



GOVERNMENT RESPONSE

TO

**THE FINAL REPORT ON THE NATIONAL COMPETITION POLICY REVIEW OF
OCCUPATIONAL REGULATION IN THE ACT BUILDING AND CONSTRUCTION INDUSTRY
CONDUCTED BY THE ALLEN CONSULTING GROUP**

OCTOBER 2000

***“A National Competition Policy Review of the *Building Act 1972*, the *Electricity Act 1971*, and
the *Plumbers, Drainers and Gasfitters Board Act 1982*”***

<p>Conclusion One</p> <p>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.</p>	<p>Noted</p>
<p>Conclusion Two</p> <p>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.</p>	<p>Noted</p>

<p>Recommendation One</p> <p>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.</p>	<p>Agreed</p> <p>The option of combining the provisions of this new Act with the provisions of the <i>Construction Practitioner’s Registration Act 1998</i> will be considered in the implementation of the review. One Act for the regulation of all occupational groups in the construction industry in the ACT would allow consumers and the industry to better access the relevant legislation and ensure greater consistency across the industry.</p>
<p>Recommendation Two</p> <p>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:</p> <ul style="list-style-type: none"> • builders; • electricians and electrical contractors; and • plumbers, drainers and gasfitters. 	<p>Agreed</p> <p>The Registrar would have the power to determine</p> <ul style="list-style-type: none"> • whether an applicant had appropriate qualifications for a licence, • whether a person was eligible to apply for a licence due to having been convicted of certain offences or under disciplinary actions in the ACT or another state, • the imposition of restrictions on licenses, • whether a breach of a technical standard was of sufficient magnitude to warrant licensing disciplinary action, • the extent of licensing disciplinary action, • the appropriateness of certain courses of training, • which type of qualifications will be established as the standard acceptable for a licence. Acceptable qualifications requirements would be located in the Regulations. <p>Advisory panels would be requested to provide advice on training and licensing issues and would select one member with appropriate technical qualifications to participate in any potential disciplinary investigations.</p>

<p>Recommendation Three</p> <p>The aim, as far as practicable, should be for the harmonisation of licensing criteria and administration between the different occupational groups.</p>	<p>Agreed</p> <p>The Government shall seek to harmonise entry criteria, assessments, disciplinary criteria and appeal mechanisms between the different occupational groups. There appears to be no clear rationale why licensing of one occupation should be treated in a different manner from the other occupations.</p>
<p>Recommendation Four</p> <p>Licensing criteria related to the age of potential licence holders should not be included in the new Act.</p>	<p>Agreed</p>
<p>Recommendation Five</p> <p>‘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.</p>	<p>Agreed</p> <p>Where a course is set as the standard to be reached for a certain class of licence and those business elements are voluntary or elective, business capacity will not be required as part of the licence. However, where the Registered Training Organisation is unable to provide a certificate of attainment without the business course and the course accords with nationally accepted training standards, then business capacity courses will be required in the ACT.</p>
<p>Recommendation Six</p> <p>Licensing criteria should not include capacity criteria in addition to the performance-based educational criteria.</p>	<p>Agreed</p> <p>Capacity criteria here refers to physical capacity, English language skills or business skills criteria. These will not be transferred to the new occupational licensing Act.</p>

<p>Recommendation Seven</p> <p>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.</p>	<p>Agreed in principle</p> <p>The principle of this recommendation is agreed, however, the regulatory method to achieve this outcome will not be the same. “Fit and proper person” provisions are now generally replaced with ‘ineligibility to apply provisions’. A person will be ineligible to apply for a licence if they have been convicted of an offence involving fraud or dishonesty, or if they are subject to disciplinary action, bankruptcy or winding up procedures.</p>
<p>Recommendation Eight</p> <p>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.</p>	<p>Agreed</p> <p>Through the creation of one licensing Registrar across the three disciplines and through published licensing and disciplinary policies, the ACT Government will attempt to provide more consistent disciplinary outcomes. For example, on the advice of relevant advisory panels, policies on appropriate licence cancellation periods may be determined. During this period, the person will be considered to not be eligible to apply for a licence. Better documentation of the investigation and the reasons for a decision may lead to fewer appeals, or at least a clearer basis for a decision.</p>
<p>Recommendation Nine</p> <p>A system of demerit points should be adopted, with increasing penalties based on number of major/minor defect or failed 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 failed inspections are incurred by the same individual within a set period of time.</p>	<p>Agreed</p> <p>Consultation is required with advisory panels to determine what number of serious breaches within what time period will result in an automatic show-cause action or inquiry. This element of the Recommendation will not be implemented until such consultation has been undertaken.</p>

<p>Recommendation Ten</p> <p>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.</p>	<p>Agreed in principle</p> <p>The introduction of ‘on-the-spot’ fines can lead to increased subjectivity in the regulatory system. Further consideration of appropriate mechanisms for ‘on-the-spot’ fines will be required prior to their introduction.</p>
<p>Recommendation Eleven</p> <p>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.</p>	<p>Agreed</p> <p>The power to issue an order to rectify work will be located in the current operational Acts, as this is appropriate for operational powers such as that of the Building Controller. Failure to comply with an order to rectify work will constitute an offence under the licensing Act and the licensing Registrar may take action.</p>
<p>Recommendation Twelve</p> <p>Licence qualifications should be removed from the review legislation and incorporated in regulations.</p>	<p>Agreed</p> <p>Licence qualifications for a class of licence holder will be specified in regulations attached to the licensing Act. The types of work a class of licence holder is permitted to do will be moved from the Building Act and Electricity Act into the Building Regulations and into new Regulations to be created for the purposes of the Electricity Act. This will allow them to be easily updated to reflect current regulatory trends.</p>

<p>Recommendation Thirteen</p> <p>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.</p>	<p>Agreed in principle</p> <p>This recommendation will require further consideration of appropriate fee levels, the impact of this fees policy on industry and on maintaining competitiveness with NSW.</p>
<p>Recommendation Fourteen</p> <p>There should be no requirement for ongoing professional development as a requirement of holding a licence.</p>	<p>Agreed</p> <p>This recommendation is agreed, subject to the implementation of Recommendation Sixteen.</p>
<p>Recommendation Fifteen</p> <p>Licences should be issued indefinitely, subject to periodic renewal.</p>	<p>Agreed</p> <p>It is proposed that licences be renewed every three years. Renewal notices will be distributed to addresses on the Register of licence holders. Licence holders would be required to confirm that they still reside at that address and that they wish to continue to hold a licence. Licence cards will then be issued on the basis of response to this request. After a certain period of time, (proposed to be six months) any persons not responding to the request for renewal of licences will be removed from the register and will not be licensed from that time forward.</p>
<p>Recommendation Sixteen</p> <p>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.</p>	<p>Agreed</p> <p>The power to ‘call in’ licence holders will be limited to circumstances such as, for example, when the new electrical Wiring Rules were introduced. Calling in may range from requirements to attend an information session to requirements to complete a short course. Whether licence holders should be ‘called in’ will usually be a matter for advice from advisory panels.</p>

Recommendation Seventeen

Appeals on strictly technical matters 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 matters should continue to be to the AAT.

Not Agreed

This proposal is similar to the mechanism for the Building Review Committee (1972-1992), which was abolished as being ineffective and was replaced with the Building Controller. Customer feedback has suggested that industry is more satisfied with the current model as more disciplinary action is undertaken.

It is proposed that a panel of three people with qualifications of the same level or above will conduct an investigation of the alleged breach (prior to the decision of the Registrar). At least one person on this panel will be a (rotating) representative of the relevant advisory panel. Once the investigation panel is satisfied that a technical breach has occurred, they will present the evidence in a report to the Registrar. The Registrar will determine, on their advice, whether the breach is sufficiently serious to warrant disciplinary action and will make a decision as to what type of disciplinary action will be taken. All steps in this process will be appropriately documented in case of later appeal.

This system replicates that in other States, where the local level gathers information and the State level takes the disciplinary decision.

The decision of the Registrar will be then appealable to the AAT. It appears that the last part of the recommendation assumes that the AAT is not capable of deciding technical matters. The performance of the AAT does not support this view. The relevant advisory panel would be available to give advice to the AAT if requested.

<p>Recommendation Eighteen</p> <p>The new Act should not require that insurance be held as a condition of any licence.</p>	<p>Agreed</p> <p>Under the new licensing legislation, licence holders will not be compulsarily required to hold insurance, apart from requirements for Housing Indemnity Insurance under Part Va of the Building Act. However, public liability and product liability insurances are considered sound business practice to protect against damage to individuals or property as a result of negligence and would be strongly advised.</p> <p>The policy to not require insurance will be reviewed in due course to consider its effectiveness and its impact on industry.</p>
<p>Recommendation Nineteen</p> <p>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.</p>	<p>Agreed in principle</p> <p>This recommendation is agreed in principle, although further consideration of roles and responsibilities is required to bring this into effect. Effective consultation with insurance providers will also be required.</p>
<p>Recommendation Twenty</p> <p>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.</p>	<p>Agreed</p> <p>This recommendation will require further consideration of the costs and benefits of various styles and scope of powers of the insurance ombudsman. Consultation with industry, particularly insurance groups, should be undertaken before any new model is set in place.</p>

<p>Recommendation Twenty One</p> <p>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.</p>	<p>Agreed</p> <p>A plain English guide to constructing or renovating a house is currently being prepared by BEPCON. It will include information on hiring a builder and a certifier, potential additional costs involved and complaint mechanisms. The guide will also provide information on consumer rights under general consumer protection laws.</p>
<p>Recommendation Twenty Two</p> <p>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.</p>	<p>Agreed</p> <p>The slow response time of the referral mechanism means that this recommendation is not reflective of the practical reality of the competency assessments. However, the referral mechanism must be utilised if it is to be effective and will be taken as an option where no more effective solution may be determined.</p>
<p>Comment</p> <p>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.</p>	<p>Agreed</p> <p>The ACT is developing new proposals for standardising application systems which may supplement the intention of disciplinary actions.</p>