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**August 2000**

Final Report

# Occupational Licensing in the ACT Building and Construction Industry

A National Competition Policy Review of the  
*Building Act 1982*, the *Electricity Act 1971*,  
and the *Plumbers, Drainers and*  
*Gasfitters Board Act 1982*

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## Abbreviations

ACT	Australian Capital Territory
BEPCON	Building, Electrical and Plumbing Control
<i>CoAG</i>	<i>Council of Australian Governments</i>
CIT	Canberra Institute of Technology
<i>CPA</i>	<i>Competition Principles Agreement</i>
CSO	consumer service obligation
HII	Housing Indemnity Insurance
kL	kilo litres
kPA	kilo pascals
LPG	liquid petroleum gas
NA	not applicable
NCC	National Competition Council
NCP	National Competition Policy
NGV	natural gas vehicle
NREL	national restricted electrical licence
<i>review legislation</i>	<i>Building Act 1972, Electricity Act 1971 and Plumbers, Drainers and Gasfitters Board Act 1982</i>
s.	section
ss.	sections
sub-cl.	sub-clause
sub-s.	sub-section

## Preface

This report has been prepared on behalf of the Government of the Australian Capital Territory but does not necessarily represent the views of the Government.

The Allen Consulting Group wishes to thank all those parties who took the time to participate in the industry roundtables and prepare written submissions.

# 1

## Chapter One

## Summary and Overview

## Chapter One

# Summary and Overview

As part of its commitments under National Competition Policy (NCP), the Government of the Australian Capital Territory (ACT) undertook to review the occupational licensing regimes established by the *Building Act 1972*, the *Electricity Act 1971*, the *Plumbers, Drainers and Gasfitters Board Act 1982*, and related subordinate legislation (collectively called the *review legislation*). The commitments extend to ensure that the *review legislation*:

“... should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.”

sub-cl.5(1) *Competition Principles Agreement*.

This *Final Report* has been prepared in accordance with these principles.

## 1.1 The Review Process

There have been a number of reviews of occupational licensing in the ACT and elsewhere that have guided this review. For example:

- NCP-consistent approaches to occupational licensing have been clarified by the review of cadastral surveyors in the ACT<sup>1</sup> and the national review of architects;<sup>2</sup> and
- possible options for the reform of occupational licensing in the ACT building and construction industry were presented to the industry in a 1998 Discussion Paper.<sup>3</sup>

Given this background, the Review Team prepared a *Directions Paper* as a basis for the public consultation. The *Paper* set out a series of ‘review issues’ upon which the Review Team was seeking comment, but also made a number of ‘preliminary findings’ on matters that were considered uncontroversial. The *Directions Paper* formed a basis around which a series of industry roundtables were convened and submissions sought. Further detail about the consultation process can be found in Appendix B.

This *Final Report* is derived from the *Directions Paper* following consideration of the roundtables and the written submissions provided to the Review Team.

<sup>1</sup> See: The Allen Consulting Group, *Surveyors Act 1967 — A National Competition Policy Review*, Sydney, 1998; and ACT Government, *National Competition Policy Review of the Surveyors Act 1967 — Government Response*, 1999.

<sup>2</sup> See Productivity Commission, *Review of Legislation Regulating the Architectural Profession — Draft Report*, AusInfo, Canberra, 2000.

<sup>3</sup> Planning and Land Management, *A Model for Occupational Licensing in Construction — Discussion Paper*, Canberra, 1998. Submissions were received in response to this discussion paper, but a final report was never prepared.



## 1.2 Major Review Issues

While there were a range of issues considered in this review, three key issues directed the Review Team's assessment of the current licensing occupational regime and the suggested reform path. These issues, and the broad conclusions reached, are outlined in the following sections.

### 1.2.1 *The Government's Role*

The first step in a NCP review is to determine the rationale for government intervention. All parties to the review were of the view that the Government has an important role in ensuring that tradespeople have the appropriate skills to enable them to undertake building and construction work in an appropriate — and hence safe — manner. This rationale for government regulation stems from two market failures:

- information asymmetries — as building and construction work is an infrequent purchase consumers tend to lack the information to be able to independently judge whether or not a tradesperson has the appropriate skills to perform the required tasks safely; and
- negative externalities — while a consumer may decide whether or not to use an appropriately skilled tradesman, that decision also has potential consequences for the wider group of people who may enter the affected premises. Thus there may be a rationale for Government involvement to protect the safety of these third parties.

An important issue raised during the industry roundtables is whether consumer protection is another rationale for Government regulation in addition to the maintenance of public safety. The Review Team suggests that the occupational licensing of building and construction tradespeople should not be viewed as an explicit form of consumer protection. In general, where the current licensing regime is clearly directed at consumer protection matters then these should be divorced from the review legislation and addressed in conjunction with consumer protection legislation.

### 1.2.2 *Licensing Options*

In the *Directions Paper* the Review Team suggested that there were a number of NCP-compliant regulatory approaches:

- ongoing licensing similar to that which occurs presently;
- co-regulation, where industry develops and administers its own arrangements but government provides legislative backing to enable the arrangements to be enforced (eg, the Government could enforce undertakings to comply with a code of practice); and
- certification, whereby anyone is allowed to practise a particular occupation, but formal certificates of competency are provided to those people who desire them and can meet the necessary standards. Certification standards tend to be similar to those in place under a licensing regime. Under a licensing arrangement, however, only those individuals who meet the requirements are allowed to practice; certification does not preclude practice by non-certified tradespeople; and
- private, non-legislative response involving the provision of information and awareness campaigns through consumer publications, and insurance schemes to cover risks.

A clear conclusion from the stakeholder consultations is that the only mechanism that will sufficiently safeguard public safety is a positive licensing regime akin to that which operates today. This approach has the advantage of facilitating cross-jurisdictional employment through the ACT's mutual recognition arrangements.

In the longer term — and as currently occurs in the United Kingdom — the Review Team considers that it is feasible to imagine an environment in which self-regulation of the building and construction industry is feasible. For this to be in the public interest it would be necessary for there to be a competitive insurance industry which would become a *de facto* regulator. In these circumstances the interests of insurance companies and the public are aligned — fewer insurance claims against builders also means greater public safety. Given the small size of the ACT's insurance industry this scenario is not currently feasible, but may be somewhat relied upon if a national approach to occupational licensing in the building and construction industry can be developed (ie, a minimalist national licensing scheme may be complemented by greater oversight from the national insurance companies).

### 1.2.3 *Administrative Options*

NCP seeks to ensure that legislation is effective (ie, achieves its legitimate objectives) and is efficient (ie, achieves the objectives in the most cost-effective and least restrictive manner). To this end, NCP is not simply about ensuring that there is a 'level playing field' between parties, but also that the regulatory system as a whole is appropriate and not an undue burden on particular groups or the community as a whole. In this context, NCP seeks to ensure that the regulatory response is proportional to the problem.

In this light, a further concern is that the existing regulatory regime:

- is unnecessarily duplicative with multiple regulators (and hence multiple costs) and different regulatory structures addressing often similar concerns; and
- entails significant and ongoing fiscal costs associated with the cost of administering the regulatory regimes (ie, paying board members and the costs associated with overseeing the boards' operations).

Furthermore, as most occupational licensing boards tend to be dominated by members of the occupation they are regulating it is reasonable to infer the capture theory of regulation — incumbent groups or associations will seek to dominate the regulatory agency because each individual group or association member stands to gain more than any consumer or potential entrant stands to lose. There is some anecdotal evidence that this may be a problem with respect to the regulation of the ACT building and construction industry.

As a result of these concerns the Review Team has recommended the streamlining of the existing administrative structure to create a single regulatory regime (ie, one Act and related subordinate legislation) for occupational licensing in the building and construction industry. The key elements of the option are:

- the Minister would appoint a public servant — the Registrar — to administer the legislation. The Registrar would be subject to the control and directions of the Minister;
- the Registrar and a staff would be responsible for: policy and legislation; low level disciplinary action against licensed/certified people whose actions are considered unsatisfactory; and the issue and renewal of licences/certificates of competence.

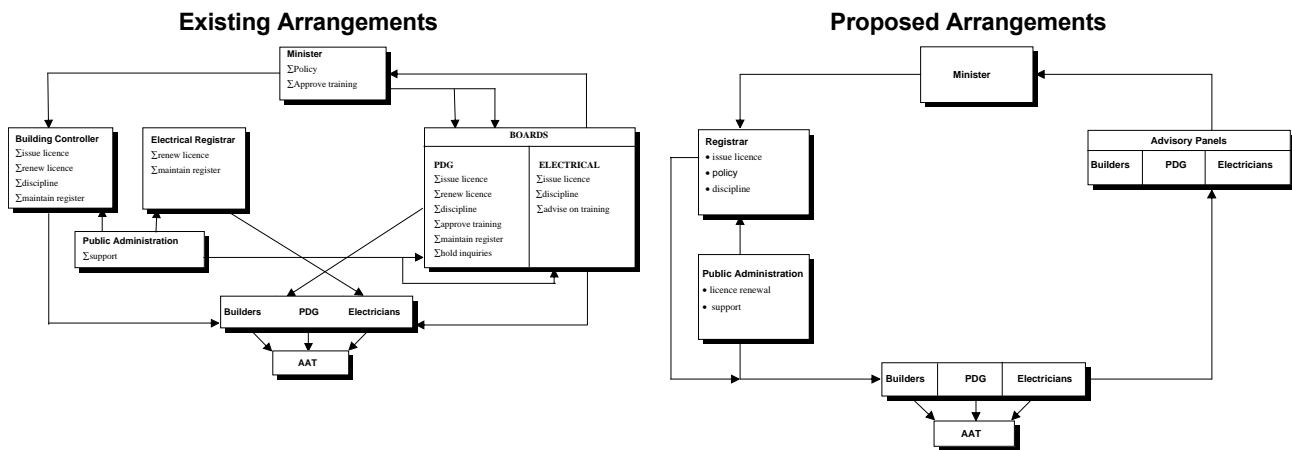
- the harmonisation of approaches to the level of legislation at which qualifications are set, to the period for which licences and registration are valid, to the renewal of licences and registration and to disciplinary action and appeals.

An important element of the recommended regulatory structure is the establishment of separate advisory panels for the three current industry sectors. Each panel would include members from occupational and community groups with interests in and knowledge of the occupation concerned and from the Government organisation responsible for licensing policy.

The existing and proposed administrative structures are compared in Figure 1.1.

Figure 1.1

**EXISTING AND PROPOSED ADMINISTRATIVE STRUCTURES**



Source: The Allen Consulting Group

**1.3 Conclusions and Recommendations**

In general, the Review Team agrees with Rose’s observation:

“That the regulatory system for builders, plumbers and electricians should be as simple as possible to reduce:

- confusion in public understanding
- administration costs
- boundary keeping by members of particular groups

but ensure public interest and consumer and community protection are adequately balanced against the risk.”

Rose, submission, 2000, p.1.

These principles are embodied in the following conclusions and recommendations.

**CONCLUSION ONE**

*While Government regulation of building and construction tradespeople may be perceived as a form of consumer protection, consumer protection is not an explicit rationale for Government regulation.*

**CONCLUSION TWO**

*There is a public safety rationale — due to the twin market failures of negative externalities and information asymmetries — that justifies Government regulation of tradespeople in the building and construction industry.*

- RECOMMENDATION ONE** *The review legislation should be replaced by a single new Act that provides for the licensing of builders, electricians and electrical contractors, plumbers, drainers and gasfitters.*
- RECOMMENDATION TWO** *The existing administrative structures should be streamlined by the abolition of the existing boards and their replacement by a single Registrar supported by three separate advisory panels, one each for:*
- *builders;*
  - *electricians and electrical contractors; and*
  - *plumbers, drainers and gasfitters.*
- RECOMMENDATION THREE** *The aim, as far as practicable, should be for the harmonisation of licensing criteria and administration between the different occupational groups.*
- RECOMMENDATION FOUR** *Licensing criteria related to the age of potential license holders should not be included in the new Act.*
- RECOMMENDATION FIVE** *'Business capacity' should not be assessed as a requirement to obtain a new licence. Business courses should continue to be offered on an optional basis, but they should not be mandatory components of training.*
- RECOMMENDATION SIX** *Licensing criteria should not include capacity criteria in addition to the performance-based educational criteria.*
- RECOMMENDATION SEVEN** *A 'fit and proper person' test should be included in the new legislation. In addition to the requirements found in s.37 of the Electricity Act, this test should also exclude parties who are subject to disciplinary action regarding their trade in the ACT or elsewhere, and should exclude parties who are bankrupt or subject to winding up procedures.*
- RECOMMENDATION EIGHT** *Disciplinary powers and actions should, as much as practicable, be standardised across the review occupations. Disciplinary powers and actions should include a range of remedial powers (eg, to suspend a party and require attendance at corrective courses) as well as powers and actions designed primarily as punishment.*
- RECOMMENDATION NINE** *A system of demerit points should be adopted, with increasing penalties based on number of major/minor defects or failed inspections. The level of penalty should set at such a level that the penalty acts as a deterrent. In order to further strengthen the disciplinary action available, automatic show cause actions could occur after a pre-determined number of major defects or failed inspections are incurred by the same individual within a set period of time.*
- RECOMMENDATION TEN** *A system of on-the-spot fines should be established where such fines can be issued to unlicensed tradespeople found doing (or having done) an activity that requires a licence. These fines should be of a dollar amount that is sufficient to act as an effective deterrent for unlicensed activity.*
- RECOMMENDATION ELEVEN** *The new Act should empower the Department of Urban Services to issue an order to rectify work that is in breach of technical standards regardless of whether a certificate of occupancy has been granted. This would ensure that unacceptable work is rectified by the original tradesperson or, if he/she is unable and unwilling to comply, by another licensed party, with the cost being charged to the negligent tradesperson.*
- RECOMMENDATION TWELVE** *Licence qualifications should be removed from the review legislation and incorporated in regulations.*

RECOMMENDATION THIRTEEN	<i>Fees should be set taking into account the costs associated with maintaining the licensing regime. The fee levels for each occupation should be set on a consistent percentage basis with respect to any deviation from full cost recovery.</i>
RECOMMENDATION FOURTEEN	<i>There should be no requirement for ongoing professional development as a requirement of holding a licence.</i>
RECOMMENDATION FIFTEEN	<i>Licences should be issued indefinitely, subject to periodic renewal.</i>
RECOMMENDATION SIXTEEN	<i>The Registrar should have the power to ‘call in’, as appropriate, all licence holders for new training when there is a significant change in the expectations placed upon tradespeople.</i>
RECOMMENDATION SEVENTEEN	<i>Appeals on matters dealing with technical breaches of the new Act should be directed, in the first instance, to a peer group. The peer group would have the power to overturn the Registrar’s initial decision. Appeals on anything other than strictly technical breaches of the Act should continue to be to the AAT.</i>
RECOMMENDATION EIGHTEEN	<i>The new Act should not require that insurance be held as a condition of any licence.</i>
RECOMMENDATION NINETEEN	<i>Housing Indemnity Insurance should be separated from the review legislation and incorporated into a new Act under the oversight of Justice and Community Safety. This approach will provide consumers with a one-stop consumer protection shop in the event that there is a problem with building and construction work.</i>
RECOMMENDATION TWENTY	<i>The Government should take steps to encourage the establishment of an insurance ombudsman who would have the power to mediate and arbitrate insurance-related disputes.</i>
RECOMMENDATION TWENTY-ONE	<i>Justice and Community Safety and Urban Services should issue a checklist to people who are about to commence building. The checklist should explain a consumer’s rights under the law and provide a checklist of actions that will assist a consumer in protecting their interests.</i>
RECOMMENDATION TWENTY-TWO	<i>The ACT should make greater use of the referral mechanism contained in the mutual recognition arrangements where concerns exist as to the competency of persons registered in other jurisdictions.</i>
COMMENT	<i>The Mutual Recognition Act in its current form makes individual state licensing policy ineffective when dealing with inter-state licensing applications. There are currently loopholes which curtail the effectiveness of disciplinary action and licensing criteria. The ACT should seek to remedy this situation at the earliest opportunity.</i>

## 1.4 Report Structure

The remainder of this *Final Report* is set out in the following manner:

- Chapter Two outlines the principles that underpin NCP and this review;
- Chapter Three describes the scale and scope of the tradespeople regulated under the review legislation and briefly describes the existing licensing regimes;
- Chapter Four considers the possible rationales for government regulation of building and construction tradespeople and whether self-regulation is appropriate;

- Chapter Five briefly outlines the three major NCP concerns with the existing regulatory regimes;
- Chapter Six considers five broad approaches to the regulation of building and construction tradespeople;
- Chapter Seven considers and assesses four broad approaches to the administration of a licensing regime; and
- Chapter Eight discusses a range of regulatory details arising from the existing regime and the consultation process.

In addition to the body of the report, the appendices set out the review's terms of reference and describe in detail the consultation process.

# 2

## Chapter Two

### National Competition Policy and the Public Interest

## Chapter Two

# National Competition Policy and the Public Interest

This chapter describes the policy frameworks that underlie this review. In particular, it explains the ‘competition test’ and the complementary assessment of the public interest. The ACT Government is committed to the rigorous application of these tests.

## 2.1 The ‘Competition Test’

In April 1995, the Commonwealth, State and Territory Governments signed the inter-governmental *Competition Principles Agreement (CPA)*, committing themselves to ensuring that new and existing legislation does not impose undue competitive restrictions:

“The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.”

*Sub-cl.5(1) Competition Principles Agreement.*

This test — the ‘competition test’ — is intended to establish whether particular restrictions on competition remain necessary, through an assessment of the costs and benefits of current and alternative means of achieving policy objectives.

Legislation may restrict competition if it:

- establishes an outright prohibition of business activity;
- establishes or protects a monopoly;
- provides for the licensing or registration of participants in a business activity;
- allocates quotas/franchises;
- requires specific quality/technical standards for specific equipment;
- establishes price controls (including direct and indirect controls);
- nominates preferred customers or suppliers;
- confers differential benefits on particular persons/entities;
- provides for natural resource access licensing;
- establishes participation limits (on overseas/interstate participants);
- establishes barriers to entry or exit (often through licensing/registration);
- imposes restrictions on business structure, form or ownership;
- imposes restrictions on business conduct;
- imposes potential impediments to innovation (eg, through quality standards);



- promotes inefficient cross-subsidies between classes of goods and services; and
- promotes efficiency losses through excessive regulation.

As the competition test is built on the presumption that restrictions to competitive economic behaviour impose costs on the community, *the burden of proof is on those who wish to retain competitive restrictions to establish the public interest case for the retention or enactment of legislation which restricts competition.*<sup>4</sup>

Even where the public benefit in retaining anti-competitive legislative provisions outweighs the cost, the competition test requires that the least anti-competitive alternative regulatory approach be implemented.

## 2.2 Public Interest Justifications for Restrictive Legislation

NCP acknowledges that competition is not an end in itself; that while, in general, the introduction of competition will deliver benefits to the consumer, there are situations where community welfare will be better served by not effecting particular competition reforms. That is, competition is to be implemented to the extent that the benefits that will be realised from competition outweigh the costs.

NCP also recognises that where anti-competitive behaviour is acceptable to achieve a public good, there must be a transparent process for assessing the balance between benefit and costs, and the behaviour must be subject to review.

Sub-clause 1(3) of the *CPA* provides for considerations other than strictly economic criteria in assessing public benefit in circumstances where, on balance, there is a net benefit for the community. It sets out the circumstances in which the weighing up process is called for, and also some of the factors that need to be taken into account in making the decision:

“Without limiting the matters that may be taken into account, where this Agreement calls:

- for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- for the merits or appropriateness of a particular policy or course of action to be determined; or
- for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.”

<sup>4</sup> See The Independent Committee of Inquiry, *National Competition Policy*, AGPS, Canberra, 1993, p.206.

This is called the ‘public interest’ test. The National Competition Council (NCC) emphasises that the public interest test is not exclusive or prescriptive. Rather, it provides a list of indicative factors a government could look at in considering the benefits and costs of particular actions, while not excluding consideration of any other matters in assessing the public interest.

### **2.3 Possible Alternative Regulatory Approaches**

If, on balance, the costs of restrictions on competition in the *review legislation* outweigh the benefits then the restrictive provisions in the *review legislation* should not be retained. Even if, on balance, there are net benefits arising from restrictions, the *review legislation* should only be retained in its current form if its objectives cannot be achieved more efficiently through other means, including non-legislative approaches.

Alternative regulatory approaches considered in other NCP reviews of occupational licensing regimes have included:

- retention of the legislation with amendments to streamline the acts and reduce any existing competitive restrictions;
- deregulation, combined with increased reliance upon generally applicable laws (eg, the *Trade Practices Act 1974*, etc) to address market failures;
- quasi-regulation, which refers to, “the range of rules, instruments and standards whereby government influences business to comply, but which do not form part of explicit government regulation”.<sup>5</sup> Examples include government endorsed industry codes of practice or standards, and national accreditation schemes;
- co-regulation, where industry develops and administers its own arrangements but government provides legislative backing to enable the arrangements to be enforced (eg, the government could enforce undertakings to comply with a code of practice);
- self-regulation, where the industry is responsible for the formation of rules, codes of conduct, and enforcement. The industry may also develop information or education campaigns, service charters and quality assurance schemes;
- strengthened elements of the existing legislation (eg, licensing provisions); and
- private, non-legislative response involving the provision of information and awareness campaigns through consumer publications, and insurance schemes to cover risks.

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<sup>5</sup> Commonwealth Interdepartmental Committee on Quasi-Regulation, *Grey-Letter Law — Report of the Commonwealth Interdepartmental Committee on Quasi-Regulation*, AusInfo, Canberra, 1999, p.7.

# 3

## Chapter Three

### *The Review Legislation Occupations*

### Chapter Three

## The Review Legislation Occupations

The occupations regulated under the *review legislation* include builders, electricians and electrical contractors, plumbers, drainers and gasfitters.

These occupations are all currently regulated through licensing administered by:

- statutory boards for electricians, plumbers drainers and gasfitters; and
- a controller (ie, a public servant) for builders.

The licensing requirements and the function of the regulator (ie, the boards and the controller) vary for each these occupations — Table 3.1 indicates the current regulatory regimes for each of these professions:

Table 3.1

	<i>Building Act</i>	<i>Electricity Act</i>	<i>Plumbers, Drainers and Gasfitters Board Act</i>
Issue certificates of competency	NA	NA	Board
Grant/refuse licences	Building Controller	Board	Board
Renew licences	Building Controller	Registrar	Board
Approve courses of training	Minister	Board	Board advises Minister
Conduct examinations	NA	Board	NA
Maintain register	Building Controller	Registrar	Board
Impose penalties	Building Controller	Board	Board
Hold inquiries into licence holder conduct	Building Controller	Board	Board

Source: Planning and Land Management, *A Model for Occupational Licensing in Construction — Discussion Paper*, Canberra, 1998, p.2.

The following sections provide a brief overview of the scale of the occupations in the ACT and describe briefly (and somewhat simplistically) the nature of the various licences.

### 3.1 Builders

There are currently 1,683 builder's licences of all classes held in the ACT.<sup>6</sup> Builders undertake building work of varying complexity, depending on the class of licence they hold. As set out in s.5 of the *Building Act*, building work includes:

- “(a) work in connection with the erection, alteration or demolition of the building and includes disposal of waste materials generated—
- (b) work in connection with repairs of a structural nature to the building
- (c) work in connection with —
  - (i) the installation of a specialised system in the building;
  - (ii) the structural modification or removal of such a system installed in the building; or
  - (iii) the maintenance or cleaning of such a system installed in the building; or
- (d) the performance of any work in relation to the building that is carried out at the site of the building and involves the handling of asbestos or the disturbance of loose asbestos”

There are four classes of builder's licences, each requiring a specified set of training, course work and practical experience, or established qualifications and supervised building work. The four classes of builder's licences are as:

- Class A — this is the least restrictive, allowing the builder to carry out building work of unlimited complexity. In order to obtain a Class A licence, the applicant must hold a degree in architecture, civil or structural engineering, or building;
- Class B — this licence allows building work of up to three stories. The prerequisites for a Class B licence include a Diploma in Building or equivalent (eg., Building Foreman and Clerk of Works Certificate), and one year of experience. If an applicant does not have the formal qualifications for a Class B builder's licence but they have the practical experience, the applicant may take a Class B licensing examination held by a registered training organization to demonstrate they have the knowledge and experience;
- Class C — their licence allows residential building work of up to two stories, with some exclusions (eg, structural beams, and slabs with spans in excess of six metres). Applicants for a Class C licence must have a Certificate IV in Building and have one year of experience. If an applicant does not have the qualifications, but has the practical experience, the applicant may take a Class C licensing examination to demonstrate their knowledge and experience; and
- Class D — this licence allow specialist building work such as demolition, swimming pools, prefabricated buildings, mechanical ventilation systems, asbestos removal and minor building work. In order to hold a Class D licence, builders must have qualifications and skills relevant to the type of specialist work and have three years of experience in that kind of work. The type of specialist building work allowed is specified on each individual licence.

### 3.2 Plumbers, Drainers and Gasfitters

There are a total of 1,211<sup>7</sup> licences currently held in the ACT by plumbers, drainers, gasfitters, or combinations of the three occupations.<sup>8</sup> An ACT plumber's licence allows

<sup>6</sup> Department of Urban Services, 7 April 2000. This figure exaggerates the actual number of builders in the ACT due to multiple licence-holding.

<sup>7</sup> This figure exaggerates the actual number of practicing plumbers, drainers and gasfitters in the ACT due to multiple licence-holding.

the holder to install or fit a fire-fighting sprinkler system, execute sanitary plumbing work or water supply plumbing work, depending on the type of licence. It also allows water supply plumbers to affix a service pipe to a water main and alter or repair a service pipe or fitting. A drainer is responsible for laying or repairing drains.<sup>9</sup> Gasfitters install or repair consumer natural gas piping systems, connect gas appliances to or disconnect from the consumer piping system, and inspect and test the consumer piping system and gas appliances.<sup>10</sup>

The *Plumbers, Drainers, Gasfitters Board Act* grants a wide variety of licences including advanced, journeyman, and restricted classifications of plumber, drainer, and gasfitter licences. Many individuals hold combinations of these licences, for example, holding Journeyman plumber, drainer or Journeyman plumber, gasfitter licences. This *Act* also licences sprinkler fitters. The requirements for obtaining one of these licences include combinations of practical experience and educational coursework:

- Journeyman Plumber or Gasfitter — these licences allow the holder to carry out plumbing or gasfitting work under the general supervision of a licensed sanitary plumber or licensed gasfitter or licensed advanced gasfitter. To obtain these licences, the applicant must have a Certificate of Competency in Plumbing or equivalent training;
- Operative Drainer — this licence allows the holder to lay or repair drains under the supervision of a licensed advanced sanitary drainer. This licence requires the applicant to have a Certificate in Drainage;
- Restricted Liquid Petroleum Gasfitter — in order to obtain this licence, the applicant must have a certificate in LPG Restricted Installations or equivalent courses, and must have completed not less than 20 supervised installations;
- Journeyman Sprinkler Fitter — to obtain this licence the applicant must hold a Certificate of Competency in sprinkler fitting;
- Sanitary Plumber — this licence entitles the holder to carry out any sanitary plumbing work. This licence requires the applicant to have an appropriate Journeyman Licence, a certificate in advanced plumbing or equivalent courses, and at least six months full-time experience in each of sanitary plumbing, water services and general plumbing;
- Water Supply Plumber — this licence entitles the holder to affix any service pipe to a water main and to alter or repair a water main or service pipe or fitting connected to a water main. The holder may also execute any water supply plumbing necessary to sanitary work. In order to receive this licence, the applicant must have an appropriate Journeyman Licence, a Certificate in Advanced plumbing or equivalent courses, and at least six months full-time experience in each of water services and general plumbing;
- Advanced Sanitary Drainer — a holder of this licence is entitled to lay or repair drain, unsupervised. In order to obtain this licence, the applicant must hold an appropriate Journeyman/Operative licence, a Certificate in Advanced Plumbing or equivalent courses, and twelve months full-time experience in draining;
- Gasfitter — applicants for a Gasfitter's licence must have an appropriate Journeyman Licence, a certificate in Advanced Plumbing or equivalent courses, and twelve months full-time experience in gasfitting;

<sup>8</sup> Department of Urban Services, 7 April 2000.

<sup>9</sup> Part 3 *Canberra Sewer and Water Supply Regulations*.

<sup>10</sup> *Gas Supply Regulations 1999*.

- Advanced Gasfitter — applicants for an Advanced Gasfitter’s Licence must have held a gasfitters licence for at least twelve months, and had at least twelve months experience working on jobs and installations in pressures exceeding 21 kPa;
- Liquefied Petroleum Gasfitter — to obtain this licence, applicants must have a certificate in LPG Restricted Installations or equivalent courses, at least twenty supervised installations, and twelve months experience in liquid phase storage and capacity in excess of 7.5kL;
- Restricted Automotive Gasfitter (LPG or NGV) — applicants require a certificate in Alternative Fuel for Vehicles – LPG or NGV, depending on the licence, completion of apprenticeship as an automotive mechanic, and a Certificate of Competency in the automotive field; and
- Sprinkler Fitter — A sprinkler fitter is entitled to install or fit a fire-fighting sprinkler system. To obtain this licence, applicants are required to have a appropriate Journeyman licence, a certificate of competency in sprinkler fitting, and a minimum of twelve months full-time experience in sprinkler fitting.

### 3.3 Electricians

There are 2,944<sup>11</sup> electrical licences held in the ACT.<sup>12</sup> Licensed electricians and electrical contractors carry out electrical wiring work, while permit-holders undertake electrical wiring work under supervision. Restricted licence holders may disconnect and reconnect electrical equipment incidental to exercising their own trade. They are not permitted to undertake electrical installation work. Electrical wiring work is defined in s.3 as being:

“the actual physical work of-

- (a) installing;
- (b) altering; or
- (c) repairing; an electrical installation, other than an electrical installation that operates at extra low voltage”

Electricians and electrical contractors can apply for one or more of four classes of licences: Grade A, Grade B, Contractor, and Restricted, each with specific qualification requirements:

- Grade A — this licence (issued for five years) allows the holder to carry out all types of electrical wiring without supervision. However, the holder may not carry out the work for a fee unless he or she also holds an Electrical Contractors Licence. In order to obtain a Grade A licence, the applicant must satisfy *one* of the following conditions:
  - Has completed an apprenticeship as an electrical fitter-mechanic or electrical fitter (or equivalent as determined by the Board); or
  - Possesses qualifications in the field of electrical engineering such that they are eligible for corporate membership of the Institute of Engineers, Australia; or
  - Holds a certificate of recognition as a recognised tradesperson under the Tradesmen’s Rights Regulation Act 1946; or
  - Be authorised to carry out unsupervised electrical wiring in another Australian State or Territory or in New Zealand; or

<sup>11</sup> This figure exaggerates the number of practicing electricians in the ACT due to multiple licence-holding.

<sup>12</sup> Department of Urban Services, 7 April 2000.

- Satisfies the Board that he or she has passed the necessary written, oral and practical exams and has the necessary skills, qualifications, and experience to carry out the work without supervision; or
  - Has held an Electrician’s Permit Grade A and has been employed as an electrical mechanic/fitter for at least twelve months.
- Grade B — this licence (issued for five years) allows the holder to carry out electrical wiring under direction and supervision of a Grade A licensed electrician. There are currently only five Grade B licences held in the ACT. New Grade B licences are no longer issued, but they are renewed to existing Grade B licence holders.
  - Electrical Contractor’s Licence — this licence allows the holder to carry out electrical wiring work for a fee or reward. In order for an individual to receive an electrical contractor’s licence, the applicant must hold a Grade A electrical licence, must have passed required written, oral and practical examinations that provide a satisfactory understanding of basic business practices and ethics, must be a fit and proper person, and must be capable of supervising other persons undertaking electrical wiring work. In order for a body corporate or partnership to receive an electrical contractor’s licence, at least one director, partner or employee must have or be eligible for an electrical contractor’s licence as per the requirements above. In addition, each director or partner must be a fit and proper person. Finally, an electrical contractor must hold an insurance policy for at least one million dollars, covering personal injury and property damage arising out of work performed by the contractor. Licences are issued for a one year period; and
  - Restricted Licence — this licence allows the holder to perform limited disconnection and reconnection work where it is associated with a recognised trade, such as plumbing, mechanical fitting, electrical fitting, refrigeration and air-conditioning repair. In order to be eligible for this licence, the applicant must be employed in an occupation where there is a need to disconnect and reconnect fixed wired electrical appliances. Applicants must achieve the learning outcomes of the equipment modules. Licences are issued for a 5-year term.

In addition, there is a Grade A Permit. This permit allows the holder to carry out electrical wiring under the supervision of a Grade A-licensed electrician. A permit is granted to Grade A Licence applicants who have sufficient qualifications, but insufficient practical experience. Those who are eligible for a Grade A Permit satisfy one of the following criteria:

- have completed an apprenticeship or training program as electrical mechanic or electrical fitter that did not provide sufficient wiring experience; or
- has educational qualifications from another State or Territory or participating jurisdiction under the *Mutual Recognition Act*, but who has insufficient practical experience for a Grade A Licence.

Finally, the Restricted Electrical Permit allows the holder to carry out incidental electrical work under the direction and supervision of a Grade A or Restricted Licence holder. Those who are eligible for a Grade A permit include people who have completed the approved course, or who have obtained similar qualifications in another state or territory, but who do not have sufficient practical experience.



# 4

## Chapter Four

### The Appropriateness of Government Intervention

## Chapter Four

# The Appropriateness of Government Intervention

This chapter provides an overview of the commonly advanced rationales for government regulation. It then asks what the objectives may be with respect to the *review legislation*, and whether these objectives are sufficient to justify government regulation.

## 4.1 Regulatory Rationales

The Council of Australian Governments (CoAG) has publicly agreed that government interventions in markets should generally be restricted to situations of market failure and that each regulatory regime should be targeted on the relevant market failure or failures.<sup>13</sup>

It is generally accepted that there are four forms of market failure which may require government intervention:

- public goods — public goods are those goods where, once they are produced, parties cannot be excluded from enjoying the benefits of the good, and any number of persons may enjoy the benefits of the good without reducing the level of benefits for others. As a result of these characteristics, public goods will tend to be under-produced unless there is government intervention
- externalities — externalities arise where an activity, service or good confers spillover benefits or imposes spillover costs on third parties. As the spillover is not borne by the originator there is little incentive to engage in the activity in the case of a positive externality or decrease the activity in the case of a negative externality;
- natural monopolies — these are said to arise where the costs of establishment, resources or infrastructure mean that setting up competition is socially wasteful. Because a natural monopoly is socially optimal but not necessarily in the interests of all players in the market, governments may decide to regulate in the public interest; and
- information asymmetries — information is not evenly distributed throughout the community. As a result, lower quality products may drive higher quality products out of the market or consumers being unable to make rational informed decisions about price and quality.

In addition, other reasons why governments have tended to regulate or intervene in markets include:

- *the desire for universal goods and/or services* — community service obligation (CSO) services such as concessions to essential services for low income households is an example where governments have deemed it necessary to ‘interfere’ with the market;
- *allocation of public resources* — some industries base their operations on a public resource of limited capacity, so that a public agency must intervene to ration out that resource; and

<sup>13</sup> Council of Australian Governments, *Report of Task Force on Other Issues in the Reform of Government Trading Enterprises*, released as part of the first CoAG communique, 1991, p.22.

- *protection of consumers, employees and the environment* — this is intended to overcome problems of externalities and imperfect information in the market place.

These three objectives may or may not be related to a market failure.

Licensing of tradespeople in the building and construction industry has traditionally been justified as a response to information asymmetry and negative externalities. These market failures are discussed below.

#### **4.1.1 Information Asymmetries**

The primary type of market failure in this instance is the existence of information asymmetry (ie, where buyers and sellers do not have the same knowledge about the services to be provided).

In markets characterised by information asymmetry, sellers have more information than buyers about product or service quality. Buyers are unable to obtain this information either because it is too costly to do so, or because quality can only be assessed after purchase or project completion. Frequently, buyers are first-time purchasers and have difficulty assessing product quality or potential product quality prior to purchase. In the extreme case, quality cannot be evaluated even after purchase.

In the recent Tasmanian *Regulatory Impact Statement — Building Bill 1999* it was recognised that, “Information asymmetries are particularly relevant to the building market. The quality of design, building construction and assessment skills will frequently only be known after the service has been supplied.”<sup>14</sup>

In effect, the existence of information asymmetries may hide construction risks and hence may be a concern from a public safety perspective.

#### **4.1.2 Externalities**

Externalities exist when buyers or sellers fail to take account of the effects of their actions on third parties.

Occupational regulation is often justified on the basis that there are negative externalities attached to the tasks undertaken by the occupation and that regulation is necessary to control such negative effects on third parties.

In the case of building and construction, the potential effect of poor construction, wiring, installation of drainage systems, or gasfitting could be quite devastating. It could lead to injury or death of individuals not involved in the purchasing decision, such as neighbours, guests, delivery persons, etc.

Support for occupational licensing in the building and construction industry on the grounds of negative externalities (although not stated in such language) was provided in a recent discussion paper released in Western Australia:

“The objective is to ensure the safety of consumers in their use of electricity within their installations and the safety of those installing electrical wiring and equipment.

Too many Western Australians are being killed and injured by electricity. ... There are many more injured or have near misses, which but for an element of luck could also have been fatalities.

<sup>14</sup> Department of Infrastructure, Energy and Resources, Government of Tasmania, *Regulatory Impact Statements on the Draft Building Bill 1999*, 1999, p15

While education and information are important elements of changing behaviour... inevitably there is a role for regulation where the force of law is required to protect the public interest.”

Office of Energy, Technical and Safety Division. *Review of the Electricity (Licensing) Regulations 1991 Discussion Paper*, Western Australia, 1999, p.1.

Again, the existence of negative externalities (ie, third party effects) related to public safety may create grounds for government regulation of building occupations.

#### 4.1.3 Consumer Protection

At least in some jurisdictions, it is suggested that a rationale for government regulation of building occupations is on the grounds of consumer protection. In effect, regulation addressing externalities and information asymmetries is characterised by some parties as consumer protection.

A report prepared for the national Departments of Labour Advisory Committee and the National Building Regulation Task Force certainly saw regulatory intervention as having a consumer basis: “While the scope of homebuilding licensing differs, these arrangements are designed to protect the consumer from incomplete or inadequate work”.<sup>15</sup>

While the Review Team agrees that the regulation of building and construction occupations are a form of consumer protection, the regimes are not consumer protection regimes in the normally understood sense.

A range of generally applicable consumer protection laws seek to ensure that consumers receive the goods and services for which they contract. These laws include:

- Part V of the *Trade Practices Act 1974* (Cth);
- tort law (including the tort of misrepresentation); and
- the *Fair Trading Act 1992* (ACT).

The difference between such traditional consumer protection and occupational licensing in the building and construction industry is this:

- regulation of the building and construction industry seeks to ensure that the work that that is promised and undertaken is appropriate to the task (ie, meets appropriate building and construction standards and is safe). This is rationalised on the basis that due to the asymmetries of information previously discussed, consumers may have difficulties not only determining quality, but also interpreting complex building codes and regulations. As a result, consumers may not be able to determine what is an ‘appropriate service’; and
- general consumer protection does not require that the work undertaken is appropriate, just that what was promised was done as promised to a merchantable standard. Such consumer protection laws do not necessarily stop someone providing inappropriate building services as long as these services are properly described and provided as contracted.

While occupational regulation has an element of consumer protection in it, it is quite distinct to the two rationales identified previously (ie, information asymmetries and externalities) in that it addresses matters other than public safety.

<sup>15</sup> Paine, *A Review of Occupational Licensing in the Building Industry, Particularly Homebuilding and Plumbing/Gasfitting*, prepared for the Departments of Labour Advisory Committee and the National Building Regulation Task Force, 1990, p.ii.

Occupational regulation addresses different regulatory objectives to traditional consumer protection regimes and hence is not a *per se* objective of the *review legislation*. On the other hand:

- some parts of the *review legislation* have a consumer protection focus — for example, the requirement for mandatory insurance appears to address consumer protection issues rather than explicit safety concerns (these requirements are discussed in Chapter Nine); and
- it is quite clear that consumers have an expectation — whether or not warranted by the review legislation — that licensing is a signal of quality in addition to competence.

The Review Team suggests that while there are ongoing consumer protection concerns in the building and construction industry, these are better dealt on a more explicit basis through other legislative and administrative mechanisms (eg, consumer protection legislation, etc) and non-legislative means (eg, providing home builders with greater information about what forms of consumer protection exist and means to reduce the risks of fraudulent builders). These issues are discussed in later chapters.

#### **CONCLUSION ONE**

*While Government regulation of building and construction tradespeople may be perceived as a form of consumer protection, consumer protection is not an explicit rationale for Government regulation.*

## **4.2 Do the Market Failures Justify Government Intervention?**

Even though there may be a market failure or failures, that does not automatically justify government intervention.

Market failures are an everyday event; buyers are rarely as informed as sellers, and most transactions have consequences for independent third parties.

There is less justification for government intervention (or at least justification for intervention at a lower scale) when, using the language of Figure 4.1:

- harm created by the market failure is less significant;
- harm is reversible;
- the risk is voluntarily assumed; and
- there is a low probability of harm occurring.

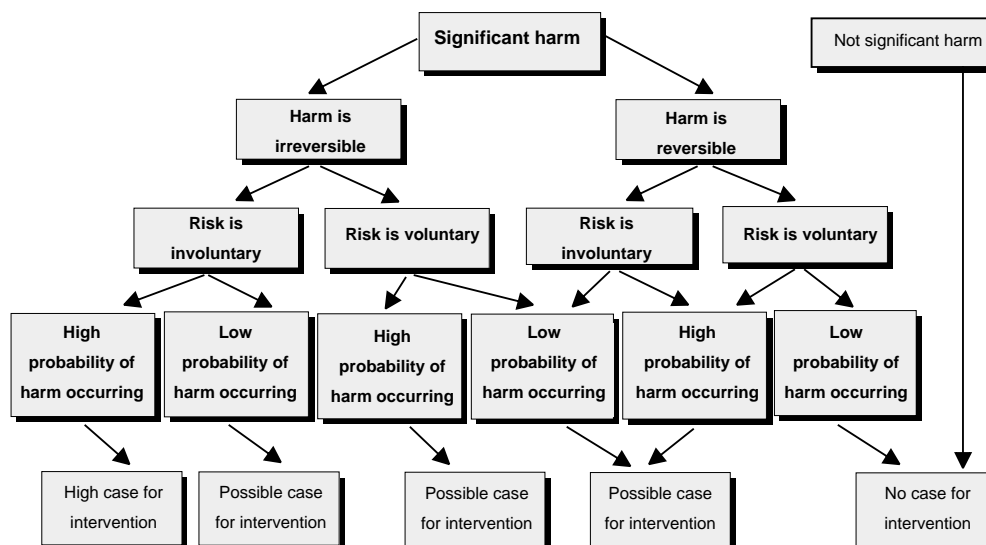
Applying this methodology, and referring to Figure 4.1, it is unlikely that the building and construction services can be categorised as meeting either of those circumstances when there is no case for government intervention — that is:

- when there is no significant harm; or
- when the harm is reversible, the risk voluntary and the probability of harm low.

Thus, there *may* be a case for government intervention.

Figure 4.1

## IS THERE A ROLE FOR GOVERNMENT INTERVENTION?



Source: Ministry of Commerce, *Policy Framework for Occupational Regulation: A Guide for Government Agencies Involved in Regulating Occupations*, Wellington, 1999, available at [http://www.moc.govt.nz/gbl/bus\\_pol/policyframework/policyframework-01.html](http://www.moc.govt.nz/gbl/bus_pol/policyframework/policyframework-01.html) (accessed 18 April, 2000).

In the *Directions Paper*, the Review Team suggested that the need for government intervention may be reduced when market mechanisms compensate for the identified market failures. The Review Team proposed that, with respect to builders, the existence of home building insurance may act as a counter-balance to perceived market failures. For example, under self-regulation (ie, with no occupational licensing) an insurer may choose to refuse to insure building work unless it is carried out in a particular way by suitably trained tradespeople.<sup>16</sup>

Industry members and the public did not agree with this view in practice. They indicated that in the case of the building and construction industry, the potential harm due to market failures was irreversible and presented a strong case for government intervention. Discussions with industry further revealed that building insurance companies do not exert sufficient performance pressure such that self-regulation is feasible. Nor did industry members feel that self-regulation was an appropriate method of ensuring public safety.

A further concern with reliance upon self-regulation relates to the free movement of building and construction tradespeople from the ACT into other jurisdictions (see section 7.5 for further discussion of mutual recognition's role with respect to the *review legislation*). In its submission to the national review of mutual recognition the Local Government Office of the Tasmanian Department of Premier and Cabinet stated that:

“There is a problem in Tasmania with respect to Registration of Builders. This Government does not wish to register builders in any statutory registration scheme. Therefore a Tasmanian builder is at a disadvantage because most other jurisdictions do register builders. It has proven to be very difficult for Tasmanian builders to become registered in another State because they do not have that base accreditation in the home State.

The Government is looking to the Tasmanian Building Industry to develop a voluntary accreditation/registration scheme along the lines of the National

<sup>16</sup> This is the approach employed in the British building and construction industry — no government regulation with the regulatory function adopted by the insurance industry.

Professional Engineers Register or the Building Surveyors and Allied Professions Accreditation Board schemes. The question arises whether if that voluntary scheme was recognised by the Government (not required), would that accreditation/registration be sufficient base to request mutual recognition in another State? If not, should it be? Given the somewhat competing direction of National Competition Policy, consideration should be given to mutual recognition of 'recognised' voluntary schemes."

Department of Prime Minister and Cabinet, *National Competition Policy Legislation Review of Domestic Mutual Recognition Agreement*, Canberra, para.5.5.7, available at <http://www.dPMC.gov.au/crrr/index.html>.

Given that Tasmania is now moving to licence builders, the problem of mutual recognition appears to be a real one. This will be discussed further in Section 8.7.

## **CONCLUSION TWO**

*There is a public safety rationale — due to the twin market failures of negative externalities and information asymmetries — that justifies Government regulation of tradespeople in the building and construction industry.*

# 5

## Chapter Five

### Concerns Regarding the Existing Regulatory Approaches



## Chapter Five

# Concerns Regarding the Existing Regulatory Approaches

The current occupational licensing regimes created by the *review legislation* raise a number of concerns under NCP. These concerns are addressed in the following sections.

### 5.1 Costs to Economic Efficiency

Licensing regimes have, at least in theory, an impact on economic efficiency because they create entry barriers and hence distort underlying supply decisions:

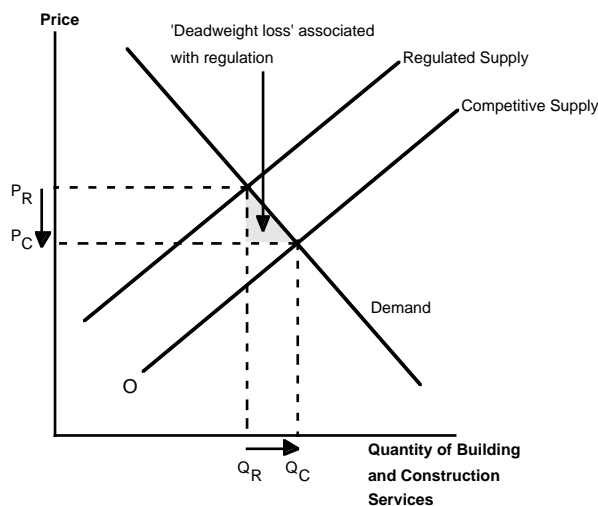
“Registration can ... restrict competition by limiting the number of people who are registered to provide a good or service. This can enhance their market power, allowing them to charge higher prices to the disadvantage of consumers.”

Office of Regulation Review, *Impact of Mutual Recognition on Regulations in Australia*, AGPS, Canberra, p.14.

A simple supply and demand model for the supply of building and construction services shows the potential efficiency costs associated with a licensing regime — see Figure 5.1.

Figure 5.1

#### THE ECONOMIC IMPACT OF OCCUPATIONAL LICENSING



Source: Derived from Logan, Milne and Officer, “Competition Policy in Regulated Markets” in James (ed), *Regulating for Competition? Trade Practices Policy in a Changing Economy*, Centre for Independent Studies, Sydney, 1989, pp.115-139 at p.127.

The current regulated market equilibrium point exists with  $Q_R$  building services supplied at price  $P_R$  (ie, prices and quantities under licensing regulation). If the licensing regime is removed (or made less restrictive) the supply curve will shift to the right, became entry is easier, creating an expansion of output ( $Q_C$  minus  $Q_R$ ) at a lower price ( $P_C$ ).

The shaded triangle in Figure 5.1 represents a loss (ie, not a transfer between two groups) in efficiency because there are a number of consumers who are willing to pay above the competitive market price ( $P_C$ ) but below the price in the regulated market ( $P_R$ ), but are denied building and construction services because licensing creates an effective minimum price of  $P_R$ . The move from licensing to free (or less restrictive) entry removes the ‘deadweight loss’ associated with licensing.

While the Review Team is of the view that licensing in the building and construction industry does impose a deadweight cost upon the community, this cost is likely to be relatively small because of:

- the existence of the mutual recognition scheme provides for relatively easy movement of licensed tradespeople across jurisdictions; and
- the claimed degree of non-compliance with the *review legislation* — during the industry roundtables a number of people commented that there is a significant number of people working in the building and construction industry without the required licences.<sup>17</sup>

## 5.2 Duplication and Cost Efficiency

NCP seeks to ensure that legislation is effective (ie, achieves its legitimate objectives) and is efficient (ie, achieves the objectives in the most cost-effective and least restrictive manner). To this end, NCP is not simply about ensuring that there is a ‘level playing field’ between parties, but also that the regulatory system as a whole is appropriate and not an undue burden on particular groups or the community as a whole. In this context, NCP seeks to ensure that the regulatory response is proportional to the problem.

In this light, a further concern is that the existing regulatory regime:

- is unnecessarily duplicative with multiple regulators (and hence multiple costs) and different regulatory structures addressing often similar concerns; and as a result
- is expensive. Increased compliance costs will cause the supply curve in Figure 5.1 to shift to the left, increasing the deadweight loss associated with licensing.

The current occupational licensing systems entail significant and ongoing fiscal costs associated with the cost of administering the regulatory regimes (ie, paying board members and the costs associated with overseeing the boards’ operations). It has been estimated that the current system of licensing and regulation costs approximately \$726,706 per year to administer, including \$387,100 in salary costs.<sup>18</sup> Projected costs for 1999-2000 include \$410,000 for total salary costs — 9.65 full-time equivalent staff. Included in this figure are board costs for the electrical licensing board and for the plumbers, drainers and gasfitters board:

- \$32,135.61 in salary costs for the plumbers, drainers, and gasfitters board;
- \$6,238.09 in salary costs for the electrical licensing board;<sup>19</sup>
- \$9,900 in operating costs for the plumbers, drainers, and gasfitters board; and

<sup>17</sup> While non-compliance reduces the deadweight loss associated with licensing (ie, a good outcome), it also challenges the effectiveness of licensing itself (ie, a bad outcome).

<sup>18</sup> Purdon Associates Pty Ltd, “*Review of Private Certification in the ACT Construction Industry*” Report to Department of Urban Services Planning and Land Management Group, Stage Two (Part B) Electrical Certification Discussion Paper, Canberra, 2000, p.24.

<sup>19</sup> Salary costs include salary top increment, 3% EPSC and leave loading — Department of Urban Services, May 2000.

- \$5,500 in operating costs for the electrical licensing board.

The overall figure of \$410,000 overstates the costs associated with the *review legislation* because it includes costs associated the overall licensing system and with the architects' registration and the Architects' Board. However, it provides an indication of the expenses associated with the current system of occupational licensing.

These costs are borne by the private sector through higher than necessary licence fees. Revenue received from licence fees for 1998-99 totalled \$835,500.<sup>20</sup>

It could be expected, in aggregate, that these fees could be reduced (and hence the deadweight cost to society reduced — see section 5.1) if the current arrangements can be streamlined.

### 5.3 Regulatory Capture

As most occupational licensing boards tend to be dominated by members of the occupation they are regulating it is reasonable to infer the capture theory of regulation — incumbent firms will seek to dominate the regulatory agency because each individual firm stands to gain more than any consumer or potential entrant stands to lose.<sup>21</sup> As a result:

“Although the professions may seek to benefit consumers, the possibility of a conflict of interest exists. The regulators, in many cases, have a financial interest in the profession they are regulating. Since professionals' self-interest may not coincide with the public's best interest, many have come to regard self-regulation with growing scepticism.”

Cox and Foster, *The Costs and Benefits of Occupational Regulation*, Bureau of Economics, Federal Trade Commission, 1990, p.1.

Capture may manifest itself in the:

- creation of regulations — theoretical findings indicate that the occupations do have an incentive to limit entry by setting entry requirements that are too high.<sup>22</sup> The self-regulated occupation may also have an incentive to enact anti-competitive business practice restrictions or rules governing the conduct of members; and
- the enforcement of regulations — the discipline process is often controlled by rivals,<sup>23</sup> which may lead to distorted incentives for enforcement. This can lead to selective enforcement of regulations in favour of those which will most benefit the occupations or the individuals on the disciplinary committee. For example, violations of anti-competitive business practice rules could increase competition and lower incomes for members of the occupation. Since builders, electricians, plumbers, drainers and gasfitters could be economically worse off when a member of their occupation violates anti-competitive rules, members of the occupation on disciplinary boards may have an incentive to prosecute individuals who violate these rules. These disciplinary boards could vigorously enforce anti-competitive

<sup>20</sup> Purdon Associates Pty Ltd, “*Review of Private Certification in the ACT Construction Industry*” Report to Department of Urban Services Planning and Land Management Group, Stage Two (Part B) Electrical Certification Discussion Paper, Canberra, 2000, p.24.

<sup>21</sup> Friedman, “Occupational Licensure”, in *Capitalism and Freedom*, Chicago, 1962, pp.137–160; Moore, “The Purpose of Licensing” (1961) 4 *Journal of Law and Economics* 93; Rottenberg, “The Economics of Occupational Licensing,” in *Aspects of Labor Economics*, National Bureau of Economic Research, Princeton, 1962, pp.3–20; Stigler, “The Theory of Economic Regulation,” (1971) 2 *Bell Journal of Economics and Management Science* 3.

<sup>22</sup> See Shaked & Sutton, “The Self-Regulating Profession” (1981) 48 *Review of Economic Studies* 217; and Leland, “Quacks, Lemons and Licensing: A Theory of Minimum Quality Standards” (1979) 87 *Journal of Political Economy* 1328.

<sup>23</sup> Young, *The Rule of Experts: Occupational Licensing in America*, Washington DC, Cato Institute, 1987, p.41.

business practice rules, but not enforce rules designed to maintain quality within the occupation.<sup>24</sup>

Conflicting views arose on the issue of regulatory capture in the ACT building and construction industry. The Plumbers, Drainers and Gasfitters Board claims that regulatory captures is not an issue in their case: “A consideration of the membership of the Board shows that only a small proportion of members could be considered to be members of the occupation as only three would be eligible to receive a licence.”<sup>25</sup> In the roundtable meetings, however, BEPCON staff highlighted an incident where a licence was refused by the Plumbers, Drainers and Gasfitters Board for reasons inconsistent with the ACT’s mutual recognition obligations, giving weight to the possibility that regulatory capture may be a concern in the industry.

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<sup>24</sup> Wolfson, Trebilock & Tuohy, “Regulating the Professions: A Theoretical Framework” in Rottenberg (ed), *Occupational Licensure and Regulation*, AEI, Washington DC, 1980, p.203.

<sup>25</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.2.

# 6

## Chapter Six

### Possible Alternative Regulatory Approaches

## Chapter Six

# Possible Alternative Regulatory Approaches

The following sections describe the broad regulatory approaches that were considered in the *Directions Paper* and discussed at the roundtable meetings with respect to the regulation of building and construction occupations in the ACT.

## 6.1 Licensing

The broad types of costs and benefits associated with occupational licensing are now well established. In general:

“The regulation of occupations can reduce the likelihood of fraud by unscrupulous practitioners, and can address information failures by providing greater assurance to non-contracting parties who may be incidentally affected by decisions taken on professional advice. Indeed, the main rationale for the registration of occupations is to correct information failures.”

Office of Regulation Review, *Impact of Mutual Recognition on Regulations in Australia*, AGPS, Canberra, 1997. p.14.

The key is to determine the relative weights associated with the costs and benefits of such regulation. A broad assessment of the benefits, or otherwise, of licensing is considered in this chapter, with further detail on licensing criteria discussed in Chapter Seven.

The main benefit claimed for licensing is that the establishment of clear entry criteria ensures that only qualified people will provide building and construction services to a sufficient quality standard. As a result it is assumed that the community as a whole are provided with increased certainty as to the provision of appropriate building and construction services. Furthermore, the threat of license revocation can be used as an enforcement tool in ensuring the maintenance of professional standards in building and construction work.

This logic — by attempting to control the quality of inputs into the production of regulated services, licensing attempts to improve the quality of these services and hence increases consumer safety — suffers from one fundamental problem: it is not clear whether or not output quality will increase as a result of restrictions on inputs. Moreover, even if licensing is effective in insuring that entrants are qualified, the continued competence of existing tradespeople is not necessarily guaranteed.

The theoretical literature indicates that input restrictions will not necessarily increase the quality of regulated services because many factors (not all of which are controlled by licensing) affect the quality of service rendered.<sup>26</sup> Since building and construction tradespeople are free to adjust the level of inputs which are not controlled by licensing (eg, the amount of time a plumber spends installing a plumbing system), licensing criteria does not necessarily imply that quality will increase.<sup>27</sup>

<sup>26</sup> See Scheffman & Appelbaum, “The Regulation of Quality” in *Social Regulation in Markets for Consumer Goods*, Ontario Economic Council Research Studies, University of Toronto Press, 1982.

<sup>27</sup> See Carrol & Gaston, “Occupational Restrictions and the Quality of Service Received: Some Evidence” (1981) 47(4) *Southern Economic Journal* 959; Phelan, *Regulation of the Television Repair Industry in*

While licensing may not ensure quality, it may facilitate the cross-jurisdictional practice of building and construction tradespeople. The existence of a licensing scheme allows building and construction tradespeople licensed in the ACT to operate interstate without needing to undergo the full test in the other jurisdictions — see section 7.5. Were the ACT to abandon licensing, it is likely that building and construction tradespeople would need to meet all the standards of licensing for at least one jurisdiction in which they wanted to work.

Thus, while it is unlikely that the benefits of licensing directly relate to the provision of appropriate building and construction services, it appears as though some form of licensing may assist in the free movement of tradespeople across jurisdictions.

In the *Directions Paper*, the Review Team considered licensing a potentially feasible regulatory approach. All parties at the roundtable discussions and through the written submissions agreed. Industry and consumers considered licensing the best way to protect public safety.

## 6.2 Co-Regulation

Co-regulation is a system of government regulation in which administrative responsibility is handed over, to a greater or lesser degree, to the industry itself.

In the ACT a co-regulatory system could be structured so that:

- the ACT Government would issue requirements for licensing and practice standards;
- the licensing/certification of applicants could be undertaken by the industry. In most co-regulatory schemes there is one organisation that does this, but in some there are (potentially) competing co-regulatory bodies. In this case possible licensing/certification bodies may include:
  - the Master Builders Association;
  - the Housing Industry Association;
  - the Master Plumbers Drainers & Gasfitters' Association of ACT;
  - the National Electrical and Communications Association;
  - insurers (either individually or collectively or through the Insurance Council of Australia);
  - one or more unions; or
  - some other body that has sufficient industry standing.
- alleged contraventions of the *review legislation* could be investigated by an industry body, and disciplinary action could possibly even be decided by the same body in the first instance; and
- the operations of the industry body could be monitored by the ACT Government.

The principal benefit of co-regulation is that it harnesses the industry's desire to be regulated and puts the onus on the industry to take on more responsibility.

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*Louisiana and California: A Case Study*, Washington DC, Bureau of Economics of the Federal Trade Commission, 1974.

A co-regulatory approach need not lessen standards — the Government can seek to maintain the standard of building and construction services through ongoing practice standards.

While co-regulation is often hailed as a more cost-effective form of regulation, in many cases the cost savings are to the government (ie, the cost of maintaining the operations of the Board would be eliminated), but such costs would, in practice, simply be transferred to the occupation and then on again to consumers. Moreover, consumers may view a disciplinary process administered by the industry as to be less independent and transparent than a Government-administered complaints mechanism.

The Review Team initially considered co-regulation to be a potentially feasible regulatory approach.

Rose also suggested that co-regulation was an appropriate — indeed, the preferred — approach:

“Option Four [co-regulation] seems to be the most appropriate in today’s economic environment and may result in improved outcomes. By giving bodies such as some of those listed the responsibility for performance of their members a raised level of awareness and an improved consideration of standards for membership would be expected to increase the performance levels of the industry.

It would be imperative to have strong monitoring/audit/sanction procedures also in place.”

Rose, submission, 2000, p.2.

However, this supportive view was challenged during the roundtable consultations:

- while the HIA and the MBA indicated a willingness to take on a co-regulatory role with respect to builders, consumers suggested that these organisations were insufficiently impartial to be able to undertake this function;
- electricians, plumbers, drainers and gasfitters considered that there were no feasible co-regulatory bodies in their field. Although raw numbers seem quite low, since many of these members are companies, industry coverage is somewhat wider, but still not comprehensive.:
  - the electrical industry body has approximately 200 members out of nearly 3000 electricians (ie, industry coverage of less than 10 percent); and
  - the Master Plumbers, Drainers and Gasfitters Association covers only 25 percent of licence-holders.

In addition, the different approaches to membership across the occupations is an impediment to co-regulation. In some cases, members are individuals, and in others, members are companies. In order for co-regulation to function properly, the co-regulator would need to identify individual licence-holders, rather than companies.

As a result, the Review Team considers that co-regulation is not a feasible regulatory approach for the building and construction industry.

### 6.3 Negative Licensing

A negative licensing scheme is one which removes the licensing restriction altogether, and permits a person to operate without any formal test of practical competence. However, under negative licensing the Government still retains the authority to withdraw the right to practise if that person subsequently fails to meet minimum professional standards of work and conduct.



Negative licensing can take two forms — where there are:

- no entry requirements necessary to get a licence (ie, just sign up); or
- restrictions on entry based on certain negative characteristics (eg, serious criminal convictions) rather than specification of any positive requirements for licensing (eg, educational requirements).

Advantages of negative licensing may include:

- lower compliance costs — negative licensing imposes fewer costs on participants which should result in lower prices for consumers;
- lower administrative costs — whilst the Government would still incur some continuing administrative costs under a system of negative licensing, compared to costs required to maintain a system of ‘positive licensing’ there would probably be a small net saving to the Government;
- lower entry barriers — costs of entry are lower, and dominant industry bodies can not seek to restrict competition by setting too stringent conditions of entry; and
- the ability to ‘punish’ contraventions of practice regulations — while registration alone may not ensure high quality, the threat of licence revocation may be enough to provide professionals with the incentive to provide high quality service. In essence, this would amount to a system of free entry and enforced exit.

In comparison, the potential disadvantages of negative licensing include:

- as no positive screening occurs the number of inappropriate participants initially entering an industry may be higher than under a registration process;
- some practitioners may be able to operate undetected or act inappropriately before they are detected. That is, licence removal will only occur after the detection of a breach; and
- enforcement activities may need to be increased, thereby increasing monitoring costs.

Given concerns regarding externalities, parties at the industry roundtables suggested that the costs of allowing initial contraventions would be too high (ie, possible electrocutions, etc) to countenance negative licensing as a realistic option.

The Review Team agrees that negative licensing is not a potentially feasible regulatory approach as it does not adequately protect public safety.

## 6.4 Certification

One of the most common alternatives to licensing is certification. Under a certification regime anyone is allowed to practise a particular occupation, but formal certificates of competency are provided to those people who desire them and can meet the necessary standards.

Certification standards tend to be similar to those in place under a licensing regime. Under a licensing arrangement, however, only those individuals who meet the requirements are allowed to practice; certification does not preclude practice by non-certified professionals.

Certification has a number of advantages over licensing. One of the most important benefits of certification, as opposed to licensing, is that it allows consumers greater freedom of choice. For example, an individual could choose either a (presumably) lower priced non-certified electrician, or a (presumably) higher priced certified electrician. Friedman strongly supports the freedom to choose under a certification regime:

“If the argument is that we are too ignorant to judge good practitioners, all that is needed is to make the relevant information available. If, in full knowledge, we still want to go to someone who is not certified, that is our business.”

Friedman, “Occupational Licensure”, in *Capitalism and Freedom*, Chicago, 1962, pp.137–160 at p.149.

A system of certification, however, is not necessarily a desirable alternative to licensing:

- as with licensing, mandatory entry requirements for a certificate may not increase service quality if they focus on inputs (such as education levels);
- certification may not lessen quality problems associated with externalities.<sup>28</sup> A consumer who chooses a non-certified electrician, for example, may not take into account the possible effect of his or her quality decision on others (eg, the risk that poor electrical work may cause a fire that also burns down a neighbour’s house); and
- certification may be undesirable when the costs of an inaccurate assessment of quality is high. For example, as a certification regime provides no information on the quality of non-certified gasfitter, a consumer may not know if the service of an uncertified gasfitter is acceptable or extremely poor. If a consumer chooses a non-certified gasfitter who is incompetent, a consumer could incur significant costs. The argument against certification in this case, however, neglects the fact that the individual can choose either a certified gasfitter with a lower risk of poor quality or a non-certified gasfitter with a higher risk of poor quality. Unless the consumer is unaware of the increased risk associated with non-certified gasfitters, the individual that chooses the lower priced, higher risk, non-certified gasfitter must prefer this option. Such an informed consumer would be worse off under a regulatory framework, such as licensing, that did not allow choice.

Certification may be aided by the actions of knowledgeable third parties who can ‘guide’ the market by identifying potentially sub-standard non-certified and certified providers. For example, insurers may be able to guide the market by refusing to provide insurance to a particular individual or firm.

Industry and consumers suggested that certification was not a strong enough mechanism to protect the consumer from injury or death resulting of sub-standard work. Industry considered the asymmetries of information significant enough that consumers were unlikely to have the technical knowledge to enable a successful system of certification. This is partly due to the fact that most consumers are infrequent purchasers of building and construction services. Industry argued that uncertified workers were most often unqualified, and that unqualified generally meant unsafe. As a result, certification is not considered a viable regulatory option.

<sup>28</sup> Wolfson, Trebilcock & Tuohy, “Regulating the Professions: A Theoretical Framework”, in Rottenberg (ed), *Occupational Licensure and Regulation*, Washington DC, AEI, 1980, p.205.

## 6.5 Monitoring the Quality of Outputs

To avoid the ambiguous quality effects that stem from mandatory entry requirements, it may be appropriate to implement a system of service (output) monitoring. Such a system would set standards of competence, monitor to insure compliance with standards, and penalise those people who fail to comply. The aim of such a regime would be to lessen a person's incentives to engage in undesirable activities. Output monitoring may also be used in conjunction with the approaches outlined in sections 6.1 to 6.4.

The effectiveness of output monitoring, however, is dependent on the degree to which regulators:

- can (and do) monitor outputs; and
- apply appropriate penalties for non-compliance.

Output monitoring can be more costly to administer than other regulatory approaches because there may be a greater requirement for inspectors (either directly or by contracting out the work) to monitor the performance of building and construction tradespeople.

Quality monitoring can be used in conjunction with a number of different options. Its advantage is that it directs government oversight at the actual service being delivered rather than factors that have only a (possibly weak) link with the efficacy of building and construction services. Hence, if there is a move to quality monitoring it is reasonable to expect that other forms of regulation can be lessened with no decrease in the quality of building and construction services provided to the community.

During the industry roundtables industry members identified serious gaps in the ability of monitoring to adequately regulate the building and construction industry. Firstly, builders brought up the question of who would take on the role of monitor. If this is to be the sole means of ensuring public safety, the number of monitors would have to be substantial and would strain resources already under pressure. Monitoring further raises the issue of the legal liability of the monitor. In cases where the monitor approved a project that was revealed to be faulty, liability would have to be apportioned between the builder and the monitor.

In the building roundtable builders further advised of an auditing problem associated with monitoring. As there is no required process for building, a monitor would not always know whether the builder had just "not got around to it yet" or whether he or she had in fact made a mistake. The only solution to this problem would be a requirement to register the stages of a project with a monitor, thus further increasing the administrative costs.

As a result, the Review Team agrees that output monitoring, on its own, is not a feasible regulatory approach.

## 6.6 Recommended Regulatory Approach

This chapter has presented a variety of methods of regulating the building and construction industry, together with industry responses to these approaches. The key issue at stake in the case of the building and construction industry is public safety. If mistakes are made by a builder, electrician, plumber, drainer, or gasfitter, the effects can be devastating, possibly resulting in death. Secondly, there are significant asymmetries of information relating to building and construction. Due to technical complexities, the consumer cannot simply be provided with information and be expected to make an informed choice of builder, electrician, plumber, drainer or gasfitter. The technical complexities of building and construction prevent distribution of information from remedying the market failure. As a result, it is important that only qualified individuals be permitted to undertake the trades regulated by the *review legislation*.

As shown in this chapter, only a licensing regime effectively prevents unqualified individuals from working in the trades in question. Monitoring and negative licensing both address sub-standard work after the work has been carried out. As a result, this does not effectively protect the consumer and the public from unsafe workmanship. Co-regulation was considered infeasible as there was no body in each occupation that was willing or that had significant representation to take on a co-regulatory role.

As a result, the Review Team agrees with industry and consumers and recommends that the building and construction occupations continue be regulated through a licensing regime. Licensing is based on the idea that unqualified, and therefore, unlicensed, people are refused entry into the occupation. This adequately addresses the public safety issue and the issue of information asymmetries.

This conclusion is strengthened by the fact that licensing facilitates the smooth operation of mutual recognition and accords with Recommendation 10 of the national review of the mutual recognition arrangements:

“In carrying out individual State or Territory National Competition Policy reviews, governments should consider the impact of their recommendations on the mobility of persons in registered occupations under the MRA.”

Department of Prime Minister and Cabinet, *National Competition Policy Legislation Review of Domestic Mutual Recognition Agreement*, Canberra, Recommendation 10, available at <http://www.dpmmc.gov.au/crrr/index.html>.

# 7

## Chapter Seven

# Alternative Structural Approaches

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# Alternative Structural Approaches

The following sections consider how alternative licensing regimes may work in practice. Sections 7.1 to 7.4 provide overviews of the alternatives, with an assessment of the options presented in section 7.5.

### 7.1 Option One — Status Quo with Slight Modification

This is a government licensing approach with certain powers delegated to boards with respect to licensing and disciplinary matters. In this approach, each of the occupations is regulated and administered separately, under its own Act, as is done currently.

The major problems with this arrangement are:

- the differential treatment between different occupational groups — while it is reasonable to suggest that regulatory approaches should be tailored to meet the particular issues raised in a particular sector, different approaches for relatively similar functions raises the prospect of horizontal inequity;
- the potential for capture — as discussed in section 5.3, the industry’s control over licensing and discipline may raise concerns about regulatory capture; and
- the maximisation of regulatory overheads — by having two separate board structures the administrative costs are maximised.

Some industry enthusiasm was expressed for this option in submissions and at the industry roundtables:

- the building industry appears comfortable with the existing arrangements. That is, builders report no industry demand for a board and both the HIA and the MBA recommend the current system be retained for the building occupation; and
- while plumbers, drainers, and gasfitters acknowledge that there are some limitations to their existing arrangements, they believe these could be overcome by investing more power in the boards. The plumbers, drainers and gasfitters believe that, “these matters could be dramatically improved by easing restrictions on the Board to take action against licensees and permitting the Board to restrict a licence”.<sup>29</sup>
- electricians believe in the feasibility of the current system, but with more targeted power vested in the regulatory system, in general, not necessarily in the boards. They would prefer that the burden and restrictions be eased in order for both the Board and the regulatory authority to use their powers more effectively.

### 7.2 Option Two — Single Multi-Disciplinary Board

Under a single piece of legislation, this option provides that the general regulatory model would be the same for all the occupations. The appeal of an option that rationalises the administrative structures (ie, does away with the need for multiple regulators) is confirmed by Paine:

<sup>29</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.4.

“If Governments want to licence contractors in the homebuilding sector, there is a strong case for the establishment of a single authority in each State and Territory to be responsible for registration and licensing of all contractors subject to licensing in the homebuilding sector.”

Paine, *A Review of Occupational Licensing in the Building Industry, Particularly Homebuilding and Plumbing/Gasfitting*, prepared for the Departments of Labour Advisory Committee and the National Building Regulation Task Force, 1990, p.ii.

In this option, a single board would be comprised of representatives from each of the occupations as well as other non-aligned representatives.

This approach has the following benefits:

- reduced overheads — by merging two boards into one there will be a resource saving;
- reduced chance of regulatory capture as a particular sector’s representatives will make up less than fifty percent of the board members; and
- consistency of approach across occupations.

There are a number of concerns with this option:

- parties with no particular experience in a sector may defer to the particular sector’s representative and hence there may in fact be the potential for regulatory capture; and
- unless the board is very large, there may be concerns regarding the mix of employee and worker representatives from each sector.

Industry members were divided in their opinion of Option Two. The Plumbers, Drainers, Gasfitters Board considered this option to be, “a positive step towards ensuring safety and standards throughout the building construction industry”.<sup>30</sup> They saw merit in a single statutory authority administering all building and construction licences, supported by an audit staff to investigate complaints and record non-compliance. Electricians, however, felt that a common board would be unworkable, as it would require too many members to ensure adequate representation and the diverse membership ‘wouldn’t gel’. Builders, as in Option One, expressed no industry demand for a formal board.

### 7.3 Option Three — Single Government Regulator

Under this option there would be a single regulatory regime (ie, one act and related subordinate legislation) established for occupational licensing in the building and construction industry.

The key elements of the option are:

- the Minister would appoint a public servant — the Registrar — to administer the legislation. The Registrar would be subject to the control and directions of the Minister;
- the Registrar and a staff would be responsible for:
  - policy and legislation — the Registrar would be responsible for policy development and the passage of legislation when necessary. This would include keeping in touch with developments in other parts of Australia by participation in the work of the national coordinating organisation for the

<sup>30</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.4.

occupation concerned. The Registrar would work closely with industry in the development of new legislation through an advisory panel (discussed further below);

- low level disciplinary action against licensed/certified people whose actions are considered unsatisfactory;
- the issue and renewal of licences/certificates of competence. However, the Registrar might assign some of these functions to another public servant or other persons or organisations; and
- there might be standard approaches to the level of legislation at which qualifications are set, to the period for which licences and registration are valid, to the renewal of licences and registration and to disciplinary action and appeals. Advice about the level of the qualifications themselves would be provided to the Minister by the advisory panels (see below).

An important element of Option Three is the establishment of separate advisory panels for the three current industry sectors. Each panel would include members from occupational and community groups with interests in and knowledge of the occupation concerned and from the Government organisation responsible for licensing policy. Membership could include construction industry bodies, unions and training providers.

The principal functions of the advisory panels would be:

- to advise the Minister on licensing and registration for the relevant trades or profession; and
- to advise and assist the public servant with statutory responsibility for licensing on the competencies and the assessment of work within the relevant trades or profession. It would include advice on the classes of licence or registration that should be established by conditions limiting the scope of work authorised together with qualifications, assessment procedures, training and other requirements for the various classes of licence and on the recognition of interstate and overseas qualifications.

A range of further functions could also be considered appropriate for the advisory panels:

- to provide peer review of disciplinary decisions (see section 8.5);
- to inquire into, and report on, any other matter relating to the relevant trades or profession that the Minister or the public servant with statutory responsibility for licensing referred to it; and/or
- any function that the panel was requested or required to perform by an authority (such as BEPCON) responsible for the regulation of the technical or safety aspects of the industry.

As technical and licensing standards in the building and construction industry in Australian jurisdictions are converging (or are uniform), it is likely that the burden of attendance at advisory and industry panel meetings would be limited. This will be the result of the active involvement of states and territories in establishing uniform national standards and arrangements.

Industry opinion of Option Three was diverse. Electricians stated that this option mirrors more closely the reality of what is happening in their industry already. Even though their governing *Act* provides for a statutory board, in actuality, this board acts more as an advisory panel, delegating much of its administrative functions to Registrar. In addition, the board's advice is not binding on the Minister. Electricians felt, however, that the principal functions of the advisory panels should include disciplinary authority.



Plumbers, drainers and gasfitters did not prefer this option. They claimed the costs of administering this system would be significant, as the new system would be a larger structure than the current system. They also believe that the establishment of a Registrar does not avoid the issue of regulatory capture as, “public servants such as a registrar can also be subject to ‘capture’ by the industry with which they work”.<sup>31</sup> The Plumbers, Drainers and Gasfitters Board also takes issue with the non-binding nature of advice from the advisory panels to the Minister or Regulator, as the advisory panels would have no real authority. They further claim that the elimination of the Board would mean a, “loss of the nexus between industry and policy development and decision making.”<sup>32</sup>

While there was some concern about a loss of industry influence because advisory panels, as their name suggests, are only advisory, Rose summed up their practicality in these terms:

“Advisory panels by definition have no real power although if strong often have influence. Advisory panels under an appropriate overseeing group with the capacity to encourage improvement or recommend sanctions for poor performance may be useful.

The proposal as discussed may operate effectively in the ACT circumstances.”

Rose, submission, 2000, p.3.

The Property Council of Australia also supported Option 3 and has indicated it would seek a position on one or more of the advisory panels.

#### **7.4 Option Four — Statutory Authorities**

This approach was recommended by the plumbers, drainers and gasfitters during the roundtable discussions and described in detail in its submission. It was proposed as a streamlined approach to Option One (ie, the status quo). The major features of this arrangement are:

- legislation for each of the occupations streamlined and harmonised;
- legal processes for each of the occupations harmonised. Each occupation would hold the same disciplinary powers;
- a single government administrator for all of the occupations; and
- a separate statutory authority for each occupation, with each authority having responsibility for issuing licences and discipline. Each authority would have its own budget and be answerable only to the Minister.

The perceived advantage of this option is that industry members will have greater power over the regulation of their industry and will have independence from the Department.

The major problems with this arrangement are:

- the potential for capture remains and may indeed be strengthened;
- overhead costs remain high — with three statutory authorities issuing licences separately, the overhead costs would actually rise relative to the present situation;

<sup>31</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.4.

<sup>32</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.4.

- inconsistent regulation between trades — with three authorities applying licensing criteria and disciplining industry participants it is likely that divergent regulatory approaches will be created with respect to similar factual situations across the trades; and
- likely time lags between application and approval — the waiting time for licence applicants may increase for electricians and builders who are currently issued a licence by BEPCON (a delegated function in the case of electricians), and do not have to wait for the convening of a Board.

## 7.5 Assessment of Approaches

A difficulty with a review such as this is that it is necessary to consider a wide range of social and economic costs and benefits associated with different reform options. This problem, and a possible solution, was highlighted by a recent Senate Select Committee:

“The Committee continues to be concerned about the application of ‘public interest’ given the confusion that exists over what the term means or allows under NCP. The confusion, when combined with the administrative ease of simply seeking to measure outcomes in terms of price changes, encourages the application of a narrow, restrictive, definition. *The Committee considers that it is important to devise a method of assessment of the policy which attributes a numerical weighting to environmental and social factors to avoid the over-emphasis on dollars merely because they are easy to measure.*”

Senate Select Committee of the 39th Parliament of Australia on the Socio-Economic Consequences of the National Competition Policy, *Riding the Waves of Change*, Canberra, 2000, p.35. Emphasis added.

Consistent with these comments the Review Team has considered the alternatives raised in this chapter using a ‘balanced scorecard’. The Department of Finance and Administration’s description of the balanced scorecard demonstrates the scorecard’s applicability to a review that incorporates significant non-quantitative elements:

“The balanced scorecard is an approach to performance management that translates an organisation’s strategic objectives into a useful set of performance measurements. In addition to traditional financial indicators, it incorporates elements of organisational or non-financial performance such as customer satisfaction, internal business processes, and innovation and learning. This is particularly useful in a public sector environment where ‘bottom line’ drivers are not pre-eminent measures of success.”

Department of Finance and Administration, *Specifying Outcomes and Outputs*, Appendix E: Key Strategic Planning Methodologies, available at [www.dofa.gov.au](http://www.dofa.gov.au).

The ‘balanced scorecard’ approach overcomes the limitations of conventional financial analyses by systematically approaching the central issues in the following manner:

*First* — a range of variables were chosen to reflect the costs and benefits associated with the review legislation. The variables chosen for the current review are

- *efficiency* — adopt and maintain only regulations for which the costs on society are justified by the benefits to society, and that achieve objectives at the lowest cost, accounting for alternative approaches to regulation. This ensures that there is the minimum level of necessary regulation and a minimum adverse affect on competition;
- *effectiveness* — regulation should be designed to achieve the desired policy outcome and should not be unduly complex so as to deter the legitimate use of administrative processes;

- *transparency & accountability* — this makes the regulatory process and requirements as transparent as possible and minimises the potential for regulatory capture; and
- *consistency* — regulatory processes should be relatively consistent across the occupations. This fosters administrative simplicity, clarity for the consumer, and fair treatment across occupations concerned within the building and construction industry.

*Second* — each option was then given a qualitative score that depends on its effects on the variables of interest. Each criteria has been assigned a score between two and minus two, with a score of two being significantly positive, with a score of minus two being significantly negative. A score of zero is neutral and reflects no change from the status quo.

This immediately raises the issue of what is meant by a ‘positive’, ‘neutral’, or ‘negative’ effect. There is really no way of objectively answering this question — it would vary from variable to variable, and inevitably be a matter of judgment. However, the advantage of this approach is that such judgments would be transparent.

Applying this approach, a balanced scorecard assessment of possible reforms is provided in Table 7.1.

Table 7.1

**ASSESSMENT OF ALTERNATIVE APPROACHES TO OCCUPATIONAL REGULATION**

	<b>Option 1</b> <b>Status Quo with Slight Modifications</b>	<b>Option 2</b> <b>Single Multi-Disciplinary Board</b>	<b>Option 3</b> <b>Single Government Regulator</b>	<b>Option 4</b> <b>Separate Statutory Authorities</b>
Efficiency	-1	1	2	-1
Transparency and accountability	0	0	2	1
Effectiveness	0	0	1	2
Consistency	0	2	2	0
<b>TOTAL</b>	<b>-1</b>	<b>3</b>	<b>7</b>	<b>2</b>

Note: A score of zero represents no significant change from the status quo, while a negative score means a worsening outcome and a positive score means a better outcome.

The key factors in allocating the scores in Table 7.1 were that:

- Options 1 and 4 were awarded negative marks because they increased the number of parties involved in the regulatory process, complicating the existing regulatory structure even further. Option 3 was awarded the highest positive score because it involves a rationalisation of the existing boards and departmental structures;
- relative to the status quo, only Options 3 and 4 were improvements in transparency and accountability, and for very different reasons. Option 3 was awarded a positive score because the move away from reliance on boards reduces the potential for regulatory capture. Option 4 maintained the potential for regulatory capture, but the clearer line of accountability to the Minister may be a positive outcome;

- effectiveness scored highest for Option 4. Separate statutory authorities with enhanced disciplinary powers for each occupation would likely be highly effective as the occupations have an interest in maintaining standards and quality. Effectiveness of Option 3 was considered higher than the status quo but less than Option 4 as advice from the advisory panels would not be binding, and could be rejected, despite its usefulness;
- consistency was considered best under Option 2 and Option 3. Both options include a single *Act* for all the occupations and have strong potential for standard licensing and disciplinary approaches to be taken.

Based on balanced scorecard results and the comments of industry and consumers, the Review Team recommends Option Three as the most NCP-compliant regulatory approach.

**RECOMMENDATION ONE**

*The review legislation should be replaced by a single new Act that provides for the licensing of builders, electricians and electrical contractors, plumbers, drainers and gasfitters.*

**RECOMMENDATION TWO**

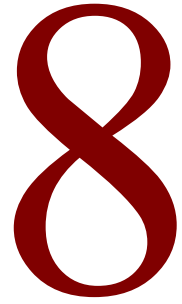
*The existing administrative structures should be streamlined by the abolition of the existing boards and their replacement by a single Registrar supported by three separate advisory panels, one each for:*

- *builders;*
- *electricians and electrical contractors;*
- *plumbers, drainers and gasfitters.*

**RECOMMENDATION THREE**

*The aim, as far as practicable, should be for the harmonisation of licensing criteria and administration between the different occupational groups.*

Further details of the recommended approach are outlined in the following chapters.



## Chapter Eight

# Further Regulatory Issues

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# Further Regulatory Issues

### 8.1 Initial and Ongoing Licensing Criteria

One of the concerns of good regulatory policy is to weed out provisions that do not address the over-riding objective of the legislation. In the case of the *review legislation*, it is reasonable to query those provisions that do not directly relate to ensuring the efficacy of building and construction work.

While licensing criteria often appear reasonable on their own, it is necessary in a NCP context to ask:

- how the criteria ensure the integrity of building and construction work; and
- whether criteria are too vague to expect that enforcement would be instigated.

In the case of the building and construction occupations, licensing requirements should be competency based, meaning that only those individuals who demonstrate the ability to carry out the work will be granted a licence.

#### 8.1.1 Educational/Practical Licensing Criteria

Current licensing criteria are broadly described in Chapter Three.

Educational and practical requirements are the most common criteria applied in occupational regulation. Certain minimum qualifications are generally seen in the community to be the minimum necessary requirement to gather the basic skills in a range of occupations.

Stipulation of a basic skills set is important when setting minimum licensing criteria. The difficult task is to determine the appropriate level of skills, and then how best to enforce such a skill requirement.

Discussions with the occupations revealed that there were no concerns with educational criteria for licences. Plumbers, drainers and gasfitters indicated that the current educational requirements met national competency standards and were consistent with other States and Territories and ANZRA. Educational requirements are also updated every three years to address new technological issues.

Educational requirements vary depending on the class of licence required. A concern held by the Review Team is that the number of different licences associated with a range of different skills and competencies— particularly for plumbers, drainers and gasfitters (see section 3.2) — is potentially confusing to consumers and increases the regulatory burden. For example, a consumer may not know whether they require a gasfitter or an advanced gasfitter.

#### 8.1.2 Minimum Age Requirements

Sub-section 26(1) of the *Plumbers, Drainers and Gasfitters Board Act* states that: “The Board shall not issue a licence under section 25 unless the Board is satisfied that the applicant has attained the age of 18 years”.

While the original intent behind such criteria may have been well-intentioned, such licensing criteria are difficult to justify under NCP.

Firstly, while it is difficult to imagine a person attaining the required qualifications prior to turning eighteen years of age, it does not seem appropriate to treat them differently to someone over the age of eighteen. While the argument may be that ‘adult’ judgement is necessary to appropriately undertake plumbing, draining and gasfitting, such judgement can be assessed by considering the applicants demonstrated skill rather than his or her age.

In this regard, the Review Team notes the ACT Government’s observations with respect to the NCP review of cadastral surveyors: “A competency-based system does not require an age qualification. It is also not allowed under discrimination legislation.”<sup>33</sup>

There was some discussion on this issue as some felt that age was an indication of maturity. However, in the end, as licensing requirements are meant to be competency-based, not age based, the occupations agreed that the minimum age requirements should be removed.

#### RECOMMENDATION FOUR

***Licensing criteria related to the age of potential license holders should not be included in the new Act.***

#### 8.1.3 Business Capacity

The occupational licensing established under the review legislation is rather unusual in that it also acts as *de facto* business licensing. This point has been acknowledged by BEPCON:

“According to the Australian Capital Territory Building, Electrical and Plumbing Control:

“For builders and electrical contractors the current licences are already in effect business licences. Although technical qualifications are among the prerequisites, business capacity is also considered and people cannot operate in the industry without a licence. ...”

Department of Prime Minister and Cabinet, *National Competition Policy Legislation Review of Domestic Mutual Recognition Agreement*, Canberra, para.4.10, available at <http://www.dpmc.gov.au/crrr/index.html>.

Many of the educational courses aspiring builders, electricians and plumbers, drainers and gasfitters must take include some business elements. For example, in order to obtain an Electrical Contractor’s licence, electricians must complete small business courses. In addition, many courses include modules on estimates, contracts and other small business issues.

The ability to operate a business is examined when applying for licence renewal. Although it is not specifically written in the legislation, insolvency of builders is not tolerated. If a builder’s business is bankrupt, their licence will not be renewed until the business is once again solvent. This requirement of business capacity is an interpretation of the ‘fit and proper person test’ (see Section 7.1.6). This requirement does not apply to electricians, or plumbers, drainers and gasfitters.

The appropriateness of including business capacity as a condition for licensing is addressed in Recommendation 11 of the national review of the mutual recognition arrangements. It recommends:

<sup>33</sup> ACT Government, *National Competition Policy Review of the Surveyors Act 1967 — Government Response*, 1999, p.5.

“That when reviewing occupational registration and business licensing in the context of National Competition Policy reforms, governments should consider separating statutory requirements for occupational registration and business licensing, so as to not restrict the ownership of businesses to those registered to practise in the occupations which relate to the services provided by the business.”

Department of Prime Minister and Cabinet, *National Competition Policy Legislation Review of Domestic Mutual Recognition Agreement*, Canberra, Recommendation 11, available at <http://www.dpmc.gov.au/crrr/index.html>.

In discussions with industry, the occupations agreed that it was not necessary to assess an applicant’s business capacity in order to address the identified market failures. The electricians stated that it does not fit with the rationale of ensuring public safety. Rather, business capacity addresses the issue of consumer protection. In most industries, business capacity is determined by the market itself (i.e., the person goes bankrupt), and the building and construction industry should not be any different.

The HIA stated that licensing “should be based on technical performance rather than business capacity. Business capacity is only relevant to the question of insurance.”<sup>34</sup>

Plumber, drainers and gasfitters agreed that assessment of business capacity should not be part of the licensing scheme, but then claimed that “business principles should be included in the training of licensees and completion of this unit should be a mandatory component of the training and competency requirements”.<sup>35</sup> However, making business courses a mandatory component of the training in fact assesses business capacity of a licence applicant.

The rationale behind the business capacity requirement was meant to address the large number of small businesses that fell insolvent. However, it does not appear that assessing business capacity by requiring business training has lessened or removed the problem of insolvency.

#### RECOMMENDATION FIVE

***‘Business capacity’ should not be assessed as a requirement to obtain a new licence. Business courses should continue to be offered on an optional basis, but they should not be mandatory components of training.***

While it should not be necessary to assess business capacity as a criterion as part of a formal licensing process, the Department can assist consumers in finding a reputable builder by providing a checklist of factors to consider. One of those factors may be whether the person is a bankrupt. Furthermore, this recommendation should be read in conjunction with section 8.1.5.

#### **8.1.4 Capacity to Perform**

Occupational licensing legislation also establishes requirements for physical capacity to carry out the work. As an example of the capacity requirements, s.49 of the *Electricity Act* provides:

The Board shall not grant a licence or permit to a person under this Act unless satisfied that the person—

- has sufficient physical capacity and skill to carry out work under the licence or permit; and
- has sufficient communication skills for carrying out that work, including an adequate command of the English language.

<sup>34</sup> HIA Submission, p. 6.

<sup>35</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.6.



- Subsection (1) does not apply to a person who is entitled to registration pursuant to the Mutual Recognition Act and who has lodged a notice under section 19 of that Act.

In effect, s.49 discriminates against local electricians as it imposes a test not imposed upon interstate electricians seeking licences in the ACT. The English language requirement was originally imposed in recognition of the need for builders, electricians, and plumbers, drainers, and gasfitters to be able to understand the codes and practices. These may no longer be appropriate conditions. While good communication skills and physical capacity are important, these should be assessed as part of the skills/qualifications assessment processes and not arbitrarily determined as separate vague criteria.

This issue sparked a great deal of discussion amongst industry representatives. There was agreement that the requirement for physical capacity and skill should be removed as it is addressed by occupational health and safety regulations. With respect to the requirement of sufficient command of the English language, views changed over the course of the discussion. In the end there was some support for removing this requirement as it was seen that:

- occupational health and safety imposes a duty of care upon individuals and employees to ensure that they have adequate skills to undertake the required tasks;
- under competency based requirements, local electricians would not be able to meet the educational requirements if they did not have adequate command of English; and
- this condition was not imposed on interstate applicants under the *Mutual Recognition Act*.

#### RECOMMENDATION SIX

***Licensing criteria should not include capacity criteria in addition to the performance-based educational criteria.***

#### 8.1.5 The ‘Fit and Proper Person’ Test

The use of a ‘fit and proper person’ test is criticised because it is subjective to the point where it serves no real purpose. The discretion available creates potential concerns in that it could be used for anti-competitive purposes to exclude potential new entrants. If there is thought to be a need to exclude people because of the behaviour it might be better to establish, as is often done in negative licensing regimes, discernible negative criteria (eg, conviction for a serious criminal offence) as grounds for not granting a licence.

Section 37 of the *Electricity Act* incorporates a ‘fit and proper person’ test that is clear and unambiguous:

“In determining whether a person is a fit and proper person for the purposes of section 34, 35 or 36, the Board shall have regard to whether the person—

- has, during the period of 10 years that preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in the Territory or elsewhere involving fraud or dishonesty;
- was, when the application was made, the subject of a charge pending in relation to such an offence;
- has, at any time, been convicted of an offence against this Act or a corresponding law of a State or another Territory; or

- has been refused a licence under a corresponding law of a State or another Territory.”

While the test is clear, it was not initially apparent to the Review Team why fraud or dishonesty — possibly relating to a matter totally unrelated to building and construction — is a matter that directly affects the quality of future building and construction work. The presumption that past behaviour is necessarily an indicator of future behaviour needs to be tested.

In addition, the *Plumbers, Drainers and Gasfitters Board Act* provides that, “The Board shall not issue a licence ... unless the Board is satisfied that the applicant ... is a fit and proper person to hold a licence”.<sup>36</sup> Rather than the precise guidelines in the *Electricity Act*, sub-s.25(4) provides broad discretion as to how the test is to be applied and assessed:

“The Board may require an applicant to attend personally before the Board and furnish the Board with such documentary evidence as to the applicant’s qualifications and character as the Board thinks fit and, if the applicant fails to attend or to furnish documentary evidence as required, may refuse the application.”

Discussions with industry highlighted the rationale behind the fit and proper person test — contractors enter customer’s homes or premises and are often left there to work unattended and hence consumers should be provided with some assurances that their property and personal safety is assured. Both industry and consumers argued that consumers need some form of indication as to the trustworthiness of the worker under these circumstances. Although this rationale falls under consumer protection, it is very industry-specific, making the new *Act* likely the best place for it to be addressed.

However, the general nature of the test in the *Plumbers, Drainers and Gasfitters Board Act* does not provide enough guidance as to the interpretation of the test. As a result, the Review Team recommends including the version of the fit and proper person test currently found in the *Electricity Act* in the new *Act* with a provision added such that insolvent tradespeople would not be issued a license or have one renewed.

Another gap with respect to the s.37 *Electricity Act* ‘fit and proper person’ test is that it does not provide for the possible exclusion of parties who are the subject of a disciplinary action in the ACT or elsewhere. As a result, a party could be awarded a licence even though there are numerous complaints that are currently being considered by regulators in the ACT and elsewhere. Given the paramount importance of public safety the Review Team suggests that a precautionary approach is appropriate and that the ‘fit and proper person’ test should exclude parties who are subject to disciplinary action regarding their trade in the ACT or elsewhere.

#### RECOMMENDATION SEVEN

***A ‘fit and proper person’ test should be included in the new legislation. In addition to the requirements found in s.37 of the Electricity Act, this test should also exclude parties who are subject to disciplinary action regarding their trade in the ACT or elsewhere, and should exclude parties who are bankrupt or subject to winding up procedures.***

Recommendation Seven may be perceived as somewhat in conflict with Recommendation Five (eg, bankruptcy may be perceived as a quasi-business capacity test). The Review Team suggests that this possible perception is not justified; bankruptcy here forms part of the ‘fit and proper person’ test and does not refer to wider business capacity issues. In any case, the clear view of participants at the industry

<sup>36</sup> s.26.

roundtables (and particularly from consumer representatives) is that ‘prevention is better than the cure’ and that transaction costs can be reduced if the regulatory excludes tradespeople who are bankrupt (and hence likely to take risks or deceive consumers).

### 8.1.6 *Disciplinary System*

An effective disciplinary system is important to ensure that the identified market failures are corrected, and to also protect scrupulous practitioners from unfair competition.

Enforcement of ongoing licensing criteria by suspending or cancelling a licence (or otherwise affecting it) are ultimate sanctions against people with an unsatisfactory record.

There are a number of problems with the current arrangements.

Firstly, the statement of what is an offence currently varies between the three occupational groups — see Table 8.1.

Secondly, the costs of prosecuting unlicensed individuals providing building and construction work are prohibitive for the Department and rarely undertaken. Therefore threat of prosecution is not a deterrent for unlicensed tradespeople.

Table 8.1

#### GROUPS FOR DISCIPLINARY ACTION (IE, ONGOING LICENCE CRITERIA)

Reason	<i>Building Act</i>	<i>Electricity Act</i>	<i>Plumbers, Drainers and Gasfitters Board Act</i>
Licence granted in error or as a result of misleading information / fraud	✓	✓	✓
Failure to follow technical standards	✓	✓	✓ Only after a conviction, and not for gas)
Attempting to deceive the regulator / providing false information	✓	✓	x
Breaking the law that controls the activity	✓	✓	✓ Only after a conviction, and not for gas
Failure to observe a condition of the licence	x	✓	x
No longer a fit and proper person	✓	✓	✓
A company or partnership no longer includes a qualified person	✓	✓	NA
Qualification withdrawn by the granting body	x	x	✓
A contractor no longer holds required insurance	x	✓	x
Lack of due diligence or lack of direction and supervision	✓	✓	x
Failure to immediately rectify faulty work by a person under supervision or direction	x	✓	x
Employing an unqualified person	x	x	✓

Source: Planning and Land Management, *A Model for Occupational Licensing in Construction — Discussion Paper*, Canberra, 1998, p.8.

Table 8.2 sets out the standard disciplinary procedures available in the *review legislation*. Although the disciplinary powers of the board/registrar seem comprehensive, the Review Team is concerned that some of the *review legislation* makes it hard to take effective action under the standard show cause procedure.

Table 8.2

**DISCIPLINARY POWERS UNDER LICENSING / REGISTRATION LEGISLATION**

Action	<i>Building Act</i>	<i>Electricity Act</i>	<i>Plumbers, Drainers and Gasfitters Board Act</i>
Suspend licence pending inquiry	✓	✓	✓
Suspend licence after inquiry	✓	✓	x
Cancel licence after inquiry	✓	✓	✓
Advertise disciplinary action	✓	x	x
Other	Vary licence	Issue reprimand	x

Source: Planning and Land Management, *A Model for Occupational Licensing in Construction — Discussion Paper*, Canberra, 1998, p.9.

An alternative approach with respect to licensed trades people may be to establish a broader test that would allow the Registrar to take action against a licensee who behaved unlawfully, improperly, negligently or unfairly in the course of licensee's work or if the licence was improperly obtained. These 'fuzzy' criteria could be spelt out in more detail with respect to the building and construction tradespeople as a whole, or each individual occupational group where an alternative approach is necessary.

The types of penalty could not be perfectly uniform. For example, limiting a licence is applicable to the wide range of business authorised by a building contractor's licence but less so in relation to a plumber's or drainer's work.

Industry was generally in agreement that disciplinary powers and actions should be standardised across the occupations. With respect to Table 7.1, this would require certain changes in the current disciplinary powers. For example, the ability to take disciplinary action against plumbers, drainers or gasfitters for:

- failure to follow technical standards; or
- breaking the law that controls the activity

should not include a qualification requiring a conviction and should not exclude gas. The current problem with this restriction on disciplinary powers is seen in the fact that only two prosecutions have been undertaken in the past 18 years under the *Plumbers, Drainers and Gasfitters Board Act*.

**RECOMMENDATION EIGHT**

***Disciplinary powers and actions should, as much as practicable, be standardised across the review occupations. Disciplinary powers and actions should include a range of remedial powers (eg, to suspend a party and require attendance at corrective courses) as well as powers and actions designed primarily as punishment.***

Industry also indicated preference for a demerit points system of discipline whereby the penalties are based on the severity of the contravention. There was some debate about the level of penalties that should be applied:

- one view is that the current penalties are insufficient to provide a sufficient deterrent; and
- the alternative view is that the costs of the prosecution process are so large that they deter prosecution for small offences.

The Electrical Licensing Board suggested that the relationship between a major defect and show-cause action should be strengthened such that there would be automatic show cause action if three major defects were incurred within a time period such as two years. They also propose that major defects should have fines that increase with the number of offences, such that the more major defects incurred by a licensed tradesperson, the higher the fine per major defect.

BEPCON stated that the discipline and defect system must have significant penalties to reflect the potential damage that major defects can cause. It has proposed that the fines be based on cost recovery so that the people causing the defects pay for the inspection system.

The Review Team suggests that an appropriately structured demerit points system should provide a system of penalties such that minor contraventions can be punished, and multiple or large offences have sufficient penalties attached such that they are a real deterrent. It recommends a system of progressively increasing penalties as the number of major defects incurred increases. It also recommends that, given the potential damage that a major defect can cause, these penalties be of sufficient amounts to act as a deterrent.

**RECOMMENDATION NINE**

*A system of demerit points should be adopted, with increasing penalties based on number of major/minor defect or re-inspections. The level of penalty should be set at such a level that the penalty acts as a deterrent. In order to further strengthen the disciplinary action available, automatic show cause actions could occur after a pre-determined number of major defects or re-inspections are incurred by the same individual within a set period of time.*

BEPCON indicated that dealing with unlicensed tradespeople caught working in the building and construction occupation is costly and ineffective. Prosecution is currently the only means available to deter unlicensed individuals from entering the market. However, prosecution generally takes six to eight months, costing the department thousands of dollars. Added to the fact that at the conclusion of the proceedings the defendant is fined only a small amount, it becomes evident that not only is threat of prosecution an insufficient deterrent for unlicensed activity, but it effectively acts as a deterrent for the department taking legal action against an unlicensed tradesperson.

The Review Team acknowledges that there must be a more flexible way of prosecuting unlicensed people. It also recognises that this flexible way must act as a strong deterrents against unlicensed tradespeople providing building and construction services. The Review Team suggests that a system be established to allow on-the-spot fines to be issued to unlicensed tradespeople found undertaking building or construction work. These fines should be of a large enough sum to act as a deterrent to unlicensed activity in the building and construction industry. This system avoids a lengthy and costly trial process and imposes a fine sufficient to act as a deterrent.

**RECOMMENDATION TEN**

*A system of on-the-spot fines should be established where such fines can be issued to unlicensed tradespeople found doing (or having done) an activity that requires a licence. These fines should be of a dollar amount that is sufficient to act as an effective deterrent for unlicensed activity.*

The Act should also provide the Department of Urban Services with the power to issue and enforce orders to rectify the work that is in breach of technical safety standards. This would ensure that unacceptable building, electrical or plumbing, draining or gasfitting work is rectified by the original licensed tradesperson or, if he/she is unable to comply, by another licensed tradesperson, with the cost being charged to the original negligent tradesperson

**RECOMMENDATION ELEVEN**

*The new Act should empower the Department of Urban Services to issue an order to rectify work that is in breach of technical standards regardless of whether a certificate of occupancy has been granted. This would ensure that unacceptable work is rectified by the original tradesperson or, if he/she is unable and unwilling to comply, by another licensed party, with the cost being charged to the negligent tradesperson.*

## 8.2 The Legal Form of Licensing Criteria

At present, with the exception of the *Building Act*, qualifications appear in the *review legislation* (ie, rather than in subordinate legislation such as regulations). This makes it difficult to update them periodically so that they continue to meet industry standards and changes in the provision of training.

It would be desirable for the relevant qualifications for each of the occupations, and the documentary support required with applications, to be a matter addressed in subordinate legislation such as regulations.

### **RECOMMENDATION TWELVE**

***Licence qualifications should be removed from the review legislation and incorporated in regulations.***

## 8.3 Licensing Fees

Table 8.3 outlines the various application and licence fees for the building and construction occupations.

Table 8.3

**CURRENT OCCUPATIONAL LICENSING FEES FOR 2000/2001**

<b>Builders</b>		<b>Electricians</b>		<b>Plumbers, Drainers &amp; Gasfitters</b>	
<i>Licence</i>	<i>Cost</i>	<i>Licence</i>	<i>Cost</i>	<i>Licence</i>	<i>Cost</i>
Assessment for licence — company	\$218	Application fee	\$17.75	Application for Certificate of Competency	\$83
Assessment for licence — individual	\$151.50				
Late application for renewal of same licence	\$67.50				
Licence — 1 year	\$325.50	Grade A – 5 year	\$56	Licence/renewal: Journeyman plumber Operative drainer Restricted liquefied petroleum gasfitter Journeyman gasfitter Journeyman sprinkler fitter 1 year	\$51
				5 year	\$197.50
Licence — 2 years	\$566.50	Grade B – 5 year	\$56	Licence/renewal: Sanitary or water supply plumber Advanced sanitary drainer Advanced gasfitter Gasfitter Liquefied petroleum gasfitter Restricted automotive gasfitter Sprinkler fitter 1 year	\$82
				5 years	\$325.50
Licence — 3 years	\$820	Electrical Contractor — 1 year	\$56		
Licence — Extension per month (max 3 yr)	\$34.50	Restricted Electrical — 5 year	\$56		

Source: Planning and Land Management, *Building, Electrical & Plumbing Fees and Charges*. Canberra, 2000, pp.14&15.

Licence fees for the building and construction industry are loosely based on cost-recovery, however none of these fees exactly cover the overhead and board costs. For example:

- fees for builders exceed the licensing costs — builders' fees were originally set at a level that covered staff costs, but as staff costs changed, fees were not adjusted; and
- fees for electricians and plumbers, drainers gasfitters are substantially less than the costs — electrical fees were based on a narrow definition of the administration costs and do not meet overhead or board costs. The costs associated with electrical licensing were last reconsidered before 1995. For plumbers, drainers and gasfitters there has been no recent exercise to ensure licence fees fully recover licensing costs.

The main issue with respect to fees for consideration in this review is the basis for fees:

- should licensing fees be based on full cost recovery, including clerical, overhead and board costs (where applicable)? Should there be any fee subsidy? If fees are to reflect costs, what measures should be undertaken to constrain the costs of administering the licensing system?
- should the licensing costs be standardised across the building and construction industry in the ACT such that licences of equal duration in each of the occupations attract the same fee?

Each occupation indicated that fees should not be based on full cost recovery. The rationale behind this argument was that, “licensing is used to assist the Government meet its obligations regarding public safety and national consistency,”<sup>37</sup> and should not be fully passed on to the occupations. Instead it should be set as a nominal service fee.

The Review Team recommends that licensing fees be set separately for each of the occupations. The fees for each occupation should be based on cost recovery for that occupation. However, to account for the public safety argument the fees could be set at a proportion less than 100 percent of cost recovery. The proportion should be uniform across the occupations in order to bring some consistency in treatment.

**RECOMMENDATION THIRTEEN**

*Fees should be set taking into account the costs associated with maintaining the licensing regime. The fee levels for each occupation should be set on a consistent percentage basis with respect to any deviation from full cost recovery.*

**8.4 Licence Duration**

At present licensing strictly covers only a one to five year period — see Table 8.4. In some cases the *review legislation* allows a simpler process, and in practice a simplified application process is allowed when the applicant already holds a licence.

Table 8.4

**DURATION OF LICENCES**

	<i>Building Act</i>	<i>Electricity Act</i>	<i>Plumbers, Drainers and Gasfitters Board Act</i>
Contractor	1 year up to 3 years	1 year	Not Applicable
Licence begins	On the day of issue.	On the day of issue.	For a new licence - on the day of issue. If renewed - on the day after the end of the previous term

Note: The Plumbers, Drainers and Gasfitters Board is not currently issuing certificates of competency.

For builders, the licence renewal is not merely a formality; they can be subject to reassessment to ensure compliance with current standards. This highlights the benefit of limited term licences: reassessment incorporated in licence renewal can ensure ongoing occupational development. For example, with the introduction of new wiring rules, the ACT could set a new exam based on the new rules. Passing this new exam could be considered occupational development and could be made a requirement for licence renewal. Although ongoing occupational development is not mandatory in the ACT, it should be considered in this review.

<sup>37</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.7.



There was no consensus among industry members as to whether occupational development should be introduced and linked to licence renewal conditions. Some electricians viewed occupational development as necessary for those who exited the industry but retained their licence, but not mandatory for those who continuously worked in the industry. However there was no consensus on this view among electricians present at the discussions.

Builders indicated that if occupational development were not mandatory it would not occur, and that it was not a lack of information and availability, but rather a lack of interest that required this measure.

Plumbers, drainers and gasfitters stated that “some consideration could be given to meeting some continuous development criteria.”<sup>38</sup> They felt this should be directed at poor performers as an incentive to maintain good performance levels in the industry. This would require a definition of poor performance and identification of poor performers.

The Property Council of Australia views continuous occupational development as an important feature from a public safety viewpoint. They would support ongoing education built into licence renewal requirements and point to the Building Industry Training Levy as a means of funding this initiative.

**RECOMMENDATION  
FOURTEEN**

***There should be no requirement for ongoing professional development as a requirement of holding a licence.***

An option to streamline the process even further is to make licensing/certification perpetual provided the holder meets certain conditions.

This approach may require the licence/certificate holder to apply for renewal periodically. This is a simple way of updating addresses and eliminating people who:

- have died;
- are no longer interested in ACT licensing; or
- are not resident in the ACT.

Registration or licensing would therefore be permanent but the holder would have to make a periodic return. The maximum period between returns would be shorter when the holder had to comply with particular conditions (eg, holding the relevant insurance, etc).

Plumbers, drainers and gasfitters supported the idea that licences be issued for longer periods and the idea that a permanent license may be possible. They indicated that retention of the licence would need to be able to be affected by poor performance.

The Review Team recognises the importance of ongoing occupational development to public safety. However, it also recognises that information distribution by the industry and day-to-day experience are large parts of continual development. The Review Team recommends that occupational development not be made compulsory for licence renewal under the new *Act*.

**RECOMMENDATION  
FIFTEEN**

***Licences should be issued indefinitely, subject to periodic renewal.***

<sup>38</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.7.

The Review Team acknowledges that there may be circumstances whereby there is a public benefit in requiring mandatory one-off occupational development training — this may be appropriate when there is a significant technological or legislative change that affects the safety of tradespeople and/or the community.

As a result, the Review Team recommends that The Registrar should have the power to ‘call in’, as appropriate, all licence holders for new training when there is a significant change in the expectations placed upon tradespeople. It would then be up to the Regulator to determine what constituted significant change, possibly in consultation with industry advisory panels. The Review Team feels this would ensure public safety in times of rapid change in the building and construction industry without imposing undue competition restrictions on the industry itself.

**RECOMMENDATION  
SIXTEEN**

***The Registrar should have the power to ‘call in’, as appropriate, all licence holders for new training when there is a significant change in the expectations placed upon tradespeople.***

## 8.5 Appeals

Currently appeals against such decisions as refusing an application, providing a more restricted licence than was applied for, or taking disciplinary action, are directed to the ACT Administrative Appeals Tribunal (AAT).

Use of courts, and even tribunals, is considered to increase the complexity and expense of the process for all parties.

One approach under a uniform system is to allow a person subject to disciplinary action to have access to review of a decision by the Registrar by a peer panel, which would be arranged through the advisory panels, and/or then be able to apply to the AAT.

Industry groups generally supported this approach. Electricians supported an appeals process to the advisory panel on technical issues only, not on legal issues.

**RECOMMENDATION  
SEVENTEEN**

***Appeals on matters dealing with technical breaches of the new Act should be directed, in the first instance, to a peer group. The peer group would have the power to overturn the Registrar’s initial decision. Appeals on anything other than strictly technical breaches of the Act should continue to be to the AAT.***

This recommendation assumes that it is feasible to identify sufficiently technically skilled individuals who are able to provide impartial technical advice (possibly including parties from interstate or from academic institutions). If this is not possible — ie, if there is a likelihood of regulatory capture — then this recommendation may be inappropriate.

## 8.6 Insurance

An ongoing debate with respect to the regulation of occupations relates to whether licensed individuals and/or firms should be required to hold insurance that covers their work. There are two different types of insurance covered under this review:

- insurance required in order to obtain or retain a licence; and
- insurance related to a specific job.

An example of the former is found in s.38 of the *Electricity Act*, which states that:

“The Board shall not grant a licence under section 34, 35 or 36, or renew an electrical contractor’s licence under section 54, unless the applicant holds a current policy of insurance for not less than \$1,000,000 which covers personal injury and property damage arising out of work to be carried out by or on behalf of the applicant.”

The latter form of insurance is addressed under Part VA of the *Building Act* which establishes a requirement for mandatory insurance — subject to the qualifications in s.58B — with respect to residential building work.

There is a strong argument that says that given the potential financial risks associated with poor building and construction work — whether by fraud, negligence or otherwise — insurance may:

- protect consumers; and
- protect firms.

The NCP issue is not the merit of either type of insurance, but whether, given the rationale for insurance being consumer protection rather than public safety, either should be made mandatory.

### 8.6.1 *Licensing Insurance*

With respect to licensing insurance, given that both providers and consumers of building and construction services benefit from insurance there is a strong incentive for it to be provided. From the provider’s point of view it is good business practice to carry insurance and will be a signal to the consumer of service quality. From a consumer’s point of view, there is incentive for them to demand that providers hold insurance.

Even if providers were not insured, the consumer would have two means of recourse: they could access private certifiers’ insurance, or they could take out their own insurance on a project. Under current arrangements, private certifiers carry limited liability insurance and the onus is on the builder, not the certifier to ensure quality. If builders were no longer required to carry insurance, the onus would be on the certifier, and consumers would only be compensated for the certifier’s portion of the liability, not the builder’s liability. To compensate, consumers could take out their own insurance for a specific project. Additionally, they could use the lack of insurance as a signal to the consumer about the builder’s services and reliability.

If insurance is made mandatory then the issue turns on what level of insurance to require. Failure to establish a minimum level of insurance would smack of tokenism, yet actually establishing a minimum insurance level would create a barrier to entry for smaller (possibly part-time or occasional) builders, electricians, plumbers, drainers and gasfitters.

In supporting a recommendation to not require mandatory insurance for cadastral surveyors the ACT Government stated:

“There is universal agreement that professional indemnity insurance is good business practice.

Compulsory professional indemnity insurance is one measure to protect consumers and ensure standards are maintained. However, from the Government’s perspective, registration of surveyors and a plan examination process give greater surety against errors and protection of the cadastre.”

ACT Government, *National Competition Policy Review of the Surveyors Act 1967*  
— *Government Response*, 1999, p.6.

It may be argued that as there is no comprehensive monitoring of building and construction work then there is a rationale for mandatory insurance with respect to building and construction work. The HIA agreed that “mandatory public liability cover for builders should be enforced.”<sup>39</sup>

Electricians and plumbers, drainers and gasfitters disagreed, arguing that insurance should not be a condition of licensing. From a public safety rationale, mandatory insurance oversteps the bounds of the regulation. Plumbers, drainers and gasfitters agree that holding insurance is good business practice, but claim that “it is not the role of licensing to enforce good business practice.”<sup>40</sup> Electricians further argued that current insurance requirements do not fully compensate affected consumers anyway, as they require insurance for public liability but not personal liability.

Rose argued for the need for mandatory insurance: “Although not a business requirement, insurance should be mandatory for an industry, due to a minority of poor operators, which is not renowned for its integrity through various media publicity.”<sup>41</sup>

Given that there appears to be significant incentive for licensed persons/firms to have insurance, and significant incentive for consumers to demand that insurance be held, the Review Team finds that there is insufficient need for Government to make insurance a mandatory requirement for licensing.

**RECOMMENDATION  
EIGHTEEN**

***The new Act should not require that insurance be held as a condition of any licence.***

Again, while the review team does not consider that insurance should be a mandatory requirement enshrined in legislation, the Review Team suggests that the Department should include a discussion of the benefits of insurance in a checklist to be provided to consumers when they obtain their building approvals.

### **8.6.2 Housing Indemnity Insurance**

Housing Indemnity Insurance (HII) is required under Part VA of the *Building Act*. It requires that builders take out insurance in the name of the owner such that:

“it provides for a total amount of insurance cover of at least the prescribed amount, or an amount equal to the cost of the work, whichever is less, in respect of each dwelling that forms part of the work;”

para.58E (1)(b) *Building Act*.

The *Building Act* further outlines that coverage extends to the current owner and the owner’s successors in title for a prescribed time period. It also outlines the conditions under which an owner is covered:

“(f) it insures the owner (if the builder is not the owner) and the owner’s successors in title against the risk of being unable to enforce or recover under the contract pursuant to which the work has been, is being or is to be carried out because of the insolvency, disappearance or death of the builder;

(g) it insures the owner (if the builder is not the owner) and the owner’s successors in title against the risk of loss resulting from a breach of a statutory warranty;

<sup>39</sup> HIA Submission, p. 5.

<sup>40</sup> Plumbers, Drainers and Gasfitters Board, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT*, Canberra, 2000, p.6.

<sup>41</sup> Rose, submission, 2000, p.3.

(h) it insures the owner (if the owner is not the builder) and the owner’s successors in title against the risk of loss resulting, by virtue of the builder’s negligence, from subsidence of the land;”

para.58E(1) *Building Act*.

This review has set out to determine whether HII should be included and mandatory under the new *Act*, and, if so, what changes need to be made in its approach.

While the *review legislation* has been justified up to this point as ensuring public safety, insurance has been identified as having a different focus — consumer protection. This raises the question of whether or not HII insurance should form part of the revised review legislation or should have a legislative basis elsewhere:

- part of the review legislation — it is quite clear that consumers see the competency of builders (as demonstrated through licensing) as a consumer protection issue, and that insurance is a complementary issue. As such, consumers expect to see HII-like issues in the review legislation and the proposed replacement legislation. This is logical to the degree that BEPCON has industry-specific skills and experience that can be applied to the HII’s regulation; and
- elsewhere — a consistent theme raised during the review was that there is no single party to whom consumers can turn to receive consumer protection advice: BEPCON refers people to Justice and Community Safety on the bases of consumer protection and contract enforcement; Justice and Community Safety suggests that consumers use the industry-specific scheme (ie, the HII) and refer consumers to BEPCON. This referral is based on the fact that BEPCON administers the industry Acts and is responsible for technical matters of the building and construction occupations. As a result, there is a case that all consumer protection legislation should be housed with Justice and Community Safety so that consumers can have a ‘one-stop consumer protection stop’.

However, complicating factors in the case of building and construction of residential structures include the infrequency of purchase and the fact that a home is perhaps the most major purchase an individual will make.

A number of issues related to the details of HII were raised at the roundtable discussions and in submissions. Consumers argued that it is extremely difficult at present for the consumer to make a claim against a builder’s insurance. There are many conditions placed on making a claim, such as the requirement for a claim to be made within 90 days of noticing a problem, of which consumers are generally not aware because of information asymmetries. Consumers have noted that

“Under the present system, for a consumer to make a claim they are required to firstly approach the ‘builder’. If you are the original purchaser you start to get the run around, however, if you are a second or third owner they do not want to even know you. Then you are required to have an engineers report, cost to the consumer, in most cases you have to have legal representation or you get flogged off.”

ACT Strata Management Services Submission, p. 3.

In these respects, HII does not have the regulatory capacity originally intended and does not offer the necessary consumer protection.

BEPCON agrees that there needs to be clarification as to insurance coverage, as insurers consider insurance to apply only if the builder is insolvent, disappeared, or dead. The *Act*, as quoted above, suggests that owners are also covered for breach of statutory warranty. Further, it is unclear what determines whether a builder has disappeared, and whether the onus is on the owner or the insurer to track down a disappeared builder.

BEPCON noted that under the current situation, if a builder produces unacceptable work and subsequently has his licence removed for failure to rectify that work, the consumer has no further recourse under the legislation. BEPCON proposes that the regulator be invested with power to issue an order to rectify the building work. This would ensure that, even if the original builder could not do the work, the work could be done by another licensed builder and could be charged to the negligent builder.

The ACT Strata Management Services sees room for improvement in the scope of residential building work insurance in the following elements:

“There is to be no excess on any claim.

All work on common property of proposed Unit developments to be fully covered by Insurance.

All insurance to be with well established companies who are at arms length from the industry.”

ACT Strata Management Services Submission, p.4.

The insurers indicated that, in theory, zero excess and coverage of common property could be achieved, but at considerable cost to the consumer. If the consumer were willing to bear these extra costs, insurers could provide the coverage. In practice, however, insurers claimed that it was not possible to charge premiums large enough to cover the cost of the expanded coverage — ie, consumers would not be able to afford it — and that there was insufficient demand for such extensive insurance coverage.

Regarding insurance providers, although HII is currently provided by the HIA and the MBA, there is no prescription that prevents other insurers from entering the market. The *Building Act* sets out that insurance is to be provided by an “authorised insurer”, defined as: “a body corporate that has been granted authority to carry on insurance business under the “Insurance Act 1973” of the Commonwealth”.<sup>42</sup> There is nothing preventing other insurers from entering this market; rather no other insurers are willing to take on the risk. Additionally, the HIA and the MBA are more ideally placed to provide this insurance given their knowledge of and proximity to the industry.

After consideration of these issues presented in conjunction with the purpose and intent of the regulation of occupations, the Review Team finds that consumer protection is a legitimate function for this type of insurance in this instance. However, HII should be provided for under a separate *Act* and placed under the jurisdiction of the Justice and Community Safety (Consumer Affairs Bureau). This will facilitate action being taken against negligent builders and provide greater protection for consumers.

The new *Act* should continue to set a minimum level of insurance and should clarify the insurance application to overtly include breach of statutory warranty by the builder.

**RECOMMENDATION  
NINETEEN**

***Housing Indemnity Insurance should be separated from the review legislation and incorporated into a new Act under the oversight of Justice and Community Safety. This approach will provide consumers with a one stop consumer protection shop in the event that there is a problem with building and construction work.***

<sup>42</sup> sub-s.5(1) *Building Act*.

Given the clear consumer dissatisfaction with respect to the operation of existing insurance schemes the Review Team suggests that the Government should also take steps to encourage the establishment of an insurance ombudsman who would have the power to mediate and arbitrate insurance-related disputes. The Review Team envisages that the ombudsman would be an independent (but industry funded) position akin to that which exists in a number of other insurance sectors.

**RECOMMENDATION  
TWENTY**

***The Government should take steps to encourage the establishment of an insurance ombudsman who would have the power to mediate and arbitrate insurance-related disputes.***

As mentioned a number of times through this *Report*, there is an obvious need to provide consumers with a single document that sets out:

- the degree to which they are protected by consumer protection laws such as the HII, ACT *Fair Trading Act* and the *Trade Practices Act*; and
- suggested measures that consumers should take to protect themselves. This may include checking: that the builder is licensed; that the builder that actually does the work is licensed; that the builder is not a bankrupt, and so on.

This checklist should be a joint Department of Urban Services and Department of Justice and Community Safety document and should be made available whenever anyone obtains a development approval.

**RECOMMENDATION  
TWENTY-ONE**

***Justice and Community Safety and Urban Services should issue a checklist to people who are about to commence building. The checklist should explain a consumer's rights under the law and provide a checklist of actions that will assist a consumer in protecting their interests.***

## **8.7 Scope for Rationalising Licences**

In the *Directions Paper* the Review Team asked whether there was scope for simplifying the number of licences by focusing licensing criteria on core skills and competencies rather than specific skills and competencies. Industry responded that there was very limited scope for consolidation. The number of different types of plumbers, drainers and gasfitters licenses seems high as it encompasses many disciplines. In fact, the number of licences is consistent with other jurisdictions. They indicated that the only scope for simplification may be to eliminate the journeyman's licence. However, there is a key difference between a journeyman and full licence, in that a fully licensed tradesperson can work un-supervised and create a design, whereas a journeyman does the work when given the design and needs his/her work signed off by a fully licensed tradesperson. Finally, gasfitters noted that there may be a need to increase the number of gasfitter licences to incorporate a gas servicing licence. This would enable consumers to know who was qualified and competent to provide gas servicing, rather than gas fitting.

The Review Team does not feel sufficiently well placed to make recommendations about the rationalisation of the number of licences, or the possible changing of currently specified educational criteria. However, the Review Team makes the following observations that may require further consideration by BEPCON and the Government:

- as the Review Team has recommended removing business capacity and licensing insurance from licensing criteria, and moving the solvency criterion to the 'fit and proper person test', the electrical contractor's licence becomes superfluous. The public's interest in ensuring safe electrical work is maintained by the requirement that sole traders (who may have previously held an electrical contractors licence)

would still be required to hold an A Class licence. Such a reform would streamline the licensing arrangements and make it easier for consumers to understand whether a person has suitable qualifications (fewer licence types reduces consumer uncertainty). However, the abolition of the electrical contractors licence may create problems under mutual recognition arrangements because other jurisdictions have contractors licences and this inconsistency in approaches may make it difficult for some electricians and companies to move between jurisdictions. Any such abolition of the electrical contractors licence should only be considered following discussions with representatives from other jurisdictions; and

- any redrafting of legislation could be used by BEPCON to consider whether there is scope for rationalising the number of plumbers, drainers and gas-fitters licences. The Review Team considers that the number of licences are confusing to consumers and a process of licence rationalisation would be of benefit to the industry by reducing multiple licensing criteria.<sup>43</sup>

## 8.8 Inter-Jurisdictional Issues

The ACT has adopted the national mutual recognition scheme through the introduction of the *Mutual Recognition (Australian Capital Territory) Act 1992*. In effect, mutual recognition:

“aims to remove barriers to the free flow of goods and labour that can arise from differences in regulations in each state or territory. Mutual recognition involves each jurisdiction recognising regulations created and administered by other jurisdictions, even where such regulations vary from their own rules and regulations. Therefore, it ensures that ... members of registered occupations can now enter an equivalent occupation in other states and territories.

Mutual recognition is based on the premise that regulations and standards covering goods and occupations in one state or territory meet community expectations and should be acceptable in other jurisdictions.”

Office of Regulation Review, *Impact of Mutual Recognition on Regulations in Australia*, AGPS, Canberra, 1997, p.1.

Currently under mutual recognition the process of registration is automatic and does not require the applicant to demonstrate knowledge of legislation in the ACT, only that he or she has *bona fide* credentials in a participating jurisdiction and pay the ACT licensing fee. If registration has not been granted, refused or postponed in four weeks then the recognition is automatic by virtue of the mutual recognition legislation.<sup>44</sup>

The Plumbers, Drainers and Gasfitters Board has expressed ongoing concern about the operation of the mutual recognition rules:

<sup>43</sup> Of course, there may be broader reasons for changing the requirements for different licence types. For example, Rose notes that: “Generally, the current educational requirements for licensing is appropriate. However, in today’s building and construction industry, as in most industries, specialisation is often the most efficient operating mode. Given this system of industry operation there may be scope for some further specialised licensing in some of the current licensed areas.” — Rose, submission, 2000, p.3.

<sup>44</sup> Similar to the operation of the domestic mutual recognition scheme, the *Trans-Tasman Mutual Recognition Act 1997* provides for mutual recognition of occupations with New Zealand.



“The intention of the Mutual Recognition Act (MR Act) is not being met by the current strategies. As part of an application for a licence under Mutual Recognition, the Board believes that information on original qualifications should be submitted with an application. Another requirement beyond the basic right to practice in the second state should be knowledge of the legislation of the second state. Furthermore, more action needs to be taken about the impact of disciplinary action in one state and its effect on being able to be licensed in another. As the MR Act currently works, if a licensee has a licence cancelled in the second state and the first state does not take reciprocal action then that licensee can immediately reapply for a licence in the second state and the Act does not allow the previous disciplinary action to be taken into account to allow refusal of that application.”

Plumbers, Drainers and Gasfitters Board of the ACT, *A Response by the Plumbers, Drainers and Gasfitters Board of the ACT to the Directions Paper on Occupational Licensing in the ACT Building and Construction Industry*, Canberra, p.8.

Anecdotal evidence suggests that these concerns have manifested themselves in the Plumbers, Drainers and Gasfitters Board adopting approaches inconsistent with the ACT’s mutual recognition obligations. For example, there is at least one case where a Board refused to license an individual even though they met the criteria under the ACT’s mutual recognition obligations. In this case, the applicant held an equivalent licence in another jurisdiction, but did not meet the ACT standards. Under mutual recognition, the Department was forced to over-rule the Board.

Concerns about the operation of mutual recognition are outside the scope of this review as the review legislation is subordinate to the ACT’s mutual recognition obligations. However, there are a number of mechanisms that could be used to reduce such concerns over the longer term:

- the development of national licensing — the development of a national (or supra-jurisdictional) licensing regime would overcome the Board’s concerns. Indeed, the national review of mutual recognition arrangements suggested, “That occupational registration authorities consider, where appropriate, the development of a national practising certificate based on mutually agreed registration requirements.
- increased harmonisation of standards between jurisdictions — to reduce the scope for ‘jurisdiction shopping’ the ACT could seek to harmonise licensing criteria between jurisdictions. This can be done by negotiation, and where there are specific concerns about the licensing standards in other jurisdictions the ACT should consider using the mutual recognition referral powers:

“The review group considers that registration authorities which have concerns about the registration requirements of other jurisdictions should make greater use of the referral mechanism contained in the MRA. Under this mechanism, a jurisdiction may refer to the relevant Ministerial Council the matter of the appropriate competency standards underpinning registration of a particular occupation within another jurisdiction. Within 12 months of receiving a referral, the Ministerial Council is required to determine whether agreed standards should apply to the occupation and, if so, what those standards should be. This could result in the development of new uniform standards which all jurisdictions would adopt or an agreed minimum level of standards which may require one or more jurisdictions to amend their requirements in order to meet the minimum standards.”<sup>45</sup>

Indeed, the national review of mutual recognition suggested, “That jurisdictions make greater use of the referral mechanism contained in the MRA where concerns

<sup>45</sup> Department of Prime Minister and Cabinet, *National Competition Policy Legislation Review of Domestic Mutual Recognition Agreement*, Canberra, para.5.2.23, available at <http://www.dpmmc.gov.au/crrr/index.html>.

exist as to the competency of persons registered in other jurisdictions.”<sup>46</sup> The Review Team supports this conclusion.

In the short term, neither of these approaches are likely to satisfy the Plumbers, Drainers and Gasfitters Board. However, given the constraints imposed by mutual recognition, these approaches are the only feasible options short of withdrawing from the mutual recognition scheme as a whole.

**RECOMMENDATION  
TWENTY-TWO**

*The ACT should make greater use of the referral mechanism contained in the mutual recognition arrangements where concerns exist as to the competency of persons registered in other jurisdictions. While this will not help on a case-by-case basis, it will help to correct systemic errors.*

**COMMENT**

*The Mutual Recognition Act in its current form makes individual state licensing policy ineffective when dealing with inter-state licensing applications. There are currently loopholes which curtail the effectiveness of disciplinary action and licensing criteria. The ACT should seek to remedy this situation at the earliest opportunity.*

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<sup>46</sup> Department of Prime Minister and Cabinet, *National Competition Policy Legislation Review of Domestic Mutual Recognition Agreement*, Canberra, Recommendation 8, available at <http://www.dPMC.gov.au/crrr/index.html>.



Appendix A

Review  
Terms of  
Reference

## Appendix A

# Review Terms of Reference

### Background

1. The *Building Act 1972*, the *Electricity Act 1971*, and the *Plumbers, Drainers and Gasfitters Board Act 1982* together with relevant subordinate legislation provide for the licensing and regulation of builders, electricians, plumbers, drainers and gasfitters in the ACT. Those parts of the legislation which establish the regulatory regimes for these occupations are to be reviewed in the context of:

- the ACT Government's commitments under the Competition Principles Agreement 1995, and
- a continuing program of regulatory reform in relation to the building and construction industry which aims to ensure the legislative regimes are appropriate to the current and future needs of the industry and the interests of consumers.

2. The regulation of the architects profession is the subject of a separate national review to be undertaken by the Productivity Commission.

### Scope

3. The Review will be undertaken by an independent consultant (the "Reviewer"). The Reviewer shall undertake a review of the principal Acts and all relevant subordinate legislation in accordance with the principle set out in Clause 5(1) of the National Competition Principles Agreement 1995 that:

"...legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that: (a) the benefits of the restriction to the community as a whole outweigh the costs; and (b) the objectives of the legislation can only be achieved by restricting competition".

4. Without limiting the scope of the review, the Reviewer shall examine the following matters in relation to the occupational regulation of builders, electricians, plumbers, drainers and gasfitters:

- current directions for reform of building and construction industry occupational regulation in other Australian jurisdictions
- the appropriate role of the ACT Government in building occupation licensing and registration;
- entry regulation through the imposition of educational, competency and training requirements for accreditation, licensing and registration;
- conduct regulation through prescribed standards for behaviour;
- investigation of complaints, disciplinary powers and procedures, and appeal mechanisms;
- professional indemnity insurance requirements;
- the appropriateness of the roles and responsibilities of the Building Controller in relation to the licensing of builders, the Plumbers, Drainers and Gasfitters Board, and the Electrical Licensing Board;
- provisions for mobility and reciprocity with other jurisdictions including recognition of overseas qualifications and experience; and

- the principles underpinning an integrated framework for the regulation of building and construction occupations.

5. The following provisions of the principal Acts and the Regulations are specifically to be considered in the conduct of the Review:

5.1 *Building Act 1972* and Regulations:

- 10-23B (relating to builders' licenses & procedures for disciplinary action);
- Part VA (relating to warranties and insurance)
- Regulation 3 (relating to kinds of licences); and
- Regulation 5 (relating to applications for owner-builder licences)

5.2 *Electricity Act 1971*:

- Part II, s4-19 (relating to the establishment and procedures of the Board) and s20 (relating to technical qualifications acceptable for licensing)
- Part III, s21-23 (relating to the Register of Electrical Contractors and Electricians, and the role of the Registrar)
- Part IV, s24-32 (which specify that work is restricted to licensed persons)
- Part V, s34-54 (relating to licences and permits);
- Part VI, s55-59 (relating to procedures for disciplinary action); and
- Part IX, s94(2)-95 (relating to appeals to the AAT in respect of decisions of the Board)
- Part X, s97-100 relating to licence documents.

5.3 *Plumbers, Drainers and Gasfitters Board Act 1982*:

- the whole of the Act.

6. In undertaking the review, the Reviewer shall take into consideration the results of earlier consultations on occupational licensing conducted with the ACT construction industry during 1998, including the potential for developing an integrated regulatory regime under the *Construction Practitioners Act 1998*.

7. The Reviewer shall prepare a report which:

- describes and clarifies the objectives of the legislation in relation to occupational regulation and the specific features of the existing legislative framework including the identification of any interacting legislation;
- identifies any public interest rationale for the legislation in relation to occupational regulation;
- describes the occupations and industries regulated by the legislation;
- identifies the nature of any restrictions on competition including any potential inconsistencies with the Trade Practices Act 1974 in relation to specific provisions in the legislation;
- analyses the likely effect of the restrictions on competition;
- assesses and balances the costs and benefits of the restrictions taking into account where relevant the matters set out in Clause 1(3) of the Competition Principles Agreement;
- considers alternative means for achieving the same result including non-legislative approaches; and
- makes recommendations for reform options.

# B

## Appendix B

### Review Consultations

*Appendix B***Review Consultations****B.1 Roundtable Meetings**

The Review Team conducted a series of four roundtable meetings, each focusing on a different stakeholder group. The meetings provided an avenue for interested parties to comment upon the review issues and the proposed options. It also allowed them to bring forth examples and case studies to help to clarify the issues and provide a measure of industry and public sentiment on the issues.

The Review Team would like to thank the following people who attended the roundtable meetings:

*Builders' Session*

Tim Atkinson, BEPCON  
 John Elliot, Consumer  
 Christopher Hardy, MBA  
 Keith Hatfield, BEPCON  
 Steve Johnson, BEPCON  
 Brian McLeod, CITC  
 David Parsons, BEPCON  
 Don Warring, builder/certifier  
 Alan Sims, HIA

*Electricians' Session*

Celia Balfour, electrician  
 Neville Betts, ETU  
 Greg Arnold, BEPCON  
 Keith Hatfield, BEPCON  
 Darrell Hills, ITAB  
 Mick Koppie, ACTEW  
 David Scullin, NECA

*Plumbers, Drainers and Gasfitters' Session*

Wayne Creaser, WorkCover  
 Paul Day, BEPCON  
 Darrel Dinnen, BEPCON  
 Bruce Duncan, independent contractor  
 Robert Edwards, MPDGA  
 Paul Guymer, BEPCON  
 Keith Hatfield, BEPCON  
 John Knight, MPDGA  
 Brian O'Reilly, CEPU  
 Bob Stone, CIT

*Insurance Session*

Tim Atkinson, BEPCON  
 Kym Bergmann, consumer  
 David Bowditch, consumer  
 David Dawes, MBA  
 John Elliott, consumer  
 Louise Elliott, consumer  
 Keith Hatfield, BEPCON  
 Darrell McNeil, AEI  
 Alan Sims, HIA  
 David Watts, AEI

*Meeting with Property Council of Australia*

Jennifer Cunich  
 Michael Porter  
 Ric Baker

## ***B.2 Written Submissions***

Interested parties were encouraged to provide written submissions to the Review Team addressing the questions raised in the *Directions Paper* or any other matters relating to the Review Terms of Reference. The submissions received by the Review Team are attached.<sup>47</sup>

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<sup>47</sup> Some of the submissions were received well after the published deadline and so may be somewhat less represented in the body of the report.



**A response by the  
Plumbers, Drainers and Gasfitters Board of the  
ACT  
to the Directions Paper on  
Occupational Licensing in the ACT Building and  
Construction Industry**

This response to the Directions Paper on Occupational Licensing in the ACT Building and Construction Industry has been prepared by the Plumbers, Drainers and Gasfitters Board of the ACT (the Board) and seeks to comment on the Review Issues raised as well as discuss some other matters raised in the discussion paper.

The Board is made up of the following members:

Nominating body	Representative
CEPU Plumbing Division - ACT Branch	Mr Brian O'Reilly (chair)
Building Electrical and Plumbing Control	Ms Lyn Van Schieveen
Master Plumbers Drainers and Gasfitters Association of the ACT	Mr Bruce Duncan
Canberra Institute of Technology	Mr Bob Stone
The Board of the Australian Gas Association	Mr Frank Gordon
A public servant	Ms Jocelyn Plovits
Ministerial Appointee	Ms Lesley Fisk
Ministerial Appointee	Ms Pat Boling
Ministerial Appointee	Ms Debbie Veenendaal

The Board is established under and operates in accordance with the requirements of the *Plumbers, Drainers and Gasfitters Board Act 1982*, one of the Acts subject to this review.

It is proposed to work through the paper and review issues and discuss and comment on them in sequential order.

*REVIEW ISSUE ONE*      *Do home building insurance companies exert sufficient performance pressure such that self-regulation is feasible? Could they exert sufficient pressure if occupational licensing did not exist? Through what mechanism could insurance companies achieve this? Are insurers willing to do this?*

*Comment:* The Board is of the opinion that the use of insurance cover and control of licence issue by insurance companies is not an appropriate method of protecting public safety by ensuring maintenance of construction industry standards.

In section **5.2 Duplication and Cost Efficiency**, the paper considers the financial costs involved with the current occupational licensing systems. However, it does not consider the social costs that would arise from a less effectively regulated system. There have been deaths in the ACT involving people working on electrical, water and gas on-site systems. These deaths have a significant cost impact on the families, owners, the industry and Government and should also be considered.

In section **5.3 Regulatory Capture** the paper raises concerns that “most occupational licensing boards tend to be dominated by members of the occupation they are licensing.” Although this may happen in some cases, the Board is of the opinion that it is not true in their case. A consideration of the membership of the Board shows that only a small proportion of members could be considered to be members of the occupation as only three would be eligible to receive a licence. Therefore, in this case, the argument of regulatory capture is not relevant.

*To what degree could approaches be harmonised with respect to these occupational groups? Should all of the occupational groups be administered under a single regulatory regime?*

*Comment:* The Board is of the opinion that a common approach to licensing over the three different areas would be preferable and this would best be achieved by setting up a separate statutory licensing authority. This proposal will be further discussed

In section **6.1.1 Licensing** the paper states that “the main benefit claimed for licensing is that the establishment of clear entry criteria ensures that only qualified people will provide building and construction services to a sufficient quality standard.” The paramount reason for requiring adequate technical training and competence as the basis for licensing is to ensure public safety. This will be achieved when work is done to a sufficient quality standard.

This section also raises the concern that the continuing competence of tradespeople is not ensured through licensing. This raises another point that is not adequately addressed in the whole paper; that of licence renewal. The paper does not really address issues such as:

- what value does licence renewal provide;
- whether licences should be “for life”;
- the implication that self funding requirements for licensing bodies means that renewal of licenses at significant cost to the licensee will be used as an income stream;
- the need to require a person, who wishes to re-enter the industry after an extensive absence, to undertake a competency assessment or upgrade; and
- should the Board have discretionary powers to place restrictions on licences at the time of their renewal in response to poor performance and set requirements for further training.

The Board would also like to raise its concerns about the way it is restricted from taking action against licensees who have undertaken unsatisfactory work. The Act requires that disciplinary action can only be taken after the licensee has been convicted of an offence under the *Canberra Sewerage and Water Supply Regulations*. This should be amended to allow the Board to take action if it believes the licensee has breached the Regulations.

The current Act does not permit the Board to restrict a licence and/or require licensees to undertake further training in a manner similar to that contained in the *Construction Practitioners Registration Act 1999*.

The Review Team considered **Co-regulation** a potentially feasible regulatory approach, but with regard to plumbing industry licensing, the Board has a number of reservations. Firstly, as the Master Plumbers, Drainers and Gasfitters Association of the ACT only represents a minority of the plumbers, drainers and gasfitters in the workforce it would not be a suitable organisation to manage a co-regulated licensing scheme. There are no other organisations that could be considered a suitable alternative. Also, in a co-regulated licensing system, the practice standards issued by the Government would have to be legally binding in order to ensure that standards are maintained. It is not clear that this is what is intended.

*Comment:* The Board believes that the occupational regulatory system in the ACT should require licensing and should not operate under a certification system. The Board is very concerned about the safety of the public even to the event of preventing serious injury or death and believes that the only effective way of achieving this outcome is by requiring all operatives to be adequately trained and competent and demonstrated by holding a licence.

In considering **Option One - Status Quo with slight modification**, the Review Team states that “While the industry appears comfortable with existing arrangements, this approach has serious limitations and should not be maintained.” These “serious” limitations appear to be:

- (i) the different treatment of the different occupational groups - an issue which while not ideal is not a “serious” limitation;
- (ii) regulatory capture - an issue which in relation to the Plumbers, Drainers and Gasfitters Board has been refuted; and
- (iii) maximisation of regulatory overheads - in relation to the Board, an annual cost of \$32,000, which is not considered serious.

As has been stated previously, there are limitations in the current system but these are more a reflection of the current wording of the Act than the operation of the Board and the licensing system. These matters could be dramatically improved by easing the restrictions on the Board to take action against licensees and permitting the Board to restrict a licence and/or require licensees to undertake further training as a condition on their retaining their licence.

For **Option Two - Single Multi-Disciplinary Board**, the Review Team considers this an improvement on the first option. As briefly commented on under *Review Issue Two*, the Board believes that this option would be a positive step towards ensuring safety and standards throughout the building construction industry. A detailed proposal would have to be worked out, but a separate statutory authority administering all licences and registrations in the ACT, with audit staff to investigate complaints of poor or unsatisfactory performance and with a standard recording system of non-compliance leading to standard disciplinary procedures would be a very positive step for the building construction industry. This proposal would provide ready links with the licensing authorities in other jurisdictions and would allow for a closer liaison with and commitment to the Australian New Zealand Reciprocity Association (ANZRA).

**Option Four - Single Government Regulator** is the preferred option of the Review Team. With the inclusion on advisory panels and peer review of “show cause” licensing action, this is not a simple proposal and in fact is a larger structure than the current system. The costs associated with this proposal are not considered in the discussion although they were a part of the issues addressed for option one. The Board believes that for this option, the negative aspects of the proposal have been ignored. The status of the advice from the advisory panels is unclear and the links with other licensing authorities and ANZRA are unclear. The discussion does not realise that public servants such as a registrar can also be subject to “capture” by the industry with which they work.

*REVIEW ISSUE FOUR: Is it feasible to consider the private administration of licences/certification? Would this involve licence/certification issuance and renewal?*

*Comment:* If the government decided to adopt the private administration of licences, it is unclear that there would be any cost saving to the industry. It is more likely that the costs would just be transferred to the private organisation who would still have to recover costs. In the case of the plumbing industry, there is no appropriate body to undertake this function. In addition, the Government still needs to employ staff to oversee the operation of the scheme, issue practice directions and take other action from time to time and this new role would actually manifest itself in additional costs.

*REVIEW ISSUE FIVE: Should there be advisory panels instead of statutory boards? What functions could advisory panels have?*

*Comment:* It is unclear that these advisory panels would have any real authority. The fact that they are only advisory indicates that they would not. The transfer of licensing responsibilities from a Board to a Registrar and the introduction of advisory panels would see the loss of the nexus between industry and policy development and decision making.

*REVIEW ISSUE SIX: Are there any private bodies that have sufficient sectoral coverage and power and may be able (and willing) to accept responsibilities associated with a co-regulatory regime?*

*Comment:* As discussed previously, there is no appropriate body to undertake this function for the plumbing industry.

In **6.2.5 The Preferred Approach**, the Review Team states that it “welcomes parties’ views as to whether licensing is required to address the identified market failures, or whether the less-restrictive certification is a more appropriate regulatory tool.” The Board very strongly believes that licensing is required to address the identified market failures.

In **7.1 Initial and Ongoing Licensing Criteria**, the paper discusses ensuring the efficacy and integrity of building and construction work. Licensing criteria ensure that operatives have the knowledge to be able to comply with codes and standards. It is only by complying with these codes and standards that safety requirements can be met and public safety guaranteed.

*REVIEW ISSUE SEVEN: Are current educational requirements for particular licences set too high, too low or just right?*

*Comment:* The current educational requirements for plumbing, draining and gasfitting meet the national competency standards. This is also consistent with other States and Territories and ANZRA. They are subject to review every three years and at this time the need to address new technology is considered.

*REVIEW ISSUE EIGHT: Is there scope for simplifying the number of licences by focusing licensing/certification criteria on core (and necessarily more general) skills and competencies rather than more specific skills and competencies?*

*Comment:* The structure of the discipline with water, drainage and gas makes simplifying the number of licences not feasible. However, there could be some scope for only issuing full licences and removing the issue of journeyman licences. This would clear up some misunderstanding on the part of consumers.

*REVIEW ISSUE NINE: Should the Government legislate to require that mandatory insurance be a requirement for the holding of a licence for one or more building and construction occupations? If yes, to which occupations should mandatory insurance apply? Should builders continue to require mandatory insurance, given that it currently does not offer adequate consumer protection?*

*Comment:* The Board believes that mandatory insurance should not be a requirement for licensing. Although it is good business practice, it is not the role of licensing to enforce good business practice.

*REVIEW ISSUE TEN: If insurance is mandatory should licensing be replaced by certification?*

*Comment:* Insurance is not satisfactory compensation for death and injury. It is also a costly means of seeking to rectify a mistake after the event. It is far better and cost effective to take proactive steps to ensure the event does not occur.

*PRELIMINARY FINDING ONE: Licensing criteria related to the age potential licence holders should be removed from the review legislation.*

*Comment:* The Board agrees that age restrictions should be removed from the Act.

*REVIEW ISSUE ELEVEN: Is it necessary to assess an applicant's 'business capacity' in order to address identified market failures? In most industries business capacity is determined by the market itself (ie, the person goes bankrupt) why should the building and construction industry be any different?*

*Comment:* The Board agrees that assessment of the business capacity of an applicant should not be part of the licensing scheme. However, it does believe that as there are a large number of small businesses which become insolvent, business principles should be included in the training of licensees and completion of this unit should be a mandatory component of the training and competency requirements for a licence.

*PRELIMINARY FINDING TWO: Licensing criteria should be directed at the performance of appropriate building and construction techniques and should not address commercial issues such as business capacity.*

*Comment:* The Board agrees that technical performance of licensees should be the criterion for licensing but business capacity should not be considered.

*PRELIMINARY FINDING THREE: Licensing criteria related to the general character of potential licence holders should be removed from the review legislation.*

*Comment:* The Board agrees with this finding.

As stated elsewhere, the requirement in **Table 7.1 Grounds for Disciplinary Action** that action may only be taken after a conviction should be amended to be after non-compliance with the Regulations. As a lesser punishment, the Board should also have the power to put conditions on a licence or require the licensee to undertake further training. The Board should also have the power to issue directions to undertake corrective work under the prospective sanction of loss of licence.

*REVIEW ISSUE TWELVE: Should there be standard disciplinary powers directed to unlawful, improper, negligent or unfair behaviour?*

*Comment:* Disciplinary powers and actions should be standard across the trades. This would mean the inclusion in the Boards powers of those matters listed under Table 7.1. It would also include the requirement to advertise the results of disciplinary proceedings.

*PRELIMINARY FINDING FOUR: Licence qualifications should be removed from the review legislation and incorporated in regulations.*

*Comment:* The Board agrees that this is a sensible proposal that would allow easier amendment of these criteria, ensuring that qualifications are current.

*REVIEW ISSUE THIRTEEN: How should licence fees be determined? Should they be based on cost recovery, fees in other jurisdictions, or some other basis? Should licence fees be standardised across the building and construction occupations?*

*Comment:* When considering the issue of whether fees should be based on cost recovery, it is difficult to determine what the full costs are and what fees constitute payment for those costs. Are fees required to cover some or all of the following: Board payments, licensing staff salaries, inspection and investigation costs, general office operation costs, maintenance of legislation and any other Government costs associated with plumbing industry issues. Fees could include licence fees, plumbing permit fees, building levy and water and sewerage rates. It is the Board's opinion that because licensing is used to assist the Government meet its obligations regarding public safety and national consistency, the licence fees should not be set to recover costs but should be a service minimum fee. Similarly, as licence renewal can only be justified as a means of ensuring current contact details of those continuing to operate in the industry, they should not be set at some cost recovery level but at a minimal service fee.

*REVIEW ISSUE FOURTEEN: Should ongoing occupational development be introduced and linked to licence renewal conditions?*

*Comment:* Occupational development can best be done by information distribution via newsletter, although some consideration could be given to meeting some continuous development criteria. Similarly, there is no recognition of good or poor performance in the current structure. It would be feasible to require those poor performers to meet additional occupational development criteria in order to develop their skills so that they are able to overcome the reasons for their poor performance. Such a scheme would provide an additional incentive to maintain good performance levels. However, this type of system can only function if complaints about performance come to the Board, are investigated and the results placed on the licensing file.

*REVIEW ISSUE FIFTEEN: Should licensing/certification include formal renewal rather than the issue of new licences/certificates of competency?*

*Comment:* Renewal is the more appropriate option and should be based on qualifications. If the licensee's qualifications are upgraded then that would allow them to seek an upgraded licence.

*REVIEW ISSUE SIXTEEN: Should licences/certificates of competency be issued for longer periods when there are no ongoing monitoring requirements?*

*Comment:* There is no reason why licences could not be issued for longer periods, with the possibility of a permanent licence that is only effected by poor performance.

*REVIEW ISSUE SEVENTEEN: Should appeals over disciplinary action include review by a peer group?*

*Comment:* It is the Board's opinion that the Board system should be retained and that consideration of disciplinary action by the Board is equivalent to a peer review process.

*REVIEW ISSUE EIGHTEEN: Is reliance on mutual recognition sufficient to allow the free movement of building and construction tradespeople into and out of the ACT?*

*Comment:* The intention of the Mutual Recognition Act (MR Act) is not being met by the current strategies. As part of an application for a licence under Mutual Recognition, the Board believes that information on original qualifications should be submitted with an application. Another requirement beyond the basic right to practice in the second state should be knowledge of the legislation of the second state. Furthermore, more action needs to be taken about the impact of disciplinary action in one state and its effect on being able to be licensed in another. As the MR Act currently works, if a licensee has a licence cancelled in the second state and the first state does not take reciprocal action then that licensee can immediately reapply for a licence in the second state and the Act does not allow the previous disciplinary action to be taken into account to allow refusal of that application.

The Plumbers, Drainers and Gasfitters Board of the ACT would like to thank Allen Consulting for the opportunity to comment on their Directions Paper on Occupational Licensing in the ACT Building and Construction Industry.

Brian O'Reilly  
Chair

July 2000





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Dear Sir or Madam

Thank you for the opportunity to comment on the Response to the National Competition Policy Review of Occupational Licensing in the ACT Building and Construction Industry.

Attached is a response following discussions with some interested parties within the Canberra Institute of Technology.

Yours sincerely

ROGER ROSE  
Dean  
Faculty of Science and Technology

4 August 2000

## **Response to the National Competition Policy Review of Occupational Licensing in the ACT Building and Construction Industry.**

The following principles should be considered in developing any regulatory system.

That the regulatory system for builders, plumbers and electricians should be as simple as possible to reduce:

- confusion in public understanding
- administration costs
- boundary keeping by members of particular groups

but ensure public interest and consumer and community protection are adequately balanced against the risk.

Whatever regulatory system is implemented random performance audits are required to ensure set standards are reached or exceeded.

A sanction system should be put in place to encourage the proper operation of the regulatory system (eg. restrictions on work, further training). This system should be harsh enough to exclude repetitive under performing members of particular “regulated” classifications.

### **Review Issue 1**

Insurance companies could exert sufficient performance pressure, however there is a “lag” time between poor performance, the associated conflict resolution/arbitration/legal process and the improvement in performance or exclusion of the poor performer.

If a non licensed environment was to exist, one expects insurance companies and the other risk taker, the client, customer, would be seeking individuals and organizations with credentials and/or qualifications indicating the capability to perform the specific tasks.

Some more rapid feedback mechanism would probably also be required. This could be by way of insurance company inspectors or industry “certifiers” with personal responsibilities to clients.

This may however, become a defacto licensing system.

### **Review Issue 2**

Given the inter-relatedness of the three areas of occupations under consideration, there is good sense in a common approach administered under a single regulatory regime.

Independent expertise to ensure an appropriate regulatory environment would be required together with appropriate consumer, legal and community advice to

encourage positive outcomes for all involved. This multidisciplinary approach would ensure safety and worklevel standards across the industry.

### **Review Issue 3**

It is expected that good outcomes could be attained from an appropriately structured certification scheme backed by adequate auditing with appropriate sanctions applied for poor performance.

The arguments for licensing would seem best linked to public safety/health. Licensing under current arrangements has still not eliminated all instances of poor public health and safety situations, some still resulting in injury and death.

Option Four seems to be the most appropriate in today's economic environment and may result in improved outcomes. By giving bodies such as some of those listed the responsibility for performance of their members a raised level of awareness and an improved consideration of standards for membership would be expected to increase the performance levels of the industry.

It would be imperative to have strong monitoring/audit/sanction procedures also in place.

One major drawback to this multi regulator approach would be the potential for increased overheads and thus an unacceptable cost penalty on the consumer/customer or the general tax paying group if government subsidy applied.

### **Review Issue Four**

The feasibility of private administration of some form(s) of regulatory scheme would seem appropriate in the economic environment of today involving user choices and user pays in a market driven model.

Some form of government involvement through monitoring of audit data and the occasional spot checks of audits would ensure appropriate community and individual customer considerations were being addressed.

### **Review Issue Five**

Advisory panels by definition have no real power although if strong often have influence. Advisory panels under an appropriate overseeing group with the capacity to encourage improvement or recommend sanctions for poor performance may be useful.

The proposal as discussed may operate effectively in the ACT circumstances.

### **Review Issue Six**

There does not appear to be any single body that would currently have sufficient sectoral coverage and the involvement of the range of industry/consumer/community representatives.

On that basis, Option 3 therefore is the best approach given the ACT circumstances. An audit process as well as occasional spot checks of audits should ensure the reliability of application of Option 3.

### **Review Issue Seven**

Linking licensing to defined competencies existing or in development for education and training arrangement would appear to be an appropriate arrangement given current circumstances. However, the competencies approach to education linked within the Australian Qualitative Framework is simply the latest approach and thus specific educational outcomes in legislation or regulation often becomes dated with time and with changes of approach by later or alternative governments.

If a responsive regulatory regime is developed it should be able to cope with terminology changes.

Generally, the current educational requirements for licensing is appropriate. However, in today's building and construction industry, as in most industries, specialisation is often the most efficient operating mode. Given this system of industry operation there may be scope for some further specialised licensing in some of the current licensed areas.

There are many potentially effective and efficient operators currently unable to be licensed who could improve the competitiveness, efficiency and standards of some of the current industry practices. There could be some consumer confusion, however appropriate and adequate publicity and consumer awareness programs and sanctions for non/poor performance must be applied.

This should not be seen however, as support for the licensing of the many currently unlicensed trades such as carpenters, tiler etc. Much of the work undertaken within these categories is simply covered by adequate consumer protection arrangements currently in place.

### **Review Issue Eight**

Focussing the industry activity under broader licensing could be restrictive and not in line with current industry specialisation approaches.

### **Review Issue Nine**

Although not a business requirement, insurance should be mandatory for an industry, due to a minority of poor operators, which is not renowned for its integrity through various media publicity.

If a licensing or other regulatory system is in place, the community expectation is that the system offers some form of protection. For the sake of the whole industry, insurance must be mandatory.

### **Review Issue Ten**

See response in Nine.

### **Review Issue Eleven**

There is general agreement with the direction outlined for this issue.

### **Review Issue Twelve**

The general direction for this review issue appears sound.

### **Review Issue Thirteen**

Fees should be set on the principle of cost recovery, however some recognition of comparisons to other states should be taken into account. This could then be used as the benchmark to modify the operating costs of the ACT system to be reasonably near best practice.

### **Review Issue Fourteen**

Under existing arrangements many licence holders undertake little or no work year by year. Given the changes in technology, methodology, materials, and working techniques there appears to be a need for some form of continuing professional development not unlike that required by other professional bodies.

If a regulatory regime is re-established some recognition of current competence through continuing professional development should be mandatory. Some justification for continuing to be a non functioning member of a regulated group, it is suggested would also be required.

Continuing Professional Development should be expected under the regulatory regime and linked to yearly or at most three yearly renewal arrangements.

### **Review Issue Fifteen**

Renewal of license is possibly the simplest approach however, linkage to continuing professional development to ensure current competency expectations needs to be incorporated into the procedures.

### **Review Issue Sixteen**

Peer review has the potential to raise the industry awareness and responsibility for poor performance and also apply stronger sanctions than “third party” approaches have achieved to date.

## **Review Issue Seventeen**

Mutual recognition arrangements are sufficient provided:

- local legislation and regulations are recognised, understood and applied.
- sanctions resulting from poor performance in the ACT jurisdiction are mutually recognised and applied in original issuing state or territory.

# A.C.T. STRATA MANAGEMENT SERVICES

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*Mr Ryan  
in response to  
our paper*

*JTH*

*30/6*

*11/7/98*

Dear Sir,

## Residential Building Work Insurance

We thank you for the opportunity to comment on this most important discussion. As Body Corporate Managers we come in contact with work by builders on many complexes in this city.

It is our understanding that this Insurance was to give protection to the consumer. The concept was very good but unfortunately the implementation has left a lot to be desired. However with a little effort and some changes the original concept can be achieved.

Medium density housing, whether it be high rise or townhouse development seem to have been overlooked in the implementation of the original concept. From our experience we would like to raise the following issues.

### Insurance Cover for buildings exceeding three storeys

As set out in your discussion paper this type of building is becoming more and more common in Canberra. Protection must be given to buyers of Units on the upper floors the same as a small townhouse in the outer suburbs.

### What should be considered "residential building work"

This is an area which should be defined to cover all aspects of a development. Let's take a complex of say 20 townhouses. In the initial stages of planning it becomes obvious car accommodation must be provided should it be carports, garages or open space. Once the development has been completed it is difficult to make major changes. In many cases it may be not possible to make any change. During the construction of such a complex roadways are part of the initial construction, as well as fences, entrances which maybe of brick construction and so forth. It is our belief that all these should be part of the overall cover. Later we shall explain in more detail.

### The level of insurance cover

Unless the Act is to be reviewed regularly say every five years this has no real meaning. For instant a house of say 150 square meters being a four bedroom family room home with an ensuite plus double garages attached is very common place these days. Cost of construction of such a property would be about say \$ 115 000. If prices increased at the rate of say 5% p.a. after 12 years the price would be over \$ 200 000. That is without any adjustment for new concepts or improvements which may become necessary during that period. Obviously this part of the legislation can be eliminated as it serves no useful purpose.

*ag*

**Who is the builder.**

This is most important and we believe is grossly overlooked and not taken into consideration.

If we can quote from some recent incidents to show what the present consumer is up against.

**Case A:**

Two persons purchase a block of land and have it approved to construct say 7 townhouse. A builder is employed to carry out or supervise the construction. A builders permit is granted to a "Pty Limited" company and Insurance taken out. After three years the building starts to fall apart. First step is to locate the "builder". A search at the Australian Securities Commission reveal a company by that name has never been registered and has not a ACN. Enquiries at the Insurance company have no record of whom they gave the cover. The consumer purchased from the two persons who had title to the land not knowing they were not the licensed builder.

**Case B:**

Consumers purchase a townhouse from a company believing the builder who was doing the work was the developer. In fact the development was owned by a consortium of people comprising solicitors, a real estate agent and so forth, with the licensed builder holding a very minor share.

**Case C:**

A company purchased land and has plans approved to carry out a development. A second company takes out the license to carry out the work and a third company gives certificates for the work, engineering and etc. In some cases the second company and the third company are the same persons under different names. When some part fails, there is a web of companies to untangle to try and have faulty work corrected.

The cost of making a claim under these circumstances is prohibitive.

**How long should a owner have to make a claim**

The first part which should be cleared up is that the claim should be for any owner during the term of the cover not just the original consumer.

At present it is five years. In many cases it takes longer than that for faults to appear. Let's take the case of faulty bricks. In dry or drought conditions it may be some years before it becomes obvious that the bricks are unsatisfactory. Even when it has been established there is a fault in the manufacture it may take time before all the bricks show they were not manufactured correctly. The cost of proving this is horrendous far beyond a reasonable cost to a private individual. Even when class action is taken the cost to each member is high.

There is evidence to show that ten years is not unreasonable cover. Builders who purchase first class materials and carryout quality workmanship have nothing to worry about with an extended length of cover.

**How long should it take to process insurance claims**

This is a heading from your discussion paper. We believe the whole process of Insurance should be, and must be overhauled.

At present Insurance cover is placed with companies who are associated with the builders as outlined in your paper, such as HIA or MBA.



These companies are not at arms length. When a consumer tries to make a claim they are confronted with "the builder is a good bloke and is still in business" or "the builder will fix it don't bother us". You have to be very persistent to even get a claim form.

The first step all Insurance should be at arms length from the building industry.

Under the present system for a consumer to make a claim they are required to firstly approach the "builder". If you are the original purchaser you start to get the run around, however, if you are a second or third owner they do not want to even know you. Then you are required to have an engineers report, cost to the consumer, in most cases you have to have legal representation or you get flogged off.


Then there is the case of an excess. At present all claims have a \$ 500.00 excess. This requires the consumer to pay the first five hundred dollars on each and every claim.

Let us take the case of a builder who builds say twenty townhouse, all the same design with say timber balconies. The plans state hardwood timber. During the course of construction the "builder" decides to cut costs and construct them of say radiator and other timbers and puts a coat of paint on some of the timber. Three years later the timber starts to rot and fall apart. What has the builder to loose?

The consumer puts in a claim to the Insurance company who reject it saying the builder is still in business see him. An engineers report is commissioned and reports very poor workmanship, incorrect and inferior materials used etc. Legal action is taken. This takes years without any action by the builder who just ignores all correspondence. The balconies fall apart and become dangerous. The Domestic Insurance company does not want to know the member and declines to renew the Domestic cover. As a last resort the builder is forced to do some work but then "blackmails" the consumers into contributing money toward correcting his poor and faulty work. In the case of the 20 townhouses the excess stood at \$ 10 000 which the builder did not have to find even if the Insurance claim had been paid. This is not what the Act intended when it was first conceived.

Let's take the case when a developer, a company, purchases land to do a development of say 30 townhouse. Many of these Units are purchased at an early stage. Finance Houses in many cases insist on a certain percentage of units being sold before they will finance the project. Plans are approved and work commences. Units are sold at various stages. Many Units are completed to a high standard then the roadworks have to be constructed. This is at a latter part of the development. Due to many factors all of a sudden levels were not accurate and the roadways have to be compromised. Slopes to get into and out of some townhouses reach a stage where the fall is in excess of 30% some times on two planes. The requirement is no more than 17% on any one plane. An engineer gives a certificate and the work is passed by the authorities. However, the consumer is in a contract which he can not get out of. On a cold wet winter morning in July these roads are not fit or safe to drive a vehicle along. This should never have happened, but it does. We can introduce you to such an instant.

Under the present system common property is not covered by Insurance. This is a pity. Let us take the case of a development with say 20 townhouse. On the common property there are driveways and a roadway which allow access to each property throughout the complex.



Should a developer construct these roadways and driveway of concrete and cut a few corners the consumers have little or no recourse. Often we find that after a few years the concrete starts to crack and break up. When work is carried out to replace these roads after say 7 or 8 years what do we find? Little or no preparation, the concrete poured straight onto the clay with no steel reinforcement. In many case the concrete is only 50mm to 75mm thick. The cost of this can, and does run to many thousands of dollars. Yet the builder is not to be found or prepared to accept any liability. Should the Unit owners wish to take action this will take years and cost thousands with no result assured. Even if a verdict in favour of the Unit owners is obtained there is every chance the company would have been stripped and wound up. This is far from satisfactory.

It is not only road work, we have had some ghastly experiences with hydraulics, stormwater, sewers being poorly constructed and finished, electricity cables only 100mm to 300mm below the surface yet passed by the various authorities and the consumers left to pick up the tab.

We believe there is an answer to all these problems. These we hope will be considered.

1. All insurance to be with well established companies who are at arms length from the industry.
2. There is to be no excess on any claim.
3. All claims to be on the same claim form no matter which company provides the cover.
4. All claims to be handled by a tribunal where all participants are able to have their grievances heard.
5. The consumer is not required to approach the "builder".
6. The Insurance company to have full recourse to take action against any offending builder no matter where he is.
7. When a company makes application to carry out any work a full and proper disclosure of shareholding should be made.
8. Where any company has another company as a share holder the shareholders of that company to be disclosed.
9. Any shareholder with a holding in excess of say 10% of the capital is to be personally liable for any defective work or materials.
10. When a company makes an application for a permit or for Insurance cover it must provide its ACN. To be confirmed by the participants.
11. All work on common property of proposed Unit developments to be fully covered by Insurance.

We thank you for considering this submission. Should you require further information we would be only too happy to assist.

All cases listed can be identified for your further consideration.

Yours faithfully,

A.C.T. STRATA MANAGEMENT SERVICES



David Bowditch  
Director



**SUBMISSION**

ON  
DIRECTIONS PAPER: OCCUPATIONAL  
LICENSING IN THE ACT BUILDING AND  
CONSTRUCTION INDUSTRY

BY

THE HOUSING INDUSTRY ASSOCIATION  
ACT/SOUTHERN NSW

JOHN FUTER  
DIRECTOR – ACT/SOUTHERN NSW

AUGUST 4, 2000

## **INTRODUCTION**

The Association believes that licensing in the ACT building industry should be restricted to the current licensing system that covers builders, plumbers and electricians. There is no reason along economic or public policy lines to justify an extension of the current licensing system to other trades.

We believe that the current system of home warranty insurance tightens consumer protection and encourages acceptable standards of workmanship.

Voluntary certification amongst trade contractors and builders can offer industry operators the opportunity to increase skill levels and obtain better ratings with insurers. Certification can also reward high performing operators with marketing advantages.

The 'Review Issues' and 'Preliminary Findings' in the Directions Paper have been commented on individually with some overlap because of the similarities in the nature of the discussion topics.

## **COMMENT ON REVIEW ISSUES**

**REVIEW ISSUE ONE:** *Do home building insurance companies exert sufficient performance pressure such that self-regulation is feasible? Could they exert sufficient pressure if occupational licensing did not exist? Through what mechanism could insurance companies achieve this? Are insurers willing to do this?*

At present insurance companies evaluate builders' applications for warranty insurance on the basis of financial information (available assets etc.) and past performance levels. The strength of a builder's financial position and performance past is then used to determine a premium based on a rated category. If a builder's past performance and asset base is substantial then a lower premium can be offered as there is less risk of having to honour a claim.

Performance pressure is only exerted when a complaint has been made by a consumer that the builder did not either complete the works in question or provide services to a proper standard of workmanship. In this instance, an insurance officer normally contacts the builder about the complaint. If the builder disputes the claim by the consumer, then the builder is advised that the matter must be dealt with under the disputes resolution procedures outlined in the building contract. If the builder fails to resolve the dispute, or resolve the dispute within a reasonable period of time, or a finding is made against him/her in a court of proper jurisdiction, then a claim will be paid.

If a builder fails in his/her role to provide adequate standards of workmanship, then subsequent applications for insurance cover are refused.

In this respect the system provides some mechanism to sort out those that should not be operating. The public benefit as poor operators are refused a continuation of insurance cover and immediately identified.

Other methods of regulation already exist for consumer protection and assessment of work performance through the building codes and Australian Standards. Here the role of private certifiers is important.

In this regard, it is suggested that insurance companies are capable of exerting performance pressure in a self-regulated environment. Extension of occupational licensing therefore is not necessary to regulate a system that rewards good performance and prevents poor operators (or those in a high-risk category) from performing building work. A builder that engages trade contractors on a subcontract bases will choose operators that will assist them in meeting their obligations under the Building Act for standards of workmanship and ensure acceptable standards of quality that will stand them in good order with the home warranty insurers.

This is not to suggest that the current system of licensing for builders, plumbers and electricians in the ACT be disbanded. It is merely an indication that performance and quality can be achieved without reference to licensing. It does however indicate that there is no perceived need to extend licensing requirements to other trades.

A concern has been raised in the review with respect to self-regulation and the free movement of tradespeople between the States and Territories. This in itself is not a reason to initiate a system of licensing for trades persons in the ACT. There are many criticisms of systems in other regional areas within Australia, New South Wales for example has a system of licensing for many trades, yet matters with respect to quality still remain. If we were to accept that a system be implemented throughout Australia, we would suggest that more self-regulation should be implemented as a matter of choice.

The Association believes that an Insurance monitoring system provides an appropriate industry tool for output measuring. It sets standards of competence and penalises operators who fail to comply and rewards operators who continually deliver quality products.

**REVIEW ISSUE TWO:** *To what degree could approaches be harmonised with respect to these occupational groups? Should all of the occupational groups be administered under a single regulatory regime?*

The question suggests that there is some acquiescence with the concept that occupational licensing should be extended and whether the groups of licensees be administered under separate or a single regulatory regime. The review points out the problems with Boards and barriers to entry. It further suggests that licensing can lead to increased costs. We accept that criticism. We do not suggest that any current arrangements be disbanded, only that the status quo be retained.

The report further suggests that the main benefit of licensing is the establishment of entry criteria that ensures only qualified people will provide building services to a sufficient quality standard. This is not the case. Problems with respect to quality are more indicative of low profit margins and cutting corners to make ends meet in a highly competitive market. Again this problem is somewhat controlled with an audit system deployed at the project entry level when an application for insurance cover is issued.

Moreover the report recognises that tradespeople are free to adjust their inputs on the job and that licensing criteria do not imply that quality will increase. Once again tradespeople that do not perform will be subject to market forces and principal contractors will refrain from using their services if quality is not achieved.

An extension of licensing to building trades will add significantly to the cost of housing. The support system required to assess, justify and revoke licenses is demanding on resources.

To issue a trade license, education and qualification criteria must be established. Questions as to how the system will cope with the many capable tradespeople who are currently working in the industry must be raised. If an examination system or recognition of prior learning is introduced, significant resources will need to put forward. The system will also require an audit process.

Under Option Four 'co-regulation' it is suggested that industry bodies could be responsible for licensing of applicants. Industry bodies would have the same problems as a public sector entity dealing with the enormity of licensing tasks associated with assessment, auditing and disciplinary procedures. Any licensing system requires an inspection, policing and penalty system to ensure quality of both product and trades persons. There would also have to be a reasonable appeal system available for those tradespeople who believe that they have been unfairly dealt with. Moreover, industry associations may be in a dubious position with respect to disciplining their own members, particularly if they hold executive offices within the respective organisations.

**REVIEW ISSUE THREE:** *Should the schema require licensing, certification, or provide for both?*

Voluntary certification is seen as a viable option to licensing. A certification process encourages building industry operators to enhance skill levels and generally increase their status as 'quality' operators. There are currently courses and training providers in the industry that are capable of meeting the resource needs for a certification system.

The system would also be an advantage to insurance companies when assessing an applicant's qualifications for insurance cover. Although it would not operate as a sole test of ability, it would demonstrate that an applicant is dedicated to enhancing their reputation and skill level to undertake certain works.

Certification will be recognised by the public as a standard of ability to undertake building work. The review has indicated that it provides a member of the public with a choice with respect to price (ie. lower priced non-certified as opposed to higher price certified).

**REVIEW ISSUE FOUR:** *Is it feasible to consider the private administration of licences/certification? Would this involve licence/certification issuance and renewal?*

Administration of a certification scheme could be undertaken by quality endorsed training providers. Certificates of competency could be issued after course participants had completed all modules for a certificate course and renewed over time after certificate holders had completed refresher courses.

**REVIEW ISSUE FIVE:** *Should there be advisory panels instead of statutory Boards? What functions could advisory panels have?*

The issue of statutory boards and licensing has been discussed, however, the use of advisory panels drawn from industry bodies to set standards of competency for certification would be a useful method for ensuring quality training and identifying areas of needed skills.

**REVIEW ISSUE SIX:** *Are there any private bodies that have sufficient sectoral coverage and power and may be able (and willing) to accept responsibilities associated with a co-regulatory regime?*

As suggested, the Association does not support a co-regulatory regime. However, advisory panels presiding over a certification scheme would be an appropriate system for ensuring competency based certification training.

**REVIEW ISSUE SEVEN:** *Are current educational requirements for particular licences set too high, too low or just right?*

The Association does not believe that the educational requirements for licensing training in the ACT are an issue of concern.

**REVIEW ISSUE EIGHT:** *Is there scope for simplifying the number of licences by focussing licensing/certification criteria on core (and necessarily more general) skills and competencies rather than more specific skills and competencies?*

The idea of certification would be for members to enhance certain skill levels. It is envisaged that if they are already operating in the industry in a certain trade capacity then they may obtain additional specialist skills in associated trade tasks (ie. certified kitchen designer (CKD) or certified bathroom designer (CBD)).

**REVIEW ISSUE NINE:** *Should the Government regulate to require that mandatory insurance be a requirement for the holding of a licence for one or more building and construction occupations? If yes, to which occupations should mandatory insurance apply? Should builders continue to require mandatory insurance, given that it currently does not offer adequate consumer protection?*

Mandatory public liability cover for builders should be enforced. Home warranty insurance is available to those builders who have satisfied minimum requirements set by the insurance companies. It is compulsory under the Act for building work (as defined) over the value of \$5000.

The Association believes that home warranty insurance can offer adequate protection to consumers given the arguments outlined.

**REVIEW ISSUE TEN** *If insurance is mandatory should licensing be replaced by certification?*

The system of builder licensing in the ACT does not need to be changed. Certification can be offered independent of current licensing requirements.

**REVIEW ISSUE ELEVEN:** *Is it necessary to assess an applicant's 'business capacity' in order to address identified market failures? In most industries business capacity is determined by the market itself (ie. the person goes bankrupt) – why should the building and construction industry be any different?*

It is necessary to assess an applicant's business capacity in order to address issues surrounding market failure. In the residential building industry cash flow problems, non-paying clients etc. have the capacity to affect a builder's ability to meet certain commitments. Often builders need to have assets or funds to cover these problems. It is therefore imperative that insurance companies assessing applications for home warranty insurance consider business capacity.

However 'business capacity' should not be the sole test of an operator's viability. It is merely an indication of his/her ability to meet failures if they occur. Furthermore 'business capacity' does not give an indication of 'quality'. Other criteria must be deployed to ascertain quality and ability.

**REVIEW ISSUE TWELVE:** *Should there be standard disciplinary powers directed to unlawful, improper, negligent or unfair behaviour?*

The current powers of BEPCON to cancel a builder's licence should be retained. Other legislation including the Trade Practices Act outline penalties for unfair or misleading conduct.

**REVIEW ISSUE THIRTEEN:** *How should licence fees be determined? Should they be based on cost recovery, fees in other jurisdictions, or some other basis? Should licence fees be standardised across the building and construction occupations?*

Current builders' licence fees should be based on cost recovery only as it applies in the ACT. They should not be based on fees in other States and Territories as their costs will differ to our local regional costs.

As the Association does not support an extension of current licensing practices to other trade occupations, then there is no comment to make on standardise fee structures across building industry trades.

**REVIEW ISSUE FOURTEEN:** *Should ongoing occupational development be introduced and linked to licence renewal conditions?*

Occupational development can be introduced through a voluntary certification system. Renewal conditions can apply for upgrading of certification qualifications.

**REVIEW ISSUE FIFTEEN:** *Should licensing/certification include formal renewal rather than the issue of new licences/certificates of competency?*

Certification can be offered for a wide variety of specialist functions. Renewal can take place after refresher training.

**REVIEW ISSUE SIXTEEN:** *Should licences/certificates of competency be issued for longer periods when there are ongoing monitoring requirements?*



Certificates of competency should have to be renewed when either technology has changed or when a reasonable time period has lapsed since the time of acquisition. A monitoring system should have no bearing on the question of renewal as there is an argument to suggest that the holder of a certificate may not necessarily have been using the skills attained under the certificate on a continual basis.

**REVIEW ISSUE SEVENTEEN:** *Should appeals over a disciplinary action include review by a peer group?*

Peer group discipline should only occur in relation to a matter concerning their membership of an industry association.

**REVIEW ISSUE EIGHTEEN:** *Is reliance on mutual recognition sufficient to allow the free movement of building and construction trades people into and out of the ACT?*

Movement of trades people outside the ACT is a matter that has already been discussed previously. The Association is not interested in basing a licensing system on models that may exist in other regions unless a system of self-regulation is set as a model.

## **COMMENT ON PRELIMINARY FINDINGS**

**PRELIMINARY FINDING ONE:** *Licensing criteria related to age potential licence holders should be removed from the review legislation.*

The Association has no argument with the above.

**PRELIMINARY FINDING TWO:** *Licensing criteria should be directed at the performance of appropriate building and construction techniques and should not address commercial issues such as business capacity.*

The Association agrees that current builders' licensing should be based on technical performance rather than business capacity. Business capacity is only relevant to the question of insurance.

**PRELIMINARY FINDING THREE:** *Licensing criteria related to general character of potential licence holders should be removed from the review legislation.*

The Association believes that issues in relation to character should be retained in the legislation to prevent applicants such as those previously convicted of fraud, misrepresentation etc. from obtaining a licence.

**PRELIMINARY FINDING FOUR:** *Licence qualifications should be removed from the review legislation and incorporated in the regulations.*

The Association does not oppose this finding for current builders' licence qualifications.

## **SUMMARY OF HIA VIEWS:**

- That insurance companies offering home warranty cover exert performance pressure on builders to enhance the delivery of acceptable standards of workmanship.
- That industry licensing should be restricted to the current system.
- That voluntary certification will assist and encourage industry operators to enhance skill levels for marketing purposes and insurance ratings.
- That certification can be administered and controlled through industry advisory bodies and quality endorsed training organisations.
- That issues related to mutual recognition should not impact on a system which has the necessary attributes to meet the needs of the ACT.

**Submission**  
**by Louise & John Elliott, 22 Marrakai St, Hawker 2614**  
**to the National Competition Policy Review of the *Building Act 1982*,**  
**the *Electricity Act 1971*, and the *Plumbers, Drainers and***  
***Gasfitters Board Act 1982***  
**on Occupational Licensing in the ACT Building and Construction Industry**

As residents of the ACT, we wish to argue in the strongest terms against further deregulation or self regulation of the building industry in Canberra. For the public good we seek an improved legislative and regulatory framework, including licensing for builders, a Building Tribunal and a greater role for the insurance industry.

We address most of our comments to the *Building Act 1982* because we have experienced major difficulties with builders over the past 18 months, and significant difficulties in enforcing our contractual and legal rights under the Building Act and its regulations.

**Key problems**

- Soft regulation in ACT has resulted in near immunity for dishonest builders.
- Homeowners have little or no way of gauging a builders trustworthiness.
- Homeowners have no way of gauging a builders liquidity.
- Homeowners generally do not have the ability to gauge the quality of work.
- Dishonest builders are damaging the credibility of the industry.
- It is difficult to "lock" dishonest builders out of the industry.
- Dishonest builders leave a dangerous building legacy behind them.
- Penalties for dishonest builders provide no disincentive
- There is no external, independent and reliable accreditation of "expert" builders.
- Builders do not need to carry compulsory "all points" indemnity insurance.
- Builders do not have to hold qualifications or attend industry courses.
- Builder Licensing does not ensure that the person doing the building is licensed.
- "Ghost" builders are trading on other people's licenses.
- Building Subcontractors are not under the licensing umbrella
- Licenses may not be immediately withdrawn on a serious complaint.
- The compulsory Home Warranty insurance is not meeting expectations.
- Home Warranty Insurance fends off major claims by saying it's a breach of contract.
- There is a conflict of interest when the builder pays for Home Warranty insurance.

- Insurance take too long to process claims
- Insurers do not vet contracts when accepting insurance
- There is no public list available detailing complaints against builders.
- There is no independent home warranty insurance appeals mechanism.
- There is no enforceable building complaints tribunal/dispute resolution.
- Prohibitive cost of legal action to enforce contractual rights and insurance claims
- The Small Claims Court dollar limit is set too low for building matters.
- Current legislation outlining the Homeowner insurance requirements are inadequate.
- Current legislation allowing PALM to police the industry is inadequate
- The building controller lacks the power to take decisive action.
- Private certification has increased the cost of building, but decreased inspections.
- Private certification does not allow selecting BEPCON as an inspection choice.
- The "training levy" is an additional and unnecessary tax.
- PALM do not take seem to check plans with due diligence.

### **The failing of deregulation in the building industry**

From our experience and talking to many other homeowners, it is clear that the already loose building legislation has failed to adequately protect the consumer. The legislation not only allows poor licensed builders to continue operating but also makes the market accessible to "builders" with no license and often no qualifications. This is resulting in a legacy of sub-standard work and an extremely deep mistrust of the industry by the public. The guarantees of quality that the consumer has expected and the support mechanisms to recover from bad work have proven to be inadequate. To suggest that further deregulation would improve competition and somehow "maintain" quality is scandalous. The opposite case is already plainly evident, the loose legislation is providing a playground for crooked operators.

Unfortunately, because of the large amounts of money involved, "building" is a lucrative industry for the dishonest. If the intent is there, dishonest "builders" can easily exploit the loopholes in the ACT legislation and engage in almost legal robbery. The practicality of enforcing building regulations means that in the most part these can be ignored too.

### **Market forces fail to weed out dishonest builders**

Building work on a home, either new or extensions, involves a person's most major asset. This cannot be regarded as just another material purchase where "buyer beware" abdicates government responsibility. A builder intent on dishonest representation can easily bypass the few checks that are available to the homeowner when signing a contract.

It is not reasonable or realistic to expect homeowners alone to exert "market forces" on dishonest builders and remove them from the industry. The information required to check a

builder's history is kept almost as a secret within the industry and government (because of libel laws). Neither are victims generally in a position to "advertise" their problem, they are often exhausted by the event and are in serious repair mode. Even when a dishonest builder has claimed many victims this information is largely hidden from the public and officials. It is unconscionable to say that market forces will clear out the dishonest builders when plainly they do not.

### **The legacy of bad work**

The poor quality, sometimes dangerous work performed by the operator is often hidden, and the owner is no position to query it. However the results of this dishonesty has the potential to seriously affect a person's life for many years. The government has a responsibility to provide a framework where that building work is done correctly for all the people that come into contact with that building – for the public good.

### **Damage to the industry**

Since experiencing our own building difficulties, we have encountered numerous other consumers who've had problems with builders but who have either been unwilling or unable to redress their problems. We believe there is a substantially unrecognised problem with building quality in Canberra.

An indication of the extent of this hidden problem can be gauged by a survey of a team of eight people in my government office. Four have had building problems, three of which were major (costing tens of thousands), two of those were unable to recover losses, the third (us) only a percentage recovered after battling the insurance for many months.

The previous team I was in and the team before that also had horror building stories, so this is not an isolated sample.

We believe it is in the interests of both consumers and a vital building industry that there be a strong licensing and quality control system, and that deregulation and self-regulation will not achieve that purpose. Instead, a strong licensing system deters those who are unqualified or dishonest, protects the competent builder by retaining consumer confidence in the local building industry, and reduces insurance claims and consumer losses.

### **Private certifiers failing to deliver**

In our experience, the new out-sourced system of private certifiers has not been a deterrent to incompetent or dishonest builders, nor has it improved our ability to manage the performance of builders. There has even been rumour of a dishonest certifier, so the guarantee of accountability is already in doubt. Our experience with private certifiers is that it has added costs to the building experience, and actually provided less monitoring of the building process. In fact we have found that when there are difficulties, BEPCON get called in to do the inspections and write reports – making one wonder about the value of the certifier.

### **Not possible to gauge a builder's liquidity**

The dishonest operators are well versed in the loopholes of the law and seek to exploit them. These "builders" aim is to extract as much money from the homeowner as possible while doing as little work as possible. Quality and adherence to building standards are not an issue if they can save a dollar. Legal action although the obvious way to address a breach of contract, and an avenue one would expect to provide some redress, turns out to be generally futile. These dishonest builders use as a weapon to head off such action the fact they have no assets. They do not carry an insurance that can be claimed against either. The protracted nature and extreme cost of litigation only costs the victim more. If pursued these dishonest "builders" having divested themselves of any assets use Insolvency as their next refuge, where again they cannot be touched. Consequently they are able to move from one job to the next causing untold grief, stress and loss, safe with the knowledge that there is little or no record of their actions to warn the following victim and they will not be sued.

A builder with no assets obviously does not have the capacity to take on a large building job. Even if the owner does not see proof of liquidity, then at least the insurance company should be able to demand it.

### **Self Regulation/Deregulation etc.**

Self-regulation is out of the question because many builders and certainly no insurance companies act in the interests of consumers. They are there to profit as much as possible. The MBA and HIA are industry bodies supported by dues from fellow builders. It is not in the bodies interest to promote competition that would see builders incomes fall. It is the industry bodies duty to lobby for issues that would benefit members. It is hard to see how this could help consumers achieve better value.

When it comes to monitoring their members work, the practicality seems to be that it is embarrassing for industry bodies to question the quality or conduct of a fellow builder. Our experience with HIA/HOW was that despite the well documented failings of the builder, and the known record of him with consumer affairs, that they on principal believed everything his licensed compatriot told them. Despite the evidence before their eyes we had to disprove each of the compatriots wild stories. There was a huge conflict of interest in this case because it was in HIA/HOWs financial interest to believe the builder and not acknowledge our claim.

If bodies like the HIA/HOW were solely responsible for builder conduct and propriety, I think consumers would find the quality of building work overall would deteriorate, and they would have little or no recourse. This opinion is based on experience. If we had not had the service of BEPCON to confirm our claims, HIA/HOW would have disputed the claim endlessly.

Self certification is not an option either if the plumbing industry is anything to go by. There is plenty of anecdotal evidence to suggest that self certification in the plumbing industry is leaving a legacy of sub-standard work which conscientious plumbers are finding when they are called in for repairs. This sort of remedial repair work by consumers is a huge additional cost. Rather than deregulation reducing costs they have in fact increased them. There is no

reason to suggest that building industry would be any different. Even with the best builder, mistakes will be made. How can self assessment possibly find these human errors? Only inspection by an external party will provide a different perspective and minimise these problems. There is no doubt that comprehensive inspection is a necessity.

With self regulation/deregulation/certification the onus is on the consumer to evaluate the work. Consumers do not have the knowledge and skills to be able to assess whether the work meets Australian standards. It is quite unreasonable to expect that they can offer a quality evaluation. Even if they do find problems they are likely to be contested by the "professional" builder who knows better (?). Currently the use of private certifiers has not provided a solution. They do not inspect every step of the building work; they do not become involved in contractual or quality matters; they only check parts of the work; by the time they become involved, sub-standard work can be hidden or irreversible.

### **Quality builders and a safety-net first**

It is clear to us that the status quo is not a satisfactory outcome either. There is a definite need to improve the legislation in terms of what is expected from a builder, and to provide administrators with real powers to enforce the legislation and protect the consumer. How does an authority working within the law control a builder working outside the law? The answer is to make the legislation comprehensive enough to push dishonest builders outside normal building boundaries, and most importantly enforce the legislation promptly if breached.

Legislation relating to the insurance provisions is also woefully inadequate. Insurance provides a level of security that consumers expect. The claim by insurance companies that improved insurance conditions would cause a huge number of claims and force the premiums up is only true with the status quo. If the government and industry were able to weed out the offending builders, and the insurance took a more proactive evaluation when issuing the policy, obviously the claims would be less. The premiums need not rise. In fact insurance companies may be able to offer no claim bonuses to promote good builders.

The important principle underlying competition is that we want good competition between builders not between crooks. First we must eliminate the dishonest "builders" and then allow competition to flourish not just on price but quality.

Firstly we need to define the requirements of the builders we want to see in the industry. They should be -

- Properly qualified.
- Licensed
- Comprehensively Insured
- Have adequate financial backing
- Have a work history open to inspection

We believe that the government needs to continue supervising a licensing system with the benefits of improved legislation to make it more effective.

The licenses should be issued having mandatory qualifications, so that the consumer is assured that the builder is competent. The current cross border licensing arrangements need to be scrutinised so as to maintain quality within the ACT. The cross border arrangements

have caused loopholes in the system which do not benefit the consumer but benefit dishonest builders. This arrangement should be reviewed to ensure minimum qualifications are maintained.

The consumer expects that the licensed and qualified builder they have hired will actually work on their house. Currently this is a farce. Ghost builders are free to operate and because the legislation tries to allow for the existence of building companies, this allows loopholes to exist where unlicensed builders are able to operate a licensed company. I really cannot see the logic in giving a company a license when a license requires a qualification. Obviously the company cannot have a qualification, only a person can. The company may be made up of a number of qualified people, or not, but the individual people need to be held responsible for their work. A company license releases the individual from their responsibility which must result in poorer work.

Another flaw in the system is that subcontractors can work on the property without any qualifications. The licensing legislation should be altered to ensure that any person engaging in building work must hold a license. Hiring a licensed builder is wasted if he hires inept subcontractors. While it might be argued that it is the builders responsibility, it would seem fair that the builder should also be able to rely on a licensing system that assures the subcontractors are competent.

It should be a condition of the building license that the builder holds comprehensive building insurance. It should not only protect the builder against law suits, but also provide the consumer with a resource they can claim against in court, that allows for adequate compensation. The current practice of the builder hiding behind no assets is devastating to an owner who wishes to seek compensation for a broken contract.

The current compulsory home owners warranty is inadequate and the legislation needs to be tightened. The wording and definition of "statutory warranties" is poor allowing easy outs for the insurance company and leaving the consumer who had expected basic guarantees, without compensation. For example the wording that if there is no completion date a breach of warranty would be not finishing in a "reasonable time". This is far too vague and difficult to claim. The insurance company could argue endlessly on what this means. The legislation does not impose any service level requirements on the insurance company. Where as a government body has standards of reply, HOW had none that we were aware of. Our claim was rejected without adequate explanation, a considerable time after lodgment.

It is clear that there need to be a complaints/appeals body that oversees the compulsory home insurance vendors, with authority and the power to force decisions. The current system does to meet consumer expectations.

It is important that for a healthy building industry an adequate and comprehensive insurance system exists. If the builders held compulsory professional insurance and the home warranty insurance was made to cover all that the builders professional insurance did not cover (a catch all), then the consumer would achieve an adequate safety net. Obviously the onus would be on the insurance companies to keep a very close eye on the builders. If they had reason to refuse insurance, then this would cause the builder to be unable to lodge plans (under existing legislation) and would provide a secondary layer to purge the industry of dishonest builders.



An existing problem with building disputes, is that the ACT does not have a body set up to arbitrate them. This is an essential element of consumer (and builder) protection. At the moment dishonest builders can use this loophole to indefinitely delay a project, not wishing to resolve the matter. We have experienced this, and having no accessible means of having the problem arbitrated and work resumed is very upsetting. The building dispute needs to be heard in a reasonable time (say one week) by a specialist government building disputes arbitrator, and the resolution needs to be binding. Having building stop with no solution available is not only traumatic for the consumer but a great injustice.

Another significant problem when things go wrong is the huge cost of litigation. Currently most building problems will cost more than \$10,000 to correct which is the limit of the small claims court. During our recent difficulties our solicitor quoted \$15,000 if we wanted to take the insurance company to court, and we would also have to pay their costs if we lost. I have spoken to numerous people who have not had the resources to enforce their rights in building disputes. This financial reality is used by dishonest builders to discourage legal action against them. This situation can hardly be regarded as just. There is a definite need to have more affordable access to justice. There are two possible ways of doing this. One is to raise the limit of \$10,000 at the small claims court. From experience a reasonable figure might be \$40,000. Another is that the compulsory home warranty insurance must pay for your legal costs (as part of the catch all). Either way this is an important step in cleaning up the industry and making the dishonest builders accountable. Certainly legal redress should be an option where as it is mostly impractical at the moment.

When signing a building contract the owner has only certain checks on the builder that are available. Even checking the builder's references is fraught with danger, as the builder gets to choose them (and obviously he chooses good ones). It is evident that there needs to be a central complaints system that is accessible by the public. If a builder has had complaints against them to the government, then the public should have access to them so that an informed decision can be made about hiring the builder. To be fair the results of arbitration should also be available to help in the decision. Why is it that these complaints are such a secret? This attitude helps dishonest builders flourish as it maintains their anonymity. Obviously checks need to be in place to ensure fairness in the process, but there is no doubt the information should be available and the government should administer it.

### **Competition follows**

It is clear that dishonest builders are not good value to the consumer. They may appear cheaper during the quoting phase, but as we have experienced, they cost considerably more in the long run than a good builder. It is unreasonable to expect the consumer to make this distinction or to judge. Government has an obligation to ensure qualified and competent builders are licensed to do work, and it is licensed builders who actually do the work. The insurance companies need legislation to make sure their cover meets consumer expectations and consequently have a financial interest to make sure dishonest builders are removed from the industry.

The purpose of deregulation is to increase competition and consequently to reduce cost to the consumer. While there are dishonest builders competing, this goal cannot be achieved as they force the ultimate cost to the consumer up. The building industry is a rare case in which

increased regulation actually is required to force the dishonest builders out. Initially doing so may appear to increase the cost of building (based on quotes) but in fact will reduce the actual cost to the consumer.

Once the legislative framework is strong enough, we should see qualified and competent builders competing on an even playing field, and the outcome for the consumer will be lower real costs.

Increased legislation = quality competition = lower building costs

There is no case for deregulation and the "choice" of sub standard work. Just as when you buy a car there are legislated quality expectations, why should a person buying a house, costing considerably more, not have the same quality expectations. We don't let companies build defective cars because they are dangerous – We shouldn't let dishonest builders make defective houses either.

#### **In relation to the review issues**

**Review Issue 1.** From our experience as consumers, building insurance companies do NOT exert sufficient performance pressure to make self-regulation feasible. Frankly, we would not trust them to be the sole mechanism to achieve this, but they could provide certainly play a part in providing a barrier to poor performers.

**Review Issue 2.** A single regulatory regime would appear to be a more efficient use of resources and would assist in dealing with problems which cross over the occupational groups. It would also provide a consistent approach.

**Review Issue 3.** Licencing is essential – a scheme that allows unqualified, ie uncertified builders to operate, is unacceptable and dangerous. Certification may add value if it provided the mechanism for third parties (such as insurance companies) to indicate past performance but would be insufficient on its own. In other words, if a builder had to be able to obtain insurance in order to be certified, but was refused insurance because of past performance, this would not preclude him from operating, but would be a strong indicator to consumers to beware.

**Review Issue 4.** Private administration of licences/certification should remain the government's responsibility. Outsourcing such a task is merely to add an additional layer of complexity and room for error. Of greater concern is that it necessarily removes or reduces part of the government's accountability to the public and relies upon excellent contract management skills to supervise private certifiers. At a seminar this week, I heard from an official from the Australian National Audit Office that such outsourcing reduces government accountability in favour of cost efficiencies. I would argue that this situation contains too much risk of significant harm for the consumer and that the government should retain this responsibility.

**Review Issue 5.** Unsure whether advisory panels would be more advantageous than statutory boards. However, would support Option Three as the preferred approach. The critical issue for consumers is that the regulator have the power to enforce legislation and regulations; we have argued above that this is not currently the case with the building controller. In addition,

there should be an appeal system against the regulator's decisions, presumably to the Minister. An advisory board could not provide an appeal mechanism because it would be without the power to enforce any findings. The role of such a board could include market research, review of case studies and decisions for equity and consistency, consumer satisfaction research, education of consumers and builders and other strategies to improve quality services. In this case, it would appear more appropriate for an advisory board to report to the Minister instead of the regulator.

Review Issue 6. Co-regulation would be undesirable.

Review Issue 7. The educational standards should require qualifications. Experience alone is insufficient. From our point of view, problems have arisen more from loopholes in the system itself than from the standards. In fact, consumers are largely unaware of the different licences needed for different jobs until they come into contact with government officials (ie. When seeking approval for building plans) and rely upon their advice about which licence is required.

Review Issue 8. The licencing umbrella should cover subcontractors. It may be general, but provides a mechanism to stop poor operators. There would seem to be a greater need for education of consumers about the different licences and how to choose the appropriate level of service. In fact, as a consumer I had expected that all builders met a sufficient level to meet my needs, but a series of competency levels would also seem sensible given the possible range of building projects in the market place, from thousands to millions of dollars. If anything, we would prefer the skill level to be raised.

Review Issue 9. Yes. And the legislation underlying it strengthened so that it does offer consumer protection. Again, the problems we have experienced are largely a result of inadequate auditing of building work as it progressed. Making an insurance claim after the fact can be impossible. We do not accept that the new system of private certifiers is adequate protection of building work as we have already experienced a situation of poor quality work (and subsequent bankruptcy) that will have to be rectified by insurance.

Review Issue 10. No.

Preliminary Finding 1. This would seem sensible.

Review Issue 11. Agreed – the insurance companies could take on this role.

Preliminary Finding 2. Agreed. But consumers need access to advice on how to assess a builder's capacity. What would aid consumers is a more comprehensive standard building contract for the ACT which included performance clauses on reporting and consulting with customers by contractors to improve communication and include it as a standard contractual obligation. Business capacity should be monitored by insurance companies.

Preliminary Finding 3. Disagree strongly. People with a criminal record relating to fraud or previous offences against the Act should be excluded from gaining a licence. It is hard enough to get such people out of the system without allowing them to keep on practising regardless of previous behaviour. Agree that criminal offences that would not affect the possible compliance with the building contract should not be a barrier.

Review Issue 12. Yes, uniform standards and powers would seem appropriate:

Preliminary Finding 4. Agreed. This would be a more flexible system, able to be updated when necessary.

Review Issue 13. They should not be set at a level that should impact on the price of building.

Review Issue 14. Ongoing occupational development would seem appropriate as new techniques and materials and standards develop. Period renewal would appear to have advantages.

Review Issue 15. Probably – it would add a layer of control.

Review Issue 16. This may be appropriate, so long as there are reviews or mechanisms in place to deal with deregistration for non-performance.

Review Issue 17. Peer review alone should not be able to overturn a registrar's decision. It could be part of a review providing advice to the Minister, as discussed previously, but should be balanced with consumer and other industry views. It would seem to have inherent danger as a lobby group against the registrar, to be questioning both the competency of the registrar to interpret the rules and perhaps the actual standards. Also, peers would presumably not have expertise in proper procedure. In balance, the Appeals Tribunal would be preferable.

Review Issue 18. Mutual recognition should not lower the standards of ACT licencing. There is a strong case to review this policy. It is of concern at the moment as it may be used as a loophole for an ACT-barred licence holder to reapply for an ACT licence on the strength of a NSW one.