

Consultation Paper and Information Sheet July 2019

Background

What's changing?

Recent amendments¹ were made to the *Building Act 1993* to:

1. provide for the registration of **building trade contractors and sub-contractors**; and
2. the licensing of **building employees**.

A registration or a licence will be required to perform certain building work which will be prescribed in building regulation ('**prescribed work**').

When will the change commence?

The general framework for the new registration and licensing schemes will commence from **1 September 2020**.

To have effect, the new framework will require building regulation to be made.

This regulation will:

- prescribe building work which requires a registration or licence to perform;
- who will need to be registered or licensed to carry out this work; and
- the requirements for registration and licensing.

While the new building regulation required is likely to be in place by 1 September 2020, to give industry a chance to prepare and plan for change, the regulations could commence later in 2021. A consultation question is included at the end of this document to seek your views on how long industry needs to plan for this change. Please refer to Part 3 of the consultation questions below.

What is the difference between registration and licensing?

Under the new framework, both a registration and a licence will authorise a building trade to do prescribed work.

In certain circumstances, a registration will also authorise a building trade to contract for prescribed work and be named as builder on a building permit for that work ('**business functions**').

¹ The *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* (Amendment Act) received royal assent on 25 September 2018.



For example, in relation to domestic building work carried out under a major domestic building contract, an appropriate registration would authorise the holder to:

- enter a major domestic building contract; and
- be named as builder for that work on the relevant building permit.

A person who is registered will be able to carry out prescribed work whether engaged as a contractor, sub-contractor or as an employee.

However, an employee licence will only entitle the holder to carry out prescribed work in the course of employment. An employee licence confers no business functions.

Who will be impacted by the change?

The new registration and licensing schemes require the transition of potentially large numbers of unregulated people into regulation under the *Building Act 1993*.

As a result, not all trade contractors and building employees will be required to be registered or licensed under the new framework at once. Rather, a staged approach will be adopted to provide for easier transition into the new framework.

Who will be impacted by the change first?

Certain types of building work will be identified as **priority areas** and building trades wishing to perform a priority area of prescribed work will need to be registered or licensed first.

Other areas of building work will be considered for prescription in later transition stages.

The Department of Environment, Land, Water and Planning (DELWP) seeks your assistance to finalise priority areas of building work.

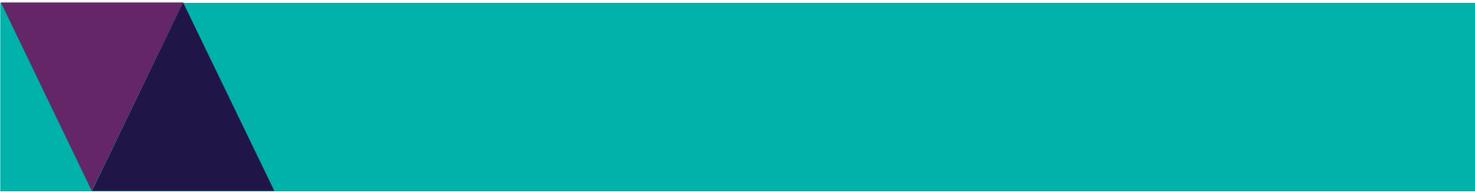
How and when will priority areas of building work be finalised?

As a first step to identifying priority areas, in 2018 when the legislation was introduced into Parliament, certain trades were identified as being *likely* to be priority areas for consideration and these were named as:

- carpenters (and framers)
- plasterers
- footing and foundation workers
- bricklayers and
- water proofers.

Before priority areas of building work can be finalised, further consideration needs to be given to a number of transition factors, including:

- the number of trades involved
- their readiness to transition into the new registration and licensing schemes, particularly in terms of available training pathways
- any relevant market factors, including labour and skills shortages
- implementation matters, including the capacity of the Victorian Building Authority to register, licence and regulate a potentially large number of new building practitioners

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- risk factors associated with the performance of each type of building work performed by trades, and
 - the complexity of each type of building work performed by trades.

Your views on these and other criteria to select priority areas of building work are sought.

To facilitate this consultation, targeted consultation questions have been included at the end of this document for your response. Please refer to the consultation questions below.

It is anticipated that priority areas of building work will be finalised by **October 2019**.

How will I become registered or licensed to perform a priority area of building work?

Building trades wanting to perform priority areas of prescribed work, will have the opportunity to transition gradually into the new registration and licensing schemes.

The following transition pathway is expected:

- The regulations are expected to be made by 1 September 2020.
- A period of one year, after the commencement date of the regulations will be given for building trades wanting to perform priority areas of building work to apply for provisional registration or a provisional licence ('**the application period**').
- If a person applies during the application period they can continue working without a registration or a licence until their application is decided.
- The detail of the requirements for provisional registration and licensing will be considered and developed, in consultation with industry, once priority areas of building work have been finalised.
- Applicants will be required to have a level of knowledge or experience to obtain a provisional registration or licence, but this will not be the same level of formal qualifications or recognition of prior learning as required for full registration or a full licence.
- The new schemes are not intended to create or exacerbate a skill or labour shortage, and requirements for provisional and full registration and licensing will reflect this.
- Provisionally registered building trades and provisionally licensed building employees will be expected to upgrade to full registration or a full licence within 5 years of receiving their provisional registration or licence.

The one-year application period and five-year qualifying period will apply to each scope of prescribed building work to be introduced into the new framework after the first priority areas of building work.

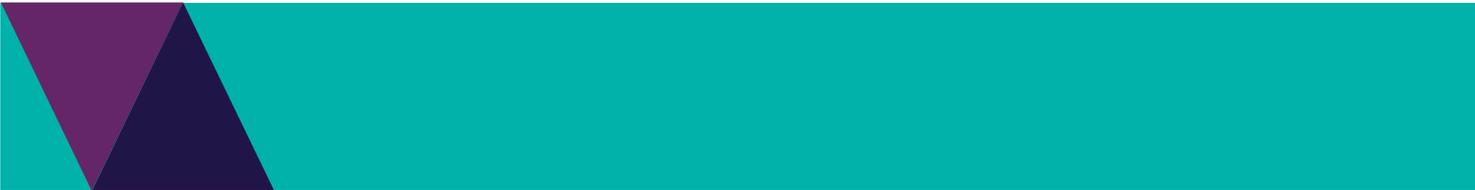
What happens if I carry out restricted building work without an appropriate registration or licence?

From 1 September 2020, it will be an offence for a person to carry out prescribed work unless registered or licensed (or have made the relevant application in the application period to be registered or licensed).

It will also be an offence for an owner or builder to engage an unregistered building trade or direct an unregistered building trade or an unlicensed building employee to do prescribed work.

What work is being done by the Government to finalise the new frameworks?

Work to make these regulations is being led by the Building Policy Branch of the Building Division of DELWP.



This DELWP team is responsible for strategic policy development and reform to deliver the Government's priorities for the building sector.

It will provide advice to the Minister for Planning, who will ultimately recommend to the Governor in Council that the new regulation required to implement the new building trade registration and employee licensing schemes be made.

The process for making any new regulation is set in the *Subordinate Legislation Act 1994* and associated guidelines. This Act imposes obligations with respect to the procedures to be implemented and the steps to be undertaken for the purpose of ensuring consultation, co-ordination and uniformity in the preparation of regulations.

Key steps and timing

1. Finalise priority areas of building work (**July to October 2019**)
2. Identify options for registration and licensing requirements for building trades for priority areas of building work (**October to December 2019**)
3. Regulatory Impact Statement (RIS) and draft regulations (**January to July 2020**)
4. New regulations made (**1 September 2020**)
5. New regulations commence – new licensing and registration schemes commence.

Consultation

Consultation with industry will be divided into three key stages:

- Stage 1:** Consultation required to finalise priority areas of building work (**July/August 2019**)
- Stage 2:** Consultation to develop regulatory options for registration and licensing requirements for priority areas of building work (**October/November 2019**)
- Stage 3:** Regulatory Impact Statement and draft regulations (**April to June 2020**)

Stage 1 Consultation – Priority areas of building work

Have your say on what building trades should be registered and licensed first

It is important that the new registration and licensing schemes are introduced with as little disruption to industry as possible.

Identifying appropriate criteria to assess the feasibility and readiness of each trade to transition to registration and licensing is critical to identify priority areas of building work.

These criteria will be applied to a complete list of building trades.

Your input is sought to help identify appropriate criteria and also to compile a complete list of building trades.

As part of this consultation stage, we also seek your views on:

- the scope of work performed by each trade
- how each trade is generally engaged (i.e. employed, contracted, sub-contracted or a combination), and
- the acceptable minimum level of competency which should be required for each trade for registration and licensing (both provisional and full).



Consultation Questions

Part 1: List of building trades and scopes of work

1. What building trades perform building work in Victoria? What activities are included within the work they perform?

For example: Sheet plastering - the carrying out of building work associated with sheet plastering, including the cutting and fixing of interior wall boards.

2. What is the preferred method of engagement of each trade (i.e. contracted, subcontracted, employed or combination) and why?

Registration of contractors and sub-contractors

3. For each trade listed, what should the minimum training and experience requirements be for (i) provisional registration and (ii) full registration?

Licensing of employees

4. For each trade listed, what should the minimum training and experience requirements be for (i) provisional licensing and (ii) full licensing?

Part 2: Criteria to identify priority areas of building work

Criteria for selecting priority areas of building work are proposed below. You are invited to comment on these criteria and suggest your own.

Criterion 1: The number of people in each trade currently working in the building industry. Do you agree with this criterion? Please provide reasons.

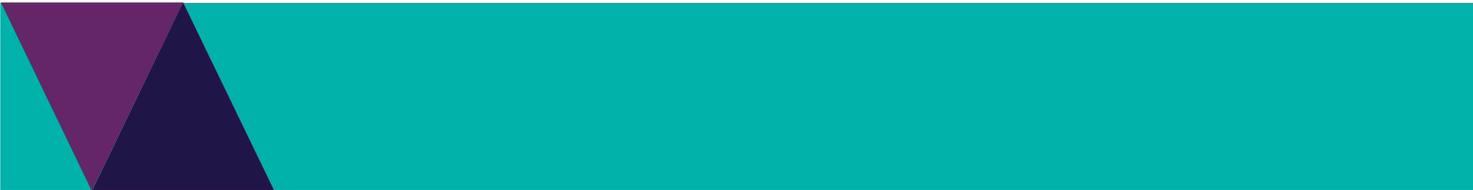
This impacts, for example, the operational capacity of the Victorian Building Authority (VBA) to register, licence and regulate trades; the capacity of education providers to offer training pathways to allow a transition from a provisional registration/licence to a full registration/licence.

Criterion 2: The number of people in each trade likely to enter the industry in the future. Do you agree with this criterion? Please provide reasons.

This impacts, for example, the operational capacity of the VBA to register, licence and regulate trades; the capacity of education providers to offer training pathways to allow a transition from a provisional registration/licence to a full registration/licence.

Criterion 3: Availability of training pathways for each trade. Do you agree with this criterion? Please provide reasons.

The absence of a training pathway (for example a qualification) may indicate that one needs to be created before a requirement for registration/licensing can be imposed. Further, the capacity of education providers to cope with a potentially large influx of new students at one time will need to be assessed.



Criterion 4: The number of people in a particular type of trade already likely to have a relevant qualification. Do you agree with this criterion? Please provide reasons.

This could make a transition to registration/licensing easier.

Criterion 5: Risks associated with the performance of particular types of building work by trades. Do you agree with this criterion? Please provide reasons.

High risk work would be considered for an earlier transition. Work will be considered as high risk if a shortfall in the performance of that work (defective work) or a fault in construction (non-compliant work) may result in a risk to public health or safety, including the health and safety of the trade performing the activity. For example, high risk work may involve any activity that involves the disturbance of asbestos, work that involves structural alterations or repairs, work that involves tilt-up or precast concrete and work that involves demolition of a load-bearing structure.

Criterion 6: Complexity of work performed by the trade. Do you agree with this criterion? Please provide reasons.

More complex work would be considered for an earlier transition. Work will be considered more complex if there is a high degree of knowledge, training and/or experience required to complete the relevant construction activities, or the type of building itself is more complex (for example, compare a simple Class 10 structure to a more complex Class 2 – 9 building). More complex construction can lead to higher cost defects.

Criterion 7: Market conditions. Do you agree with this criterion? Please provide reasons.

Any labour and skills shortages should not be exacerbated by the new schemes.

Criterion 8: Issues with the performance of a particular type of work (for example prevalence of non-compliant work or defects). Do you agree with this criterion? Please provide reasons.

Types of building work with higher instances of non-compliance or defects would be considered for an earlier transition.

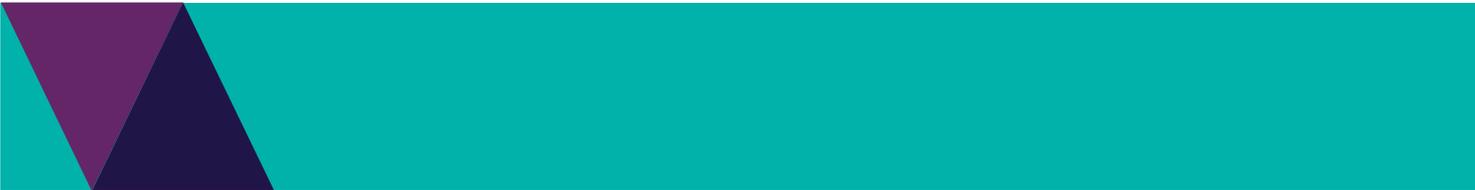
Other: suggest your criteria for priority areas of building work here

Part 3: Change Management

Time required to plan and prepare for registration and licensing

The new framework will allow for an application period of 1 year from commencement to apply for a provisional registration or licence and a qualifying period of 5 years to graduate from provisional to full registration and licence.

Do you think a trade will need more time before the application period commences to plan and prepare for provisional registration and licensing? If yes, how much extra time do you think is needed over and above the application period and why?



When are responses to Stage 1 consultation due?

DELWP invites responses to the Stage 1 consultation **by COB, Friday, 9 August 2019.**

Responses can be filled in or uploaded onto [Engage Victoria](#).

Privacy Statement

DELWP is committed to protecting personal information provided by you in accordance with the principles of the Victorian privacy laws.

The information you provide will be used to develop regulations required to implement the registration and licensing schemes introduced by the *Building Amendment (Registration of Building Trades and Other Matters) Act 2018* and may be used for future building policy development.

Your contact details may be used by the department or its contracted service providers under confidentiality agreements to survey you about your experience with the department.

The information you provide will be made available to the Minister for Planning and the Scrutiny of Acts and Regulations Committee. This information is being collected in accordance with Section 6 of the *Subordinate Legislation Act 1994*.

You may access the information you have provided to the department by contacting building.policy@delwp.vic.gov.au.

How can I monitor the progress of the project?

Project updates will be posted on the Engage Victoria website: <https://engage.vic.gov.au/>

You will be able to monitor the progress of this project from this webpage.

More questions?

Any questions you may have in relation to this project can be emailed to DELWP at building.policy@delwp.vic.gov.au