

Discussion Paper on New Victorian Registration and Licensing of Tradespeople

There is much confusion about the mechanism and requirements of the Victorian Government changes to Register and Licence Trades, including Waterproofing. In Queensland and New South Wales the State Governments have already gone down the path of registering Trades. The problem of building defects and consumer confidence in the industry still remains. In Victoria the single highest claim payout figure relates to water issues.

The test case for Registration and Licensing of Tradespeople will be the final legislation relating to Carpentry, Stage 2 will involve Waterproofing. The principles of Registration of subcontractors and Licencing of employees will be worked out in the proposed changes in September 2020.

The following are extracts from the DELWP – Consultation Options Paper

Why is there a new trades registration and licensing scheme?

Current scheme

The Victorian Building Authority (the VBA) currently administers a registration regime for building practitioners, including builders, operating in the Victorian building industry. This registration regime allows the VBA to collect information about registered builders, which, in turn, enables the VBA to monitor and enforce compliance with the *Building Act 1993* ('the Building Act') and the Building Regulations 2018 (the building regulations). Not all builders and tradespeople involved in a project require registration to perform building work – only the head contractor needs to be registered, and only in certain circumstances.

Why the change?

Change was considered an important step to reduce **non-compliant building work**, enhance industry **accountability** and encourage **skills formation** and availability:

- **Non-compliant work:** Consumer problems in the Victorian building industry are high relative to other sectors, and the most common consumer complaint in the domestic building industry is poor quality workmanship. There is a significant financial burden on consumers to rectify poor quality and non-compliant work.
- **Accountability:** While head contractors engage directly with consumers, an estimated 80 to 85 percent of building work is completed by subcontractors and employees. Without registration and licensing requirements, the VBA is unable to initiate disciplinary action against these unregulated trades when they breach standards.
- **Skills formation:** The lack of any registration and licensing requirements for subcontractors and employees reduces the incentive for these groups to obtain the minimum recognised

level of competency required to safely, competently and proficiently perform building work. This is reflected in low apprenticeship completion rates. Of the trade apprentices commencing training in 2014, only 54.5% completed their training. This not only presents a risk to the quality of work undertaken in the industry, but it could also be a factor in the ongoing skills shortage in the sector.

What is the change?

The new scheme will introduce new obligations for employees and subcontractors working in the building industry. Employees will be required to obtain a licence, and subcontractors to obtain a registration, to perform certain (or 'prescribed') building work. The new scheme will be implemented for carpentry work first, with other building work to be considered for inclusion in the scheme over a five-year period. The new scheme will not alter existing regulation in relation to domestic and commercial builder registrations (head contractor registrations).

When will the change begin?

The general framework for the new registration and licensing schemes will commence in the Building Act from 1 September 2020. However, the new framework will not have effect until building regulations are made to prescribe the detail of the scheme. While the new building regulations will likely be in place by 1 September 2020, to give industry a chance to plan and prepare for change, the operative date for the regulations could be delayed – for example into 2021.

How will the new scheme work?

The general framework for the new registration and licensing scheme will be provided in the Building Act. However, the Act does not provide the detail of the scheme. For example, the Act does not prescribe building work, and provides no detail on how the scheme will operate. To give effect to the new scheme, the Victorian Government is considering options for new regulations.

The objectives of the new scheme are to ensure:

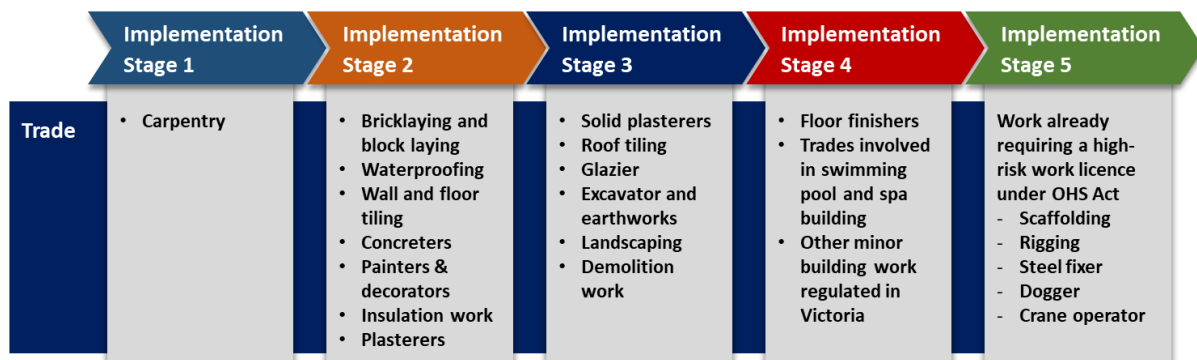
- 1. The incidence of non-compliant building work is reduced;**
- 2. There is greater accountability for non-compliant work;**
- 3. Incentives for skills formation in the building industry are improved (including completion of apprenticeships);**
- 4. There is confidence that people who carry out or perform prescribed work have suitable qualifications, skills and experience to do so;**
- 5. There is relative consistency between the approach taken to trade subcontractors and trade employees so as not to create incentives for the replacement of employees by subcontractors.**

A registration/licence will provide a mechanism to:

- set a minimum standard of competency to be expected of people who perform prescribed work;
- ensure that only qualified, competent and suitable trades are authorised to operate;
- subject subcontractors and employees to regulatory oversight. This means trades providing poor workmanship will bear the cost of rectifying that work. This will be achieved through a disciplinary system, which will provide an incentive for trades to do compliant and quality work the first time;
- recognise registered and licensed trades on a public register. This will also make it easier for consumers and builders alike to identify competent and qualified trades who are accountable for their work.

The new registration and licensing framework will operate by:

- making it an offence for any builder or tradesperson to undertake prescribed building work without the appropriate registration (for contractors) or licence (for employees);¹ and making it an offence for others to engage an unregistered subcontractor or to direct an unregistered or unlicensed person to carry out prescribed building work



¹ Building Act (1993) s 169EA.

Core element	What will the Regulations do?
Scope of work	Define the carpentry work that can only be performed by a registered (if they are a subcontractor) or a licensed (if they are an employee) carpenter. For consistency, the scope of hands-on building work prescribed for subcontractors and employees will be the same.
Class of practitioner	Define the type of licence or registration a tradesperson must have in order to do prescribed work.
Formal qualifications	Set the formal qualifications required for each new class of practitioner.
Relevant practical experience	Set the practical experience requirement for each new class of practitioner.
Business competency	Set the business competency required to be eligible for registration.
Personal probity	Set the personal probity requirements for registration. The Building Act does not provide for personal and financial probity requirements to apply to employee licences.
Financial probity	Set the financial probity requirements for registration. The Building Act does not provide for personal and financial probity requirements to apply to licences.
Proposed transition arrangements	Set the provisional registration and provisional licensing arrangements which allow tradespeople to enter the new scheme.

Registration Options

- In **Registration Options Package 1** all trade contractors are registered as **domestic or commercial builders in relevant existing classes of builder registration** and this registration entitles them to not only carry out prescribed building work, but also to contract for it (whether head contract or subcontract). Package 1 is an extension of the existing registration obligation for head contractors to subcontractors seeking to perform prescribed building work. Essentially this option requires subcontractors to meet the current requirements as they exist in the current system for head contractors.
- **Registration Options Package 2** creates new classes of trade subcontractor which correspond to the work prescribed for existing classes of domestic and commercial builder. However, the new subcontractor classes would enable less onerous registration requirements to be set than in Registration Options Package 1. This is because the new subcontractor class would not be authorised to enter a head contract (i.e. they would only be authorised to subcontract). Registration Options Package 2 is similar to Registration Options Package 1 in that both packages retain and rely on existing classes of domestic and commercial builder. Unlike Options Package 1 however, Options Package 2 does not require trades to be registered as domestic and/or commercial builders and does not require subcontractors to meet requirements as they exist in the current system for head contractors. Under this package, any new prescribed subcontractor class could be prescribed less onerous registration requirements than the corresponding head contractor class. This reflects the different levels of responsibility each class assumes in relation to prescribed work.
- **Registration Options Package 3** would introduce one (or more) new classes of registration enabling subcontractors to perform a broad range of prescribed carpentry work. This package is different to Registration Options Packages 1 & 2 as it departs from the way in which the classes of registration are currently prescribed for domestic and commercial builders. In other words, in Registration Options Package 3 there is no distinction between domestic and non-domestic building work. The advantage of introducing broader classes of registration for subcontractors is that it prevents fragmentation of carpentry and promotes labour mobility across the domestic and non-domestic sectors.
- **Registration Options Package 4** would prescribe only carpentry work that is considered to be high-risk carpentry work. In this option, single or multiple classes of registration can be created. Registration Package 4 differs from the other three packages in that it is the only package that prescribes only some carpentry work, whereas all the other packages prescribe all carpentry work. In this package, prescribed carpentry work is narrowly defined thereby limiting the scope of the scheme.

Licensing packages Options

A description of each package for the new licensing scheme follows.

- In **Licensing Options Package 1** all employees are licensed, and new classes of licence align with existing classes of domestic and commercial builder (per Registration Options Package 1 and 2). Criteria for registration and licensing which set the minimum standard necessary to physically perform each class of prescribed work is the same for head contractors, subcontractors and employee licences (qualifications and experience). Business competency and personal and financial probity requirements are not required for licensing.
- **Licensing Options Package 2** would introduce one (or more) new classes of licence enabling employees to perform a broad range of prescribed carpentry work (i.e. broader than work prescribed for current classes of builder). Under this package, employees are licensed, and classes of licence correspond to carpentry work prescribed for Registration Options Package 3. Licensing Options Package 2 and Registration Options Package 3 are different to Registration and Licensing Packages 1 as they depart from the way in which the classes of registration are currently prescribed for domestic and commercial builders. In other words, this package does not retain a distinction between domestic and non-domestic building work.
- **Licensing Options Package 3** would prescribe carpentry work narrowly thereby limiting the effect of the scheme. It prescribes only carpentry work that is considered to be high-risk carpentry work. In this option, single or multiple new classes of licence can be created. Under Licence Package 3 employees are licensed and classes of licence correspond to carpentry work prescribed for Registration Options Package 4. Licensing Package 3 differs from the other two packages in that it is the only package that prescribes only some carpentry work. The other packages prescribe all carpentry work.

Discussions so far with DEWP and MBA favour:

Registration Option 3

Licensing Option 2

MEMBER ENGAGEMENT WORKSHOP

OPTION 3

Creates one (or more) new classes of registration enabling subcontractors to perform a broad range of prescribed carpentry work.

In Options 3 there is no distinction between domestic and commercial building work.

The advantage of introducing broader classes of registration for subcontractors is that it prevents fragmentation of carpentry and promotes labour mobility across the domestic and commercial sectors.

DOMESTIC	COMMERCIAL
DB-U	CB-U
DB-L	CB-L
Trade Registered Carpentry <i>(can work across the industry)</i>	
Licensed Carpentry Employee <i>(can work across the industry)</i>	

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MEMBER ENGAGEMENT WORKSHOP

OPTION 3

SCOPE	WHO CAN PERFORM WORK					
	Domestic Builder Unlimited	Domestic Builder Limited Carpentry	Commercial Builder Unlimited	Commercial Builder Limited	Trade Carpentry	Licensed Carpentry
Work on Domestic Projects	✓	✓	x	x	✓	✓
Work on Commercial Projects	x	x	✓	✓	✓	✓
Work on Domestic Projects and Commercial Projects	x	x	x	x	✓	✓
Hands-on work	✓	✓	✓	✓	✓	✓
Subcontract to builder	✓	✓	✓	✓	✓	x
Contract to client	✓	✓	✓	✓	x	x
Take out building permit	✓	✓	✓	✓	x	x
Take out DBI	✓	✓	NA	NA	x	x

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Registration and licensing exemptions

Broadly speaking, employees or contractors that would like to perform prescribed carpentry work will need to obtain a registration or licence. Registration and licensing exemptions however define circumstances in which prescribed work can be done by an unregistered subcontractor or a non-licensed employee or even another registered practitioner whose registration does not authorise the carrying out of a particular class of prescribed work.

Options proposed by stakeholders for exemptions from registration and licensing include:

- Allow an un-registered subcontractor to contract for any prescribed carpentry work that is under the value of \$10,000.
- Allow any carpentry work over the value of \$10,000 which is exempt from compliance with the building regulations and/or from the requirement for a building permit to be carried out by un-registered and non-licensed trades.
- Supervised work - This would allow an unregistered subcontractor or a non-licensed employee to work under the supervision of an appropriately registered building practitioner. This supervised work exemption could apply to facilitate workers who are not undertaking an apprenticeship and who are not eligible to obtain a provisional registration or licence to gain the experience necessary to become registered or licensed under the new scheme.
- Low risk work - If a broad definition of prescribed work is used, it may be necessary to identify specific aspects of work that should be exempt and can be carried out by anyone.

We hope this information provides some insight to the process and stimulates discussion.

Regards

David Hepworth