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# **Building and Construction Industry Review**

## **DISCUSSION PAPER**



**Government of South Australia**  
Consumer and Business Services

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# Minister's message



The building and construction industry is vital to our economy. It employs thousands of South Australians, drives growth and provides us with the homes and infrastructure needed to support our great lifestyle.

In recent years, our state has faced new challenges with increased housing demand, supply chain constraints and industry labour shortages. The building sector has also been affected by insolvencies, growing cost pressures and changes to the way that building work is delivered.

In this environment, it is especially important that the regulatory framework for those who perform building work is fit for purpose. This review asks for your feedback on important reform proposals designed to modernise the *Building Work Contractors Act 1995*, the *Plumbers, Gas Fitters and Electricians Act 1995* and associated regulations.

I encourage you, through this discussion paper, to have your say about potential reforms and measures to strengthen the building and construction industry in South Australia.

**Hon Andrea Michaels MP**

**Minister for Consumer and Business Affairs**

# Purpose and scope of the review

It is important that South Australia's regulatory framework for building and construction work is well placed to meet the current and future needs of our state.

The Building and Construction Industry Review is looking at ways to achieve this objective, with a focus on opportunities to enhance industry compliance, protect and inform consumers, and support building practitioners to deliver high quality work.

Items in this discussion paper were identified at a series of roundtables convened by the Minister for Consumer and Business Affairs and Consumer and Business Services (CBS) with key industry bodies, state government agencies and training providers. The Commissioner for Consumer Affairs (the Commissioner) and CBS have also contributed suggestions to improve compliance, streamline dispute resolution processes and better protect consumers.

In addition, the review will consider recommendations from the national report, '*Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*' (the Building Confidence report), by Professor Peter Shergold AC and Ms Bronwyn Weir.<sup>1</sup> This report was commissioned by the Building Ministers Forum and produced a number of recommendations to improve the implementation of building and construction standards in the National Construction Code (NCC).

There are five key areas canvassed in this discussion paper:

1. improving building dispute resolution
2. regulation of building and construction industry contracts
3. reforms to licensing and registration
4. continuing professional development for workers; and
5. strengthening compliance and enforcement.

Comments from consultation will be used to help the Government decide what reforms should be pursued, their design and scope, and how to manage technical and practical issues that may arise.

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<sup>1</sup> *Building confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, Peter Shergold and Bronwyn Weir, February 2018.

# How to get involved

CBS is committed to a broad public consultation and invites all interested parties to provide submissions on the consultation paper. The consultation paper will be published on the yourSAy website (<https://yoursay.sa.gov.au>). Submissions can also suggest reforms for the building and construction industry that are not addressed in the discussion paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

The following legislation is available on [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au):

- *Building Work Contractors Act 1995*
- *Plumbers, Gas Fitters and Electricians Act 1995*
- *Planning, Development and Infrastructure Act 2016*
- *South Australian Civil and Administrative Tribunal Act 2013*
- *Fair Trading Act 1987*
- *Electricity Act 1996*
- Building Work Contractors Regulations 2010
- Plumbers, Gas Fitters and Electricians Regulations 2010
- Planning, Development, and Infrastructure (General) Regulations 2017
- Planning, Development, and Infrastructure (Swimming Pool Safety) Regulations 2019

**Please send all submissions by 5pm, Friday 17 January 2025. Please address any enquires to [CBSReforms@sa.gov.au](mailto:CBSReforms@sa.gov.au).**

You can provide your submissions by:

## 1. Email

[CBSReforms@sa.gov.au](mailto:CBSReforms@sa.gov.au)

## 2. Post

Att: Building and Construction Industry Review  
Consumer and Business Services  
GPO Box 1719  
ADELAIDE SA 5001

Please note that submissions (including name and address details) may be made publicly available. If you do not wish for your submission or any part of your submission to be made public, please mark your submission 'Confidential – Not for Publication' and provide your reasons for this.

Please be aware that, unless a request for confidentiality is made, information contained in any submission may be referred to publicly or published. Any material identified as 'confidential' is still subject to the *Freedom of Information Act 1991* and, while efforts will be made to keep the material confidential, in some circumstances it may be disclosed under that Act. Where disclosure of information may identify you, attempts will be made to consult with you under the *Freedom of Information Act 1991* before the documents are disclosed.

# Terminology and references

<b>Commissioner</b>	Commissioner for Consumer Affairs
<b>Building practitioner</b>	A person who undertakes plumbing, electrical or building work in the construction industry. This includes both a person who holds the relevant registration or licence required to perform work in South Australia, and a person who does not hold the relevant registration or licence required for that work.
<b>Licensed building practitioner</b>	A person who undertakes plumbing, electrical or building work in the construction industry and holds the relevant registration or licence required to perform that work in South Australia.
<b>BII</b>	Building Indemnity Insurance
<b>Building classes</b>	Building classes or classifications are referenced in Section A of the Governing Requirements, Part A6 of the National Construction Code. Buildings are labelled 'Class 1' through to 'Class 10'.
<b>Building Confidence report</b>	A report commissioned by the Building Minister's Forum, and authored by Professor Peter Shergold AC and Ms Bronwyn Weir, entitled ' <i>Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia.</i> '
<b>BWC Act</b>	<i>Building Work Contractors Act 1995 (SA)</i>
<b>BWC Regulations</b>	Building Work Contractors Regulations 2011 (SA)
<b>CPD</b>	Continuing Professional Development
<b>domestic building work</b>	Work that involves constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a house. <sup>2</sup> This includes excavating or filling a site on which a house will be constructed and other work prescribed by the BWC Regulations. <sup>3</sup>

<sup>2</sup> "House" is further defined in section 3(1) of the BWC Act and regulation 4(3) of the BWC Regulations.

<sup>3</sup> Section 3(1), BWC Act.

**domestic building work contract** A contract between a building work contractor and another person for the performance by the contractor of domestic building work. This does not include a subcontract for the performance of domestic building work.<sup>4</sup>

**FTA**

*Fair Trading Act 1987 (SA)*

**NCC**

National Construction Code

**NSW CAT**

NSW Civil and Administrative Tribunal

**PDI Act**

*Planning, Development and Infrastructure Act 2016 (SA)*

**PGE**

Plumbing, gas fitting and electrical

**PGE Act**

*Plumbers, Gas Fitters and Electricians Act 1997 (SA)*

**PGE Regulations**

Plumbers, Gas Fitters and Electricians Regulations 2010 (SA)

**SACAT**

South Australia Civil and Administrative Tribunal

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<sup>4</sup> As above.

# Part 1 – Building dispute resolution



# 1.0 Background

Domestic building work is an area with elevated complaint levels, potential for high levels of consumer detriment and substantial impacts on people's lives.<sup>5</sup>

Under current provisions of the *Building Work Contractors Act 1995* (SA) (BWC Act), if a consumer has a dispute with a building work contractor that they are unable to resolve, they have the option of lodging a request for assistance with CBS, which provides a conciliation service for consumer disputes. Consumers and traders often need to obtain a building inspection report, at their own cost, to support the conciliation process.

If a dispute cannot be resolved through a conciliation process (which is discussed further under Part 1.3 of this paper), it is open to the consumer to obtain their own legal advice and representation to pursue the matter through bringing civil proceedings in the Magistrates, District or Supreme Court, depending on the value of the dispute.

## Current problems with building disputes

There is concern that the costs and time involved in court action does not sufficiently protect consumers against defective building work. Some consumers involved in building disputes that have escalated to court action have reported that it has taken in excess of three years (including their own initial attempts to resolve disputes) to pursue their claims. Costs for legal action can also leave consumers and builders hundreds of thousands of dollars out of pocket, with litigation expenses far exceeding the cost of rectification work.

In response to these concerns, the Government is considering new measures to facilitate cheaper and more timely resolution of domestic building work disputes for all parties.

## Proposals

Parts 1.1 and 1.2 of the paper consider the following options for improving building dispute resolution, all of which intend to complement existing CBS conciliation services:

1. a proposal to introduce a binding rectification order scheme for domestic building work contract disputes, facilitated by CBS; and/or
2. a proposal to transfer domestic building work contract disputes from the courts to the South Australian Civil and Administrative Tribunal (SACAT); and/or
3. keeping domestic building work contract matters in the court system and considering other options to reduce expenses and delays (for example, through changes to court processes).

The interaction between these different proposals will also need to be considered. For example, a binding rectification order scheme could function with SACAT or the courts acting as a review body for binding rectification orders. SACAT or the courts could also maintain a separate jurisdiction to

<sup>5</sup> Section 3(1) of the BWC Act defines 'domestic building work' as work involved in constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a house, or work involved in excavating or filling a site for a house. The BWC Regulations prescribe further types of work that fall within this definition.

deal with domestic building work contract disputes that are not suitable for or have not been successfully resolved by a binding rectification order scheme.

Other suggestions or proposals to improve domestic building dispute resolution are also welcomed.

## 1.1 Binding rectification order scheme

One option to enhance the dispute resolution process is to introduce a binding rectification order scheme in South Australia (SA). The intent of a binding rectification order scheme is to resolve building disputes about defective work quickly and cost effectively without parties going to court.

It is proposed that the binding rectification order scheme would apply to disputes under domestic building work contracts exceeding a specific monetary value. The monetary value could be similar to the minimum threshold for Building Indemnity Insurance (BII) in domestic building work contracts.<sup>6</sup>

Any binding rectification order scheme would be an additional dispute resolution option to the conciliation service that is provided by CBS. Parties may be required to attempt conciliation with CBS before applying for a binding rectification order, and/or attempt resolution through a binding rectification order scheme before commencing proceedings in another forum (such as the courts or SACAT, as discussed under Part 1.2).

Many Australian jurisdictions have dispute resolution schemes that function outside of the court system. These schemes offer independent assessments of building work and allow regulatory authorities to issue binding determinations to parties about issues in dispute, with those determinations often reviewable at state tribunals. A proposed binding rectification order scheme and an overview of arrangements in other jurisdictions is provided below.

### Proposal

It is proposed that the scheme could generally work as follows:

#### Application

- A party would lodge an application with the Commissioner for a binding rectification order in relation to building work. Applications would only be accepted where parties had made genuine attempts to resolve a building dispute directly and there are valid issues in dispute.
- The Commissioner would consider the application based on particular criteria and decide whether it is appropriate to immediately engage a building expert to assess the work in dispute, or offer CBS conciliation services in the first instance.

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<sup>6</sup> Building indemnity insurance is currently required for domestic building work contracts that have a value of \$12,000 or more (sections 3 & 33, BWC Act and regulation 4, BWC Regulations). The Government is presently undertaking a separate review of BII arrangements which will consider changes to this minimum threshold.

### Assessment of building work

- The Commissioner may consider it is appropriate to engage a building expert to assess the building work that is the subject of the dispute.
- The Commissioner would appoint an independent building expert from a panel of appointed experts to assess the complaint and inspect any work. The cost of this assessment would be paid by the party that lodged the initial application.
- The independent building expert would produce a report identifying issues and making recommendations based on their assessment.
- The report would be provided to the Commissioner and both parties. Parties would have a specified period to provide written submissions to the Commissioner in response to the report.

### Outcomes

- At this stage, the parties would be given an opportunity to consider the contents of the report and negotiate an agreement (including via a CBS conciliation process).
- Where the parties are still unable to resolve the dispute, the Commissioner would consider the report and submissions, before making an order.
- Types of orders made by the Commissioner would broadly include:
  - an order for works to be rectified by the builder;
  - an order for the builder to pay reasonable costs for another builder to undertake rectification work;
  - an order for the builder to complete work set out in the contract;
  - a finding that building work was not defective or incomplete;
  - an order for the consumer to pay money to the builder to complete building work or take specific actions that will allow the builder to complete the work set out in the contract;
  - an order determining payment of fees for expert reports between the parties, including any independent building reports obtained by parties when they first lodged an application with the Commissioner.
- The building work contractor or consumer would be able to apply for a review of the decision within a prescribed timeframe. The body determining the review application could potentially be the Magistrates Court or SACAT (see related discussion in Part 1.2 of this paper).
- Where a builder or consumer did not comply with an order and did not appeal within the prescribed timeframe, the following would apply:

- the Commissioner would be able to partially suspend the building work contractor's licence to prohibit them from entering into contracts for new work;
- the consumer or builder would be entitled to end the building work contract and make an application to another forum for appropriate orders (e.g. an application to the courts , which is further discussed in Part 1.2).

Further consideration would need to be given to the types of buildings or building work, and the scale of defects, that the scheme would apply to.

## What schemes are used in other jurisdictions?

### New South Wales

In NSW, the Building Commissioner has authority to issue rectification and prohibition orders under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*. These powers are currently limited to multi-storey, multi-unit apartment buildings or mixed use buildings (shops and apartments), hostels or boarding houses, and residential aged care buildings (class 2, 3 and 9c buildings<sup>7</sup>).

A building work rectification order can be issued where building work is being carried out in a way that might lead to a serious defect (whether or not the building is occupied). It is intended to get building work remediated so that a serious defect does not arise or if there is already a serious defect, that it is fixed.

In the event remediation work is not undertaken, enforcement action can be taken. A prohibition order may be made if the building is not occupied and the developer has been ordered to fix serious defect/s. If a prohibition order is in place, a certifier cannot issue an occupation certificate until the defects are fixed. This gives confidence to purchasers that once a prohibition order is lifted, there is a reduced risk of serious defects in the building.

Part 3A of the *Home Building Act 1989* also establishes a binding rectification order scheme that applies to work undertaken on houses and other multi-unit dwellings. Where a consumer or builder lodges a complaint about defective work, NSW Fair Trading will appoint a building inspector to meet with the parties on the building work site, inspect the work under dispute and produce an assessment report. Inspections only consider major defects, being problems with major elements of a building caused by defective design, workmanship or materials, or failure to comply with the NCC.

The inspector may issue a rectification order requiring a builder to take steps to ensure that work is completed, or defects or damages are rectified. The rectification order:

- may specify conditions that the consumer must comply with before the builder complies with requirements of the order, such as the payment of money due under the contract;
- may specify stages in which the requirements of the order must be complied with (staged rectification order); and

<sup>7</sup> Building classes are defined in Part A6, Volume 1, National Construction Code (2022).

- must provide a date by which the requirements of the order must be complied with.

Where an order is not complied with or one of the parties is not satisfied with the decision made, a building claim can be lodged with the NSW Civil and Administrative Tribunal (NSW CAT). The NSW CAT may make an order:

- requiring one party to pay money to another party;
- indicating that one party does not owe a specified amount of money to another party in the proceedings, or is entitled to a refund; or
- requiring that a party undertakes, or refrains from undertaking specified building work

If a builder fails to comply with a rectification order issued by an inspector or an order issued by the NSW CAT, disciplinary action may be pursued.

## Victoria

A builder or a consumer may lodge an application for building dispute resolution with Domestic Building Dispute Resolution Victoria (DBDRV). If a dispute is not resolved by a conciliation, or a record of agreement is not honoured, the Chief Dispute Resolution Officer (CDRO) may issue a binding rectification order. The CDRO will consider the building assessment reports, the extent of non-compliance with a record of agreement, and any change in circumstances since the assessor's report.

A dispute resolution order (binding rectification order) issued against a building owner can direct them to:

- pay money to the builder for the completion of building work by a specified date;
- pay money into the Domestic Building Dispute Resolution Victoria Trust Fund, to be held until the defective or incomplete building work is fixed or completed; or
- refrain from doing anything that would stop the builder from complying with the contract or their warranty obligations.

A dispute resolution order issued against a builder can direct them to:

- rectify defective building work by a specified date;
- complete the building work in accordance with the contract by a specified date;
- rectify any damage caused as a result of carrying out the building work by a specified date;
- pay for reasonable costs of another builder to rectify or complete the building work (if the building work is too defective to allow them to continue);
- arrange the building work to be carried out by a registered builder (if the building work in dispute should have been carried out by a registered builder) by a specified date;
- an order can include a finding that the building work in dispute is not defective or incomplete.

Parties who have had a dispute resolution order issued against them may seek to have it reviewed by the Victorian Civil and Administrative Tribunal (VCAT) on the basis that:

- the description of the defective or incomplete building work is not accurate;
- the due date for carrying out the specified building work is not reasonable; or
- any requirement in the order to take or refrain from taking specific action is unreasonable.

If a builder fails to comply with a dispute resolution order, an assessor will check the status of the building work and report on whether it has been complied with. If the order has been breached, a notice of breach of dispute resolution order is issued. The owner is then entitled to end the contract (as long as they have met any requirement in a dispute resolution order issued against them) and, if they wish, apply to VCAT for appropriate orders.

A builder who has been issued with a notice of breach of dispute resolution order can seek a review in VCAT to challenge the accuracy of the building assessment report/s on which the order is based or to prove that the dispute resolution order has since been complied with. An owner cannot end a contract until the outcome of the review is known.

If a building owner fails to comply with a dispute resolution order, the builder is entitled to end the contract and apply to VCAT for:

- an order for damages as a result of the loss of work caused by the early end to the contract; or
- payment for works carried out to date.

## Queensland

In Queensland, a consumer or a principal building contractor can lodge a complaint about defective building work with the Queensland Building and Construction Commission (QBCC). Following a site inspection, the Commission may issue the principal contractor and any relevant subcontractor with a direction to rectify defective building work. In most cases, the rectification period is 35 days.

In the event a contractor does not comply with a direction to rectify, the Commission may apply demerit points to their licence, prosecute the contractor, issue a penalty fine, take disciplinary action in the Queensland Civil and Administrative Tribunal or the courts, apply conditions to the contractor's licence or issue a show cause notice that may result in the contractor's licence being suspended or cancelled.

A subcontractor responsible for defective work must rectify it or face disciplinary action which could result in the suspension or cancellation of their licence. Should the subcontractor fail to comply with the direction issued to them, the principal contractor will be required to either rectify the defect themselves or have another subcontractor do that work at the principal contractor's cost.

## Western Australia

In Western Australia, a builder or consumer can lodge a complaint about home building work with the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011*. The Building Commissioner may issue a remedy order if satisfied the regulated building service subject to the complaint has not been carried out in a proper or proficient manner or is faulty or unsatisfactory.

A building remedy order may require a person who carried out the regulated building service to remedy the work, pay costs associated with having someone else remedy the work, or pay

reasonable compensation. However, the Building Commissioner cannot issue orders for work or payments valued over \$100,000 without the consent of the parties.

A home building work contract remedy order can be issued by the Building Commissioner if satisfied that the order is justified. A home building work contract remedy order may consist of, but is not limited to, an order:

- to stop an action in breach of a contract, or require work to be done;
- to pay an amount payable under the contract;
- requiring specified work to be done;
- that an amount is not payable under the contract, or if already paid, an order to repay the amount;
- for compensation for loss or damage; or
- declaring that an amount of money claimed for work done is not payable.

Complex or intractable disputes are referred to the State Administrative Tribunal (SAT).

When dealing with building disputes, the onus is on the parties to provide sufficient evidence to substantiate their respective positions. Depending on the complexity and nature of the issue/s a report from a building expert may be required.

Parties to a dispute who are aggrieved by the decision of the Building Commissioner to refuse to accept a complaint may apply to the SAT for leave to have that decision reviewed. Similarly, any person who does not agree with an order issued by the Building Commissioner may apply to the SAT for review of that order. A review to the SAT must be made within 28 days from the date of issue of the Building Commissioner's order or decision.

## Tasmania

In Tasmania, the *Residential Building Work Contracts and Dispute Resolution Act 2016* confers original jurisdiction for residential building work disputes on the Tasmania Civil and Administrative Appeals Tribunal (TASCAT).

A consumer or builder may lodge a building dispute notice with TASCAT. However, parties must attempt mediation with a mediator appointed by the Director of Building Control before lodging a notice. Where a matter progresses to TASCAT, the Tribunal has powers to determine a range of matters relating to defective or incomplete building work, contract terms and damage arising from building work.

## Northern Territory

In the Northern Territory, under the Construction Contracts (Security of Payments) an application can be made by any party to a contract to have a building "payment dispute" adjudicated. Payment disputes may be made by either a builder or a consumer in relation to the performance or non-performance by the builder under the contract, disputes over amounts retained under the contract by one of the parties, and disputes over the return or non-return of a security payment. If a consumer refuses to pay a payment claim on the basis that the work was defective, that will give rise to a payment dispute. Alternatively, a refusal by a contractor to pay a payment claim made

under a building contract to recover the cost of rectifying defective work will also give rise to a payment dispute.

An application must be made within 90 days of the dispute arising. A third party (prescribed appointers under the regulations) appoints an adjudicator to resolve the dispute. The adjudicator has 10 working days to determine a dispute. Disputes are determined based on the materials provided but adjudicators can request reports from experts and conduct site inspections, if considered necessary. A determination made by an adjudicator is enforceable before a court. A party who is not happy with an adjudicator's decision may commence litigation, however, this litigation is not part of the adjudication process and cannot interfere with the adjudication process and the enforcement of outcomes from it. Litigation may provide for a different set of outcomes between the parties, however, this may occur long after the construction works required under the contract are completed.

The Local Court may hear appeals in relation to appointed adjudicators (including a refusal to appoint an adjudicator) or review a decision of an adjudicator who has dismissed an application without making a determination of its merits.

Separate to the security of payments scheme, domestic building disputes (i.e., residential building work not including high rise apartments) are also dealt with by a Commissioner of Residential Building Disputes, an expert who conducts technical inspections and makes decisions to resolve disputes.

### Questions

1. Would the introduction of binding rectification orders enhance the building dispute resolution process in SA?
2. Is the proposed binding rectification order scheme appropriate? Are there alternate models or mechanisms that would provide faster and cheaper resolution of domestic building work contract disputes for parties?
3. How should rectification orders be enforced, and what should the consequences be for non-compliance?
4. Are there any unintended consequences the proposed rectification order scheme may have? What would be the *costs* and *benefits* for consumers and building practitioners if the proposed binding rectification order scheme was implemented?

## 1.2 Transfer of domestic building work disputes to SACAT

The BWC Act provides that a party to a domestic building work contract may apply to the Civil (Consumer and Business) Division of the Magistrates Court to determine a dispute in relation to that contract.

The BWC Act provides for disputes in relation to residential building work to be dealt with informally and with minimal expense in this division of the Magistrates Court. However, it also specifies that disputes involving amounts over \$100,000, on the application of a party to the proceedings, must be transferred to the District Court.

Schedule 2 of the BWC Act stipulates that the Minister must establish a panel of experts with expertise in building work who may sit with the Magistrates or District Court (Civil Division) as assessors in proceedings with respect to domestic building work (under Part 5 of the BWC Act).

### Problems with court-based dispute resolution

Building disputes can be costly (especially for consumers, who may be awarded costs at the conclusion of proceedings) and protracted, particularly where proceedings are dealt with in the District Court and involve reports from multiple experts engaged by parties.

Whilst some matters can be managed quickly, fairly and at low cost in the Civil (Consumer and Business) Division of the Magistrates Court, many larger building disputes need to be considered by superior courts.

This section of the paper seeks feedback on two options to transfer domestic building work contract disputes to SACAT or improve processes for managing disputes in the court system, with the goal of providing more efficient dispute resolution to builders and consumers involved in higher value building disputes.

### Transferring building disputes to SACAT

Consideration could be given to transferring jurisdiction for the following disputes from the Magistrates and District Court to SACAT:

- applications relating to terminated contracts (under section 36 of the BWC Act);
- applications relating to contract disputes (under section 37 of the BWC Act); and
- applications relating to harsh and unconscionable terms (under section 38 of the BWC Act)

### Considerations

The main objectives of SACAT include ensuring that applications are processed and resolved as quickly as possible while achieving a just outcome, keeping party costs to a minimum, and acting with as little formality as possible. Accordingly, moving domestic building work contract disputes to this forum may see disputes resolved more efficiently and cheaply for parties.

It is anticipated that either party (the builder or the consumer) would have the ability to lodge a claim with SACAT in relation to a domestic building work contract dispute.

SACAT would require assistance from experts with appropriate building industry qualifications and experience when determining these disputes (similar to the court assessors currently appointed to assist the Magistrates Court in domestic building work matters).

Some matters, such as where the dispute is between an SA resident and a resident of another State or involves a claims under a federal legislation, will require the exercise of federal judicial power which can only be exercised by a court and not SACAT. Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013* allows SACAT to transfer matters between residents of different States to the Magistrates Court. Federal diversity proceedings are dealt with at SACAT by a member who is concurrently appointed as a judicial registrar of the Magistrates Court (acting in their capacity as a judicial registrar) or by the Tribunal's Deputy President, acting in her capacity as an auxiliary magistrate.

Matters relating to federal legislation may also need to be referred by SACAT to the courts, which would require legislative amendments and may add some expense and delay where matters need to be transferred to another member part-way through proceedings. For some matters, the existence of federal issues is not clearly identifiable when proceedings commence and may only arise later. Victoria has experienced this issue recently, with VCAT resources having to accommodate the additional task of actively triaging matters and referring them to the courts where federal issues arise.<sup>8</sup>

SACAT does not have a general civil claims jurisdiction to deal with debt claims or common law contractual disputes that are ancillary to a building dispute (which several other jurisdictions' civil and administrative tribunals have). Because of this, some inefficiencies and extra expense may arise from the jurisdictional overlap that may occur where, for example, a building work contractor takes action against a consumer in the courts to enforce a debt and the consumer counterclaims to SACAT for breach of a domestic building contract for faulty or incomplete work.

The ACT Civil and Administrative Tribunal (ACAT) has a general civil claims jurisdiction up to a \$25,000 monetary limit and can deal with building disputes. Expert assessors are appointed by ACAT to assist the ACAT in its decision making but these technical experts do not make decisions either alone or as part of a majority in panel decision-making. The NT Civil and Administrative Tribunal (NTCAT) is also a court with general civil claims jurisdiction up to \$25,000. However, domestic building disputes in the NT are dealt with by a Commissioner of Residential Building Disputes, as discussed under Part 1.2.

SACAT also does not have an ability to enforce its own orders, meaning that a builder or consumer would need to commence separate proceedings in court to ensure compliance. This might be overcome by legislative amendments allowing SACAT orders relating to building disputes to be enforced by a court as a minor statutory proceeding on application by one of the parties, without needing to meet pre-action requirements. In addition, the Commissioner could have the power to

<sup>8</sup> *Annual Report 2022-2023*, Victorian Civil and Administrative Tribunal, p 17.

partially suspend a building work contractor licence to prevent entry into further contracts until a SACAT order is complied with.

To prevent delays caused by large numbers of applications, parties to a building dispute might be asked to participate in alternative dispute resolution processes before seeking a resolution with SACAT. This process could potentially draw on existing CBS conciliation services.

### Other options

As an alternative to transferring building work matters to SACAT, the Government is also open to suggestions that will improve current court processes for managing domestic building work contract disputes by reducing expenses and delays for parties.

The Civil (Consumer and Business) Division of the Magistrates Court already offers the following advantages for parties to a building dispute:

- low costs to lodge an application;
- access to a court-appointed mediator at no cost to the parties<sup>9</sup>, and access to a court-appointed building expert during a mediation;
- use of court-appointed experts to inspect the building work that is in dispute, and provide a report to the court at no cost to the parties;
- powers to deal with any ancillary aspects of a building dispute, including debt claims and enforcement;
- access to a judicial conciliation conference with a magistrate prior to a trial, to attempt resolution; and
- orders that can be enforced (as is the case of all courts that hear building work dispute matters), unlike those issued by SACAT.

However, the Civil (Consumer and Business) Division of the Magistrates Court is generally limited to smaller claims up to \$12,000 in value.<sup>10</sup> Due to the increasing costs of building work, there are claims that fall outside of this jurisdiction and must be considered by the General Division of the Magistrates Court, the District Court or the Supreme Court, depending on the value of the dispute. Parties to these claims do not benefit from all of the features designed to facilitate early and low-cost resolution of matters in the Civil (Consumer and Business) Division of the Magistrates Court.

Consideration is being given to changes that might facilitate low cost and timely resolution for a greater number of the building work disputes heard by the courts. For example, the jurisdiction or monetary limits for domestic building work contract disputes could be adjusted to allow for higher value disputes to be heard within the Civil (Consumer and Business) Division of the Magistrates

<sup>9</sup> Court appointed mediators are also available in the General Division of the Magistrates Court, at a low cost to parties.

<sup>10</sup> All claims lodged under the BWC Act automatically fall in the Civil (Consumer and Business) Division of the Magistrates Court pursuant to section 3 of the *Magistrates Court Act* and section 292.1 of the *Uniform Civil Rules 2020*, unless the amount claimed is more than \$12,000 and the parties elect to that have matter heard in the General Civil jurisdiction of the Magistrates Court, where claims of up to \$100,000 may be heard.

Court. Alternately, some features from the Civil (Consumer and Business) Division of the Magistrates Court might be adopted by the higher courts when managing disputes.

It should be noted that some disputes are more appropriately managed using the existing adversarial procedures in the higher courts. Any proposed change to court processes will need to consider the complex legal and technical questions that can arise in building work contract disputes, and the need to ensure that there are appropriate forums for managing these issues.

### Questions

5. Would the transfer of the identified building disputes from the Magistrates/District Court to SACAT assist in improving the dispute resolution process in SA?
6. Are there any unintended consequences that could arise from the proposal to transfer identified building disputes from the Magistrates/District Court to SACAT, or other factors that should be taken into account?
7. How could SACAT utilise experts when considering building work disputes?
8. Aside from transferring the jurisdiction for domestic building work contract disputes to SACAT, are there other options to reduce the current expense and delays associated with court proceedings about domestic building work disputes? (for example, changes to existing court processes and monetary limits)
9. What factors need to be considered when contemplating any changes to court processes to facilitate improved resolution of building work contract disputes?

## 1.3 Compulsory conciliation conferences for building disputes

CBS provides a conciliation service for consumer disputes. This involves an officer from CBS assisting the consumer and the building practitioner to reach a resolution of the dispute through negotiation. All consumer complaints are assessed on receipt to ensure that there are genuine issues in dispute, and building practitioners are given an opportunity to respond to the issues before CBS staff determine whether to proceed with a conciliation. Successful negotiation relies on the willingness of both parties to reach a mutually agreeable outcome.

CBS has no legal authority to impose any action or resolution on either the building work contractor or the consumer. However, under section 8A of the *Fair Trading Act 1987* (FTA), the Commissioner for Consumer Affairs has the power to call a Compulsory Conciliation Conference where the building practitioner is required to attend to discuss the issues with the consumer and a senior officer from CBS. This sort of conference is designed to avoid the need for consumers to pursue a remedy through the courts, which, as outlined above, can be lengthy and expensive. In the 2022-2023 financial year, 79% of disputes referred to a CBS compulsory conciliation conference were successfully resolved.

Failure to attend a compulsory conciliation conference by the consumer, without reasonable excuse, may result in CBS ceasing to provide any further assistance in the dispute resolution process.

In the event the Commissioner notifies a building practitioner of a compulsory conciliation conference, they are required to attend (it is not optional). In the event a building practitioner fails to attend a compulsory conference, they risk being issued with an expiation notice of \$315 (for minor offences) or being prosecuted, with a maximum penalty of \$5,000 for minor offences or \$10,000 in any other case. Minor offences are defined to be an offence where the value of the goods or services the subject of the dispute is not more than \$1,000 or as otherwise prescribed by the regulations.

Some building work contractors avoid settling disputes through conciliation, with the expectation that consumers will not invest time and money in further court proceedings. In 2023, on 15 occasions, a builder or contractor failed to attend a compulsory conciliation conference organised by CBS.

### Proposal to increase penalties for non-attendance

Resolving a dispute can save the cost, stress and time of taking civil action. It is proposed that the expiable offence when a trader<sup>11</sup> (including a building practitioner) fails to attend a compulsory conciliation conference be increased from \$315 to a higher amount, with the intent of increasing participation in such conferences.

<sup>11</sup> Section 3(1) of the FTA defines a trader as a person who in the course of a business supplies, or offers to [supply](#), goods or services; or [sells](#) or lets, or offers to [sell](#) or let, premises.

The expiable offence (currently \$315) only applies to minor offences, which are defined in section 8A of the FTA to be disputes with a value not more than \$1,000.

When the value of the dispute exceeds \$1,000 (and does not meet the definition of a minor offence), a builder or contractor can be prosecuted for their failure to attend a compulsory conciliation conference and face a fine of up to \$10,000. CBS exercises discretion to determine when it is appropriate to prosecute builders for the failure to attend a compulsory conciliation conference.

It is also proposed that the expiable offence be applied to conciliation of all disputes regardless of value, instead of the current limitation to minor offences. This would result in more builders being subject to an expiation fee in the event they fail to attend a compulsory conciliation conference.

These changes would apply to any trader who has been asked by the Commissioner to attend a compulsory conciliation conference.

### Questions

10. Should the expiable offence for non-attendance at a compulsory conciliation conference be applied to all traders who fail to attend compulsory conciliation conferences, including conferences relating to building disputes?

# Part 2 - Building and construction industry contracts



## 2.1 Certificate of Occupancy and swimming pool requirements in building contracts

### Certificates of Occupancy and swimming pool requirements

From 1 October 2024, a Certificate of Occupancy (COO) is required for Class 1a buildings<sup>12</sup> (dwellings) under the *Planning, Development and Infrastructure Act 2016* (PDI Act). A COO is a certificate issued by either a private certifier or a council. It indicates that a dwelling is suitable for occupation and complies with requirements prescribed by regulation, being requirements published by the Chief Executive of the Department for Trade and Investment (DTI) on the PlanSA website.

The Chief Executive of the DTI will initially prescribe the following minimum requirements for a COO to be issued:

- for all dwellings, smoke alarms have been installed, are interconnected (where required) and are operational; and
- where the building is within a Hazards (Bushfire – High Risk) Overlay of the Planning and Design Code, all relevant bushfire protection requirements (as outlined in *Ministerial Building Standard MBS 008 – Designated bushfire prone areas – additional requirements*) have been installed and are operational as approved, including on-site water supply, pumps, pipework, hoses and fittings as applicable.

Councils are also required to inspect swimming pools to ensure that the appropriate safety features have been complied with. Concerns have been raised that swimming pools are often installed with no fencing or temporary fencing that remains in place for too long, requiring multiple inspections by councils which impacts their limited resources.

### Current requirements

There are existing obligations to comply with both the minimum COO requirements and swimming pool safety features, including offences if these obligations are not complied with.

In relation to smoke alarms, the *Planning, Development and Infrastructure (General) Regulations 2017* (PDI Regulations) require Class 1 and 2 buildings (whenever constructed) to have at least one smoke alarm installed. For bushfire protections, the Planning and Design Code under the PDI Act specifies that where a building sits within a Hazards (Bushfire – High Risk) Overlay, certain bushfire protections (such as water tanks) are required.

In relation to swimming pool fences and gates, the PDI Act outlines that the regulations may designate safety features for swimming pools. The PDI Regulations require fencing and barriers to be installed, with temporary fencing only to be used for up to two months after the completion of the construction of the swimming pool. The building work contractor or the owner of the property (when no building work contractor is engaged) must install a permanent pool gate and fencing before the pool is filled with water or within two months after the pool construction is complete.

<sup>12</sup> Class 1a buildings are houses, or stand-alone single dwellings of a domestic or residential nature. For further information see section A of the Governing Requirements in Part A6 of the NCC.

Recognising these requirements, an applicant must provide prescribed documentation to the relevant authority when lodging an application for a proposed pool or spa development. This documentation is required to outline the location of fences, safety barriers and access gate location/s, amongst other things.

Whilst these requirements are in place, enforcement is reportedly not effective as some of the offences lie against the building owner who, unlike a builder, may be less aware of the building requirements.

### Details of proposal

It is proposed that the BWC Regulations are amended to require domestic building work contracts to include information in relation to the following:

- the requirement to install smoke alarms, as outlined in the PDI (General) Regulations;
- in the event the building is in a Hazards (Bushfire – High Risk) Overlay area, the bushfire protection requirements as required by the Planning and Design Code and Ministerial Building Standard MBS 008; and
- in the event a swimming pool is constructed, the safety features which are required by the PDI (Swimming Pool) Regulations.

By including this information in building work contracts, the building owner would be put on notice of such requirements. In the event the build did not comply with the requirements and a COO could not be issued, this would likely increase the effectiveness of enforcement action against building owners.

Information about smoke alarms and swimming pool fences is already provided in educational material available in a document titled 'Consumer guide to Building, Extending and Renovating a home', which is prepared by CBS and available on the internet. Information about bushfire protections is also available on the CBS website.

### Questions

11. Would it be helpful to require information about the proposed COO requirements and swimming pool safety feature requirements to be contained within building work contracts?
12. Are there other mechanisms which might increase the effectiveness of enforcement action in relation to the COO and swimming pool safety feature requirements?
13. Should the COO and swimming pool safety feature requirements be included in a building work contract as obligations to be met by the builder, instead of information for the consumer? For example, should the pool builder be required to arrange installation of swimming pool fencing as part of the building contract, or should the consumer have the option of separately arranging a trader to install the fencing?

## 2.2 Sunset clauses

A sunset clause allows either party to terminate a contract if the building works under the contract are not completed within a set period of time. In the building industry, these clauses are designed to protect both parties if the conditions of a property sales contract cannot be fulfilled due to factors such as unforeseen weather and construction issues.

One of the most common usages of a sunset clause is in contracts of sale for off-the-plan residential buildings (off-the-plan contracts). In these situations, buyers sign a contract with a building developer or other seller to buy a home that is yet to be built or in the process of being built. Where the developer fails to complete works by the date specified, the contract may be terminated and the deposit returned to the buyer.

As there is no legislation governing the use of sunset clauses in SA, their operation is dependent on the specific terms of each agreement and the application of contract law.

### Issues with sunset clauses

In recent years, there have been problems in other jurisdictions with building developers deliberately postponing the completion of construction work in order to cancel a contract using an existing sunset clause, and sell the property at a higher price. This leaves purchasers at a significant disadvantage because they are unable to benefit from the increase in land value since signing the contract and may find themselves priced out of a higher property market.

CBS is also aware of situations where building developers have indicated that they intend to use a sunset clause to terminate a contract, if additional funds are not paid by consumers.

### Addressing the problems

This section of the paper seeks feedback about how sunset clauses currently operate in the building and construction industry in SA, and ways to strengthen consumer protections whilst retaining the flexibility required for investment in new homes.

There have been significant reforms to the use of sunset clauses in other jurisdictions over the last few years. Victoria, Queensland, New South Wales and the ACT have all introduced legislation to limit the circumstances where a seller of land can use a sunset clause to terminate an off-the-plan contract. In these jurisdictions, property sellers are only able to execute a sunset clause with the consent of the purchaser or the permission of a court. For a court to grant an order in favour of the seller, the court needs to be satisfied that terminating the contract is just and equitable taking into account specific factors.

### Questions

14. Are sellers, including developers, using sunset clauses inappropriately to terminate off-the-plan contracts with consumers in SA? Please provide evidence.
15. Should there be limitations on the use of sunset clauses similar to those implemented interstate? Are there other options to address this problem?
16. What would be the *costs* and *benefits* for consumers, developers and industry if there were limitations imposed on the use of sunset clauses to terminate off-the-plan contracts?
17. If changes are implemented, what transition period should apply?

# Part 3 – Licensing and Registration



## 3.1 Building inspections

### Inspections during construction

#### Current requirements

The PDI Act establishes the scheme relating to inspections of development during the construction phase (and immediately post-construction but before occupation, i.e., at practical completion). The PDI Act provides that the State Planning Commission must issue a practice direction that will require councils to carry out inspections of development undertaken in their respective areas.

The State Planning Commission has published the *State Planning Commission Practice Direction (Council Inspections) 2020* (Practice Direction 9), which sets out the specific inspection requirements for building work within council areas that each council must comply with. It is important that Practice Direction 9 remains contemporary to ensure that inspections are prioritised to areas of risk and where the consequences of failure are more serious.

It must be noted that some building work cannot be inspected at a point in time. This is because defects may not be obvious by visible inspection (and may require testing of some sort), and it is the process of construction or the coordination of various trades that is important.

It is also important that where a licensed building practitioner is identified as failing to comply with construction standards and requirements, intelligence of those failings is reported to CBS so appropriate action may be taken against any licence holder.

#### Building Confidence Report

In February 2018, the Building Confidence Report was delivered to the Building Ministers Forum. In relation to inspections of development during the construction phase, recommendation 18 in the Building Confidence Report emphasised the importance of inspection regimes and recommended that “each jurisdiction requires on-site inspections of building work at identified notification stages”.

New South Wales has implemented a requirement for mandatory critical stage inspections for all building work. For example, the following building work must be inspected on class 1 and 10 buildings<sup>13</sup>:

- Piers/Footings – after excavation and before placement of concrete;
- Slabs or other reinforced concrete elements – before placement of concrete;
- Framing – before covering (or insulation) installation of any floor, wall or roof framing;
- Waterproofing – before covering of the waterproofing membrane;
- Stormwater – before covering drainage connections; and
- Completion – after the work is completed.

<sup>13</sup> Class 1 and 10 buildings are defined in Part A6, Volume 1, National Construction Code (2022).

A key difference is that in New South Wales, inspections may be undertaken by the relevant local council or by a private accredited certifier. In SA, only local councils may undertake inspections to meet the requirements of the PDI Act.

This section of the paper asks how effective the current inspection scheme for building developments is, in the construction phase.

### Questions

18. Are the current council building inspection requirements (in Practice Direction 9) ensuring building work complies with the National Construction Code?
19. Is the approach to inspections consistent across council areas and building types? Are there specific stages of building work that should be inspected that are not being adequately or appropriately inspected?
20. Does the experience and expertise of the inspector have a large bearing on the effectiveness of the inspection? Should inspections be able to be undertaken by other suitably qualified and experienced building professionals (private building certifiers, architects, engineers, trade specialists etc)?

## Building inspectors

Building inspection reports are often used to assess the condition of a building before purchase. An inspection report may also be requested for insurance purposes, a property valuation, to identify necessary renovations on older buildings, or to support claims in a building work dispute.

It is common for people to engage a private building inspector to identify any building defects or costly issues before making an offer on a residential home or bidding at auction. In some situations, a purchaser will insert a condition in the contract of sale that they must be satisfied with the contents of a pre-purchase building inspection report before the sale is made.

### Current regulation of building inspectors

In SA, it is not mandatory to obtain a building inspection report before buying a property. However, it is recommended that consumers engage an independent building inspector, surveyor or architect to identify potential issues before committing to a purchase.

People who conduct residential building inspections are regulated as “building consultants” under the BWC Act and do not need to hold a licence or any particular insurance.<sup>14</sup> However, a building inspector can be subject to disciplinary action under the BWC Act if they act unlawfully, improperly, negligently, or unfairly in the course of their business, or if they breach an assurance under the FTA.

The services that building inspectors provide are covered by consumer guarantees under Part 5-4 of the ACL. This includes a guarantee that the services will be provided with acceptable care and skill or technical knowledge and taking all necessary steps to avoid loss and damage. Where a building inspector breaches a consumer guarantee, a consumer can also seek compensation through the courts.

### Issues and proposal

Some industry stakeholders are concerned that there are no requirements for building inspectors to hold qualifications or demonstrate experience in the construction industry. This may put consumers and other building practitioners at risk in circumstances where a building inspector does not have the appropriate training and experience to identify defective building work. Disputes between consumers and builders may also arise where an unqualified inspector makes incorrect findings in a report.

In light of these issues, the Government is considering whether it is appropriate to introduce a registration or licensing scheme for building inspectors.

Queensland is presently the only jurisdiction in Australia that imposes licensing requirements for residential building inspectors. In Queensland, all pre-purchase inspections on completed buildings must be conducted by a licensed inspector. To obtain a residential building inspection licence, a person must undertake an approved building inspection course, hold a particular class of building licence, and demonstrate five years of experience in the building industry.<sup>15</sup>

### Questions

21. What evidence is there to indicate specific failures by residential building inspectors in SA?
22. Should the Government increase regulation of building inspectors? If so, how? And what would be the *costs* and *benefits* for consumers, building inspectors and other tradespeople in the construction industry?
23. Who should be included in a registration scheme for building inspectors?

<sup>14</sup>Section 20 of the BWC Act defines a “building work consultant” as a person (other than a registered architect) who carries on the business of giving advice or furnishing reports in respect of domestic building work (whether being work already performed, work in progress or work that may be required in the future).

<sup>15</sup> Applicants must hold a current licence in one of the following classes: builder-low rise, builder-medium rise, or builder-open. Alternatively, applicants may hold accreditation as a building surveyor, assistant building surveyor or building technician.

## 3.2 Regulation of owner builders

In SA, a person who is not a licensed builder can build or perform building work on their own home (an owner-builder). Owner builders cannot undertake plumbing, electrical or gas fitting work where that work can only be performed by a registered worker under the PGE Act. However, owner builders can contract this specialist trade work to licensed persons and engage a licensed builder to complete some or all stages of a building project.

A genuine owner builder is not required to take out building indemnity insurance (BII) when performing domestic building work. However, if a person sells or rents two or more buildings in a five-year period that they have built or improved, they are considered to be a building work contractor under the BWC Act (unless they can prove otherwise) and must take out a BII policy. Penalties apply to individuals who meet these criteria and fail to take out the required insurance.

Any building practitioners that an owner builder has contracted work to must also have a BII policy in place, where the building work costs \$12,000 or more and council approval is required.

There are other measures that provide oversight of work performed by owner builders.

In particular, the PDI Act requires all plans for building developments to be assessed by an appropriately registered accredited professional to ensure compliance with the NCC and Building Rules. At the end of a building project, a Statement of Compliance needs to be signed off by the main building work contractor responsible for the building work, a registered building work supervisor or a building certifier. This Statement certifies that building work is compliant with the NCC and Building Rules and has been carried out according to the approved plans for the building development. From 1 October 2024, a building surveyor or council will also be required to issue a Certificate of Occupancy indicating whether the building is suitable to be occupied.

### Issues

Some concerns have been raised about two issues:

1. Unlicensed individuals performing building work for profit and posing as owner builders to avoid BII requirements and statutory warranty obligations under the BWC Act. For example, an unlicensed person might build multiple properties under their ownership and sell or lease those properties within a five-year period. There is no BII coverage for this work.
2. Licensed building work contractors persuading consumers to declare that they are acting as an owner builder when seeking development approval, with the building work contractor performing a project management role. CBS is aware of instances where some builders have taken this approach because they are not able to obtain BII coverage for a project.

Both of these scenarios are problematic because consumers cannot access important legal and financial protections for building work, in circumstances where those protections should reasonably apply.

## Proposal

This section of the paper seeks input on the general quality of work undertaken by owner builders, whether the above two issues are evident in the building sector and possible solutions.

Options to address unlicensed owner builder work include:

- CBS undertaking closer monitoring of ‘owner builder’ planning approvals submitted to councils, to detect unlicensed building work;
- requiring all owner builders to notify CBS before applying to council for building consent, to prevent repeat attempts at unlicensed building work; or
- requiring all owner builders to obtain a permit before progressing building work, which might include completion of an owner builder training course and limits on the number of permits granted to an applicant over a set period.

A permit or notification system might also be used to scrutinise and limit owner builder development applications involving a building work contractor acting in a project management role.

Other jurisdictions in Australia have introduced requirements for owner builders to hold a permit or license when carrying out a residential building project. Features of these licensing schemes include completion of an approved owner builder training course for owner builders who do not have a building licence, and a limit on the number of permits that may be granted to an owner builder across a set period.

### Questions

24. Are there problems with the quality of building work performed by owner-builders in SA? Please provide evidence.
25. Is there evidence indicating problems with unlicensed individuals masquerading as owner-builders in SA, whilst building, selling or renting homes for profit? If so, what options are there for the Government to address these problems?
26. Is there evidence indicating that building work contractors are inappropriately persuading consumers to declare owner builder status for projects, in circumstances where the work performed by the building work contractor If so, what options are there for the Government to address these problems?
27. What *costs* and *benefits* might accompany increased regulation of owner builders? (e.g., introduction of a permit scheme, a notification system or close monitoring of 'owner builder' planning approvals by councils)

## 3.3 Regulation of building developers

Residential building developers (developers) play an important role in stimulating investment, economic growth and the expansion and improvement of infrastructure in our state.

In recent years, the activities of some developers have garnered negative attention in the context of several high-profile building and construction industry insolvencies. In some cases, consumers and subcontractors have been disadvantaged by these insolvencies and failures on the part of developers to meet their contractual obligations.

South Australians should have confidence that developers will fulfill their contractual obligations and act competently and ethically. In this section of the discussion paper, input is sought on the role and activities of building developers, options to better protect consumers where developers fail to meet their obligations, and ways to hold developers accountable for their services whilst progressing the housing and infrastructure needs of our state.

### What is a building developer?

The role of a building developer varies between projects and can be difficult to define. A developer may be involved in some or all of the following activities in the life cycle of a building project:

- planning the building project, including assessing market demand and conducting feasibility studies;
- acquiring land or properties for development;
- securing and managing finance for the project;
- designing and planning the project, in collaboration with architects, engineers and other professionals;
- obtaining development approval;
- managing construction on the project, including coordinating the work of contractors and subcontractors; and
- marketing and selling the property or properties within a development.

For the purposes of this discussion paper, a developer is defined as a person or entity that seeks approval for a building project on property that they have an interest in, and arranges for construction activity to be carried out on that property for the purpose of improving its value. However, comments on this proposed definition are encouraged.

### How are developers currently regulated?

Developer activities are subject to a number of regulatory frameworks, including:

- the South Australian planning, land division and development system and building rules applicable to building and construction work, established by the *Planning, Development and Infrastructure Act 2016* (PDI Act) and Planning, Development and Infrastructure (General) Regulations (PDI Regulations);

- national laws about unfair contract terms, consumer guarantees and associated enforcement powers in the Australian Consumer Law, which forms part of the *Competition and Consumer Act 2010* (Cth) and is applied as a South Australian law by the FTA;
- requirements of directors and company officers as set out in the *Corporations Act 2001* (Cth);
- duties and requirements in relation to community title schemes under the *Community Titles Act 1996* (SA);
- requirements for the receipt or recovery of progress payments between parties to a contract for building and construction work under the *Building and Construction Industry Security of Payment Act 2009* (SA); and
- requirements for the sale of land under the *Land and Business (Sale and Conveyancing) Act 1994* (SA).

Developers who engage contractors to perform building work may also meet the definition of a building work contractor under the BWC Act. The legislation defines a building work contractor as a person who causes, organises or arranges building work to be performed for others, or with a view to sell or lease the land and buildings improved as a result of the building work.<sup>16</sup>

### Issues with common infrastructure in residential developments

Recently, SA has experienced issues with developers failing to provide common infrastructure on medium and large scale residential building projects, pursuant to contractual obligations.

In one high profile case, the failure to complete an internal access road and common infrastructure services on a community title development stopped building work and delayed consumers moving into their new homes. The developer remained solvent but the required works were not completed. To assist the affected consumers, the Government agreed to build the access road for this development. With the intent of preventing similar incidents in future, the State Planning Commission also updated a Practice Direction for local councils to require that community title developments of more than six lots complete common driveways and access roads before titles for the lots can be issued.<sup>17</sup>

<sup>16</sup> Section 3(1), BWC Act.

<sup>17</sup> State Planning Commission Practice Direction 12 (Conditions) 2020.

## How do other jurisdictions regulate developers?

### Australian Capital Territory

Legislation was passed in the ACT Legislative Assembly in June 2024 to create a licensing scheme for residential building developers. The *Property Developers Act 2024* also applies a binding rectification order regime and existing statutory warranties for building work to developers. Specific features of the Act include:

- a broad definition of ‘property developer’ that includes individuals who arrange for building work to be undertaken, individuals who own land on which building work is undertaken or principal builders responsible for building work on a property.
- a requirement for a person to be licensed as a property developer where undertaking certain residential development activities, including applying for development approval and selling an off-the-plan property;
- initial eligibility criteria for a licence that focuses on the operational and financial capacity of a developer;
- the use of approved ‘rating entities’ to prepare reports on applicants that may need to be submitted as part an application for a property developer’s licence;
- ongoing standards that developers must adhere to, including a code of practice;
- creation of a public register of licensed developers
- an ability to issue rectification orders for serious building defects to a developer, or to the directors of a developer company where a developer company is in receivership, liquidation or administration; and
- other measures to bring developers into the existing statutory chain of accountability for building work.

### Queensland

Queensland enacted a licensing scheme for developers that was repealed in 2014. The Queensland government revisited this issue in 2021 and commissioned an independent Developer Review Panel to consider the role of developers in the building and construction industry. A final report was released in April 2023<sup>18</sup> with recommendations that focused on opportunities to improve security of payments, solvency and building quality and safety. Notably, the report recommends establishing an accreditation, disclosure and registration framework, which would require developers to:

- nominate a Person of Influence (POI) who must meet a ‘fit and proper’ test and minimum education requirements;
- comply with a code of conduct for developers;
- comply with disclosure obligations before entering into a relevant contract, including confirming they have appropriate finance to complete the contract and their accreditation is current;

<sup>18</sup> Queensland Government, *Setting the tone: the role of developers in Queensland’s building and construction industry*, Final Report of the independent Developer Review Panel, April 2023.

- notify each development activity on a public register; and
- be listed on a public register of accredited developers.

These recommendations are currently being considered by the Queensland Government.

### New South Wales

In New South Wales, the Building Commissioner has specific powers to prevent a developer from completing a building and obtaining an occupation certificate where there are serious defects. Under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, the Building Commissioner can prohibit the issuing of occupation certificates and issue developers with orders to stop work, rectify building work or pay costs incurred by government in connection with a building work rectification order.

No licensing system is in place for developers, however consumers can access the Equifax Independent Construction Industry Rating Tool (iCIRT) to inform their decisions when buying an off-the-plan apartment. The iCIRT uses public and private sector data to independently review developers and other building practitioners based on their capability, capacity and willingness to deliver quality building work. Participation in the iCIRT is voluntary for developers and building practitioners, who must pay a fee to obtain an assessment and rating.

### Questions

28. Are developers not meeting their obligations in residential development projects? Please provide evidence.
29. Are consumers sufficiently aware of the different roles of developers and building work contractors, and their rights when entering into a contract with these parties? For example, some consumers may enter a contract with a developer but not understand that physical building work will be undertaken by a separate entity with a building work contractor licence.
30. Are there sufficient protections for consumers where a developer fails to complete essential infrastructure works (e.g., common roads, driveways and utilities connections) for a residential housing development? If not, what can the Government do to address this issue?
31. Is there a case for stronger regulation of building developers and, if so, what options should the government consider? For example, introducing a licensing scheme for developers or a developer rating scheme for consumers.
32. How should a residential building developer be defined? Is the definition of a developer used in this discussion paper suitable?

## 3.8 Qualifications and Recognition of Prior Learning

Currently, the Commissioner must accept qualifications obtained through Recognition of Prior Learning (RPL) when considering applications for a licence or registration under the BWC and PGE Acts.

RPL is a process that assesses the competency of a person, acquired through formal and informal learning, to determine if they meet the requirements for a unit of study or qualification. A person can apply to a Registered Training Organisation (RTO) to have their prior learning assessed to determine whether they have met the competences and learning outcomes for a particular qualification.

### Issues with RPL qualifications

CBS and industry bodies have observed that some trade qualifications obtained through RPL are being issued without individuals undertaking the approved training that is required for the qualification. This places consumers, licensees and co-workers at risk where the qualifications are used to obtain a licence. Particular issues have emerged with plumbing, gas fitting and electrical qualifications obtained substantially through RPL.

### Proposal

The Government is considering reforms that will provide the Commissioner with discretion to not accept qualifications gained wholly or substantially through RPL. These changes would apply to applicants seeking a licence or registration for building, electrical, plumbing and gas fitting work under the BWC Act and PGE Act.

It is proposed that applicants who gained their qualification wholly or substantially through RPL would be required to provide evidence of similar qualifications or experience used to gain the qualification. Where this information is lacking and the RPL-based qualification appears to have been obtained without an adequate demonstration of practical skills and knowledge, the Commissioner would be able to reject the application.

One issue with this proposal is that applicants may be left with no way to rectify their qualifications and gain a licence, as an RTO is not able to issue a qualification to a person who has been issued that same qualification by another RTO. However, the Australian Skills Quality Authority (ASQA) may be able to resolve this by cancelling the qualification that was improperly granted.

### Questions

33. Should the Commissioner have discretion to not accept trade qualifications obtained wholly or partly through Recognition of Prior Learning? Are there other options to address this problem?

## 3.9 Setting PGE worker qualifications

### Current arrangements

The required qualifications and experience for plumbing, gas fitting and electrical worker registration and contractor licences are prescribed by the PGE Regulations and set by the Commissioner.<sup>19</sup> The regulations contain some qualifications and experience requirements that are almost thirty years old but continue to be accepted for licensing purposes.

The specific qualifications in the PGE regulations are listed in Appendix 2. These requirements are currently duplicated in the qualification requirements approved by the Commissioner.<sup>20</sup>

### Proposal

It is proposed to both remove the older qualifications from the regulations and remove the capacity for qualifications and experience requirements of plumbing, gas fitting and electrical worker registration and contractor licences to be set by regulation.

It should be noted that the older qualification and experience requirements listed in Appendix 2 will continue to be accepted for licensing and registration requirements, as they are included in the list approved by the Commissioner. Removing these qualifications from the regulations and the associated power to prescribe, will provide the Commissioner with more efficient options to set qualifications and experience requirements.

Feedback is sought on this proposal and its potential impact on affected building practitioners.

### Questions

34. Should the older qualifications for PGE contractors and workers be removed from the PGE regulations, along with the power to prescribe qualification and experience requirements by regulation?

<sup>19</sup> Sections 9 and 16, PGE Act and regulations 5 and 9, PGE regulations.

<sup>20</sup> See <https://www.cbs.sa.gov.au/documents/electrical-qualification-guidelines.pdf.pdf>; and [https://www.cbs.sa.gov.au/documents/plumbers\\_gas\\_fitters\\_qualification\\_guidelines.pdf](https://www.cbs.sa.gov.au/documents/plumbers_gas_fitters_qualification_guidelines.pdf).

## 3.10 Reviewing the scope of electrical work

### Why is the scope of licensed electrical work being reviewed?

Electrical workers ensure the safe installation, maintenance, and operation of electrical systems that are essential for powering homes, businesses, and infrastructure. Their expertise is important to prevent hazards and maintain the reliability of electrical networks in an industry where unsafe work carries high risk. The PGE Act establishes a licensing system to ensure that only competent workers carry out this type of work in SA.

In recent years, changes to technology and work practices have prompted a need to review the types of work that should only be performed by a registered electrical worker. Renewable energy and other emerging technologies are rapidly changing the way that electricity is generated, stored and used. It is also more common for electricians to use unskilled labour, or trade assistants, to perform some low-risk manual handling tasks.

Regulation of electrical workers and contractors needs to adequately address the risk of exposure to electrical hazards from emerging technologies, and support safe work practices whilst minimizing regulatory burden.

With these objectives in mind, the scope of permitted work for electrical workers is being reviewed. Feedback is sought on the following specific topics:

- licensing and registration for workers who install 'off-grid' electrical systems that are not connected to public electricity networks;
- registration requirements for electrical trade assistants; and
- electrical work that is currently exempt from electrical worker registration requirements under the PGE Regulations.

### Current scope of licensed electrical work

The PGE Act assigns responsibility to the Commissioner for the registration of electrical workers. Under section 3 of this Act, an 'electrical worker' is a person who personally carries out electrical work. 'Electrical work' is defined as the installation, alteration, repair or maintenance of an electrical installation, including classes of work prescribed by regulation. Section 3 further defines an 'electrical installation' as:

the whole or part of any system or equipment wherever situated intended for the conveyance, control, measurement or use of electricity supplied or intended to be supplied by a person or body that supplies electricity to the public at a voltage above extra low voltage as defined in Australian Standard AS3000 Wiring Rules<sup>21</sup>;

<sup>21</sup> According to Australian/New Zealand Standard 3000, 'Extra Low Voltage' means voltage that does not exceed 50 volts alternating current or 120 volts ripple-free direct current.

By contrast, an “electrical installation” has a different meaning under the *Electricity Act 1996* (SA), which establishes safety and technical standards for electrical installations and regulates the electricity supply industry in SA. Section 4(1) of the *Electricity Act 1996* (SA) defines an “electrical installation” as:

a set of wires and associated fittings, equipment and accessories installed in a place for the conveyance, control, measurement or use of electricity that is, or is to be, or has been, supplied for consumption in the place, including anything declared by regulation to be or form part of an electrical installation, but does not include –

- (a) electricity infrastructure owned or operated by an electricity entity; or
- (b) any wires, fittings, equipment or accessories connected to and beyond any electrical outlet at which fixed wiring terminates (other than any such outlet used to connect sections of fixed wiring); or
- (c) anything declared by regulation not to be or form part of an electrical installation;

### ‘Off-grid’ electrical work

As indicated above, the current definition of ‘electrical work’ in the PGE Act and Regulations does not encompass “off-grid” installations. Changes to the PGE Act and Regulations are being considered to clarify the range of work on “off-grid” electrical installations that must be performed by a registered electrical worker. This would include the installation of solar photovoltaic (PV) panels, small wind turbines, fuelled generators and battery storage systems in residential homes. It is proposed that installation of house wiring and hard-wired electrical equipment that is connected to these systems would also fall within the expanded scope of work.

### Electrical trade assistants

In some jurisdictions, trade assistants are allowed to perform manual tasks associated with electrical work, such as laying conduit and cable in trenches. This type of work can only be performed by registered electricians in SA.

It is proposed that trade assistants should be permitted to perform low risk activities on un-energised installations under the supervision of an electrician. This would involve introducing a specific exemption from registration requirements for trade assistants undertaking this type of work, or a restricted electrical workers’ registration for trade assistants. In terms of benefits, this proposal may see some electrical work delivered more efficiently with the aid of a trade assistant and at reduced cost to consumers.

Examples of work that could be performed by a trade assistant whilst under the direct supervision of a registered electrical worker include:

- installation, repair or removal of conduit, support or protective enclosures intended for housing electrical wiring, provided that the electrical wiring is not connected;
- placing or laying of cables on or into a cable support system before connection;
- assisting a registered electrical worker to carry out electrical work, on electrical equipment, if it does not involve physical contact with any connected electrical equipment; and

- locating, mounting or fixing electrical equipment in place, if this task is not performed in relation to the connection of electrical equipment to an electrical supply.

## Exempt electrical work

The PGE Regulations currently exempt a person from electrical worker registration requirements imposed by the PGE Act in particular circumstances. The exemptions generally cover electrical work that is low risk, and electrical work that is already managed by other regulatory schemes.

The types of work exempted by the PGE Regulations include:

- oiling, greasing, cleaning or painting of an electrical installation;
- work on electrical infrastructure owned or operated by a licensed electricity entity;
- work on appliances that are connected to the electricity supply by a plug and outlet socket (e.g., plug in appliances);
- work on an electrical installation outside of a township that is used for a primary production business;
- work on television or radio station transmission equipment;
- the manufacture or assembly of new equipment;  
the repair of used equipment for resale under supervision of an electrician; and
- any work involved in educational courses or scientific research or experiments.

Some of these exemptions have been in place for many years and require review.

### Questions

35. Should people who perform work on “off-grid” electrical installations that are not connected to a public electricity network require a licence or registration? Please provide reasons.
36. What types of “off-grid” electrical installations should require a registered or licensed electrical worker?
37. What would be the practical *benefits* and *costs* to industry, workers and the community if new licensing requirements were introduced for “off-grid” electrical work?
38. What types of work should electrical trade assistants be allowed to undertake, and why?
39. What would be the practical *benefits* and *costs* to industry, workers and the community if electrical trade assistants were allowed to perform some tasks on un-energised electrical installations?
40. Are the current exemptions to electrical licensing requirements listed in the PGE Regulations appropriate?

## 3.7 Installation of stormwater piping

### Stormwater piping

In SA, a person must have a plumbing workers registration to personally carry out plumbing and drainage work under the PGE Act. Drainage work includes work involving the installation, alteration, repair, maintenance or disconnection of pipes that convey stormwater to public stormwater systems.

Currently, work on stormwater drainage pipes not exceeding 90mm in diameter is exempt from the Act.<sup>22</sup> There are no restrictions on who can install, maintain or repair stormwater pipes less than 90mm in diameter. Homeowners, civil contractors and general building workers can perform this work, along with licensed plumbers.

Where stormwater piping exceeds 90mm in diameter and feeds into public disposal systems, work must be performed by a registered plumbing worker. If an entity is contracting for any storm water installation (including for piping that is 90mm or less), this work must be done by a licensed building work contractor or plumbing contractor. Licences are obtained through CBS, and all stormwater installations must meet relevant National Construction Code (NCC) requirements.

### Issue and proposal

Some industry stakeholders have raised concerns about the quality of stormwater piping work conducted by people other than plumbers and reported substantial issues with non-compliant storm water installations. Accordingly, a proposal is being considered to remove the exemption for work on pipes of 90mm or less, which would require plumbers to install all stormwater pipes connected to public disposal systems.

Some large-scale building work contractors currently exclude stormwater installation from their contracts for owners to arrange themselves, or already engage plumbers for this work. As such, only a portion of builders would be affected by the proposed change. Most jurisdictions also require a licenced plumber to complete any drainage work involving the installation, maintenance, or repair of stormwater pipes less than 90mm in diameter.

However, the suggested change would reduce the scope of work allowed to be performed by some building practitioners and impose additional costs on homeowners. Some industry stakeholders have indicated that building practitioners and civil contractors are already completing this work to a high standard and to engineer's specifications. Complaints about faulty stormwater work are also rarely received by CBS.

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<sup>22</sup> Regulation 4(5)(a)(v), Plumbers, Gas Fitters and Electricians Regulations 2010 (SA).

### Questions

41. Are there problems with the quality of stormwater piping work undertaken by people and businesses without a plumbing registration or contractor's licence? Please provide supporting evidence.
42. Should all stormwater work connected to public disposal systems only be undertaken by licensed plumbers? Please provide reasons.
43. What would be the *costs* and *benefits* for consumers, plumbers and other tradespeople in the construction industry if the current exemption for stormwater piping work was removed?

## 3.8 Access to Australian Standards

The technical requirements for building work in SA are set out in the NCC, which is mandated by the PDI Act. The current edition of the NCC refers to more than 400 Australian Standards (the Standards). Builders and tradespersons may need to access some of these standards to ensure that the work they carry out is compliant. Similarly, electrical workers are required to comply with specific standards under the *Electricity Act 1996* when carrying out work.

Despite being mandated by legislation, copies of the Australian Standards are not freely available to licensed and registered workers. Tradespersons may pay between \$75 and \$500 to access an individual standard or purchase them as a bundle or subscription package. Some industry associations have arrangements with Standards Australia to offer their members access to the Standards at a discounted rate.

The Australian Standards are developed and owned by Standards Australia, a non-profit organisation. Government staff and industry association representatives often provide voluntary assistance to develop and revise the standards.

Recently, Standards Australia have proposed changes to subscription and pricing arrangements. After listening to concerns from industry, the Government is considering options to advocate for fair and equitable access to the standards for builders and tradespeople in SA.

### Questions

44. How can the Government ensure fair and equitable access to the Australian Standards for tradespeople working in SA?



## What is Continuous Professional Development?

Continuous Professional Development (CPD) is a commitment to ongoing lifelong learning. CPD encourages looking forward and identifying opportunities to learn something new, refresh existing knowledge, improve skills, or keep up to date with the latest developments in a particular profession or industry following completion of formal training.

State and territory governments have agreed to consider implementing all recommendations of the *Building Confidence* report. The model guidance for CPD on the NCC and ethics represents a nationally agreed response to BCR recommendation 3 of that report. This recommendation states “[t]hat each jurisdiction requires all practitioners to undertake compulsory continuing professional development on the National Construction Code”.<sup>23</sup>

In recent years, industry groups have also strongly advocated for the introduction of CPD schemes to maintain the competency of building practitioners and improve the safety and quality of building work. This section of the paper seeks input on a proposal to introduce mandatory CPD for licensed building practitioners in the building, electrical, plumbing and gas fitting industries.

## What are the problems that mandatory CPD is seeking to address?

Regarding effective implementation of the NCC, the Building Confidence report found the nature and extent of the problems to be significant and concerning, leading to diminishing public confidence that the building and construction industry can deliver compliant, safe buildings which will perform to the expected standards over the long term.

Many stakeholders reported that building practitioners across the industry did not have a sufficient understanding of the NCC or its revisions, leading to non-compliance or poor-quality documentation of compliance.

Public concern has been noted over recent years about the quality of building and construction work in SA, with some consumers being left with defective buildings requiring costly remedial work.

The Government is seeking feedback about the nature and extent of current problems with building work and whether mandatory CPD will address these issues.

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<sup>23</sup> Building Confidence Report, p 18.

### Questions

45. Are there areas of poor performance or non-compliance in SA that could benefit from building practitioners participating in professional development? To what extent are these problems with poor quality work due to lack of knowledge as opposed to work being done by 'rogue operators' or people without an appropriate licence? Please provide evidence.
46. What evidence (including experience from other jurisdictions) is there that introduction of mandatory CPD will address problems with poor performance and non-compliance?
47. What other options besides mandatory CPD could be considered to address the problem?
48. What types of professional development activity could be required? How much training and how frequently would it be required?

### What is already being done in South Australia to address the problem?

The Commissioner regulates those who perform work in the South Australian building and construction industry using provisions in the BWC Act and PGE Act, and associated regulations. These laws establish registration and licensing schemes for building practitioners and provide for disciplinary action.

The Commissioner can take the following actions against licensed building practitioners:

- suspend, cancel or impose conditions on the licence or registration of a worker, which can include imposing conditions for a person to complete training;
- urgently suspend, cancel or impose conditions on a licence or registration in circumstances where there is a danger of significant harm, or significant loss or damage to others; and
- take disciplinary action based on a number grounds, including where a tradesperson acts improperly or negligently.

Disciplinary matters are heard by SACAT and SACAT may reprimand a person, impose a fine, prohibit a person from carrying out work relating to their licence, disqualify a person from being licensed, and suspend, cancel or impose conditions on a licence.

## Potential models of CPD Implementation – Current frameworks interstate

Many professional organisations and associations require members to complete a certain number of CPD points each year to maintain their membership. The number of CPD points required can vary but typically ranges from 10 to 20 points per year.

CPD points are awarded for completing CPD activities, such as attending courses, workshops, and conferences, participating in online learning, or completing on-the-job training. Each activity is assigned a certain number of points, depending on its duration and content.

Other Australian jurisdictions are at varying stages of considering or implementing CPD for the building industry.

### New South Wales

In New South Wales, CPD is required to retain a builders' registration licence and is managed by NSW Fair Trading. As part of the licence renewal process, practitioners need to meet CPD requirements relevant to the licence category to renew licences.

By law, it is a requirement of NSW Fair Trading for all licensed builders and pool builders to acquire 12 CPD points per year to maintain a valid building licence. If the licence period is for three years, then the licensee must show that they have obtained 36 CPD points in the three years immediately prior to renewal.

### Victoria

Many building practitioners already engage in some form of continual learning in Victoria, either through structured programs run by industry associations, workplace-based activities or on their own initiative. In general, industry-based CPD programs require practitioners to complete a minimum number of 'points' in certain activities, aimed at refreshing existing skills, updating knowledge where there have been changes in work requirements or practices, or developing new skills. These activities often take the form of structured courses, delivered in person or online, but can also include informal activities such as some industry events or private study.

To ensure continued competence of practitioners in Victoria, the *Building Act 1993* (Vic) was amended through the *Building Legislation Amendment (Consumer Protection) Act 2016* (Vic) to allow CPD requirements to be prescribed as a condition of renewal of a building practitioner's registration. The Act was further amended through the *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* (Vic) to allow CPD requirements to be prescribed as a condition of renewal of a plumber's registration or licence.

In 2020 the Victorian Department of Transport and Planning (DTP) released a Consultation Paper and public survey seeking feedback on high level options for a CPD framework for building and plumbing practitioners. Since then, DTP has developed and consulted on a Regulatory Impact Statement (RIS), which analyses the costs and benefits of CPD options. The RIS is accompanied by proposed Regulations reflecting the preferred policy option and consultation feedback is currently being reviewed.

The preferred option is for the Regulations to prescribe the amount of CPD that must be completed in a practitioner's registration/licence period and mandate a minimum amount to be completed in broadly defined topics and types of learning (such as technical knowledge). The remaining balance of points could be gained through self-directed learning activities. This option sets a minimum baseline requirement for all practitioners, with flexibility to adjust requirements over time in consultation with industry. The option also includes two pathways for practitioners to meet CPD requirements: enrol in an approved industry run CPD program or through individual accumulation of points.

### Queensland

Currently, only two QBCC licences have compulsory professional industry training obligations that must be met each year: pool safety inspectors and building certifiers.

QBCC measure learning activity using a point system and approve and allocate points for CPD activities such as training courses, workshops, seminars and memberships. Experience gained within each 12-month period is added to a licence when it is renewed annually.

One hour of participation in an approved educational activity equates to one point. Two points are accrued if practitioners are a member of any of the following organisations:

- Australian Institute of Building Surveyors
- Royal Institution of Chartered Surveyors
- Swimming Pool and Spa Association of Queensland
- Institute of Building Consultants as a division of Master Builders.

### Tasmania

CPD is required in Tasmania to retain a builder's registration licence and is managed by the Consumer, Building and Occupational Services (CBOS). Builders must complete 12 points of CPD activity per year.

Practitioners are required to undertake CPD that is a blend of skills maintenance and skills development activities during a licence period (one or three years), measured by a points system allocated according to the value of the activity undertaken. Each licence category has an average requirement per year and a minimum requirement for a three year period.

All CPD activities must either be nationally accredited training delivered by a Registered Training Organisation or submitted to and approved by CBOS.

Funding for training is available via Keystone Tasmania (formerly Tasmanian Building and Construction Industry Training Board) and was created by government for the industry to ensure a safer, higher skilled building and construction workforce with the provision of funding assistance. Keystone is an independent organisation funded by industry.

### Northern Territory

To be registered as a building practitioner in the NT, a person is required to have achieved relevant qualifications and experience which are considered as part of the application and registration

process. Once registered, there is currently no requirement to maintain or upgrade skills and knowledge for the renewal of a registration.

There is no clear requirement to undertake continual education, training or upskilling to keep up to date with new requirements or changing practices or products. However, it is the intention of the Northern Territory Government to introduce a framework for all registered building practitioners to undertake CPD during the registration period to be eligible for the renewal of a licence.

Whilst CPD is not currently a requirement for practitioner registration renewal, other legislated tools are implemented in the NT to minimise and address problems with practitioner performance and compliance. The *Building Act 1993* gives the Director of Building Control (the Director) audit functions and powers related to all categories of practitioners and classes of buildings. The Director has the authority to audit any practitioner's work or conduct as a consequence of a complaint or wherever the Director considers it appropriate to do so.

### Questions

49. Who should deliver CPD training?
50. How well is the mandated CPD working in other jurisdictions and what evidence is there for this?
51. Should CPD in SA be voluntary or mandatory? Who should be subjected to a CPD scheme and what form of CPD is appropriate?

### Benefits of a mandatory CPD scheme

The limitation with maintaining the status quo (training on a voluntary basis) is that for practitioners who are not members of industry associations with CPD schemes, there is limited incentive or requirement for practitioners to participate in professional development. Practitioners may not keep up with contemporary practices and products and may not be informed of changes to codes and standards. This risks non-compliant services and building work being undertaken.

The expected benefit of mandatory CPD scheme is that practitioners would be more likely to participate in professional development and as a result, it is anticipated that there would be a reduction in the extent of non-compliant building work and improved consumer confidence in the building industry.

### Questions

52. If CPD were to be implemented, how could its success be measured? What indicators might suggest that the problems are being successfully addressed?
53. How could it be ensured that CPD is appropriately targeted and addresses the problem areas in the construction industry?

## Costs of a mandatory CPD Scheme

Despite mandatory CPD being attractive to training and professional organisations, it is not without cost and may also be adding regulatory burden to licensees.

The implementation of a mandatory CPD scheme would see all practitioners incur a cost to undertake the specified training requirements. Although members of industry or training organisations may receive a discounted price for the training, it is not generally cost free to the practitioner. These courses may range from as little as \$45 to upwards of \$300.<sup>24</sup>

Furthermore, participation in the training would require all practitioners to either take time off work to attend training or complete training outside of work hours.

Practitioners could also face increased CPD requirements where they hold multiple SA licences, or licences in more than one Australian jurisdiction. However, this might be addressed through mutual recognition arrangements.

There is a further risk that introducing a mandatory CPD scheme would not appropriately address the issues it is designed for. For example, the cause of non-compliant building work may not be a lack of knowledge of the NCC, but rather an active choice to cut corners and cost-save. As a result, mandatory CPD would not necessarily change these behaviours.

### Questions

54. Are there any costs or other potential impacts of a proposed CPD scheme that are not considered in this discussion paper, but which may affect the Government's decision to proceed with mandating CPD requirements?

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<sup>24</sup> For example, [Pointsbuild](#) and [HIA](#) are training organisations that offer building and construction training courses.

# Part 5 - Compliance and enforcement



## 5.1 Increasing penalties

### Current penalties

The BWC and PGE Acts establish penalties and expiations for a range of offences related to building and construction work in SA, including:

- building and construction work performed without an appropriate licence or registration;
- misleading or non-compliant advertising for building and construction work;
- failing to comply with legislative requirements for building work contracts, including form, content, pricing and payment requirements;
- providing false or misleading information; and
- contravening disciplinary orders issued by a Tribunal (SACAT).

Currently, penalties range from an expiation fee of \$80 to maximum penalty amounts of \$50,000 for individuals and \$250,000 for a body corporate. Maximum imprisonment terms of 6 to 12 months also apply for third and subsequent offences of a more serious nature, such as unlicensed work.

### Reviewing penalties

The Government will be undertaking a review of all offences in the BWC and PGE Acts to ensure that current penalty amounts effectively deter behaviour in the building industry that places the community at risk. Some penalties have not been updated since these laws were introduced in 1995 and would benefit from revision.

In revising penalty amounts, the Government will consider whether existing amounts:

- are a sufficient deterrent to the commission of the offence;
- reflect the seriousness of the relevant offence;
- are sufficient to eliminate any financial gain or benefit from non-compliance with the legislative obligations; and
- are consistent with penalties for similar offences or offences of a similar seriousness.

### Questions

55. Are there particular penalties in the BWC and PGE Acts that should be reviewed?  
Please provide details.

## 5.2 Use of another builder's licence in advertising

### Licensed building work contractor advertisements

The BWC Act currently prohibits a licensed building work contractor from advertising their business without the contractor's name and licence number. The Act also has a general offence for making false and misleading statements in relation to information provided or records kept under the Act.

These provisions apply to licensed building work contractors and any person providing information pursuant to the Act. However, there is currently no offence provision for an unlicensed building work contractor who advertises building work contracting services under someone else's licence number.<sup>25</sup>

### Issues

At times, CBS has received information that unlicensed building work contractors have advertised using another person's licence number.

The objectives of the BWC Act are: to improve standards of practice, to protect consumers from those who are not appropriately qualified or licenced to carry out building work, and to minimise the risk that consumers will be out-of-pocket for suboptimal or defective works. Consumers should have confidence that when they engage a contractor for building work, that contractor is appropriately qualified and licenced to carry out that work.

### Proposed new offence

It is proposed to introduce a new offence prohibiting unlicensed building work contractors from advertising building services using another building work contractor's licence number. While the BWC Act has an existing offence for unlicensed work, the proposed offence provides an extra deterrent and addresses an additional wrongdoing to performing work whilst unlicensed.

Other jurisdictions address this issue to varying degrees, with Queensland the only jurisdiction to apply a specific offence for a person making unlawful use of another builder's licence.

### Questions

56. Would it be useful to introduce the proposed offence prohibiting unlicensed building work contractors from using another person's building work contractor's licence in advertising?

<sup>25</sup> Note that it is an offence to undertake building work contracting work without a licence under section 6 of the BWC Act.

## 5.3 Unlicensed subcontractors

### Issue

CBS is aware that within industry, subcontractors have been performing work whilst unlicensed. The BWC Act requires all persons who carry on the business of performing building work for others (i.e., building work contractors) to be appropriately licensed, and imposes penalties for non-compliance. This includes a requirement for subcontractors to be licensed to carry out building work when they are under a contract with another building work contractor.

A building work contractor can hold a building work contractor's licence that covers all the practitioners under their employment. The employees are covered by the licence as they perform work under the direction and control of their employer.

Independent subcontractors are limited to entering into contracts with other contractors and have a much higher level of control over the work they perform. Subcontractors take on more financial responsibility and risk when performing works and consumers are entitled to have the same level of confidence that subcontractors who are engaged by contractors to carry out works for them are appropriately qualified and licensed.

### Proposal

It is proposed to introduce a new offence prohibiting building work contractors from engaging unlicensed subcontractors to perform work.

Imposing a requirement for contractors to engage subcontractors who are licensed provides extra assurance for the consumer in terms of the quality of work being provided, as the contractor must ensure whoever they engage to subcontract is appropriately qualified and licensed. Often, discovering a subcontractor is unlicensed only occurs at the time a consumer has complained about defective building work and CBS has investigated the matter.

Introducing a requirement for building work contractors to only engage licensed subcontractors may also reduce the level of unlicensed work being performed within the building industry. Building work contractors can search the CBS Licensing Register to check whether a subcontractor is licensed to undertake work. The online register is free and accessible to the public.<sup>26</sup>

The Government is also considering whether subcontractors should be required to demonstrate to a building work contractor that they hold the appropriate licence to undertake the work that they are contracting for.

With regard to other jurisdictions, Queensland and Victoria have specific offences applying to licensed contractors who engage unlicensed subcontractors to perform building work.

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<sup>26</sup> <https://www.cbs.sa.gov.au/find-a-licence-holder>

### Questions

57. Would it be beneficial to introduce the proposed offence prohibiting building work contractors from engaging unlicensed subcontractors?
58. How can the Government hold subcontractors accountable for ensuring that they are appropriately licensed to undertake contracted work?

## 5.4 Building work supervision requirements

### Issue and proposal

A building work supervisor supervises all other trades and oversees the complete building process to ensure that a building complies with the NCC, other relevant codes and plans, and that all work is performed to proper trade standards. A building work supervisor has significant responsibilities in overseeing all building work on-site, making their role essential to consumer protection.

Proper supervision of a building project is important. The obligation to ensure building work is properly supervised is pertinent when major structural events occur, and for appropriate checks during construction to ensure that what proper supervision should achieve, actually occurs.

The BWC Act does not specifically define the role or tasks of the building work supervisor or provide a description of what ‘proper supervision’ is. Rather, the *Building Work Contractors Regulations 2011* (SA) specify the areas in which a person must have knowledge and experience to be eligible for registration as a supervisor. Specific tasks of a building work supervisor are not codified into the BWC Act or Regulations. This has created some confusion for industry that has since been clarified by the courts (see discussion below).

CBS is aware that within industry, there are varying degrees of understanding as to a building supervisor’s role and scope of their required supervision tasks. Complaints have been received about building quality issues where it is apparent that defects have not been identified by the building work supervisor at an early stage. This can cause problems regarding costs, and willingness of building work contractors and supervisors to rectify the defects. CBS is also aware of instances where building work supervisors are being engaged in “name only” and not overseeing building work.

It is proposed that a clearer description of supervision requirements be developed, and record-keeping of supervisor’s inspections be maintained at key stages of the building process. The aim is to ensure that building work supervisors are accountable for their responsibilities and that building defects are identified and rectified at an early stage. The Government is also considering whether building work supervisors should be subject to penalties where they fail to meet supervision and record keeping requirements.

A consumer has the right to expect that any building work performed is carried out with proper supervision and care in accordance with the current building codes and industry expectations. A building work contractor also expects that any registered supervisor engaged on their behalf is competent, experienced and aware of all their legal obligations.

Proper supervision ensures that all building work is performed in a professional manner and free from faults that could have been circumvented by proper care and skill under the controls of proper supervision. Setting out clear requirements for building work supervisors will alleviate confusion for industry and provide consistency in expectations of the building work supervisor’s role.

## Current guidance for building work supervisors

CBS has published a guidance document on its website setting out principles for supervision of building work. This document is based on expectations of a building work supervisor as set out in a 1997 case before the Supreme Court of South Australia (*Homestead Award Winning Homes Pty Ltd v State of South Australia* (1997) 72 SASR 299). The guidance material was also developed in consultation with industry.

The following may be within the scope of what is considered “proper supervision”:

- Checking the building work to ensure it is performed in a proper manner, to accepted trade standards, and where relevant, in accordance with Development Approval and Building Rules Consent, building agreements and contracts, the agreed plans, specifications, the NCC and associated Australian Standards.
- An understanding of the requirements of all the necessary documents and implementing those requirements on site in a practical manner to ensure decisions made are compliant.
- Compiling accurate records of site visits, including any observations and actions taken.
- Overseeing the principal parts of the building work before they are concealed from view (e.g. footings and other structural elements) and ascertain by personal inspection whether the work has been done according to specification.
- Direction, coordination and oversight of the on-site work processes within the scope of the supervisor’s registration.
- Determining when particular sub-contractors or phases of the construction process can start, and when it is necessary to suspend a process.
- Coordination and general instruction for work associated with one process so as not to endanger persons engaged in other processes.

The guidance material published by CBS is not legally binding upon building work supervisors. Consideration is being given to codifying what is “proper supervision” by building work supervisors and potentially bringing in record-keeping requirements for supervisors’ inspections under the BWC Act.

### Record-keeping

While mandatory building notifications are required under the PDI Act to be submitted through PlanSA at various stages of a building project, there are no mandatory reporting or record-keeping requirements of building work supervisors under the BWC Act.

It is proposed that building work supervisors would be required to keep records for a period of 5 years from completion of major domestic building work or 2 years for other work.

Records for each project might include:

- The name of the supervisor performing each check

- The date of each check
- Whether the work was satisfactory or brief details of defects found

### Questions

59. Is the current guidance on “proper supervision” sufficiently clear for building work supervisors to understand their obligations?
60. Should “proper supervision” requirements for building work supervisors be defined under the BWC Act? Should this include record-keeping and reporting requirements for building work supervisors to keep track of inspections they conduct? Please provide reasons.
61. Should the Government introduce an offence for building work supervisors who fail to provide adequate supervision?
62. What would be the *costs* and *benefits* for consumers, building work supervisors and other practitioners in the construction industry if specific requirements for building work supervision are codified?

## 5.5 New Commissioner powers relating to practitioner training

A licensing scheme should ensure that building practitioners have the necessary skills and qualifications to safely and competently provide services to the public. This is often achieved at the entry point, by assessing a practitioner against eligibility requirements for a particular licence or registration.

It is also important that regulators have the capacity to require a licensed building practitioner to undertake further training, where they lack some of the skills and knowledge necessary for their scope of work. For example, a building practitioner may not have the required knowledge to use new materials or technologies competently, despite having an older qualification that meets the eligibility criteria.

### Current Commissioner powers

The Commissioner is able to suspend a licence or registration until the practitioner has met conditions stipulated by the Commissioner, pursuant to provisions in the BWC Act and PGE Act.<sup>27</sup> These powers have been used by the Commissioner to impose conditions requiring that a practitioner completes further training in an identified area of work before the suspension on their licence or registration is removed.

However, the powers can only be exercised where events occur such that the practitioner would no longer be entitled to their licence or registration if they were to re-apply (for example, the practitioner may have been subject to disciplinary action). In addition, the Commissioner must be satisfied that it is appropriate to suspend a practitioner's licence, meaning that there must be serious circumstances justifying the temporary removal of the practitioner's ability to work and derive an income.

### Proposal

Consideration is being given to introducing powers allowing the Commissioner to direct a person to undertake training without suspending their licence or registration. The powers might apply in circumstances where the Commissioner is satisfied that a practitioner's work is defective in a particular area, and this can be addressed by requiring the person to undergo specific training whilst retaining their licence or registration.

The proposal is expected to benefit licensed or registered building practitioners by allowing them to undertake training without losing the ability to earn income.

In other jurisdictions, regulatory authorities have broad powers to impose conditions that may include completion of training. However, these powers are often exercised as a form of disciplinary action and only available where grounds for disciplinary action can be proven, or as a pre-condition for renewing a licence or registration.

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<sup>27</sup> Section 19B, BWC Act and section 18B, PGE Act.

### Questions

63. Should the Government introduce new powers enabling the Commissioner to direct a licensed or registered building practitioner to undertake further training? What criteria should be satisfied before exercising this power?

# Appendix 1 – Summary of questions for comment

1. Would the introduction of binding rectification orders enhance the building dispute resolution process in SA?
2. Is the proposed binding rectification order scheme appropriate? Are there alternate model or mechanisms that would provide faster and cheaper resolution of domestic building work contract disputes for parties?
3. How should binding rectification orders be enforced, and what should the consequences be for non-compliance?
4. Are there any unintended consequences the proposed rectification order scheme may have? What would be the *costs* and *benefits* for consumers and building practitioners if the proposed binding rectification order scheme was implemented?
5. Would the transfer of the identified building disputes from the Magistrates/District Court to SACAT assist in improving the dispute resolution process in sa?
6. Are there any unintended consequences that could arise from transferring jurisdiction from the identified matters to SACAT, or other factors that should be taken into account?
7. How could SACAT utilise experts when considering building work disputes?
8. Aside from transferring the jurisdiction for domestic building work contract disputes to SACAT, are there other options to reduce the current expense and delays associated with court proceedings about domestic building work disputes? (for example, changes to existing court processes and monetary limits)
9. What factors need to be considered when contemplating any changes to court processes to facilitate improved resolution of building work contract disputes?
10. Should the expiable offence for non-attendance at a compulsory conciliation conference be applied to all traders who fail to attend compulsory conciliation conferences, including conferences relating to building disputes?
11. Would it be helpful to require information about the proposed COO information and swimming pool safety feature requirements to be contained within building work contracts?
12. Are there other mechanisms which might increase the effectiveness of enforcement action in relation to the COO and swimming pool safety feature requirements?

13. Should the COO and swimming pool safety feature requirements be included in a building work contract as obligations to be met by the builder, instead of information for the consumer? For example, should the pool builder be required to arrange installation of swimming pool fencing as part of the building contract, or should the consumer have the option of separately arranging a trader to install the fencing?
14. Are sellers, including developers, using sunset clauses inappropriately to terminate off-the-plan contracts with consumers in SA? Please provide evidence.
15. Should there be limitations on the use of sunset clauses similar to those implemented interstate? Are there other options to address this problem?
16. What would be the *costs* and *benefits* for consumers, developers and industry if there were limitations imposed on the use of sunset clauses to terminate off-the-plan contracts?
17. If changes are implemented, what transition period should apply?
18. Are the current council building inspection requirements (in Practice Direction 9) ensuring building work complies with the National Construction Code?
19. Is the approach to inspections consistent across council areas and building types? Are there specific stages of building work that should be inspected that are not being adequately or appropriately inspected?
20. Does the experience and expertise of the inspector have a large bearing on the effectiveness of the inspection? Should inspections be able to be undertaken by other suitably qualified and experienced building professionals (private building certifiers, architects, engineers, trade specialists etc)?
21. What evidence is there to indicate specific failures by residential building inspectors in SA?
22. Should the Government increase regulation of building inspectors? If so, how? And what would be the *costs* and *benefits* for consumers, building inspectors and other tradespeople in the construction industry?
23. Who should be included in a registration scheme for building inspectors?
24. Are there problems with the quality of building work performed by owner-builders in SA? Please provide evidence.
25. Is there evidence indicating problems with licensed or unlicensed builders masquerading as owner-builders in SA, whilst building, selling or renting homes for profit? If so, what options are there for the Government to address these problems?

26. Is there evidence indicating that building work contractors are inappropriately persuading consumers to declare owner builder status for projects, in circumstances where the work performed by the building work contractor? If so, what options are there for the Government to address these problems?
27. What *costs* and *benefits* might accompany increased regulation of owner builders? (e.g., introduction of a permit scheme, a notification system or close monitoring of 'owner builder' planning approvals by councils).
28. Are there issues with developers not meeting their obligations in residential development projects? Please provide evidence.
29. Are consumers sufficiently aware of the different roles of developers and building work contractors, and their rights when entering into a contract with these parties? For example, some consumers may enter a contract with a developer but not understand that physical building work will be undertaken by a separate entity with a building work contractor licence.
30. Are there sufficient protections for consumers where a developer fails to complete essential infrastructure works (e.g., common roads, driveways and utilities connections) for a residential housing development? If not, what can the Government do to address this issue?
31. Is there a case for stronger regulation of building developers and, if so, what options should the government consider? For example, introducing a licensing scheme for developers or a developer rating scheme for consumers.
32. How should a developer be defined? Is the definition of a developer used in this discussion paper suitable?
33. Should the Commissioner have discretion to not accept trade qualifications obtained wholly or partly through Recognition of Prior Learning? Are there other options to address this problem?
34. Should the older qualifications for PGE contractors and workers be removed from the PGE regulations, along with the power to prescribe qualification and experience requirements by regulation?
35. Should tradespeople who perform work on "off-grid" electrical installations that are not connected to a public electricity network require a licence or registration? Please provide reasons.
36. What types of "off-grid" electrical installations should require a registered or licensed electrical worker?
37. What would be the practical *benefits* and *costs* to industry, workers and the community if new licensing requirements were introduced for "off-grid" electrical work?

38. What types of work should electrical trade assistants be allowed to undertake, and why?
39. What would be the practical *benefits* and *costs* to industry, workers and the community if electrical trade assistants were allowed to perform some tasks on un-energised electrical installations?
40. Are the current exemptions to electrical licensing requirements listed in the PGE Regulations appropriate?
41. Are there problems with the quality of stormwater piping work undertaken by people and businesses without a plumbing registration or contractor's licence? Please provide supporting evidence.
42. Should all stormwater work connected to public disposal system only be undertaken by licensed plumbers? Please provide reasons.
43. What would be the *costs* and *benefits* for consumers, plumbers and other tradespeople in the construction industry if the current exemption for stormwater piping work was removed?
44. How can the Government ensure fair and equitable access to the Australian Standards for tradespeople working in SA?
45. Are there areas of poor performance or non-compliance in SA that could benefit from building practitioners participating in professional development? To what extent are these problems with poor quality work due to lack of knowledge as opposed to work being done by 'rogue operators' or people without an appropriate licence? Please provide evidence.
46. What evidence (including experience from other jurisdictions) is there that introduction of mandatory CPD will address problems with poor performance and non-compliance?
47. What other options besides mandatory CPD could be considered to address the problem?
48. What types of professional development activity could be required? How much training and how frequently would it be required?
49. Who should deliver CPD training?
50. How well is the mandated CPD working in other jurisdictions and what evidence is there for this?
51. Should CPD in SA be voluntary or mandatory? Who should be subjected to a CPD scheme and what form of CPD is appropriate?

52. If CPD were to be implemented, how could its success be measured? What indicators might suggest that the problems are being successfully addressed?
53. How could it be ensured that CPD would be appropriately targeted and address the problem areas in the construction industry?
54. Are there any costs or other potential impacts of a proposed CPD scheme that are not considered in this discussion paper, but which may affect the Government's decision to proceed with mandating CPD requirements?
55. Are there particular penalties in the BWC and PGE Acts that should be reviewed? Please provide details.
56. Would it be useful to introduce the proposed offence prohibiting unlicensed building work contractors from using another person's building work contractor's licence in advertising?
57. Would it be beneficial to introduce the proposed offence prohibiting building work contractors from engaging unlicensed subcontractors?
58. How can the Government hold subcontractors accountable for ensuring that they are appropriately licensed to undertake contracted work?
59. Is the current guidance on "proper supervision" sufficiently clear for building work supervisors to understand their obligations?
60. Should "proper supervision" requirements for building work supervisors be defined under the BWC Act? Should this include record-keeping and reporting requirements for building work supervisors to keep track of inspections they conduct? Please provide reasons.
61. Should the Government codify specific requirements for building work supervision?
62. What would be the *costs* and *benefits* for consumers, building work supervisors and other practitioners in the construction industry if specific requirements for building work supervision are codified?
63. Should the Government introduce new powers enabling the Commissioner to direct a licensed or registered building practitioner to undertake further training? What criteria should be satisfied before exercising this power?

## Appendix 2 – PGE Qualifications and experience requirements

Regulations 5 and 9 of the PGE Regulations establish the following qualification and experience requirements for a building practitioner to be entitled to a contractor's licence. It is proposed to remove these requirements from the PGE Regulations.

Applicants for an electrical contractor licence must:

- hold a Certificate in Electrical Stream 3212 issued by a training provider approved by the Commissioner, and
- one of the following certificates issued by the Industrial and Commercial Training Commission:
  - Certificate of Competency in Electrical Mechanics;
  - Certificate of Competency in Electrical Fitting; or
  - Certificate of Competency in Engineering Tradesperson (Electrical/Electronic);

and have successfully completed subjects relating to business administration approved by the Commissioner.

Applicants for a plumbing contractor's licence must:

- hold a Certificate of Competency in Plumbing or a Certificate of Competency – Advanced Plumbing issued by the Sanitary Plumbers Examining Board, and
  - 6 years of plumbing experience including at least 2 years as –
    - the holder of a certificate of registration as a sanitary plumber issued by the Sanitary Plumbers Examining Board; or
    - a registered plumbing worker; or
  - 7 years of plumbing including at least 18 months as –
    - the holder of a certificate of registration as a sanitary plumber issued by the Sanitary Plumbers Examining Board; or
    - a registered plumbing worker; or
- hold a Certificate of Proficiency and a Certificate of Competency in Sanitary Plumbing, Draining and Water Plumbing issued by the Regency Institute of TAFE and have successfully completed subjects relating to business administration approved by the Commissioner.

Applicants for a gas fitting contractor's licence must:

- hold a Certificate of Competency in Gas Fitting issued by the Gas Fitters Examining Board; or
- hold a Certificate of Proficiency and a Certificate of Competency in Gas Fitting issued by the Regency Institute of TAFE and have successfully completed subjects relating

to business administration approved by the Commissioner.

Applicants for an electrical worker's registration must:

- hold a Certificate in Electrical Stream 3212 issued by a training provider approved by the Commissioner, and
- one of the following certificates issued by the Industrial and Commercial Training Commission:
  - Certificate of Competency in Electrical Mechanics;
  - Certificate of Competency in Electrical Fitting; or
  - Certificate of Competency in Engineering Tradesperson (Electrical/Electronic).

Applicants for a plumbing worker's registration must:

- hold a Certificate of Competency in Plumbing or a Certificate of Competency – Advanced Plumbing issued by the Sanitary Plumbers Examining Board, and
  - 6 years of plumbing experience including at least 2 years as –
    - the holder of a certificate of registration as a sanitary plumber issued by the Sanitary Plumbers Examining Board; or
    - a registered plumbing worker; or
  - 7 years of plumbing including at least 18 months as –
    - the holder of a certificate of registration as a sanitary plumber issued by the Sanitary Plumbers Examining Board; or
    - a registered plumbing worker; or
- hold a Certificate of Proficiency and a Certificate of Competency in Sanitary Plumbing, Draining and Water Plumbing issued by the Regency Institute of TAFE.

Applicants for a gas fitting worker's registration must:

- hold a Certificate of Competency in Gas Fitting issued by the Gas Fitters Examining Board; or
- hold a Certificate of Proficiency and a Certificate of Competency in Gas Fitting issued by the Regency Institute of TAFE.