home warranty Insurance Inquiry Report Final report 30 September 2003 pg 15

2 Managing Sydney's Urban Growth Residential Forecasts – Data Book 2002 Department of Planning pg 7

3 As above, pg 6

- that “consumers are strongly wedded to the value of the licensing system”.⁴
- “licensing gives consumers an assurance that there are standards, a good minimum quality in the industry overall” and “signifies a level of protection to the consumer.”⁵

Participants in the groups suggested that consumers are “reassured by the presence of licences and would not like to see them removed.” Widespread abolition of licences (considered for discussion purposes) or an increased stringency in the provision of licences were seen to be unfavourable to the industry and for consumers at large – in their view they would either lose their level of protection or their ability to afford contracted services.

Current regulatory framework

The regulatory framework provided by Fair Trading has many components. In addition to the licensing system and its associated disciplinary regime, the other components are:

- provision of advice and information through Fair Trading and other networks;
- education activities by government and industry;
- inspection of work and early dispute resolution by Fair Trading;
- accessible and inexpensive dispute resolution provided through Fair Trading and the Consumer, Trader and Tenancy Tribunal;
- building contract regulation through the *Home Building Act 1989*;
- requirement to hold private home warranty insurance where the value of the work exceeds \$12,000;
- investigation and prosecution to ensure that the legislative provisions are complied with by licensees, certificate and permit holders.

Regulations administered by other Government departments also impact on the home building industry. For example, WorkCover, for health and safety issues, the Department of Industrial Relations, for employment law, the Department of Environment and Conservation in relation to environmental laws, the Department of Planning in relation to planning laws and various local councils in relation to Local Environmental Plans and planning instruments.

Licensing in the context of this Review

A licence is defined as any form of registration including licensing, approval, admission, certification (including practicing certificates), or any other form of authorisation of a person required by or under legislation for the carrying on of any occupation.⁶ In this Paper a licence is an instrument giving permission to do something.⁷

In NSW the main licence issued under the *Home Building Act* is called a contractor licence.⁸ This Review is focussed on licensing in order to ascertain the appropriate scheme for ‘modern licensing practice’ and ‘to improve the effectiveness of licensing for all stakeholders’.⁹

Licensing is one means of recognising the capabilities of an individual or organisation to undertake certain work. Occupational licensing usually involves an individual’s qualifications/competency to carry out certain work (e.g. electrical or plumbing work). Business licensing means that the entity which is licensed possesses the necessary equipment and financial resources to complete a transaction.

⁴ *Report on Consumers’ Perceptions for the Review of Licensing in the NSW Home Building Industry* by Ipsos Australia September 2005 page 7

⁵ *Ibid* page 7

⁶ *Mutual Recognition (New South Wales) Act 1992* Schedule Mutual Recognition Bill 1992 section 4 Interpretation

⁷ Webster’s On-line Dictionary <http://www.websters-online-dictionary.org/definition/licence> 2/9/05

⁸ South Australia use the same legislation for licensing and contracts being Building Work Contractors Act 1995

⁹ Terms of Reference

Why license?

The main reason for regulating certain work or transactions is that there are risks to the consumer if an 'unqualified' person or organisation is used to undertake the work. Licensing can minimise risks by ensuring that people who perform work which is critical to the structure of the home or building have achieved a certain standard of technical skills. This work would, if done badly, have the potential to cause significant harm to people or cause costly property damage. Licensing was brought in 34 years ago to address complaints about builder bankruptcy and insolvency, poor workmanship, poor contract management by builders and failure to rectify work.¹⁰

A licence is a signal to the consumer that the holder not only has the capabilities to do the work but is a 'fit and proper' person - it saves the consumer the time and effort of ascertaining this information alone. It may also not be possible for a consumer to obtain the necessary information, such as confirmation of qualifications and experience, financial standing and criminal record.

Licensing can be an onerous regulatory option. It adds costs to business transactions which are subsequently passed onto the consumer and so it is important to apply licensing where the risks are greatest¹¹ on the assumption that the consumer does not want to have costs passed onto them where the risks are low. This is accepted modern and good regulatory practice.¹²

Minimising risk

Risks in building and home building include risks to the consumer such as non-completion of work, lack of weatherproofing and compromised structural integrity of the building. Sometimes risk may extend to third parties such as contamination of mains water supply or electrical injuries. These risks to public health and safety are the reason that an occupational licence is required for plumbing, gasfitting, electrical and air-conditioning work. In multi-unit buildings there are other risks not previously addressed. For example, poor waterproofing may affect several occupiers or residents with possible damage to electrical wiring, raising the risk of electrocution for occupants of the building.

Some general risk factors which the Review is considering include whether:

- the type of work poses a significant risk to public health and safety if it is not performed by properly qualified/trained tradespersons, for example, the 'specialist' categories such as plumbers and electricians;
- The type of work being undertaken is critical to the structure of the building;
- insolvency or incompletion of the work would leave the consumer with significant financial loss.

Ensuring that the regulatory response (such as licensing) matches the level of risk associated with the building occupation may have the potential to reduce costs and administrative procedures for the industry.

10 Report from the Select Committee of the Legislative Assembly upon the Building Industry, Part 1 Report and Minutes of the Proceedings printed 20 October 1970 page 8

11 This statement is consistent with National Competition Policy Principles.

12 Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies endorsed by Council of Australian Governments April 1995 and last amended June 2004.

TERMS OF REFERENCE IN DETAIL

Coverage of licensing

Term of Reference 1.1

Consider the coverage of licensing and assess whether the range of building activity covered by licensing is appropriate

Current situation in New South Wales

In order to perform any 'residential building work' where the cost of labour and materials is over \$1000 or any 'specialist work' in New South Wales, a person, partnership or corporation must be licensed. 'Residential building work' encompasses a wide range of activities from the construction of a dwelling to minor maintenance and cleaning. Residential building work is defined in the *Home Building Act 1989* as any work involved in, or co-ordinating or supervising:

- the construction of a dwelling, or
- the making of alterations or additions to a dwelling, or
- the repairing, renovation, decoration or protective treatment of a dwelling.

Generally, 'specialist work' is defined as:

- plumbing work, or
- gasfitting work, or
- electrical wiring work, or
- any work declared by the regulations to be refrigeration work or air-conditioning work.

An extended description of the range of building activity regulated under the *Home Building Act* is at Appendix A.

Issue

The coverage of each trade and occupation in the home building industry by a uniform licensing regime may be restrictive and may add costs to the home building industry and in turn to the consumer. While licensing may be appropriate for some trades and occupations, there may be scope for other trades to be subject to lighter forms of regulation (such as registration or accreditation by industry bodies) in order to reduce some costs without compromising consumer protection.

National Perspective

All states license residential builders and 'specialist' trades (plumbers and electricians). Victoria, Queensland and South Australia license trade categories (such as carpenters, bricklayers etc), however the range of work covered is not as wide as in NSW. Western Australia also has a Painter's Registration Board that is responsible for the registration of painters. It should be noted that the states that do license the trade categories are the larger states in terms of population and economic development reflecting that there may be more scope for unscrupulous persons to operate in these markets.

Options

Retain present system

Retain the present system where licensing covers all trades and occupations engaged in 'residential building work'.

Advantages	Disadvantages
<ul style="list-style-type: none"> Consumers have an assurance that the licensee with whom they are transacting has the knowledge or competency, as defined by the licensing requirements, to undertake the work for which they are contracted to do and that the licensee is a 'fit and proper' person. Addresses information asymmetry by performing on behalf of the consumer, the necessary checks and research required in order to engage a competent building practitioner or tradesperson, this knowledge is conveyed to the consumer through the form of a licence. Provides a system for sanctions against misleading and dishonest practices in the home building industry. 	<ul style="list-style-type: none"> Licensing creates a barrier to entry to the industry by specifying certain preconditions (qualifications or otherwise) before a person can participate in the industry. Licensing usually leads to a rise in costs for the industry due to industry participants having to conform with the regulatory requirements, obtaining the necessary qualifications, paying licence fees and complying with the Act. The present licensing situation applies uniformly and does not differentiate in its application to trades and occupations with different levels of risk.

Apply different regulatory responses based on risk

Under this option, an assessment of the risks to consumers from home building activity would be carried out and only those occupations which pose a significant risk to consumers would be subject to the most restrictive level of regulation, such as licensing. Areas which do not pose as great a risk could be subject to lighter forms of regulation, such as accreditation or registration by industry bodies, or no regulation.

Advantages	Disadvantages
<ul style="list-style-type: none"> Removes barriers to entry for certain activity. The removal of some trades and occupations from licensing may reduce transaction and compliance costs for industry participants and may lead to lower prices for consumers without significantly compromising consumer protection. Limitation of licensing to those areas of the home building industry where there is greatest risk to consumers from poor workmanship, or risk of significant financial loss, will allow compliance resources to police the licensing system more effectively and efficiently, instead of being spread across all areas of the home building industry. 	<ul style="list-style-type: none"> A greater burden rests on consumers to identify a qualified and competent practitioner, although accreditation or registration, as an alternative to licensing, may reduce that burden.

Remove licensing

Licensing is one part of the consumer protection framework for homeowners provided by the Office of Fair Trading. Under this proposal, all licensing requirements would be removed, but consumer protection measures such as dispute resolution and redress through the Tribunal would be retained.

Advantages	Disadvantages
<ul style="list-style-type: none"> Removing licensing will lead to unrestricted competition, reduce compliance and transaction costs and lead to lower prices for consumers. 	<ul style="list-style-type: none"> Removal of licensing would mean that the remaining consumer protection mechanisms are reactive (activated only in response to consumer complaints).

	<ul style="list-style-type: none">• Consumers may be inconvenienced in terms of time and money in trying to find a competent practitioner.• It relies on the market to force out incompetent or dishonest practitioners.
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Do you prefer one of these options or do you have another suggestion to make in response to this term of reference?

Monetary Threshold

Term of reference 1.2

Consider the coverage of licensing and assess whether the monetary threshold (\$1,000) for requiring residential building work to be contracted by a licence holder is appropriate

Current situation in New South Wales

Under the Home Building Regulation 2004, work on a dwelling (other than specialist work) where the reasonable market cost of the labour and materials does not exceed \$1,000 (inclusive of GST), is expressly excluded from the definition of 'residential building work' and a person, partnership or corporation is not required to be licensed to perform this work.

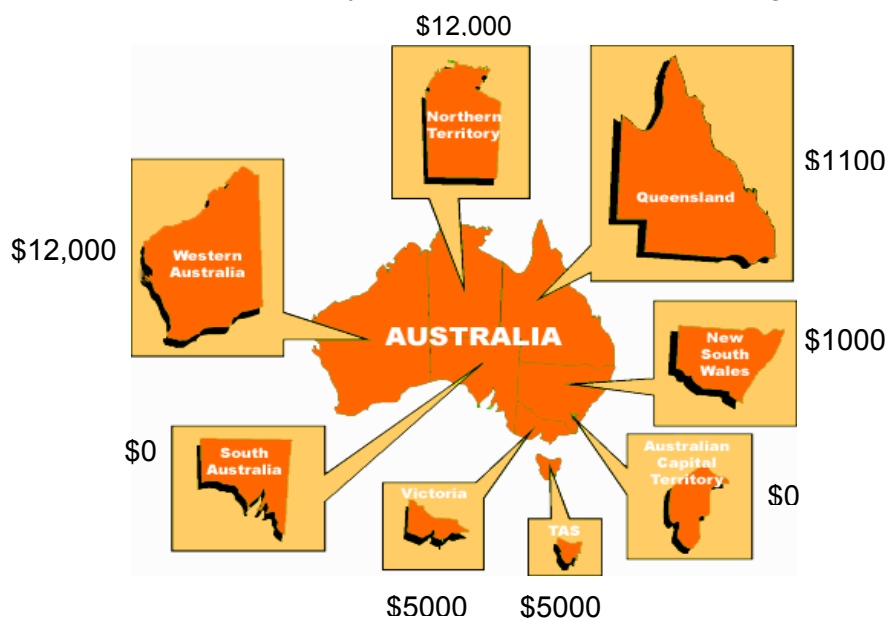
This exclusion from the licensing provisions of the *Home Building Act* was brought in to benefit homeowners and builders by reducing compliance costs and, thereby, the cost of the work for minor household jobs. The threshold was raised in 2004 from \$200 to \$1,000 so as to extend the benefit of reducing compliance costs to a wider range of work. In effect the raising of the threshold was minimised by the fact that the previous \$200 threshold included labour only while the new threshold includes the cost of labour and materials. Homeowners still have protection via access to the consumer claims division of the Consumer, Trader and Tenancy Tribunal in the event of a dispute.

Issue

Costs to consumers may be minimised by identifying an appropriate financial threshold for the requirement for licensing while retaining other forms of redress for the consumer that are more appropriate for problems with low value work, such as access to inexpensive dispute resolution.

National perspective

The map below indicates the monetary threshold above which licensing applies:



Note: the Victorian Competition and Efficiency Commission is investigating raising the threshold to \$12,000.¹³

¹³ Housing Regulation in Victoria; Building Better Outcomes Draft Report
[http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/PreliminaryandOverviewHousingDraftReport/\\$File/Preliminary%20and%20Overview%20Housing%20Draft%20Report.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/PreliminaryandOverviewHousingDraftReport/$File/Preliminary%20and%20Overview%20Housing%20Draft%20Report.pdf) 15/9/05

Options

Retain present system

Retain the present threshold of \$1,000.

Advantages	Disadvantages
<ul style="list-style-type: none"> Reduces compliance costs for low value work. Enables 'handymen' and other trades people doing low value work to operate without a licence. 	<ul style="list-style-type: none"> It may be too low, restricting unlicensed persons from carrying out small jobs valued above \$1,000. It is a barrier for qualified tradespeople in other states that have a higher threshold (such as Victoria) from working in NSW. Homeowners do not receive the protection of the Act for residential building work valued up to \$1,000.

Remove the threshold

All persons undertaking residential building, regardless of the value, would be required to be licensed.

Advantages	Disadvantages
<ul style="list-style-type: none"> All consumers, regardless of the value of work for which they engage a building practitioner to undertake, receive the protection of the <i>Home Building Act 1989</i>. Removal of the threshold may be justified if licensing is based on genuine risk, for example, the risk that an electrician might incur or cause serious injury is the same regardless of whether the job is worth \$500 or \$1,500. 	<ul style="list-style-type: none"> Increased compliance costs for industry practitioners and thereby the cost of the work. Increased costs may be passed on to consumers.

Raise the threshold

Raising the threshold would mean that an increased range of trade work would not require a licence. The threshold is \$5,000 in Victoria and Tasmania and \$12,000 in Western Australia. When licensing commences in the Northern Territory the threshold will be set at \$12,000.

Advantages	Disadvantages
<ul style="list-style-type: none"> Raising the threshold would open up the industry to greater competition from unlicensed practitioners, reduce regulatory and compliance costs and provide greater choice and lower costs for consumers. Tradespeople from Victoria and ACT would not be restricted from working in NSW on jobs valued below the threshold. 	<ul style="list-style-type: none"> Depending on the level to which the threshold is raised, a significant number of practitioners in the home building industry may not need to be licensed. This would mean that a significant number of consumers who undertake residential building work would not receive the protection of the Act nor guidance in the choice of contractor. May further encourage the practice of contract splitting to avoid legal requirements in relation to licensing and home warranty insurance.

Do you prefer one of these options or do you have another suggestion to make in response to this term of reference?

Licensing of entities

Term of reference 1.3

Consider the coverage of licensing and assess whether the discrete licensing of individual, partnership and corporate entities is appropriate

Current situation in New South Wales

The licensing system in NSW is a combination between an occupational licensing system and a business licensing system. Occupational licensing usually involves an individual's qualifications/competency to carry out certain work while business licensing means that the entity which is licensed possesses the necessary equipment and financial resources to complete a transaction.

Business licensing in NSW is typified by the contractor licence. The applicant for a contractor licence does not have to possess the necessary competency or qualifications to undertake the work but can employ someone with the required qualifications to supervise or undertake the work.

Occupational licensing applies in the specialist trades in NSW. Applicants that wish to operate in the specialist trades are required to possess the necessary competency or qualifications to undertake or supervise the work. If a person in the specialist trades also wants to contract directly with consumers then they must also possess a contractor licence.

In NSW a licence can be issued to an individual, a partnership or a company. If a licence is issued to either a partnership or a company, the partnership or company must employ a person holding a qualified supervisor certificate to supervise the work that is being carried out. In 1984 the number of licences issued to companies and partnerships for that year represented 8% and 3% respectively of the 6,501 contractor licences issued. The number of licences issued to companies and partnerships has steadily increased and in 2005 companies and partnerships represented 22% and 10% respectively of the 6,910 contractor licences issued.

Under the *Home Building Act 1989* the following licences, certificates or permits are available in order to undertake specialist work or residential building work.

1. **Contractor Licence:** This allows the holder, being an individual, a corporation or partnership, to contract, sub-contract and advertise for work. If issued to an individual with the required competency and experience (called an endorsed contractor licence), it also allows the holder to supervise as well as carry out work in the category or categories for which the licence is issued. A company or partnership can be issued a contractor licence as long as they employ a person holding a qualified supervisor certificate to supervise the residential building work carried out by the company. A contractor licence is defined as a 'business licence' because the holder is not required to hold a particular qualification to gain a licence. The holder is able to employ a person with the relevant qualifications to undertake or supervise work.
2. **Qualified Supervisor Certificate:** This allows the holder to supervise and carry out work as an employee, partner or director, in the category or categories for which it has been issued. A qualified supervisor certificate can only be issued to an individual. The holder cannot contract in their own right.

3. **Tradesperson Certificate:** Tradesperson certificates are required for 'specialist' work categories, generally for plumbing and gasfitting. This certificate allows the holder to carry out work in the category or categories for which the certificate is issued, as an employee under the supervision of an endorsed contractor licence or supervisor certificate holder. The certificate can only be issued to an individual.
4. **Building Consultancy Licence:** A building consultancy licence allows the holder to make pre-purchase visual inspections of dwellings and report on their condition, excluding pest inspections and inspections of specialist work. Individuals, companies and partnerships can hold a building consultancy licence. A company or a partnership must have at least one director, partner or full-time employee who is the holder of a consultancy licence in order to operate.
5. **Owner-builder Permit:** This allows the holder to carry out residential building work (except for 'specialist work') on, or to organise the carrying out of work on, a residential property which they own or in which they have a 'prescribed interest' (e.g. by being a share holder of a corporation which owns the property). Owner-builder permits are only issued to individuals. At the time of application the holder must also intend to reside in the dwelling.

Issues

Identifying competency

Licensing is perceived by the public as giving some form of assurance that the licensee has the relevant skills for the kind of work they are licensed to do. Companies and partnerships, as non-personal entities, cannot demonstrate competency. Only an individual person can demonstrate that they have the required competency, as defined by the licensing requirements, to operate in the particular industry.

'Phoenix companies'

On some occasions directors of companies have avoided liabilities by winding up and re-establishing themselves under a new name and licence. The new entities are often referred to as 'Phoenix companies'. With business licensing, because the corporate entity holds the licence rather than the individual, it can be difficult to identify that, behind a such a new corporate licence applicant or holder, are individuals who were associated with a failed company.

A feature of phoenix company activity in the residential sector in New South Wales from a licensing perspective has been the practice of making application for, and being issued, a licence in the name of the new corporate entity prior to the existing company becoming insolvent. This has allowed directors to 'truthfully' answer questions about their past involvement with companies that have gone into liquidation and 'legalised' the operation of the new entity. This practice has been addressed by provisions contained the *Home Building Amendment Act 2004* which commenced on 29 April 2005 however the measures are designed to prevent those involved in fraudulent phoenix company activity from participating again in the industry. It does not significantly prevent the activity occurring in the first place.

The Cole Royal Commission into the Building and Construction Industry heard from the Australian Taxation Office about the vulnerability of this industry to the problem.¹⁴ A recent

¹⁴ Cole Royal Commission into the Building and Construction Industry at page 133 identified that the particular characteristics of the industry which make it particularly vulnerable include:

- Much of the work for subcontractors in the trades in which phoenix company activity is prevalent is short term on particular projects. Subcontractors may not have adequate staff on hand when rapid expansion of the company requires more administrative staff to cope with the management of a larger business.

article in the *Business Review Weekly*¹⁵ magazine highlighted a consensus among insolvency practitioners, the Australian Securities and Investment Commission (ASIC) and the Australian Taxation Office (ATO) that this practice is becoming more prevalent, in part due to the slowing activity in the building and construction and property industries. A particularly insidious effect of operators who do not intend to honour liabilities is they undercut prices and ‘have a huge commercial advantage over their competitors’¹⁶ because they plan to not pay their suppliers.

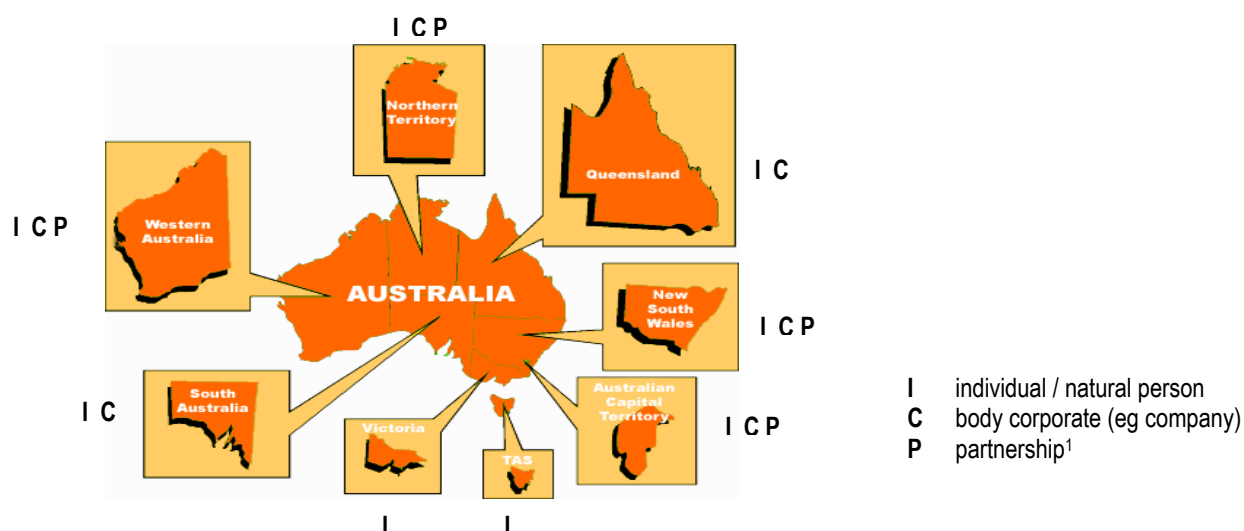
Two licences to contract

The hybrid nature of the licensing system, being a combination of business and occupational licensing, has led to some practitioners paying two fees in order to be allowed to operate in the industry. For example, a holder of a qualified supervisor certificate pays a fee to obtain this certificate in order to supervise and/or carry out specialist work without supervision. However, where the person actually contracts work themselves through a partnership structure, the partnership, being a separate trading entity, would also have to have a contractor licence to enable it to contract, sub-contract and advertise for work.

National Perspective

In those jurisdictions that allow a company or partnership to be licensed, the company or partnership must have at least one nominee who is eligible for the relevant class of licence. The nominee may be a director, partner or employee. The nominee must ensure the supervision of the organisation’s construction services.

The map below indicates the entities to which the different Australian States issue a licence for building work.



- Subcontractors face pressure to undercut rivals when quoting for jobs. This can result in cash flow problems which lead to the subcontractor avoiding contractual obligations and other debts, such as group tax.
- Not all trades are required to be licensed, or there may be no requirement for adequate business skills and financial backing as a condition of licensing.
- There are a large number of subcontractors that are incorporated entities but they are often small and not well organised or experienced in terms of dealing with their corporate responsibilities or their employees’ entitlements.
- Subcontracting companies often have very few assets - usually small amounts of plant and equipment and vehicles which depreciate.

¹⁵ ‘Phoenix companies keep rising’ *Business Review Weekly* 2 June 2005

¹⁶ ‘Phoenix Operation’ *Business Review Weekly* 7 – 13 July 2005

Options

Retain present system

Retain the current arrangements whereby contractor licensing is a hybrid between occupational licensing and business licensing.

Advantages	Disadvantages
<ul style="list-style-type: none"> Minimal disruption to industry. The residential building sector has undergone significant changes since licensing was introduced with a move by many licensees toward structuring their practice as a corporation. In addition, the inability of sole traders to obtain home warranty insurance has led to some sole traders forming partnerships in order to increase business equity and assets. 	<ul style="list-style-type: none"> A corporate entity is unable to demonstrate competency. Only individuals can demonstrate competency. Business licensing satisfies this requirement by requiring a company or partnership to employ a qualified supervisor. However, a qualified supervisor is only an employee and can leave the company or be dismissed, leaving the company or partnership in the position of having to cease trading until a new qualified supervisor can be found, or trade illegally. The conditions for 'phoenix company' activity to occur remains unchanged; The current hybrid nature of licensing means that some practitioners, when using a corporate structure or partnership, need two licences to operate.

Limit business licensing to companies with a capital base over \$500,000

In response to the problem of phoenix companies, the New South Wales Home Warranty Insurance Inquiry considered that there was merit in only licensing corporations if their capital base is above \$500,000.¹⁷

Advantages	Disadvantages
<ul style="list-style-type: none"> May reduce 'phoenix company' activity because licensing would be restricted to companies with a large capital base. Evidence heard by the Cole Royal Commission highlighted the fact that a feature of phoenix company activity is the lack of assets controlled directly by the company that is eventually liquidated or wound up; Large building companies whose directors may have valuable business skills but not technical building skills can still participate in the industry. 	<ul style="list-style-type: none"> This practice may be discriminatory to smaller companies which make up the majority of company licence holders. Partnerships would no longer be eligible to hold a licence as a partnership is itself not a legal entity with any capital base.

Only license individuals

Under this option, companies and partnerships and other business arrangements could continue to operate in the industry provided that a director of the company or one of the partners in a partnership has an occupational licence.

¹⁷ NSW Home Warranty Insurance Inquiry Final Report September 2003 pg 71

Advantages	Disadvantages
<ul style="list-style-type: none">• Ability to identify competency in the licence holder. Consumers can be assured that the licensee has demonstrated that they have some form of competency or experience, as defined by the licensing requirements.• Restricts phoenix company activity by locating responsibility with an individual. If a licensee operates through a corporate structure the licensee has an interest in ensuring that the company behaves responsibly or they may face disciplinary action from the authorities. It also makes it easier to identify licensees who are involved in phoenix company activity and restrict them re-entering the industry.• Does not prevent a company from operating in the industry but makes the individual holding the licence directly responsible for the performance of the company.	<ul style="list-style-type: none">• It may deter genuine business people, who have innovative ideas and business skills, but not the technical competency as defined by the licensing requirements, from participating in the industry.

Do you prefer one of these options or do you have another suggestion to make in response to this term of reference?

Alignment of builder licence categories with BCA

Term of Reference 1.4

Consider the coverage of licensing and assess whether licence categories should be aligned with building types such as those referred to in the Building Code of Australia (e.g. low, medium and high-rise)

Current situation in New South Wales

The Home Building Regulation 2004 prescribes 28 categories of residential building work for which a licence can be issued. These categories include 'general building work' and the sub-trades, which include occupations such as carpentry, bricklaying, painting and excavating.

The licence category of 'general building work' is not graded or tiered to take into account the skill level, qualifications or experience of the builder. However, the *Home Building Act* allows the Director-General to impose conditions on licences, such as limiting the type or value of work that a licensee is allowed to undertake. This provision has been used to issue builder licences where the licensee is restricted to constructing single storey dwellings and some licences where the builder is restricted to constructing dwellings that do not exceed two storeys in height.

In 2002 a Joint Parliamentary Inquiry, chaired by David Campbell MP, established to look into the quality of building standards in NSW (the Campbell Inquiry), noted that the rise of multi-unit residential buildings, as a more complex form of development than single dwellings, may require the need to distinguish between novice and experienced builders. While the Campbell Inquiry did not present any evidence of harm resulting from the current general building work category, it recommended that the categories of licences be aligned with building types, such as low, medium and high rise buildings.¹⁸

Building Code of Australia

The Building Code of Australia (BCA) classifications are listed in the table below.

BCA classification	Types of buildings
Class 1a	<ul style="list-style-type: none"> Free standing or attached (side by side) single dwellings and additions Small boarding houses, guest houses
Class 1b	
Class 2	Residential flat buildings
Class 3	Residential portions of buildings – hotel motels hospitals
Class 4	Separate residences within a different building class eg caretaker flat
Class 5	Office/Commercial premises
Class 6	Retail/Shop premises
Class 7	Warehouses and car parks
Class 8	Factories and car parks
Class 9a	Hospitals, nursing homes
Class 10a	<ul style="list-style-type: none"> Garages, carports, sheds Swimming pool, fences, retaining walls
Class 10b	

Issue

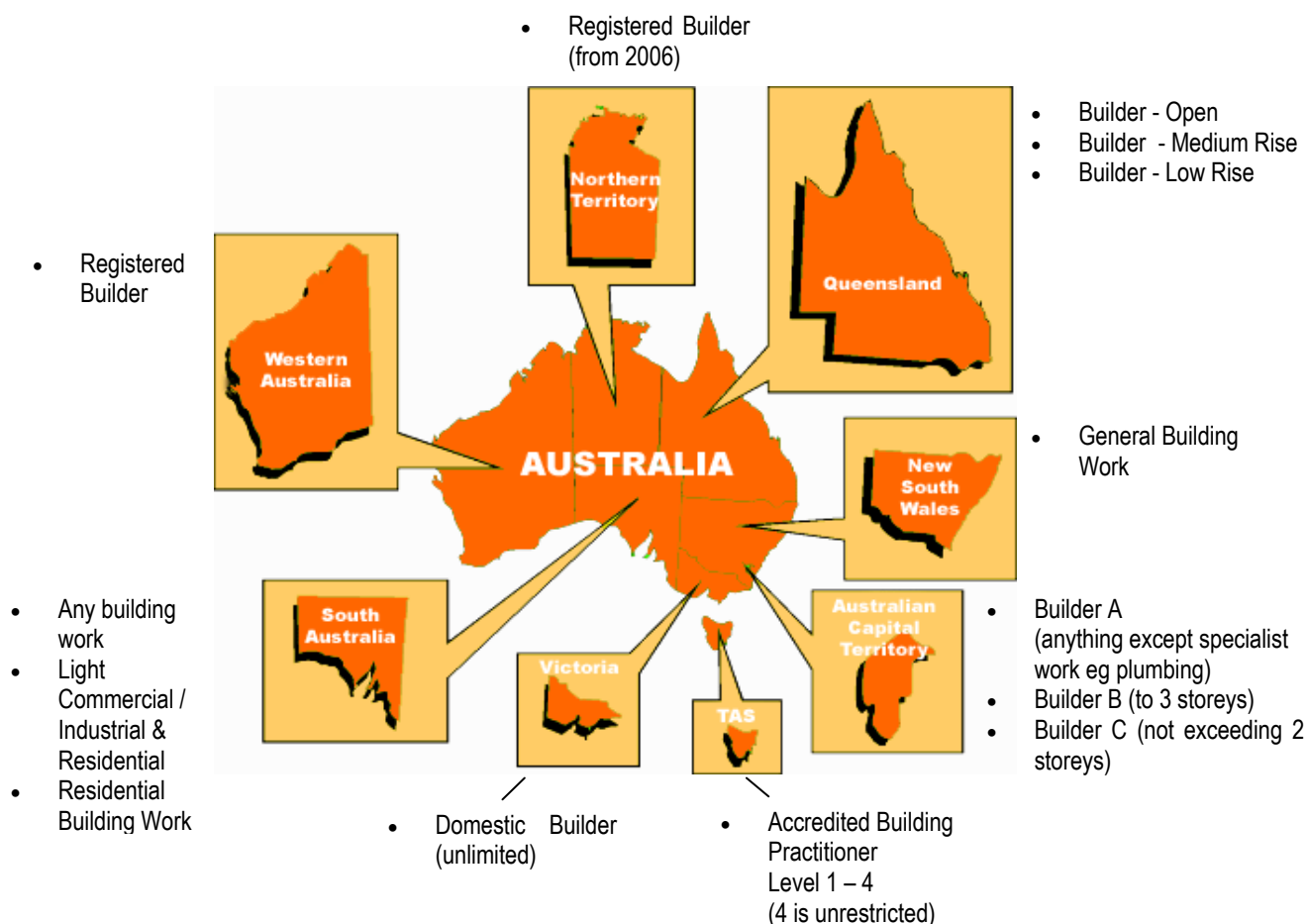
The 'general building work' category of licence in NSW does not take into account the different levels of complexity involved with the construction of different buildings. Under the present licensing system, unless there is a condition imposed on their licence, a novice builder is not restricted from working on more complex building types, such as a two storey construction with parking below that may require a higher level of authority requirements and management of trades, or a high rise residential development where construction of fire-

¹⁸ *Report upon the Quality of Buildings*, Joint Select Committee on the Quality of Buildings, July 2002, Recommendation 5, p.41.

rated and sound attenuating partitions, fire separation between levels, waterproofing of external envelope, hydraulic and active fire safety systems, are required.

National Perspective

Builder licences are graded with reference to the BCA in Tasmania, ACT and Queensland. In South Australia and Victoria, licences are aligned with sectors, such as residential, industrial and commercial. South Australia also issues a licence which allows a builder to operate in all sectors.



In Tasmania, Queensland and ACT, licences are graded according to the building types contained in the BCA with an additional height restriction. For example, in Tasmania, accredited building practitioners' licences are graded from Level 1 to Level 4, with Level 4 being the highest category of accreditation (unrestricted). The lower accredited building practitioner levels impose a restriction on the scope of work that the practitioner is accredited to perform. For example, Builder – Domestic (ABP Level 1) will be restricted to Class 1 & 10 buildings and Class 2 buildings up to 2 storeys in height.

Options

Retain present system

Retention of the present system whereby a 'general building work' licence is issued to all builders but the types of work that a builder can undertake (e.g. single storey, multi-storey) is regulated through the conditions imposed on their licence or the market.

Advantages	Disadvantages
<ul style="list-style-type: none"> The use of conditions allows the licensing authority flexibility to issue licences with restrictions that are more stringent than the building types referred to in the BCA or tailored to the particular case of the licence applicant and the locality in which they work, such as in rural or regional areas. The market regulates the work of the builder. 	<ul style="list-style-type: none"> Restrictions which are placed on licensees are at the discretion of the licensing authority and the basis on which they are imposed is not transparent. This may lead to uncertainty within the industry as to what is the requirement for a licence. Inconvenience for the consumer as they cannot be certain that the builder possesses the skills for the job. The use of conditions on a licence to restrict the type of work a licensee may undertake is discretionary and so may not be imposed in all appropriate situations.

Alignment of licence categories to complexity of the work

Align the types of licences that are issued in the building category to the complexity of the work. A method which has been employed in other jurisdictions has been to align licence categories to the classes of buildings in the Building Code of Australia, with the addition of a height restriction.

Advantages	Disadvantages
<ul style="list-style-type: none"> May ensure that consumers engage (or at least have the choice to engage) the most appropriately qualified builder for their needs. Therefore if a consumer wants to build a house that is quite complex, they would have a better guide as to which builder is actually qualified to undertake such work. By prescribing specific grades of licence categories, the basis on which such licences can be issued is transparent and allows the licensing authority to issue clear guidelines for the attainment of such licences. This would remove the ad hoc restriction on some licensees which are currently imposed by the licensing authority in NSW. 	<ul style="list-style-type: none"> Creation of graded licensing for builders will introduce further restrictions into the industry and may lead to higher prices within the building industry. The Review has not heard any evidence suggesting that this is a major issue for the industry.

Do you prefer one of these options or do you have another suggestion to make in response to this term of reference?

Licensing of persons who do not contract with a homeowner

Term of Reference 1.5

Consider the coverage of licensing and assess whether the licensing of persons not contracting directly with homeowners is appropriate

Current situation in New South Wales

In New South Wales a contractor licence is required if an individual, a corporation, or partnership contracts, sub-contracts and advertises for residential building work.

At all times the principal contractor and the homeowner are responsible for ensuring that the terms and conditions of the contract are met. If a subcontractor does not meet the terms of their contract with the principal contractor, the remedy is separate and does not involve the homeowner. The terms of contract between the principal and sub contractor are exempt from provisions of the *Home Building Act*.¹⁹

The structure of business operations has altered so that many trade workers are now engaged on a subcontract basis rather than as employees. There are a number of reasons for this change including:

- an increased pressure on firms to cut costs - the cyclical nature of industry and sequential nature of production means that substantial cost savings can be made by engaging subcontractors (savings are made on workers compensation, holiday pay etc) instead of directly employing a workforce.
- a move by firms to shift activity away from undertaking actual construction work with their own directly employed labour to coordinating the construction process; and
- legitimate tax minimisation reasons.

Issue

In any dispute over residential building work, the homeowner can only pursue the principal contractor (the person who has signed the contract with the homeowner) for a remedy. Therefore, from a consumer protection viewpoint, there is minimal justification for subcontractors to be licensed and some cost savings may be achieved. Some trades (especially the specialist trades) contract directly with consumers as well as working under a subcontract with a builder. In such cases the trade operator would require a licence to contract.

National perspective

Licensing of subcontractors



¹⁹ Home Building Regulation 2004 exempts contracts which are subordinate to a principal contract in clauses 15(a), 16(a) and 17(a).

Options

Retain present system

Under the present system a subcontractor must possess a contractor licence to do residential building work.

Advantages	Disadvantages
<ul style="list-style-type: none"> The licensing of subcontractors ensures that persons doing residential building work have the necessary knowledge or competency, as defined by the licensing requirements, to undertake the work. The requirement that subcontractors be licensed may increase the likelihood that a job will be completed satisfactorily, lessening the potential for disputes to arise in the first place. The disciplinary regime which comes from licensing means that a builder and subcontractor can reciprocally use the dispute resolution services provided under the Act for disputes. 	<ul style="list-style-type: none"> The addition of costs to the industry by requiring tradesmen who only work subcontractors to be licensed may not be justified by the benefit, especially if consumers can only seek remedies for poor workmanship against the principal contractor and not the subcontractor. Prosecution or disciplinary action against subcontractors is rarely pursued as it is reported that builders are reluctant to complain to the regulator.

Remove requirements for subcontractors to be licensed

Under this option, only persons who sign contracts directly with homeowners would have to be licensed.

Advantages	Disadvantages
<ul style="list-style-type: none"> Removal of the requirement for subcontractors to be licensed may reduce costs in the industry without significantly compromising consumer protection. The principal contractor has a choice in using licensed or unlicensed persons as subcontractors, accepting responsibility for their work as is presently the case. 	<ul style="list-style-type: none"> The requirement of a licence forces persons who wish to participate in the industry as subcontractors to obtain qualifications. Removal of licensing for subcontractors may lead to lower costs but a less skilled workforce. May encourage illegal work as those subcontractors may on occasion contract directly with homeowners (e.g. weekend work) and may choose not to obtain a licence.

Licensing based on risk

If the coverage of licensing is limited to areas of significant risk, subcontractors working in such categories would still have to be licensed. This would be similar to the situation that applies in relation to the specialist trades.

Advantages	Disadvantages
<ul style="list-style-type: none"> Takes into account the risk factors of the particular trade or occupation and tries to minimise them at all stages of the building work. 	<ul style="list-style-type: none"> The cost benefit of de-licensing subcontractors is not realised for these trades and occupations. Risk level may depend on the circumstances of a specific job rather than a generic definition. Categorising and defining risk areas for this

Advantages	Disadvantages
	purpose would be complex and may be potentially restrictive without commensurate benefit.

Do you prefer one of these options or do you have another suggestion to make in response to this term of reference?

Whether licensing should apply to the broader construction industry

Term of Reference 1.6

Consider the coverage of licensing and assess whether licensing should apply to the broader construction industry

Current situation in New South Wales

Licensing in NSW only applies to residential building work and to specialist work in any sector. When licensing was introduced, the Government did not deem that it was necessary to license all builders as it was considered that clients of builders of non-residential projects, who may be advised by solicitors, architects, quantity surveyors and engineers, are capable of protecting their own interests.

The broader non-residential construction sector remains regulated by other Government departments in relation to occupational health and safety, planning laws, environmental laws, industrial relations, long service payments and security of payments. Due to the nature, scale, and high profile of some commercial developments, the activities of the commercial building sector are often under closer scrutiny by Government departments, local councils, and unions in relation to these matters.

The cyclical nature of the construction industry also means that many builders are licensed under the *Home Building Act 1989* and move between the residential and commercial building sectors as work opportunities dictate.

Issue

Given the movement of builders between the commercial and residential sectors, and the fact that all Australian jurisdictions, other than the Northern Territory, license commercial builders, it may be useful to consider whether there is some utility in requiring commercial builders to be under the same regulatory regime as the residential building sector. This could increase compliance by individuals and entities who move across industry sectors and would bring NSW into line with most other Australian jurisdictions.

It can be argued that multi-unit and high-rise residential developments are in essence commercial in nature, being built for unidentified users and for profit. As such, partial regulation through licensing already operates in the commercial sector.

National perspective

The licensing schemes of every other Australian State, except the Northern Territory, applies to all builders regardless of the sector in which they work. The Northern Territory licensing scheme, which commences in 2006, will only apply to residential builders.

Options

Retain present system

Retain current arrangements whereby licensing of building contractors is restricted to the residential building sector and specialist work.

Advantages	Disadvantages
<ul style="list-style-type: none"> Cost structure remains unaffected for the commercial sector as the costs of the compliance and regulatory regimes associated with licensing would not be passed onto the commercial sector. 	<ul style="list-style-type: none"> While larger commercial enterprises may be able to protect their own interests, some smaller commercial operations may not have the same access to professional advice nor the resources to adequately protect their interest.

Licensing system apply to all builders

This option is based on the argument that licensing, as a way to ensure better performance by building practitioners, should apply to all builders regardless of the sector in which they operate.

Advantages	Disadvantages
<ul style="list-style-type: none"> Allows the licensing authority to set the standards for all builders, regardless of which sector they operate in, ensuring certain standards for the built environment. 	<ul style="list-style-type: none"> Licensing the commercial sector will impose an additional layer of regulation and cost on builders who do not undertake any mix of residential and non-residential work.

Do you prefer one of these options or do you have another suggestion to make in response to this term of reference?

Adequacy of entry requirements for a licence

Terms of reference 2

Assess the adequacy of entry requirements for licensing purposes including

2.1 training and education of industry participants

2.2 competency standards

2.3 the role of licence testing and accreditation

Current situation in New South Wales

Training and Education/Competency standards

To be granted a licence or certificate under the *Home Building Act 1989*, an applicant must satisfy several entry requirements. These include:

- Age test - the applicant must be aged 18 years or more.
- A fit and proper person test – the applicant must be of good repute, having regard to character, honesty and integrity.
- The applicant is not mentally incapacitated, or a disqualified person - such as a bankrupt person;
- the applicant would not be influenced by any close associate who is not a fit and proper person;
- Fulfilling any other requirements (such as educational or trade qualifications) or standards set by the Director-General.

The current qualification requirements and standards that have been approved by the Director-General for the grant of a licence in the different licence categories cover a range of different combinations of formal qualifications, experience, and skills assessment.

The potential avenues for entry into the residential building industry can be illustrated through the requirements for a licence in the category of general building work. Avenues include:

- minimum of two years demonstrated acceptable practical experience carrying out or supervising a wide range of building construction works, as well as completion of a qualification related to building such as a bachelor degree, diploma, advanced diploma, a certificate of registration under the *Architects Act* or a Certificate IV in Building.

The table below outlines the requirements for each licence category.

Formal qualification essential AND experience	Formal qualification OR experience	Qualifications including training through specialist industry scheme and experience OR skills assessment and experience	Experience only AND skills assessment	
<ul style="list-style-type: none"> General building work Plumbing work Water plumbing work Draining work Gasfitting work Liquefied petroleum gasfitting work Advanced liquefied petroleum gasfitting work Electrical wiring work 	<ul style="list-style-type: none"> Air-conditioning work Refrigeration work Disconnection and reconnection of fixed electrical equipment 	<ul style="list-style-type: none"> Structural landscaping Carpentry Joinery Bricklaying Painting Decorating Wall and floor tiling Glazing Waterproofing Roof plumbing 	<ul style="list-style-type: none"> Swimming pool building Swimming pool repairs & servicing Stonemasonry Flooring Dry plastering Wet plastering General Concreting Demolishing 	<ul style="list-style-type: none"> Excavating Underpinning or piling Fencing Roof tiling Roof slating Mechanical services Metal fabrication Minor tradework Minor maintenance and cleaning
<ul style="list-style-type: none"> Building Consultancy licence (pre purchase inspections) 		General building work licence AND 5 years experience OR Professional Indemnity Insurance with a 5 year no claim history covering pre purchase building inspections OR assessment OR qualification AND 2 years experience		

Individuals holding an occupational licence or registration in one state/territory are entitled under mutual recognition to an equivalent NSW licence or registration, where available, on lodgement of the proper notification and payment of the required fee. Mutual recognition legislation applies only to individuals and occupations carried on by them.

As mutual recognition only applies to licences that are equivalent between States and Territories, difficulties may arise as licensing regimes are inconsistent between the States and Territories.

The role of licence testing and accreditation

Licence testing is an assessment of skills and knowledge in cases where the applicant does not hold a prescribed qualification. Currently such assessment for a licence in NSW is conducted by the Building Industry Skills Centre.

Accreditation by an industry body as an alternative to licence testing or in lieu of formal entry criteria set by a licensing authority does not presently occur in NSW.

Issues

Training and Education/Competency Standards

- There appears to be little uniformity in the levels and types of skills and knowledge provided by the different courses, for example, the formal qualification requirements for a builders' licence include a Certificate of Registration as a Chartered Architect, Diploma in Technology (Building), Degree in Engineering (Structural), or Certificate IV in Building .

- The requirement for demonstrated acceptable practical experience as an entry requirement for most licence categories raises difficulties in terms of the relevance of the experience to be assessed, determining an objective standard and measurement of the quality of the experience, and the potential for fraud.

The role of Licence Testing and Accreditation

- Costs for industry participants may be lowered and entry into the licensing system may be enhanced if any Registered Training Organisation, whether TAFE, BISC or any private provider, is allowed to assess skills for the purposes of licensing.
- Costs for government may be further reduced if industry bodies were allowed to assess and accredit trades. This may reduce administrative costs for government in terms of verifying qualifications and assessing applicants for relevant experience allowing resources to be focussed on compliance issues.

National Perspective

Qualification requirements are variable across the States. For the specialist trades, most require a combination of technical training, for example trade qualifications from the relevant national training package, and experience. For builders most states base their qualification requirement on the Certificate IV in Building 3477, a course developed in the mid 1990's based on national modules.

National training packages have been developed for the plumbing, electrical and construction industries. One of the aims of training packages is to create a genuine national approach to training. However, there are inconsistencies in the way in which the different states approach the prescription of qualification requirements for licensing purposes. Accordingly, the qualification of a person who has trained in another state may not be recognised for licensing in New South Wales unless they are already licensed in their home state and apply for an equivalent licence in NSW under mutual recognition. If they are not already licensed in their home state, that person may find that they need to undertake a course prescribed in New South Wales or skills assessment even though they may have previously completed a similar course in another state.

The Council of Australian Governments (COAG) has reached agreement on measures to implement full mutual recognition of skills qualifications for licensing purposes across all States and Territories. These new measures will assist people with recognised trade qualifications to Australian standards to move more freely from one Australian jurisdiction to another and commence work in their chosen occupation without undergoing additional testing and registration processes.

Governments will work with employers and unions to put in place more effective mutual recognition arrangements across States and Territories for electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters and joiners and bricklayers (skills shortage trades) by June 2007 and by December 2008 for all licensed occupations where people normally receive certificates and diplomas.

The Review considers that COAG's agreement on measures to implement full mutual recognition of skills qualifications across all States and Territories overlaps significantly with this Term of Reference. Given that the NSW Government has agreed to implement these measures, the Issues Paper does not suggest any reform options. However, the Review would welcome any comments that stakeholders may have on either the discussion outlined above, or the COAG measures in relation to this issue. Submissions received by the Review on this particular issue will be forwarded to COAG.

Appropriateness of existing legislative conditions on licences

Term of Reference 3

Examine the appropriateness of existing legislative conditions placed on licences and other authorities (including the period that authorities remain valid) and whether there is scope for commonality

Current situation in New South Wales

Legislative Conditions

Under the *Home Building Act 1989*, all licences that are issued are subject to conditions that are contained in the Home Building Regulation 2004.²⁰ These conditions require the licence holder to notify the licensing authority within a certain time of any material change that affects the licence, such as:

- a change in qualified supervisor for a contractor licence;
- a change in partnership details if a partnership is dissolved;
- a change in company details if there is any change in the directors of the corporation.

As previously indicated in relation to Term of Reference 1.4, the Act also allows the Director-General to impose specific conditions²¹ on licence holders by order. This has been used by the licensing authority to limit the range of work that some licence holders are permitted to undertake, for example, the licensing authority has issued fencing licences where the licensed fencer is restricted to only working on metal fences. In the case of general concreter, at 31 March 2005 there were 84 different conditions for the licence or in other words, 84 different types of licence for the general concreter category of work.

Other samples of specific conditions that are imposed on licences include:

- | | |
|--|---|
| • Bricklayer – glass bricks only | • Joiner – bathroom vanities |
| • Builder – steam rooms only | • Kit supply – gazebos only |
| • Builder – not to exceed two storeys | • Mechanical services – refuse chute installation |
| • Fencing – metal only | • Metal fabrication – awnings only |
| • General concreter – excluding house slabs | • Plumber – within the shire of Hay only |
| • Roof tiler – repairs only | • Stonemason – marble bench tops only |
| • Swimming pool builder – demountable pools only | • Minor trade work – install vehicle turntables |
| • Waterproofing – waterproof coatings only | • Minor trade work – installation of mail boxes |

As at 28 February 2005 there were about 170,000 licences issued by the licensing authority with the majority (141,371) issued without any conditions limiting the licence holder's scope of work.

²⁰ *Home Building Act 1989* Section 36 Conditions of authorities

²¹ Ibid.

(1) An authority is subject to:

(a) any conditions prescribed by the regulations for authorities of the same kind, and
(b) any conditions imposed by order of the Director-General and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c), and

(c) any conditions imposed by order of the Director-General and set out in a notice served on the holder of the authority.

(2) A person issued with an authority must not contravene any requirement made by the conditions of the authority.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

National Perspective

All jurisdictions can impose some form of condition on the licences which they issue. This may be in response to disciplinary action or other matter. With the implementation of their new licence categories, Queensland is moving away from imposing conditions on licences.

Period of authority

Building contractor licences, building consultancy licences, other construction or specialist contractor licences and supervisor certificates are issued for 1 year. Tradespersons' certificates and other construction or specialist work supervisor certificates are issued for 3 years.²²

Issues

Conditions limiting work:

- The concept that a licence can be tailored to an individual's skills means that the licence applicant is not required to meet an externally established standard.
- The use of conditions to define permitted work places a greater burden on a consumer to check detail about a prospective contractor and to make enquiries about the interpretation of the condition.
- The proliferation of licences restricted through the use of conditions jeopardises mutual recognition objectives because the conditions are individual and do not correspond to an external standard.

Period of authority

- Licences and certificates that are issued by the licensing authority are not consistent because the period that they remain valid differs, for example, contractor licences are issued for a period of one year while tradespersons' certificates and supervisors' certificates are issued for a period of three years.

Options

Retain the present system

Under the present system some licences are issued with conditions that restrict the licensee in the type of work they are allowed to undertake. This is used in some cases when a licensee is unable to demonstrate sufficient skills to be granted a full licence.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Licences can be limited to reflect the skills of the licence holder. • The assessing officer is able to take into account mitigating factors (such as the applicant being in a rural and regional area) and impose conditions on the licence to limit risk. • The proliferation of conditions can be addressed and rationalised administratively under the present system. 	<ul style="list-style-type: none"> • The licence application is not assessed against a standard. • The licence is approved at the discretion of the assessing officer. • The consumer may not understand the nature of the work which the licensee is permitted to undertake. • jeopardises mutual recognition objectives because the conditions are individual and do not correspond to an external standard.

²² Home Building Regulation 2004 Schedule 4

No conditions limiting work

This option is to issue full licences only. Licences would only be subject to the general conditions contained in the Regulation or imposed following disciplinary processes. A transition plan would be required to bring existing holders to the standard and if this was not possible, existing licences with conditions would need to be continued for specific holders.

Advantages	Disadvantages
<ul style="list-style-type: none"> Only people who can satisfy the entry requirement are licensed. Licence holders would be subject to a transparent external standard which is often a vocational qualification. May encourage operators to expand the range of their skills through training to bring more skills to the industry. Consumer confidence may be boosted because there would be a correlation between a licence and a qualification. This option will support the objective of licence harmonisation with other States 	<ul style="list-style-type: none"> Increases barriers to entry into the industry.

Period of authority**Retain the present system**

Advantages	Disadvantages
<ul style="list-style-type: none"> Allows the licensing authority to use the renewal process as a performance management tool to review the conduct of licensees. Term of Reference 5 further discusses the use of the renewal process as a performance management tool. 	<ul style="list-style-type: none"> No saving in transaction costs for licensees. No saving in administrative costs for government.

Three year licences

Increase the period of the authority to three years.

Advantages	Disadvantages
<ul style="list-style-type: none"> This option could reduce transaction costs for business as the requirement to report to Fair Trading is reduced. Removes the inconsistency between contractor licences and supervisor certificates which are issued for 1 year and tradespersons' certificates and other construction or specialist work supervisor certificates which are issued for 3 years. Licensees would only pay the processing fee every three years. 	<ul style="list-style-type: none"> The licensing authority is not able to use the renewal process as an annual performance management tool to review the conduct of licensees. A three year fee would be paid in advance.

Do you have any views about these options or do you have another suggestion to make in response to this term of reference?

Fees – structure for issue and renewal of licences

Term of reference 4

Consider the need for differential fee structures for the issue and renewal of licences and other authorities

Current situation in New South Wales

General Framework

The general framework for NSW Government licensing fees is the *Licensing and Registration (Uniform Procedures) Act 2002*. This Act establishes the concept of a processing fee, which is designed to cover the approximate costs incurred by the licensing agency in processing the application. All fees paid in connection with an application which is refused (other than any processing fee) must be refunded.²³ The other purpose of prescribing a processing component for each licensing fee is to enable the calculation of a fee rebate for on-line applications when these are able to be made in the future. The Act also establishes a right to apply for restoration of a licence that is not renewed prior to its expiry.²⁴

Level of fees

Fees are set under the Home Building Regulation 2004 and have been raised every year by the consumer price index since 2000. The current fee schedule is attached at Appendix B. Improved dispute resolution services and other reforms were funded through special purpose fee increases of 10% on 1 January 2002 and 21.5% on 1 January 2003 (to fund implementation of the Campbell Inquiry reforms).

Fee revenue also contributes to the costs of the former government insurance scheme which closed in May 1997. Reserves held by the Office of Fair Trading have long been exhausted but the scheme continues for 10 years, until May 2007, or longer if a court extends the time for a claim.

Duplication of fees

Licensees who wish to operate under either a company or partnership structure must obtain a contractor licence for the business entity and either hold a qualified supervisor certificate themselves or employ a person with this certificate.

Demolishers (over certain heights or conditions) and excavators (earthmoving) are required to hold appropriate authority from WorkCover as well as a licence under the *Home Building Act 1989*.

Exemption from fees

Renewal and restoration fees are payable only by licence holders and not holders of certificates. At 30 May 2005, 47,580 certificate holders were not required to pay renewal or restoration fees or contribute to the costs of operating the licensing regime. The licensing system is aimed at protecting consumers so it is proper that the contractor, who signs the contract with the consumer, should be subject to renewal and restoration fees. However, many certificate holders are employees, who do not contract directly with consumers, so it was considered that the requirement for them to pay a fee for renewal or restoration of a certificate would mean they would be paying for the right to work.

²³ Licensing and Registration (Uniform Procedures) Act 2002 section 22

²⁴ Licensing and Registration (Uniform Procedures) Act 2002 section 10

An applicant for a contractor licence, supervisor certificate, or tradesperson certificate pays no fee for issue of a NSW authority if they reside or work principally in Victoria and they hold a licence issued by the Plumbing Commission of Victoria.²⁵

Building consultancy licences are issued for no fee to a contractor licensee authorised to do general building work or an architect registered under the *Architects Act 2003* or to an accredited certifier within the meaning of the *Environment Planning and Assessment Act 1979*.

Fee anomalies

The fee structure does not take into account the volume or turnover of a licensee's business, applying equally to a builder who builds two dwellings a year or a builder who builds two hundred dwellings a year.

Fee setting principles

Principles governing fee setting could include:

- Transparency in the structure of fees.
- Removal of duplication of fees for the same work.
- All licensees who are beneficiaries of the system should contribute through fees to the maintenance of the system; no licence or authority (such as a certificate) should be renewed or restored without payment of a processing fee.
- The merit of setting a fee based on turnover should be considered without being punitive of success; this principle is also dependent on a determination of which entities are licensed.

National perspective

There is no standard format for fees which is applied in each State. State regimes are not themselves directly comparable as licence categories and systems differ. In Queensland for example, insurance remains a part of the licensing system. In order to find some common ground for comparison, this table sets out fees for **one year** for a full licence by using some common examples. Fees could be also levied for the following functions (where a State is named it means that State does explicitly charge the fee for the service):

- restoration of a lapsed licence (NSW, ACT – others would charge the 'application fee')
- a replacement licence (NSW, ACT, QLD)
- to issue a licence under mutual recognition laws (VIC, WA, Qld)
- for additional category / class (NSW, VIC)
- change of details (ACT, or vary /revoke conditions – SA)
- discount for three year licence (ACT)
- late fees if overdue by one month (WA Plumbers Board)

State	Builder – individual \$		Builder – company \$		Plumber –individual \$		Owner-builder \$
	<i>New</i>	<i>Renewal</i>	<i>New</i>	<i>Renewal</i>	<i>New</i>	<i>Renewal</i>	<i>Issue</i>
NSW	494	330	990	494	223	165	132
ACT	531	363	561	363	140	120	168
Vic ²⁶	540 - 680	180	N/A	N/A	269.50	215.70	75
Qld ²⁷	415.40 – 910.75	179.85 – 404.90	752.95 – 1,651.15	359.65 – 808.75	415.40 – 910.75	179.85 – 404.90	131.50 or 265 ²⁸

²⁵ Home Building Regulation 2004 clause 42 (4)

²⁶ Victoria has limited and unlimited categories.

²⁷ Queensland takes into account for business turnover from \$250,000 to over \$200mill. The financial requirements for licensing vary and increase across the categories the value of the business e.g. annual to quarterly financial reporting, liquidity or asset ratio, independent review report to full audit.

²⁸ The fee depends on whether the value of the work is under or over \$11,000.

State	Builder – individual \$		Builder – company \$		Plumber –individual \$		Owner-builder \$
WA	480	255	1011	786	400	200	107
SA	481	341	899	759	388	248	²⁹
NT ³⁰					100 per cat.		
Tas accreditation	495 – 544.50	495 – 544.50	³¹		46.80	46.80	³²

Issues

- There is duplication of fees in some licence categories, for example, a holder of a qualified supervisor certificate pays a fee to obtain this certificate in order to supervise and/or carry out specialist work without supervision. However, where the person actually contracts work themselves through a partnership structure, the partnership, being a separate trading entity, must also have a licence to operate. Some licensed categories (such as demolishers and excavators) are also licensed by, and pay fees to, other government agencies (such as WorkCover).
- There are several anomalies in the fee system, such as:
 - ❑ Some categories of certificate holders not having to pay licence fees or processing fees for renewal and restoration of their certificates;
 - ❑ Victorian plumbers who have their principal place of residence in Victoria not having to pay fees for a NSW licence or certificate;
 - ❑ Building consultants not having to pay fees if they also hold a general builder contractors licence, are registered as an architect under the *Architects Act 2003*, or are accredited certifiers within the meaning of the *Environmental Planning and Assessment Act 1979*.
- Small and large business enterprises incur the same annual fee. It may be argued that as larger enterprises have a greater potential to incur disputes with consumers, they should contribute more to the resourcing of the licensing system.

Options

Retain the present system

Advantages	Disadvantages
<ul style="list-style-type: none"> • The situation where applicants who are required to be licensed/registered under other legislation do not pay a fee for the issue of a licence (eg architects and certifiers for the issues of a building consultants licence (pre-purchase property inspections) would remain unchanged. • Minimal disruption to industry. 	<ul style="list-style-type: none"> • The cost of the system is not borne by all authority holders.

²⁹ This varies because the permit is issued by a local government.

³⁰ Provisions only commence in 2006 including change of plumbing licences for life to 2 year length.

³¹ Tasmania is phasing out corporate licences by end 2006.

³² As per SA footnote 4.

Modify the present system

Under this option, the present system could be modified so that all authority holders would contribute toward the maintenance of the licensing system. Certificate holders would be charged the cost of processing their renewal and restoration applications.

Advantages	Disadvantages
<ul style="list-style-type: none"> The licensing system would be more equitable as all beneficiaries of the system would contribute through fees to the maintenance of the system. 	<ul style="list-style-type: none"> Certificate holders would have to pay a processing fee for a renewal or restoration of a certificate.

Set fees based on size of business

Under this option, licence fees could be proportional to the size of the business. This option recognises that larger businesses, who are exposed to more homeowners and have a higher potential for disputes to arise, may have a greater call on government services for resolution.

Advantages	Disadvantages
<ul style="list-style-type: none"> This would mean that the increased compliance costs arising from increased market activity would be proportionately funded through fees. 	<ul style="list-style-type: none"> If the system was overly complex, the goal would not be achieved. Unless the business size was self evident (eg company licence with significant capital base), the objective may not be achieved. This option depends on a determination of which entity is licensed.

Do you have any views about these options or do you have another suggestion to make in response to this term of reference?

Performance management of licence holders

Term of Reference 5

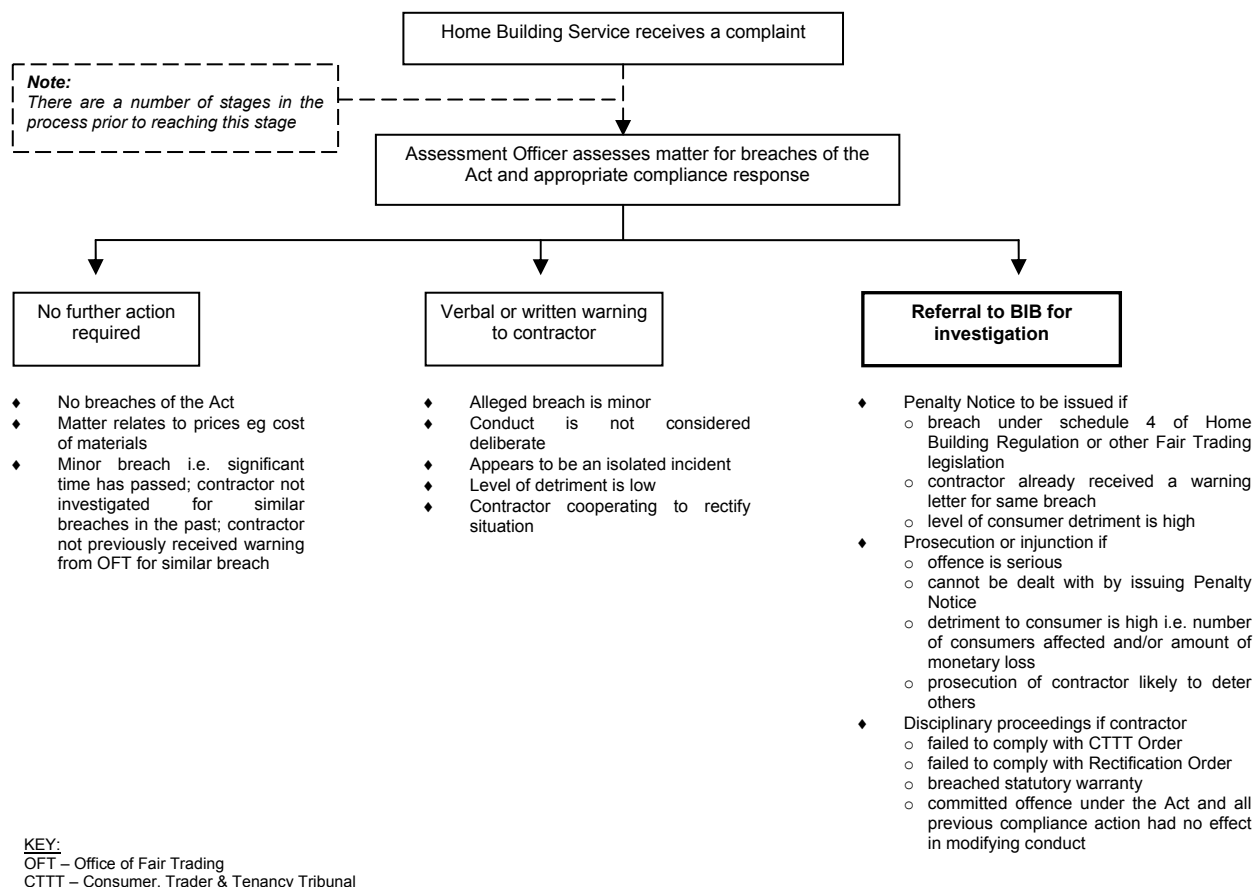
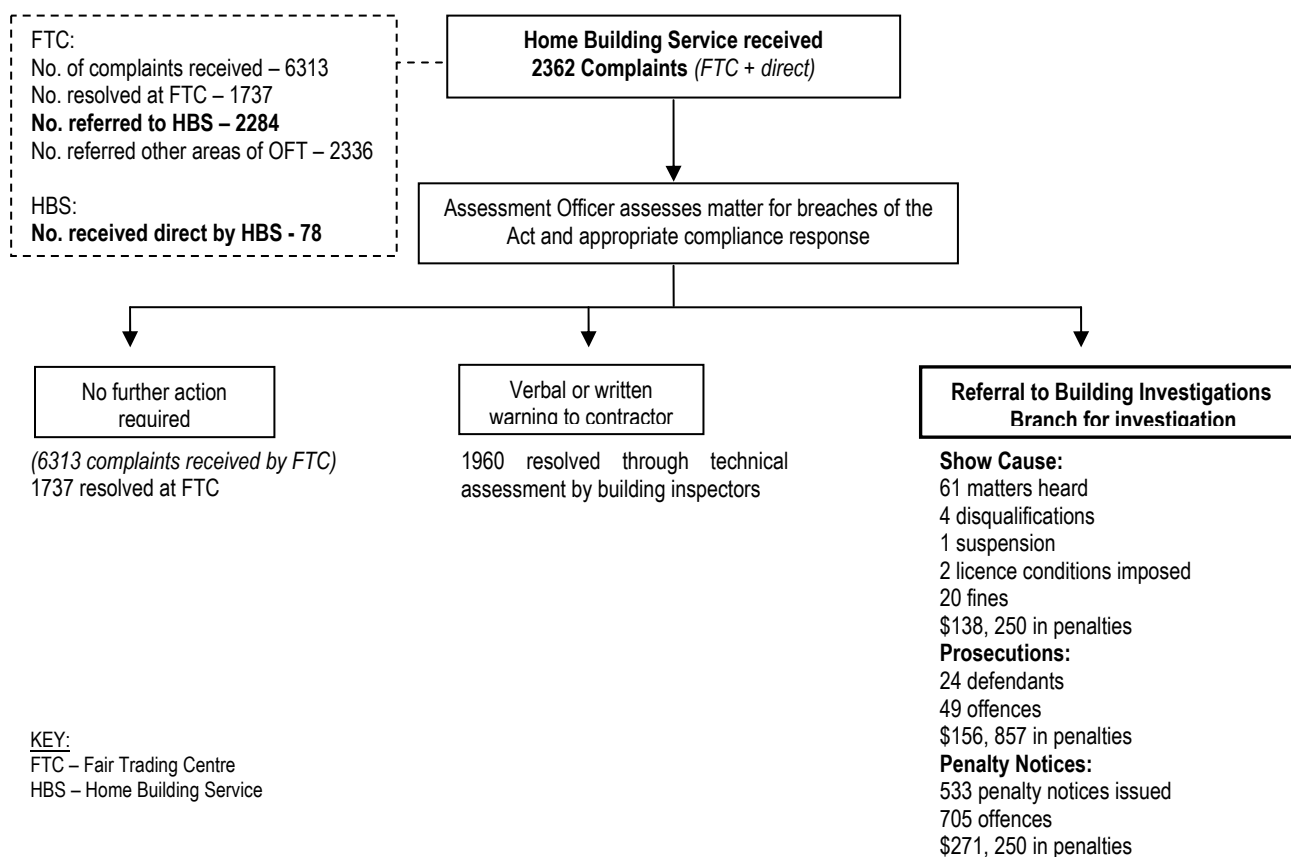
Consider systems for performance management of licence holders including the introduction of a demerit points and/or a rating system as part of the existing disciplinary regime

Current situation in New South Wales

Licence holders are monitored for their performance via complaints, periodic compliance audits by inspectors and through the licence renewal process. The present system, which depends on numerous controls, is comprehensive, complex, and can be time consuming. The present system also does not recognise or give credit for good performance and so does not avail itself of incentive tools to improve the performance of building practitioners.

The existing disciplinary regime

The present system for dealing with complaints is set out below (as at 28 February 2005 there were about 170,000 licence holders in NSW). The first diagram below describes the processes of the existing disciplinary regime and the second shows complaints statistics when the processes were applied in 2004 – 05. In addition, different audits of licensees can take place as part of proactive compliance. Licence renewal processes also impact on management of licensees and this is also described below.

The existing disciplinary (complaints) regime:**1 July 2004 – 30 June 2005**

Renewals

Licensees are presently subject to the following tests when they seek to renew their licence or certificate. Under the *Home Building Act*³³ the requirements of which the Director-General must be satisfied include that:

- the applicant is a fit and proper person, that is, of good repute having regard to character, honesty and integrity;
- the applicant is not mentally incapacitated, or a disqualified person;
- the applicant would not be influenced by any close associate who is not a fit and proper person;
- the renewal application has been properly completed and no judgement debt is owed to the Director-General;
- any requirements for continuing professional development courses are completed (builders and swimming pool builders only).

The Home Building Regulation³⁴ sets out additional matters of which the Director-General must be satisfied. These include that each relevant person:

- is not bankrupt or subject of a winding up order (further detail in the Regulation);
- is not subject to any unsatisfied Tribunal order;
- has not had what the Director-General considers to be an unreasonable number of complaints made against them or an unreasonable number of formal cautions given to them or an unreasonable number of penalty notices issued to them or a whose work has been subject to an unreasonable number of insurance claims.

Other State systems

Both Queensland and ACT have demerit points systems which operate in addition to other disciplinary processes under their respective licensing legislation.³⁵ Like the licence demerit points system which is operated by the Roads and Traffic Authority in NSW, points are allocated against offences. In Queensland when the limit is reached within a three year period the licensee is banned from the industry for three years. If they re-enter the industry after the ban and accumulate the limit of demerit points again, the licensee will be banned for life. A demerit system is used as both a disciplinary tool ('top down' government intervention) as well as an incentive to improving conduct (building practitioners are awarded demerit points for specific breaches e.g. contract not in writing).

Performance rating

There is no government sponsored rating system of building practitioners operated in Australia. There are public registers of builders which contain information about disputes and disciplinary history for a consumer to use and check the credentials of their selected contractor. No system indicates quality of service or performance in a positive sense. The only indicator is the absence of proven complaints.

The National Review of Home Builders Warranty Insurance and Consumer Protection, conducted by Professor Percy Allan³⁶ canvassed a builders rating system that operated in Ontario, Canada, that helped consumers make informed choices when selecting a builder. The system worked by posting consumers' comments on builders on the internet.

Currently in Canada the RateYourBuilder service³⁷ is a free internet service that provides consumer ratings of home builders. It allows those who have purchased new homes to share

³³ Home Building Act 1989 section 40

³⁴ Home Building Regulation 2004 clause 39A

³⁵ Queensland Building Services Authority Act 1991 Part 3E section 67AQ – 67AZB and Construction Occupations (Licensing) Act 2004 Part 8 section 89- 202

³⁶ *National Review of Home Builders Warranty and Consumer Protection*, Professor Percy Allan AM, June 2002, p.50.

³⁷ <http://canada.rateyourbuilder.info>

their experiences and provide feedback. The rating system prevents users from voting more than once which helps keep unscrupulous users from artificially increasing or decreasing a builder's rating. The service is not associated or affiliated with any home builders or real estate companies.

Continuing professional development

Continuing professional development (CPD) is a requirement imposed by the licensing authority on certain licensees to undertake annual education and training to maintain and upgrade skills and knowledge. The requirement is aimed at raising standards across the industry and to assist licence holders remain highly skilled in a rapidly changing environment. CPD provides an incentive for licence holders to keep up to date with technical advances and other regulatory requirements and a key objective is to increase the confidence of both consumers and builders.

Builders and pool builders are the first licence categories required to meet CPD obligations. Extension of CPD to other licence categories has been put on hold pending the recommendations of this Review.

Issues

- The existing disciplinary system is principally reactive, following complaints, while the proactive compliance regime is seen by industry as inadequate.
- The Review has heard anecdotal evidence that the complaint resolution process and action against an offender can be protracted and expensive.
- The current performance management tools are punitive and do not acknowledge or recognise good performance.
- Effectiveness of CPD as a performance management tool is not measured and has been criticised by licensees for being of limited relevance, costly and of limited accessibility in rural and regional areas.

Options

Retain the present system

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ensures that complaints against licensees are properly tested and investigated. • Ensures that licensees have access to proper procedures and natural justice. 	<ul style="list-style-type: none"> • The existing system is reactive. • May be protracted and expensive • System is punitive and does not recognise good performance.

Institute a demerit points system

A demerit points system could be used for certain and specific breaches. Licensees would be allocated points for breaches of their licence conditions or for breaches of the Act. A licensee could face suspension or have their licence revoked if they reached a certain number of demerit points.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Licensees would have a greater understanding of what type of behaviour constitutes a breach of their licence conditions or the legislation. • May be a more efficient way of monitoring the 	<ul style="list-style-type: none"> • Businesses with a larger market profile are potentially exposed to more problems and how market share can be taken into account is not clear. For example, two complaints from 10 jobs annually may be worse than two

performance of licensees.	<p>complaints from 100 jobs each year.</p> <ul style="list-style-type: none"> • While consumers can check to see how many demerit points a licensee has accumulated on the public register, they may not be able to understand what type of behaviour has led to the accumulation of points (unless this is also on the register). • This performance management tool is also punitive and reactive following complaints against a licensee.
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Support a consumer-driven builder rating system

A builder rating system based on structured feedback by consumers, such as that operating in Canada, could be an effective performance management tool as an incentive to raise standards. An incentive scheme could complement the regulatory scheme to improve licensee performance. While there is a public website containing certain information about a licensee, there is currently no mechanism for capturing positive experiences with builders from clients in real time.

Advantages	Disadvantages
<ul style="list-style-type: none"> • The system recognises good performance and is an incentive for licensees to improve performance. • The market ensures that good licensees are rewarded. 	<ul style="list-style-type: none"> • Ratings and feedback may be affected by unjustified grievances from consumers as there is limited means of checking the veracity of feedback. • Ratings may provide false expectations for consumers. A high rating is no certainty for good work.

Do you have any views about the options or do you have another suggestion to make in response to this term of reference?

Owner-Builders

Term of reference 6

Assess the appropriateness of continuing the owner-builder permit regime in its current form having regard to the potential for corrupt or illegal activity in relation to that regime

Current Situation in New South Wales

The original purpose of the owner-builder permit was identified in 1970 when the Select Committee of the Legislative Assembly upon the building industry stated that “it is recognised that many people have the skill and capacity to either build their own house or to supervise its construction by subcontractors”.³⁸

An owner-builder permit can only be issued to an individual (not a corporation) to permit the person to act as the builder. In addition to owning the land the owner-builder must be over 18 years old and have completed an approved course or training (where work is over \$12,000). An owner is eligible to obtain a permit once every five years³⁹ (although an owner of the land could be several people or a corporation, the permit database only records a single name). An owner-builder may either personally undertake the work or supervise and manage tradespeople. In 2004, 16,982 owner-builder permits were issued.

Under the *Home Building Act 1989* persons proposing to undertake residential building work on their own property must obtain an owner-builder permit if the work⁴⁰ -

- has a market value of labour and materials over \$5,000;
- requires development consent; and
- relates to a single dwelling house or dual occupancy.

Issues

There is scope for the owner-builder regime in NSW to be improved to prevent abuses of the system. The Review has heard evidence that:

- the owner-builder system is being used to disguise unlicensed contracting;
- contractors who are unable to obtain home warranty insurance sometimes persuade homeowners to apply for owner-builder permits, where the value of the work exceeds \$12,000, in order to circumvent the home warranty insurance requirement;
- some owners apply for permits under different names with the intention of building dwellings for commercial purposes and / or obtaining more than one permit in a five year period.

38 Report from the Select Committee of the Legislative Assembly upon the Building Industry, Part 1 Report and Minutes of the Proceedings printed 20 October 1970 page 18

39 *Home Building Act 1989* section 31 (3)

40 *Home Building Act 1989* section 29 – 32AA

Options

Retain the present system

Advantages	Disadvantages
<ul style="list-style-type: none"> Enables some homeowners to save money by allowing them to project manage the building or renovation of their own home by contracting individually with licensed tradespeople. 	<ul style="list-style-type: none"> As the system allows persons with no or limited experience in building to manage the construction or renovation of their own home the quality of the finished product may not be satisfactory or safe. The lack of building experience and knowledge by an owner allows unlicensed contracting to flourish as owner-builders may not be aware of the legislative requirements concerning unlicensed contracting or may be more interested in cutting costs. The requirement to hold home warranty insurance can be avoided through undetectable contract splitting. The present system, as currently administered, enables owners to build more often than every five years (especially in cases where there is more than one owner on the title) and may disguise construction for commercial purposes. The content of owner-builder courses is not independently defined and is thought to be inconsistent. The organisations which deliver the training are not required to be registered or subject to accreditation.

Discontinue the owner-builder system

Advantages	Disadvantages
<ul style="list-style-type: none"> Ensures that all homes are built to the regulated industry standard. 	<ul style="list-style-type: none"> Limited choice for homeowners in how they build or renovate their homes. Homeowners who have the skill or project management expertise do not have the option of building or renovating their own homes and gaining the associated cost benefits or satisfaction of this option.

Strengthening the system

The integrity of the owner-builder regime depends on the attributes of the individual. Systemic improvements could be developed to support the owner-builder regime. Possible enhancements to the regime could include:

- Ensuring that the permit is issued in identical names to those shown on property title while maintaining issue in personal, not body corporate names. Enhanced identity checks to connect property ownership with applicant could also be carried out;
- Applicants for an owner-builder permit having to sign an affidavit or other formal document acknowledging their responsibilities (such as OHS and home warranty requirements) under the owner-builder permit;

- Making approved owner-builder courses more robust, being offered only through Registered Training Organisations, and evidence of attendance to the course mandatory; and
- Increased compliance checks for unlicensed contracting by Fair Trading.

Advantages	Disadvantages
<ul style="list-style-type: none">• Less potential for corruption or illegal activity due to strengthening of the system for permit issue will ensure that permits are granted for their genuine purpose.	<ul style="list-style-type: none">• Administrative systems will need to be upgraded at significant cost for Government to enable better assessment of permit applications.• Increased compliance checks for unlicensed contracting will also lead to further costs for Government.

Do you have any views about these options or do you have another suggestion to make in response to this term of reference?

National Competition Policy principles and mutual recognition issues

Term of Reference 7

Consider National Competition Policy principles and mutual recognition issues

What are national competition policy principles?

National Competition Policy was adopted by the Council of Australian Governments in 1995 so that reforms could produce benefits to the Australian community. National Competition Policy underpins an economy that is efficient, dynamic and innovative, delivering competitive goods and services, and economic and employment growth.

In 1999, the Productivity Commission estimated that National Competition Policy reforms would provide a sustained increase in economic output, as measured by real gross domestic product 2.5 per cent above the outcome in the absence of the reforms.⁴¹

National Competition Policy principles which underpin reform continue to be required to achieve economic productivity gains because the ageing of Australia's population brings increased costs and a declining tax base.

In 1996 the NSW Government undertook a review of licensing in the home building industry in accordance with the terms for legislation set out in the National Competition Principles Agreement. A Green Paper, *Review of Licensing in the NSW Home Building Industry*, was released for consultation and the final report was handed down in 1998.

The major recommendation in the final report was that the licensing of builders and trade contractors be retained until such time as the full impact of the change to the provision of home warranty insurance by the private sector can be properly assessed.

All licensing creates a barrier for new entrants to practice. Since the Policy has been adopted it has become necessary to ensure that legislation does not restrict competition unless it can be demonstrated that the benefits to the community outweigh the costs of the regulation⁴² and that the objectives of the legislation can only be achieved by restricting competition.

This objective means that all regulatory restrictions must relate directly to the achievement of public benefit outcomes and pursuit of the objectives is at minimum cost to the public in terms of restrictions on competition.

Reserving the performance of certain building work to licensees means that there is potential for licence holders to raise their charges to the public because there are insufficient operators in the market offering the same or similar services. The licensing of persons to perform **all** residential building work thus creates a major barrier to entry into the market.

There needs to be a substantial reason to reserve work for licensees because regulation will not solve imperfections in a marketplace.

⁴¹ National Competition Council Frequently asked Questions <http://www.ncc.gov.au/articleZone.asp?articleZoneID=267> 8/9/05

⁴² Administering and complying with regulation is costly. See 'The good, the bad and the ugly: economic perspectives on regulation in Australia' Speech by Gary Banks Productivity Commission Chairman to the Conference of Economists, Business Symposium, Hyatt Hotel Canberra 2 October 2003 pg 6 <http://www.pc.gov.au/speeches/cs20031002/cs20031002.pdf> 9/9/05. It is also costly because much regulation is expressed in inaccessible language.

Any regulation does interfere in and distort the market's ability to provide services that consumers want and increases the costs of those services. Broadly speaking, protection for a consumer must be understood to embrace access to well priced and innovative products and services, as well as addressing concerns regarding unethical and incompetent practice.

To balance the benefits to the community and the consumer, there needs to be a clear and direct advantage to justify the costs of operating a regulatory scheme.

One aspect of risk identification is to isolate the kinds of residential building work for which certain standards are essential. Another way of understanding the risks is that the work is so critical that if done badly it has the potential to cause significant harm to people or cause costly property damage. In this context inherent risks need to be managed in a way which clearly minimises risk as follows:

- technically complex tasks are controlled through skill qualification;
- financial risks are managed through insurance products;
- quality risks are managed through consumer reference checks and as quality is partially subjective, through access to inexpensive dispute resolution;
- cost to government is minimised by regulating where the probability of the risk is higher;
- costs to consumers are minimised so that the regulatory burden on business is explicit and not duplicated.

The options in this Paper have been developed with regard to National Competition Policy Principles.

What are mutual recognition issues?

In general terms mutual recognition means that any individual person holding an occupational licence or registration in one State/Territory is entitled to an equivalent licence or registration in another State/Territory, where available, on lodgement of the proper notification and payment of the required fee⁴³. In order to be of greatest benefit, mutual recognition relies on occupations to be equivalent in all states.

There are marked differences between the State licensing regimes (many of these were highlighted earlier in this Paper). As mentioned earlier in this Paper, COAG has reached agreement to enable people with trade qualifications to move more freely around Australia without undergoing additional testing and registration processes. More effective mutual recognition arrangements across States and Territories will be put in place for electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters and joiners and bricklayers (skills shortage trades) by June 2007 and by December 2008 for all licensed occupations where people normally receive certificates and diplomas.

The Table below shows how the different Australian jurisdictions license different activity.

Equivalent licensing

Category		NSW	VIC	ACT	QLD	SA	WA	NT	TAS
Builder residential	In every Australian State the various licensing schemes apply to all residential builders (see term of reference 1.4 for the different types of residential builder). Every Australian jurisdiction except New South Wales and Northern Territory license builders in other industry sectors (see term of reference 1.6).								
Builder commercial			✓	✓	✓	✓	✓		✓
Specialist	Plumbers, drainers and gasfitters	✓	✓	✓	✓	✓	✓	✓	✓
	Electrical wiring and permits for restricted electrical disconnection and	✓	✓	✓	✓	✓	✓	✓	✓

⁴³ *Mutual Recognition (New South Wales) Act 1992*. The Act enables the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations

Category		NSW	VIC	ACT	QLD	SA	WA	NT	TAS
	reconnection								
	Water plumbing work (fire protection systems)	✓	✓		✓	✓			✓
	Air-conditioning*	✓	✓	✓	✓	✓	✓	✓	✓
	Refrigeration work*	✓	✓	✓	✓	✓		✓	✓
	Liquid petroleum (including advanced) gasfitting work	✓	✓	✓	✓	✓	✓	✓	✓
Trades and miscellaneous^		✓ (over \$1000)	✓ (over \$5000)		✓ (over \$1100)	✓	✓ (painting)		
Building consultants for pre-purchase property inspections#		✓			✓				
Supply of kit homes+		✓							

*Air-conditioning: WA – evaporative: SA, NT, QLD, ACT, VIC, TAS - usually via restricted electrical licence

^Trades and miscellaneous: In WA only painters are licensed. QLD once over \$1100, VIC once over \$5000 (see term of reference 1.2)

#Building consultants for pre-purchase property inspections: ACT no licensing however persons who prepare reports for consumers under their Civil Law (Sale of Residential Property) Act 2003 must hold professional indemnity insurance.

+Supply of kit homes: Supplier of product not licensed in any state. Suppliers of 'small structures' are registered in NT (for cyclone standards). In SA, TAS, QLD and WA an installer doing 'building work' must be licensed as a builder in the applicable manner (in WA the structure must also be if permanent).

Other licensed work

Some other States licence work which is unregulated in NSW such as building designers (separate from an architect), termite management, project managers, draftspersons and building services designers.

Generally, the only licence issued by another State or territory which can be recognised in NSW is that of builder, trade categories (if existing in NSW) and the specialist categories of plumbers, electricians, air-conditioning and refrigeration mechanics. If another State does not have a licence requirement for a trade that is licensed in NSW, then the interstate qualified applicant would have to meet the NSW requirements to work here.

The Review is aware of the COAG agreement to implement full mutual recognition of skills qualifications described above and will consider submissions received and develop its recommendations in the context of COAG's objectives.

Recommendations will also take into account relevant licensing regimes in all other States and territories.

APPENDIX A

Range of activity covered by Licensing

Residential building work and specialist work:

In order to perform any residential building work or any specialist work in New South Wales, a person, partnership or corporation must be licensed.

‘Residential building work’ is defined in the *Home Building Act 1989* as any work involved in, or co-ordinating or supervising:

- the construction of a dwelling, or
- the making of alterations or additions to a dwelling, or
- the repairing, renovation, decoration or protective treatment of a dwelling.

Residential building work includes work declared by the regulations to be roof plumbing work or specialist work done in connection with a dwelling and work concerned in installing a prescribed fixture or apparatus in a dwelling (or in adding to, altering or repairing any such installation).

A ‘dwelling’ means a building or portion of a building that is designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat). The definition of a ‘dwelling’ in the Act includes any swimming pool or spa constructed for use in conjunction with a dwelling and any additional structures and improvements that are declared by the regulations to form part of a dwelling.

Clause 46 of the Home Building Regulation 2004 prescribes 28 categories for which a licence can be issued. These categories are:

- | | | |
|-------------------------------------|----------------------------|--------------------------------|
| • general building work | • dry plastering | • waterproofing |
| • swimming pool building | • wet plastering | • roof tiling |
| • swimming pool repairs & servicing | • painting | • roof slating |
| • structural landscaping | • decorating | • roof plumbing |
| • carpentry | • wall and floor tiling | • mechanical services |
| • joinery | • general concreting | • metal fabrication |
| • flooring | • demolishing | • minor trade work |
| • bricklaying | • excavating | • minor maintenance & cleaning |
| • stonemasonry | • underpinning or piercing | |
| • fencing | • glazing | |

‘Specialist work’ is defined as:

- plumbing work (other than work declared by the regulations to be roof plumbing work), or
- gasfitting work, or
- electrical wiring work, or
- any work declared by the regulations to be refrigeration work or air-conditioning work.

Clause 46 of the Home Building Regulation also prescribes ten categories of specialist work, for which a licence can be issued. These categories are:

- | | |
|-----------------------|--|
| • plumbing work | • refrigeration work |
| • water plumbing work | • electrical wiring work |
| • draining work | • disconnection & reconnection of fixed electrical equipment |
| • gasfitting work | |

- liquefied petroleum gasfitting work
- advanced liquefied petroleum gasfitting work
- air conditioning work

The Home Building Regulation 2004 declares the following structures and improvements as forming part of a dwelling when constructed for use in conjunction with a dwelling:

- parts of a building containing more than one dwelling (whether or not the building is also used for non-residential purposes), being stairways, passageways, rooms, and the like, that are used in common by the occupants of those dwellings, together with any pipes, wires, cables or ducts that are not for the exclusive enjoyment of any one dwelling,
- parts of a building containing one dwelling only (where the building is also used for non-residential purposes), being stairways, passageways and the like which provide access to that dwelling,
- if non-residential parts of a building containing one or more dwellings give support or access to the residential part—the structural elements of the non-residential parts giving such support or access,
- cupboards, vanity units and the like fixed to a dwelling,
- detached garages and carports,
- detached decks, porches, verandahs, pergolas and the like,
- cabanas and non-habitable shelters,
- detached workshops, sheds and other outbuildings (but not jetties, slipways, pontoons or boat ramps and any structures ancillary to these exceptions),
- concrete tennis courts and the like,
- driveways, paths and other paving,
- retaining walls,
- agricultural drainage designed or constructed to divert water away from the footings of a dwelling or a retaining wall,
- fences and gates,
- ornamental ponds and water features, and other structural ornamentation, the construction or installation of which requires development consent.

In addition to requiring those undertaking residential building work and specialist work to be licensed, the Act also licenses building consultants and suppliers of kit homes.

‘Building consultancy work’ is defined as work involved in, or involved in co-ordinating or supervising, the inspection of dwellings and reporting on their condition, or the conduct of inspections and the furnishing of reports, in respect of specialist work (for example, electrical, plumbing or air-conditioning work). Pre-purchase pest inspections and inspections solely of specialist work are not required to be licensed.

A ‘kit home’ is defined as a set of building components which, when offered for sale, is represented as sufficient for the construction of a dwelling according to a plan or instructions furnished by the supplier.

Work excluded from licensing:

Work on a residential dwelling (other than specialist work) where the reasonable market cost of the labour and materials does not exceed \$1,000 (inclusive of GST), is expressly excluded from the definition of ‘residential building work’ and a person, partnership or corporation is not required to be licensed to perform this work.

The Home Building Regulation 2004 specifically excludes the following buildings from the definition of a ‘dwelling’ and any person, partnership or corporation working on these

buildings (excluding specialist work) does not need to be licensed when working on these buildings:

- a boarding house, guest house, hostel or lodging house,
- all residential parts of a hotel or motel,
- any residential part of an educational institution,
- accommodation (other than self-contained units) specially designed for the aged, persons with a disability or children,
- any residential part of a health care building that accommodates staff,
- a house or unit designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation,
- any part of a non-residential building that is constructed or adapted for use as a caretaker's residence,
- a moveable dwelling (with or without a flexible annexe) within the meaning of the *Local Government Act 1993* that is, or is capable of being, registered under the *Road Transport (Vehicle Registration) Act 1997* (such as a caravan or a motor home),
- a residential building for the purposes of which development consent can be granted only because of *State Environmental Planning Policy No. 15 – Rural Landsharing Communities*.

APPENDIX B

Home Building Regulation 2004

Schedule 4 Application fees (as at March 2006)

(Clause 42)

Type of application	Duration	Processing component	Fixed component	Total fee
Contractor licence				
Building contractor or supplier of kit homes				
(Individual)	New licence	1 year	\$215	\$279
	Renewal	1 year	\$51	\$279
	Restoration	1 year	\$102	\$279
	Variation to N/A add a category or categories referred to in clause 46 (1) (a), (b) or (d)		\$215	Nil
	Variation to N/A add a category or categories referred to in clause 46 (1) (c) or (e)–(ab) or (2) (a)–(j)		\$89	Nil
				\$215
(Partnership)	New licence	1 year	\$502	\$323
	Renewal	1 year	\$51	\$323
	Restoration	1 year	\$102	\$323
	Variation to N/A add a category or categories referred to in clause 46 (1) (a), (b) or (d)		\$215	Nil
	Variation to N/A add a category or categories referred to in clause 46 (1) (c) or (e)–(ab) or (2) (a)–(j)		\$89	Nil
				\$215
(Corporation)	New licence	1 year	\$547	\$443
	Renewal	1 year	\$51	\$443
	Restoration	1 year	\$102	\$443
	Variation to N/A add a category or categories referred to in		\$547	Nil

Type of application		Duration	Processing component	Fixed component	Total fee
	clause 46 (1) (a), (b) or (d) Variation to N/A add a category or categories referred to in clause 46 (1) (c) or (e)–(ab) or (2) (a)–(j)		\$89	Nil	\$89
Other construction or specialist contractor					
(Individual)	New licence	1 year	\$109	\$114	\$223
	Renewal	1 year	\$51	\$114	\$165
	Restoration	1 year	\$102	\$114	\$216
	Variation to N/A add a category or categories referred to in clause 46 (1) (a), (b) or (d)		\$215	Nil	\$215
	Variation to N/A add a category or categories referred to in clause 46 (1) (c) or (e)–(ab) or (2) (a)–(j)		\$89	Nil	\$89
(Partnership)	New licence	1 year	\$116	\$196	\$312
	Renewal	1 year	\$51	\$196	\$247
	Restoration	1 year	\$102	\$196	\$298
	Variation to N/A add a category or categories referred to in clause 46 (1) (a), (b) or (d)		\$502	Nil	\$502
	Variation to N/A add a category or categories referred to in clause 46 (1) (c) or (e)–(ab) or (2) (a)–(j)		\$89	Nil	\$89
(Corporation)	New licence	1 year	\$116	\$241	\$357
	Renewal	1 year	\$51	\$241	\$292
	Restoration	1 year	\$102	\$241	\$343
	Variation to N/A add a category or categories referred to in clause 46 (1) (a), (b) or (d)		\$547	Nil	\$547
	Variation to N/A		\$89	Nil	\$89

Type of application	Duration	Processing component	Fixed component	Total fee
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add a category
or categories
referred to in
clause 46 (1)
(c) or (e)–(ab)
or (2) (a)–(j)

Building consultancy licence

(Individual)	New licence	1 year	\$215	\$279	\$494
	Renewal	1 year	\$51	\$279	\$330
	Restoration	1 year	\$102	\$279	\$381
(Partnership)	New licence	1 year	\$502	\$323	\$825
	Renewal	1 year	\$51	\$323	\$374
	Restoration	1 year	\$102	\$323	\$425
(Corporation)	New licence	1 year	\$547	\$443	\$990
	Renewal	1 year	\$51	\$443	\$494
	Restoration	1 year	\$102	\$443	\$545

Supervisor certificate**Building supervisor**

(Individual)	New Certificate	1 year	\$62	\$116	\$178
	Renewal	1 year	Nil	Nil	Nil
	Restoration	1 year	Nil	Nil	Nil
	Variation to N/A add a category or categories referred to in clause 46		\$62	Nil	\$62

Other construction or specialist work supervisor

(Individual)	New certificate	3 years	\$62	\$100	\$162
	Renewal	3 years	Nil	Nil	Nil
	Restoration	3 years	Nil	Nil	Nil
	Variation to N/A add a category or categories referred to in clause 46		\$62	Nil	\$62

Tradesperson certificate

(Individual)	New certificate	3 years	\$65	\$41	\$106
	Renewal	3 years	Nil	Nil	Nil
	Restoration	3 years	Nil	Nil	Nil
	Variation to N/A add a category or categories referred to in clause 46		\$62	Nil	\$62

Type of application	Duration	Processing component	Fixed component	Total fee
Owner-builder permit				
	Not applicable	\$51	\$81	\$132
Replacement contractor licence, building consultancy licence, certificate or owner-builder permit				
	Not applicable	\$37	Nil	\$37

APPENDIX C

Consultative meetings held with stakeholders

Date	Stakeholder representative and organisation	
11 May 2005	Mr Paul Naylor Mr Brian Seidler Mr Peter Meredith Mr Jim Tinslay Mr Geoff Jocelson	Master Plumbers and Mechanical Contractors Association of NSW Master Builders Association of NSW Master Builders Association of NSW National Electrical Communication Association of NSW National Electrical Communication Association of NSW
12 May 2005	Mr Peter McClelland Mr Irving Warren Mr Brian Hardiman Mr Manfred Wiesemes	Construction Forestry Mining and Energy Union Building Industry Specialist Contractors Organisation of NSW Swimming Pool and Spa Association of NSW Ltd Swimming Pool and Spa Association of NSW Ltd
13 May 2005	Mr Steve McCarney Mr Douglas Greening Mr Bernie Riordan Mr Col Harris	NSW Plumbers and Gasfitters Union Construction Industry and Training Board Electrical Trades Union of Australia Electrical Trades Union of Australia
17 May 2005	Mr Wayne Gersbach Mr John Fuentor Mr Cliff McSorley Mr Chris Aird Mr Lindsay Le Compte	Housing Industry Association Housing Industry Association Building Industry Skills Centre Office of Fair Trading Office of Fair Trading
19 May 2005	Ms Marie Persson Mr Chris Burvill Mr Peter Stevens Mr Peter Wright Mr Matt Duff Mr Dennis Lennon	Sydney Institute of TAFE Sydney Institute of TAFE Sydney Institute of TAFE Sydney Institute of TAFE Sydney Institute of TAFE Sydney Institute of TAFE
20 May 2005	Mr Jeff Norton	Building Commission of Victoria
2 June 2005	Ms Michelle Morgan Ms Ruth Sledge Ms Rita Phouisangiem	Office of Fair Trading Office of Fair Trading Office of Fair Trading
23 June 2005	Mr Rod Stowe Mr Lindsay Le Compte Mr Steve Newton Mr Michael Silk Mr Chris Aird Mr Steve Griffin Mr Kel Nash Ms Jane Coulter Ms Barbara Fernandez Ms Michelle Morgan	Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading Office of Fair Trading
7 July 2005	Mr Norm Argent Ms Lucie Booker	Air Conditioning and Mechanical Contractors Association of NSW National Fire Industry Association Australian Elevator Association Ltd Air Conditioning and Mechanical Contractors Association of NSW National Fire Industry Association Australian Elevator Association Ltd
12 July 2005	Ms Irene Onorati Mr Sal Russo Ms Natasha Scuderi Mr Gerard Nicholl	Building Action Review Group Russo and Partners Building Action Review Group Building Action Review Group

Date	Stakeholder representative and organisation	
21 July 2005	Mr Neil Cocks Ms Helen Ting Mr Lindsay Le Compte Mr Lachlan Baird Mr John Lewer	Department of Planning Department of Planning Office of Fair Trading Master Painters Association Australian Institute of Building
28 July 2005	Regional Meeting - Dubbo	
4 August 2005	Mrs Barbara Fernandez Mr Neil Cocks Mr Garry Poole Mr Allan Harriman Mr Brett Daintry Mr Bernie Cohen Mr Rick Moy Mr Brian Malouf	Office of Fair Trading Department of Planning Liverpool City Council Private Certifier Woollahra Municipal Council Private Certifier Private Certifier Blacktown City Council
8 August 2005	Regional Meeting - Penrith	
11 August 2005	Regional Meeting – Wagga Wagga	
15 August 2005	Mr Percy Allen	Percy Allen & Associates Pty Ltd
16 August 2005	Building Inspectors Mr Wayne Gersbach Mr John Futer Mr Scott Lambert Mr John Caffi Ms Sue Perry	Office of Fair Trading Housing Industry Association Housing Industry Association Housing Industry Association Mirvac Group AON Australia
18 August 2005	Mr Jason Smith Mr Cameron Murphy Ms Debbie White Mr Chris Boyle Regional Meeting – Tweed Heads	Building Services Authority, Queensland Building Services Authority, Queensland Building Services Authority, Queensland Building Services Authority, Queensland
19 August 2005	Mr Percy Allen	Percy Allen & Associates Pty Ltd
22 August 2005	Mr David Collins Mr Ian Kingsley Ms Margaret Willis Mr John Skeen	Department of Education and Training Department of Education and Training Department of Education and Training Department of Education and Training
12 September 2005	Mr Percy Allen	Percy Allen & Associates Pty Ltd

APPENDIX D

List of submissions received

	Submitted by	Company
1	Michael McLeod	Hire A Hubby
2	Naomi Dinnen	NSW Utilities and Electrotechnology ITAB Ltd
3	Ross Plummer	Norsk Electrical Services
4	Clifford Hensby	
5	Ian Ritchie	Sooean P/L
6	Brett Jakins	
7	A & G Cooper	
8	James Sullivan	
9	Phillip Brooks	
10	Dave McCarthy	Coral Homes Pty Ltd
11	Central Coast Group	
12	Rodney Nelson	Local Government Building Surveyor
13	Steve Watson	
14	Louise Riles	Neil Riles Construction
15	Trudi Wight	Creative Design Cabinet Making
16	Michael Hughes	Hughes Plan & Design
17	Albertus	
18	Graeme Carter	
19	Dane Simmonds	Billabong Shade
20	Terry Adam	
21	Mark Beahan	Narromine Plumbing Co
22	Michael McIlwraith	Building Institute of Training & Development
23	Geoff Steel	
24	Peter Conroy	Local Government Building Surveyor
25	Stephen Koelewyn	Ausinspect
26	Ken Buckley	
27	John Gray	Middlewatch
28	Sophie Seck	RAIA
29	Jonathan Garner	Australian Institute of Horticulture inc
30	Simon Nott	Masonry Contractors Assoc of NSW
31	Lachlan Baird	Master Painters Australia
32	Paul Naylor	Master Plumbers Association
33	Edgar Richards	
34	Russell Kenny	
35	Rick Heron	Master Roof Tilers and Slaters Assoc of NSW
36	Peter Meredith	Master Builders Association of NSW
37	Neil Creek	Australian Steel Institute
38	Keith Atkins	Australian Bathroom & Waterproofing Assoc
39	Ken Stevens	
40	Paul Robinson	Australian Society of Building Consultants Incorporated
41	Barry Dawson	NECA Group Training
42	James Tinslay	NECA
43	Peter Breen MLC	
44	Kevin Jubelin	
45	Jean Frater	
46	Bernie Riordan	Electrical Trades Union
47	Robyn Lucienne	
48	Keith Pierce	

	Submitted by	Company
49	Laurie Zucco	Sydney Water
50	Adrian Piccoli, MP	
51	Ken Collins	Integral Building Investigations
52	Steve Rowbotham	Narellan Pools
53	Steve McCarney	Plumbers & Gasfitters Employees Union
54	Alan Metcalf	
55	Norm Argent	Air Conditioning and Mechanical Contractors Association
		Australian Elevator Association Ltd
		National Fire Industry Association Ltd
56	Darren Baker	Darren Baker Building
57	Andrew Ferguson	Construction Forestry Mining and Energy Union, Construction & General Division
	Chris Christodoulou	Unions NSW (Labour Council)
	Steve McCarney	Plumbers & Gasfitters Employees Union
	Tim Ayres	Australian Manufacturing Workers' Union
58	Jolyon Burnett	The Irrigation Association of Australia Ltd
59	Bernie Riordan	
60	Phil Dwyer	Builders Collective of Australia
61	Kate Doyle	NSW Architects Registration Board
62	John Cook	
63	Wayne Gersbach	Housing Industry Association
64	Brian Bresnahan	
65	Donna Finn	FS Architecture
66	R Gunther	Gwydir Construction Building Contractors

