

Building Amendment (Registration and Other Matters) Bill 2021

Summary of key changes

Building Amendment (Registration and Other Matters) Bill 2021 ('the Bill')

The Bill will make a number of amendments to the *Building Act 1993* to enable a new registration and licensing scheme for building trades in Victoria.

The first piece of legislation to implement this scheme was passed by Parliament in 2018 (*The Building Amendment (Registration of Building Trades and Other Matters) Act 2018*) ('2018 Act').

The 2018 Act:

- made it an offence for a person to carry out certain types of building work (i.e. trade work) without being registered or licensed (s169EA and related offences);
- provided for the provisional registration of certain builders who carry out certain building work;
- provided a licensing scheme for building employees who carry out certain building work (Part 11A).

The Building Amendment (Registration and Other Matters) Bill 2021 ('the Bill') makes a number of improvements to the scheme, including:

- A. The introduction of a new and proportionate pathway to registration just for subcontractors;
- B. Correspondingly limiting the functions and responsibilities of subcontractors relative to head contractors;
- C. Strengthening and improving the registration process;
- D. Strengthening and improving the employee licensing process;
- E. Strengthening and improving the framework to facilitate the transition of unregulated trades into regulation;
- F. Adding flexibility to the system.

The Bill can be accessed here: [Building Amendment \(Registration and Other Matters\) Bill 2021](#)

A. New and proportionate pathway to registration just for subcontractors

Clause 21 of the Bill introduces new sections 171(1)(ab) and (ac) to the Act to create distinct pathways to registration for subcontractors.

- Under the 2018 Act all subcontractors would be required to register as head contractors in existing classes of domestic and commercial builder.
- The Bill changes this position by creating new streamlined pathways for tradespeople to register as subcontractors.
- This means a subcontractor who only intends to operate in this capacity will not have to meet the higher entry requirements of head contractors.
- This change avoids overregulation by enabling targeted and proportionate qualification, experience and probity criteria to be set according to the level of responsibility assumed by a practitioner.
- On passage of the Bill, the following pathways to registration will be provided:
 - Pathway 1: for existing classes of building practitioner (see s171(1)(a))
 - Pathway 2: for new classes of registered subcontractor (see s171(1)(ab))
 - Pathway 3: for new classes of provisionally registered subcontractor (see s171(1)(ac)).
- Discrete pathways to registration for subcontractors also allows scopes of regulated work to be set in a manner targeted to the work of trades rather than being based on existing classes of builder (which are under review and subject to change in any event).

Reduced probity requirements (relative to head contractor) for full subcontractor registration

Under the 2018 Act the full range of head contractor probity requirements applied to tradespeople. Further, the full range of head contractor probity requirements applied to a provisional registration.

Personal probity

- The Bill changes this position by applying a reduced personal probity requirement to subcontractors relative to head contractors and not applying a personal probity requirement to an application for a provisional registration.
- The Bill preserves the existing personal probity requirement for head contractors.
- Specifically, new s171D(2) imposes the reduced probity requirement on applicants for a full subcontractor registration.
- The reduced probity requirement is that the 10-year period within which the Victorian Building Authority can consider relevant personal probity issues as a basis to refuse an application for registration (such as offending history) will be reduced to a 5-year period to correspond to the 5-year qualifying period which allows subcontractors the opportunity to demonstrate a 'clean record' by the end of the qualifying period to gain a full registration or licence.
- To facilitate transition, no probity requirement would apply to a provisional registration.

Financial probity

The Bill also applies a reduced financial probity requirement to subcontractors relative to head contractors and disapplies a financial probity requirement to a provisional registration.

- New s171E(1A) applies the reduced financial probity requirement to a full subcontractor registration.

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- The Bill preserves existing financial probity requirements for other building practitioners via s171E(1).
- For financial probity purposes, the main distinction between a subcontractor and other registered building practitioners is that subcontractors will not be required to hold insurance as a registration requirement (for example, to show eligibility for domestic building insurance). This does not prevent insurance applying outside of the registration scheme under commercial arrangements, however.
- This means that existing financial probity matters for head contractors connected to insurance are not financial probity matters that apply to subcontractors, for example:
 - eligibility for domestic building insurance (s171E(1)(a)),
 - relevant insurance coverage (s171E(1)(b)),
 - denial, cancellation or the imposition of special conditions by an insurer in relation to insurance as a building practitioner (s171E(1)(e), and
 - judgement debts recoverable by an insurer under a policy of insurance for domestic building work (s171E(1)(f)(i))
- As a result, these financial probity matters will be turned off for subcontractors (but will continue to be financial probity matters that apply to other building practitioners).
- This means the following financial probity matters can be considered by the VBA when determining an application for a full subcontractor registration:
 - Whether a person has, is, or has been, disqualified from managing corporations (s171E(1)(d))
 - Whether a person owes a judgement debt to the VBA (s171E(1)(f)(ii))
 - Whether a person owes a judgement debt in relation to a domestic building dispute (s171E(1)(f)(iii))
 - Whether a person owes any amount payable under any dispute resolution order (within the meaning of the Domestic Building Contracts Act 1995) or VCAT (s171E(1)(f)(iv))
 - Whether a person owes unpaid adjudicated amount due to be paid under the Building and Construction Industry Security of Payment Act 2002 (s171E(1)(f)(v))
 - Whether the applicant is a director of a body corporate that has outstanding any judgment debt or unpaid amount (s171E(1)(g))
 - Whether the applicant was a director of a body corporate that had outstanding any judgment debt or unpaid amount at the time the applicant was a director (s171E(1)(h))

B. Correspondingly limit the functions and responsibilities of subcontractors relative to head contractors

Limitation on subcontractor acting as head contractor

Limiting the business functions of subcontractors counterbalances their reduced entry requirements relative to head contractors (in terms of probity and business competence).

- A registered subcontractor and a provisionally registered subcontractor will be authorised to:
 - subcontract to an appropriate builder for work of any value; and
 - head contract for low-risk work only.
- Low risk work is:
 - Building work under the value of \$10k; and
 - Non-domestic building work of any value that does not require a building permit.
- A registered subcontractor and a provisionally registered subcontractor will not be authorised to head contract for:
 - non-domestic building work over \$10k that requires a building permit; and
 - any domestic building work over \$10k whether or not a building permit is required.
- The purpose of new s169AA is to introduce these limitations.
- The offence will also clarify that a series of individual contracts or a variation to a single contract cannot be used to avoid the \$10k threshold in s169AA.
- New s171H(1A) also makes it a condition of a subcontractor's registration (including a provisional registration) to head contract only for low-risk work.
- Further, Clause 6 of the Bill amends section 24B(3)(a) and (4)(b) of the Building Act to confirm that the relevant building surveyor must not issue a building permit that names a registered or provisionally registered subcontractor as builder for work that is not low risk work.

Limitation on subcontractor entering major domestic building contract

- Clause 6(2) of the Bill substitutes a new section 24B(4)(b) of the Building Act to prohibit the relevant building surveyor from issuing a building permit for major domestic building work to a registered (including a provisionally registered) subcontractor.
 - This amendment plays an important role in implementing the policy position that a registered and provisionally registered subcontractor should not assume sole responsibility for the construction of a home.
 - This reflects their lower entry requirements for registration.

Restriction on owner builder entering major domestic building contract with subcontractor

- The Bill preserves the original policy position that the holder of a provisional registration must obtain a certificate of consent to perform certain owner builder work.
- Clause 9 of the Bill adds to this position by providing that a registered subcontractor must also obtain a certificate of consent to perform certain owner-builder work.
- This amendment also makes it an offence for an owner-builder to enter a major domestic building contract with a registered subcontractor (including a provisionally registered subcontractor).
- This type of contract must only be made with an appropriately registered domestic builder.

C. Strengthen and improve the registration process

Discrete improvements to the registration process

A number of discrete improvements are also made to the registration process, these are summarised below:

- Clause 19(1) of the Bill substitutes section 170(1) of the Act to clarify that a natural person or a company may register as a:
 - building practitioner, including:
 - a subcontractor; and
 - a provisionally registered subcontractor
- Clause 19(2) of the Bill substitutes section 170(2) of the Act to clarify that:
 - A provisional registration is only available for the new class of subcontractor.
 - An application for a provisional registration is time limited, i.e., an application can only be made:
 - in the period of 12 months after the work is prescribed ('the application period'); or
 - longer at the discretion of the Victorian Building Authority in exceptional circumstances (but capped at 24 months after the work is first prescribed).
 - Clause 19(2) also inserts new section 170(3) into the Building Act to provide how the time limitations imposed in new s170(2)(b) on an application for a provisional registration are to be enforced.
 - It does this by requiring the Authority to refuse an application for a provisional registration that is not made within the periods of time allowed under new s170(2) (see row above).
 - New section 170(3)(b) also confirms that a provisional registration may only be granted once, i.e., on initial transition into the scheme.
 - Clause 20 of the Bill inserts new section 170A(ca) into the Building Act which will require an applicant to clearly state on their application for registration, the type of registration sought. This change is needed because of the introduction of two new types of registration, a provisional registration and a subcontractor registration.
 - Clause 21(6) substitutes section 171(1A) to provide that if a nominee director is registered in a new class of subcontractor, the company may only be registered in the new class of subcontractor.
 - Clause 26 substitutes section 171G(2)(ba) with a new section 171GA(1)(ba) and (bb) of the Building Act to require a registration card to also state the type of registration - i.e. whether it is a subcontractor registration or a registration for another type of building practitioner. New paragraph (bb) also provides that the certificate must specify the expiry date of the registration. This recognises that building practitioner registrations are no longer granted indefinitely and that a provisional registration lasts only for a period of 5 years.

D. Strengthen and improve the employee licensing scheme

Discrete improvements to the licensing process

A number of discrete improvements are also made to the building employee licensing process. These changes are consistent with those made to the registration process (where appropriate) and are summarised below.

The 2018 Amendment Act introduced Part 11A—Licensing of building employees into the Building Act.

- Part 11A provides for a building employee licensing scheme.
- Clause 32 of the Bill amends section 187A of the Building Act to clarify that this section also applies to an application by a natural person to be provisionally licensed and that an application for a provisional licence is subject to the time limitations set out in s187A(2), by reason of s187A(3).
- Section 187A(2) provides that the application period for a provisional licence is limited to the 12-month period after trade work is prescribed (or longer in exceptional circumstances at the discretion of the VBA capped at 24 months after the work is first prescribed).
- This amendment also confirms that a provisional licence may only be granted once and only if applied for in the application period. This section is consistent with the time limitation on applications for a provisional registration (s170(2)).
- Clause 33 inserts new section 187B(ca) into the Building Act to clarify that one of the requirements of an application to be licensed as a building employee is that the application must state if the application is for a licence under section 187F or a provisional licence under section 187G.
- Clause 34 amends section 187F of the Building Act under which the Authority may issue a building employee licence by adding new sections 187F(1)(a), (ab) and (ac) to clarify the criteria that apply to be licensed in a certain class of building employee.
- Clause 35 of the Bill substitutes s187G of the Act. New s187G clearly sets out requirements for a provisional licence, including qualification (or equivalent) or knowledge, experience, prerequisites, and other requirements.
- Section 187G provides that the Authority must grant a provisional licence to an applicant as a building employee in a class of building employee if the Authority is satisfied of the criteria provided in new s187G.
- Clause 38 amends section 187J(2)(c) of the Building Act, regarding licence certificates to require that a licence certificate should also specify if licence is provisional or not.

E. Strengthen and improve the framework to facilitate the transition of unregulated trades into regulation

Discrete improvements to facilitate the transition of tradespeople into the scheme

A number of discrete improvements are also made to facilitate the transition of unregulated tradespeople into regulation. These changes are summarised below.

- New section 171H(1B) provides it is a condition of a provisional registration that the person holding the registration must comply with the requirements of a training plan (if any) during the period of that registration.
 - Where a provisional registration holder does not meet qualification and/or experience requirements for a full subcontractor registration, they must be assessed and issued with a training plan.
 - The training plan is a record of outstanding requirements to achieve a full registration which allows the trade (and the VBA) to track progress against the plan over the qualifying period.
- New section S172(1)(c) requires the holder of a training plan to report annual progress to the VBA.
- The equivalent for a licence holder is provided by clauses 36 and 40 of the Bill.

F. Add flexibility to the system

Flexibility added

A number of discrete improvements are also made to add flexibility to the scheme, these are summarised below.

- New s171(2A) enables the Victorian Building Authority (VBA) to grant a provisional registration where an applicant has applied for a full registration and does not meet requirements. An equivalent provision is provided for building employees via new section 187F(2A).
- New section 169EA(3) allows apprentices to continue to perform work while unregistered/unlicensed on completion of their apprenticeship while the VBA determines their application for registration/licensing
- New sections 171I(3) and s187I(4) provide for the extension of a provisional registration/licence if this is required to enable the VBA sufficient time to process a follow-on application for registration/licensing.
- New s169EB and s169EA(4) operate to provide an exemption for an applicant from the registration and licensing requirements in limited circumstances to enable them to gain practical experience in regulated work required for registration or licensing (once the provisional transitional scheme has closed). This exemption has been designed to mirror the apprenticeship pathway.
- New s170(2) and s187A(2) allow the VBA to accept an application for a provisional registration/licence outside of the 12month application period in 'exceptional circumstances' which is capped at a total of 24 months after the work is first prescribed.