



Government of Western Australia
Department of Mines, Industry Regulation and Safety
Building and Energy



Registration of Builders (and related occupations) Reforms

Consultation Regulatory Impact Statement

October 2020

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Every effort has been made to ensure that the information presented in this paper is accurate at the time of publication. Because this paper avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

October 2020

Glossary

ABCB	Australian Building Codes Board – Operates under an intergovernmental agreement to revise and uphold the National Construction Code and related reforms
AQF	Australian Qualifications Framework
ASIC	Australian Securities and Investments Commission.
BCA	Building Code of Australia (Volumes 1 and 2 of the National Construction Code)
BMF	Building Ministers’ Forum - State and Commonwealth government ministers responsible for building regulation and policy
BSR Act	<i>Building Services (Registration) Act 2011 (WA)</i>
BSR Regulations	Building Services (Registration) Regulations 2011 (WA)
Building Act	<i>Building Act 2011 (WA)</i>
Building Regulations	Building Regulations 2012 (WA)
BSB	Building Services Board
BSCRA Act	<i>Building Services (Complaint Resolution and Administration) Act 2011 (WA)</i>
Building and Energy	Building and Energy Division - Department of Mines, Industry Regulation and Safety
Building Confidence Report	Professor Peter Shergold AC and Bronwyn Weir, <i>Building Confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia</i>
CRIS	Consultation Regulatory Impact Assessment (this paper - a key part of the Regulatory Impact Assessment process required for legislative review processes in WA)
Diploma	Diploma of Building and Construction (Building) - the Diploma is the main technical building qualification in WA
DMIRS	Department of Mines, Industry Regulation and Safety
HBC Act	<i>Home Building Contracts Act 1991 (WA)</i>
NCC	National Construction Code
NRF discussion paper	<i>National Registration Framework for Building Practitioners: discussion paper</i>
Provider	This term refers to all registered building service practitioners and contractors under the BSR Act, including contractors and practitioners in the building, building surveying and painting industries
RTO	Registered training organisation
SAT	State Administrative Tribunal
VET	Vocational education and training

Executive Summary

This Consultation Regulatory Impact Statement (CRIS), prepared by the Department of Mines, Industry Regulation and Safety – Building and Energy Division (Building and Energy), is part of the first steps towards meeting the McGowan Government’s commitment to implement Recommendations 1, 2 and 6 of the report *Building Confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* (the Building Confidence Report).

Approaches to builder registration and licensing differ across Australia. On 26 June 2020, the Australian Building Codes Board (ABCB) Building Confidence Report Implementation Team released the *National Registration Framework for Building Practitioners: discussion paper* (NRF discussion paper).

The *Building Services (Registration) Act 2011* (BSR Act) (WA) establishes the registration regime for builders, building surveyors and painters in Western Australia (WA). This CRIS seeks comment on a range of proposed reforms aimed at supporting and improving builder expertise, career pathways and builder regulation in WA.

Consistent with recommendations in the Building Confidence Report and the NRF discussion paper, proposals in this CRIS seek to replace the current single class of registration for builders in WA with three classes (tiers) of registration: Level 1 (Open), Level 2 (Medium rise) and Level 3 (Low rise). This CRIS examines the proposals in some detail and discusses how this reform could be implemented in WA.

Input is also sought on the NRF discussion paper proposal to register project managers responsible for coordinating and planning commercial building projects in WA. Two tiers of registration are proposed: commercial project manager and restricted/commercial project manager. The NRF discussion paper also proposes the registration of owners’ representatives for commercial buildings.

In the interests of building confidence in the building industry in WA, this CRIS contains proposals to strengthen disciplinary and enforcement powers in WA and increase penalties for builders and building surveyors who do not comply with the law. It is also proposed to strengthen powers to issue infringement notices and interim disciplinary orders. Penalties for unregistered activity are also proposed to be increased. In addition, a new notification is proposed to ensure building contractors advise the Building Services Board (BSB) about sales and mergers of registered building contractors.

Finally, a proposal is made to extend builder registration to most currently excluded areas of remote and regional WA, consistent with other building, gas and plumbing legislation in the State.

Feedback is sought from builders, building industry associations and institutes, homeowners, registered training organisations and local government. Building surveyors, building surveying industry associations and institutes, and painters and painting industry associations are also encouraged to provide comment on the disciplinary and enforcement proposals in Part 8, as most of these proposals will impact occupations registered under the BSR Act.

Your input and information will be invaluable in ensuring the proposed reforms are practical and encourage improved construction standards and protections for the WA public.

List of questions raised in this consultation

1. Do you support the introduction of tiered registration of builders in WA? If not, why not?
2. Are the proposed types of work to be undertaken by each tier reasonable (Refer to Table 1 and Appendix A)? Why or why not?
3. Do you support changing the builder registration threshold and, if so, what is an appropriate threshold value?
4. Should any currently exempt work, or work under \$20,000, be subject to the requirement to use a registered building contractor on the basis of safety for the community? Why?
5. Do you support the proposed qualifications and experience requirements outlined in Table 2 and Table 3? Why or why not?
6. Should particular types of experience be clarified as unsuitable for builder registration (e.g. experience gained during apprenticeship or training; unlicensed experience; experience in constructing retaining walls, dividing fences or structures not included in the NCC Volumes 1 and 2)?
7. Would a standardised logbook (electronic or hardcopy) assist applicants for builder registration to record key information about their experience?
8. Should the builder registration pathway for persons with architectural or engineering qualifications (Set 2) be removed? Why or why not?
9. Should the builder registration pathway for persons with qualifications acceptable for membership as a Fellow or Member of the Australian Institute of Building (Set 3) be removed? Why or why not?
10. If the Set 3 Australian Institute of Building pathway is retained, to which tier of builder registration (Open, Medium rise, Low rise) should it apply?
11. Should the current builder registration pathways allowing persons to obtain registration by sitting an examination and demonstrating five years' experience in supervising or managing building construction (Set 4), or attaining the Building and Construction (Building) Diploma based on experience only (Set 5), be removed? Why or why not?
12. Do you have any suggestions to improve the transition process and limit impacts?
13. Should the current building contractor registration numbers on registration certificates be kept the same where possible? Why or why not?
14. Do you support the proposed registration of project managers working on commercial construction projects and qualifications/experience requirements? Why or why not?
15. Do you have concerns about the knowledge and expertise of project managers and/or owners' representatives working on commercial construction projects? If so, please outline your concerns and, where possible, provide examples.
16. Do you support the proposed registration of owners' representatives that work on commercial construction projects and qualifications/experience requirements? Why or why not?

17. Do you have any concerns about the quality of training providers delivering the Diploma of Building and Construction (Building)? If so, what evidence can you provide?
18. Do you support requiring applicants for registration to declare that they have read and approve all the content and attachments contained in their application? Why or why not?
19. Do you support clarifying, and placing beyond doubt, that the BSB can seek written verification of experience (referee checks) from an applicant for registration? Why or why not?
20. Do you support amending the BSR Regulations to require registered building practitioners and building surveying practitioners to complete online national training modules on the NCC in WA? Why or why not?
21. Are online training modules the best way to provide this training? Are there better ways of doing this?
22. Do you support the proposed amendments to the 'ineligible persons' provisions of the BSR Act? Why or why not?
23. Do you support the removal of consent of the provider (i.e. the subject of a complaint) to the BSB choosing to hear a minor disciplinary matter?
24. Do you support the BSB having the power to order a registered practitioner to complete a specified further course of training following a disciplinary investigation and BSB hearing?
25. Do you support the proposed measures to increase the scope of the interim disciplinary order?
26. Do you support the doubling of penalties for breaches of discipline dealt with by the SAT and the BSB, and penalties for carrying out unregistered work?
27. Are there any other changes to the powers of the SAT and the BSB that would make them more effective?
28. Do you support new penalties and grounds for disciplinary action if a building practitioner or building surveying practitioner works outside their class of registration?
29. Do you support amending the BSR Act to require registered contractors that are companies to give the BSB written notice of a sale or merger within seven day of its occurrence? Why or why not?
30. Do you support amending the BSR Act, in relation to serious cases of poor quality work, to require the building contractor to demonstrate that the management and supervision of the work was sufficient to ensure that the whole of the building work was carried out in a proficient and workmanlike manner? Why or why not?
31. Do you support amending the BSR Act to expand the grounds for disciplinary action to include fraudulent conduct and misleading and deceptive conduct?
32. Do you support amending the BSR Act to allow disciplinary action for breaches of WA building related laws?
33. Do you support extending the time period in which an infringement notice can be issued for building related offences from 21 days to 12 months after the offence has been committed?

34. Are there any other ways to make the infringement notice provisions more effective for local governments?
35. Do you support extending builder registration requirements to most areas of WA by the repeal of Schedule 3 of the BSR Regulations? Why or why not?
36. In your view, what are the costs and benefits of introducing mandatory builder registration in currently exempt areas of remote and regional WA?

1. About this paper

1.1. Purpose of this CRIS

Following the Grenfell Tower fire tragedy in London in June 2017, as well as other building compliance issues in Australia, the Building Ministers' Forum (BMF) commissioned Professor Peter Shergold AC and Ms Bronwyn Weir to conduct an independent expert assessment of the effectiveness of compliance and enforcement systems for the building and construction industry across Australia.

Their report, titled *Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* (Building Confidence Report), found weakness in the legislative frameworks across Australia and made 24 recommendations for reform to the regulation of building and construction occupations and processes to improve compliance with national building standards.

In April 2018, all State and Territory Building Ministers gave in-principle support to the Building Confidence Report's recommendations.

The purpose of this CRIS is to invite feedback on proposals to reform the registration framework for building practitioners and contractors in WA, which are part of the first steps toward addressing Recommendations 1 and 2 of the Building Confidence Report. In addition, changes to the disciplinary (enforcement) requirements are also proposed (Recommendation 6 of the Building Confidence Report).

The registration and disciplinary expectations placed on builders are central to the delivery of proficient building work. The Building Confidence Report observed:

The quality of buildings depends heavily on the competency and integrity of builders. There are many builders that have high standards of competency and integrity. However, the rates of disputes, alleged defects and reports of high levels of illegal phoenix activity are evidence that there are shortcomings in the performance of some builders. These need to be addressed.¹

This CRIS outlines reform proposals and presents questions for stakeholders to consider and provide feedback to help design the new requirements. Respondents are also welcome to suggest other options they consider appropriate. Importantly, feedback is sought on the potential costs and benefits of the proposals presented and any that may be suggested by stakeholders.

This CRIS represents the first stage in the consultation process and the proposals outlined in it do not represent the McGowan Government's final policy position.

The WA building industry and other stakeholders will be advised of any proposed changes to builder registration laws well in advance and lead-in times and the staggering of these proposed reforms will be adopted to reduce impacts.

¹ Prof. Peter Shergold and Ms Bronwyn Weir, *Building Confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, p 13

1.2. National Registration Framework

The Building Ministers' Forum (BMF) comprises Australian state, territory and Commonwealth ministers responsible for the regulation of the building and construction industry. On 18 July 2019 the BMF established an Implementation Team within the ABCB to develop a national framework for the recommendations of the Building Confidence Report. The National Registration Framework (NRF) discussion paper seeks to progress Recommendations 1 and 2 of the Building Confidence Report by proposing nationally consistent registration requirements for a range of building related occupations involved in the design, construction and maintenance of buildings. The NRF discussion paper can be accessed at www.consultation.abcb.gov.au.

Since the release of the discussion paper, the ABCB Building Confidence Report Implementation Team has consulted with key stakeholders nationally. This has resulted in changes to the proposed NRF. The proposals in this CRIS are consistent with the most recent (October 2020) version of the proposed NRF.

The ABCB Building Confidence Report Implementation Team will provide the NRF model to the BMF for approval in late 2020. Building and Energy is providing input into the development of the national framework. Further changes may occur, and proposed legislative reforms in WA will be adjusted to align with the NRF where possible.

The NRF discussion paper acknowledges that progress to a nationally consistent occupational registration scheme is not a quick or easy task.² It also notes that the path taken to implement the NRF may vary to suit individual states and territories. In the registration component of this CRIS, Building and Energy seeks comment on:

1. Proposed changes to builder registration and how these could be implemented in WA (refer to Parts 2-4 below).
2. Proposed introduction of registration for project managers and owners' representatives involved in the construction of commercial buildings (NCC Classes 2 to 9) (refer to Part 2.4 below).

1.3. Scope of this review

This CRIS deals only with reforms that relate to Recommendations 1, 2 and 6 of the Building Confidence Report, with a primary focus on the BSR Act. The remainder of the Building Confidence Report recommendations are the subject of separate and concurrent reviews and consultation processes.

Building and Energy is currently reviewing the registration of building related engineers and the approvals processes for commercial buildings and residential buildings. Details of these consultations can be accessed on the Department of Mines, Industry Regulation and Safety (DMIRS) website at the following link www.commerce.wa.gov.au/building-and-energy/public-consultations-0.

² ABCB Building Confidence Report Implementation Team, *ACCB National Registration Framework: discussion paper*, p 6

1.4. Overview of proposals

ISSUE & PAGE	CURRENT SITUATION	PROPOSALS FOR CHANGE			
Tiered Registration (Based On NRF Discussion Paper)					
Classes or tiers of builder registration See page 15	Single class or tier of registration for building practitioners and building contractors	Three classes or tiers of registration for practitioners and contractors: <ul style="list-style-type: none"> • Level 1 - Open Building Practitioner (Open) Building Contractor (Open) • Level 2 - Medium rise Building Practitioner (Medium rise) Building Contractor (Medium rise) • Level 3 - Low rise Building Practitioner (Low rise) Building Contractor (Low rise) 			
Restrictions on scope of work See page 17	Building work on all NCC Classes of building for all practitioners and contractors	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="705 857 1463 999"> Level 1 - Open NCC Class buildings of any size </td> </tr> <tr> <td data-bbox="705 999 1463 1267"> Level 2 – Medium rise Restricted to NCC Class 2 to 9 buildings up to a maximum of three storeys above a storey used for the parking of vehicles but not including a building of Type A construction other than for NCC Classes 2, 3 or 9; and NCC Class 1 and 10 buildings of any size. </td> </tr> <tr> <td data-bbox="705 1267 1463 1435"> Level 3 - Low rise Restricted to NCC Class 2 to 9 buildings with a gross floor area of not more than 2,000m² but not including Type A or B construction; and NCC Class 1 and 10 buildings of any size </td> </tr> </table>	Level 1 - Open NCC Class buildings of any size	Level 2 – Medium rise Restricted to NCC Class 2 to 9 buildings up to a maximum of three storeys above a storey used for the parking of vehicles but not including a building of Type A construction other than for NCC Classes 2, 3 or 9; and NCC Class 1 and 10 buildings of any size.	Level 3 - Low rise Restricted to NCC Class 2 to 9 buildings with a gross floor area of not more than 2,000m ² but not including Type A or B construction; and NCC Class 1 and 10 buildings of any size
Level 1 - Open NCC Class buildings of any size					
Level 2 – Medium rise Restricted to NCC Class 2 to 9 buildings up to a maximum of three storeys above a storey used for the parking of vehicles but not including a building of Type A construction other than for NCC Classes 2, 3 or 9; and NCC Class 1 and 10 buildings of any size.					
Level 3 - Low rise Restricted to NCC Class 2 to 9 buildings with a gross floor area of not more than 2,000m ² but not including Type A or B construction; and NCC Class 1 and 10 buildings of any size					
Nominated supervisors See page 18 and Appendix A	Building practitioners are entitled to be a nominated supervisor for building work on all types of buildings in all NCC Classes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="705 1435 1463 1585"> Building Practitioner (Level 1 Open) entitled to be a nominated supervisor for building work on residential or commercial buildings of any size (i.e. Level 1-3 contractors). </td> </tr> <tr> <td data-bbox="705 1585 1463 1736"> Building Practitioner (Level 2 Medium rise) entitled to be a nominated supervisor on low to medium rise commercial and residential buildings (i.e. Level 2 and 3 contractors) </td> </tr> <tr> <td data-bbox="705 1736 1463 1917"> Building Practitioner (Level 3 Low rise) entitled to be a nominated supervisor for low rise residential buildings and small low fire risk commercial buildings with a gross floor area of not more than 2,000m² (i.e. Level 3 contractors) </td> </tr> </table>	Building Practitioner (Level 1 Open) entitled to be a nominated supervisor for building work on residential or commercial buildings of any size (i.e. Level 1-3 contractors).	Building Practitioner (Level 2 Medium rise) entitled to be a nominated supervisor on low to medium rise commercial and residential buildings (i.e. Level 2 and 3 contractors)	Building Practitioner (Level 3 Low rise) entitled to be a nominated supervisor for low rise residential buildings and small low fire risk commercial buildings with a gross floor area of not more than 2,000m ² (i.e. Level 3 contractors)
Building Practitioner (Level 1 Open) entitled to be a nominated supervisor for building work on residential or commercial buildings of any size (i.e. Level 1-3 contractors).					
Building Practitioner (Level 2 Medium rise) entitled to be a nominated supervisor on low to medium rise commercial and residential buildings (i.e. Level 2 and 3 contractors)					
Building Practitioner (Level 3 Low rise) entitled to be a nominated supervisor for low rise residential buildings and small low fire risk commercial buildings with a gross floor area of not more than 2,000m ² (i.e. Level 3 contractors)					

<p>Building practitioner qualification and experience requirements</p> <p>See page 22</p>	<p>Five 'pathways' to registration primarily based on a Diploma level building qualification and 5 to 7 years' experience</p> <p>Architects and engineering qualifications</p> <p>Some pathways allow applicants to sit an exam rather than obtain building technical qualifications</p>	<p>Building Practitioner (Level 1 Open)</p> <p>Degree in construction management as endorsed by a building industry accredited scheme, such as the Australian Institute of Building's (AIB's) Higher Education Course accreditation scheme; and</p> <p>Three years' experience relevant to the tier under the supervision of a nominated supervisor</p> <p>OR</p> <p>Advanced Diploma of Building and Construction (Management) plus key prescribed units from the Diploma of Building and Construction (Building); and</p> <p>5 years' experience relevant to the tier under the supervision of a nominated supervisor</p> <p>OR</p> <p>Diploma of Building and Construction (Building); and</p> <p>7 years' experience relevant to the tier under the supervision of a nominated supervisor</p> <hr/> <p>Building Practitioner (Level 2 Medium rise)</p> <p>Diploma of Building and Construction (Building); and</p> <p>Three years' experience relevant to the tier under the supervision of a nominated supervisor</p> <hr/> <p>Building Practitioner (Level 3 Low rise)</p> <p>Certificate IV in Building and Construction plus key prescribed units from the Diploma of Building; and</p> <p>Three years' experience relevant to the tier under the supervision of a nominated supervisor</p>
<p>Transition to tiered registration for current builders (See page 28)</p>		
<p>Current practitioners seeking to build in the high risk Building Practitioner (Level 1 Open) tier will need to apply for registration under assessment principles, or take part in a simplified notification process used for nominated supervisors or senior employees of commercial building contractors.</p> <p>Most current building practitioners will be automatically transferred (grandfathered) into the Building Practitioner/Contractor (Level 2 Medium rise) tier. Any current conditions on registration will continue to apply. All contractors must have one or more suitable nominated supervisor(s) entitled to build the 'scope of work' in that tier (refer above). Subject to this requirement, current contractors may opt into their preferred tier of registration.</p> <p>Lead-in times will ensure industry has time to prepare for the changes and transitional regulations will ensure building work commenced prior to the tiered regime will not be affected.</p>		

OTHER ISSUES	PROPOSALS FOR CHANGE
<p>Project Manager and Owners' Representative Registration</p> <p>See page 32</p>	<p>The NRF discussion paper has proposed the mandatory registration of project managers and owners' representatives for commercial building projects (NCC Class 2-9). Preliminary views are sought.</p>
<p>Continuing Professional Development</p> <p>See page 39</p>	<p>The ABCB is developing online training modules on the National Construction Code for a range of building occupations, including builders and building surveyors. Preliminary input is sought on this.</p>
<p>Disciplinary Provisions</p> <p>See page 40</p>	<ul style="list-style-type: none"> • Improve effectiveness of the current 'ineligible officer' provision • Strengthen the capacity of the Building Services Board (BSB) to deal with minor disciplinary complaints • Extend the scope of the BSB's interim disciplinary orders • Double penalties for unregistered persons and disciplinary penalties available to the State Administrative Tribunal (SAT) and the BSB • New penalties and grounds for disciplinary action if a builder or building surveyor operates outside their class of registration • Requirement for registered building contractors that are companies to notify the BSB within seven days of a sale or merger • Expand current grounds for disciplinary action based on management and supervision for builders • Expand current grounds for disciplinary action to include preparatory work and advertising that is fraudulent, deceptive or misleading, and breaches of WA building laws • Increase the period infringement notices may be issued by Building and Energy and local governments from 21 days to 12 months after the offence occurred.
<p>Extension of Builder Registration to Currently Exempt Areas of WA</p> <p>See page 52</p>	<p>Proposal for extension of requirements for builder registration to currently exempt remote and regional areas of the State, consistent with building permits.</p> <p>To limit disruption for regional builders, these changes would take place after the above tiered registration regime has been established.</p>

1.5. How to have your say

Making a submission

When reading and commenting on this CRIS, please feel free to focus only on the areas that are relevant to you. A number of questions are included throughout the document that are aimed at making it easier for stakeholders to make comments. It is not expected that all respondents will respond to all questions and proposals.

A submission template form is available for download from the Building and Energy website: www.commerce.wa.gov.au/building-and-energy/public-consultations-0. Using this form will help to focus comments from stakeholders and assist us in the analysis of comments. However, you are welcome to make submissions in other formats, including responding specifically to questions included in the CRIS; or writing a letter outlining your views.

You are also welcome to suggest alternative options to address matters of concern to you. Please include the reasons for your suggestions as this will help in understanding your viewpoint and will assist in identifying the most suitable options for reform.

Submissions can be made:

- Emailed to: registrationreview@dmirs.wa.gov.au
- Mailed to: Registration Review
Department of Mines, Industry Regulation and Safety - Building and Energy Division
Locked Bag 100
EAST PERTH WA 6892

Who are you?

When making your submission please let us know which part of the building industry you are from. For example, whether you are a builder, building owner, design professional, building surveyor or representative of an industry organisation.

Closing date

This CRIS is open for comment until **FRIDAY 29 JANUARY 2021**.

How your input will be used?

Building and Energy will analyse all the information gathered through this consultation process, analyse outcomes of the NRF national consultation process, undertake a cost benefit analysis and then publish a Decision Regulatory Impact Statement recommending a final policy position. The Government will then decide which reforms to adopt.

The implementation of reforms arising out of this consultation process, along with concurrent reviews, will be phased to provide the building industry, permit authorities and other stakeholders with appropriate timeframes to adjust. The proposed reforms will also be considered in the broader context of other Building Confidence Report recommendations and the Government's priorities.

Information provided may become public

Please note that any feedback submitted is part of a public consultation process. Responses received may be made publicly available and quoted in future publications. If you prefer your name to remain confidential, please indicate this in your submission.

As submissions will be subject to freedom of information rules, please do not include any personal or confidential information that you do not wish to become publicly available.

2. Builder Registration – Tiered registration

2.1. Current provisions

Any person or entity that carries out ‘builder work’ in WA for any other person must be registered under the BSR Act as a ‘building contractor’. ‘Builder work’ means building work:³

- for which a building permit is required;
- with a value of \$20,000 or more; and
- carried out in an area of the State set out in Schedule 3.

Some types of lower risk work (e.g. installation of a tennis court) are specifically exempt from the requirement to be carried out by a registered building contractor.

In WA there are 4,738 registered building businesses (i.e. building contractors) and 5,367 building practitioners.⁴

The Building Services Board (BSB) makes decisions on granting registration to builders in WA based on requirements set out in the BSR Act and the Building Services (Registration) Regulations 2011 (BSR Regulations). Building and Energy and other divisions within DMIRS provide registration, compliance, legal and other services to support the registration regime and the work of the BSB and the Building Commissioner.

Under current legislation, each building contractor that is a partnership or company must have at least one nominated supervisor for that class of contractor. Ongoing supervision and other requirements apply to building contractors and nominated supervisors (refer to Part 8).

Registered building practitioners are individuals and must meet the qualification and experience requirements for registration, as well as meet the BSB’s fit and proper policy (e.g. criminal and compliance history checks). Employees of registered building contractors who carry out building work are not required to be registered as building practitioners but sometimes choose to register.

For a partnership or company, the nominated supervisor must be an officer or employee registered as a building practitioner. A building contractor that is a sole trader is both a registered building practitioner and the nominated supervisor for that business.

Building contractors are required to meet financial viability as well as management and supervision requirements.

³ ‘Building work’ has a broad definition as given in the *Building Act 2011*, section 3, including the construction, erection, assembly or placement of a building or incidental structure; renovation, alteration, extension or improvement or repair of a building or an incidental structure; or the assembly, reassembly or securing or a relocated building or relocated structure; site work linked to building work and change of ground levels that could adversely affect land beyond its boundaries.

⁴ DMIRS registration data, 31 July 2020

Individuals or entities that meet the registration requirements under the BSR Act are registered in a single class or 'tier' called 'building contractor', which permits them to build any type of building of any size or rise, from (for example) a carport to a multi-storey skyscraper. This is a legacy of 1930's legislation when buildings were much less complex and builders were typically small businesses. This is clearly out of step with the current reality of the building industry in WA. All other Australian states and territories have implemented a form of tiered registration for builders.

The Building Confidence Report states that:

*"It is important that each category of regulation have defined sub-categories which limit the scope of work that can be performed by reference to classifications of buildings and/or building heights and floor areas. At a minimum, sub-categories referable to Commercial and Domestic buildings should be applied to each category."*⁵

Building work carries high life safety and financial risks for homeowners, investors and building occupants. In the most serious cases, building defects can cause significant loss of life, such as in the Grenfell Tower fire in London in June 2017. Other incidents in Australia, such as the Lacrosse apartment fire in 2014 and the Neo200 fire in 2019 in Melbourne, have highlighted concerns about fire risks in multi-storey buildings.

Arising from concerns about the use of combustible cladding in buildings, Building and Energy carried out an extensive state-wide audit review of high risk buildings in WA, which identified buildings with cladding that are now being remediated. Amendments have been made to the Building Regulations 2012 (Building Regulations) to prohibit the future use of combustible cladding in WA.

The structural integrity of apartment buildings is an area of significant concern in Australia. In June 2019, residents of Mascot Towers in Sydney were forced to evacuate. Initial estimates put the repair bill at \$7 million but leaked emails suggest it may extend to more than \$50 million.⁶ An emergency evacuation of Sydney's Opal Towers in December 2018 also occurred after cracking in concrete panels occurred.

There is evidence of problems with the standard of building work in WA. In 2017, the Building Commissioner released a report that identified non-compliance with the National Construction Code (NCC) in relation to roof tie-downs in the construction of sheet metal clad timber framed roofs.⁷ Building and Energy's public consultation papers entitled *Reforms to the building approval process for single residential buildings in Western Australia*, and *Reforms to the approval process for commercial buildings in Western Australia: CRIS*⁷ have also identified the need for improved controls on building professionals.

⁵ Building Confidence Report, p 16

⁶ ABC News website, *Mascot Towers repair bill to hit \$53 million prompting owners to consider selling*, April 2020

⁷ DMIRS, *Final Report: general inspection report one: a general inspection into metal roof construction in Western Australia* April 2016 (released October 2017)

These findings highlight the need for improved competence requirements in the registration framework relevant to the type of building work being undertaken. A particular concern identified in the Building Confidence Report is that some building contractors and building professionals do not have the capability to deliver larger or more complex projects.

Implementation of a tiered registration regime for builders in WA will better align the qualifications and experience requirements of building practitioners with the type and complexity of work they undertake. In addition to other proposed reforms, this will support expertise in the building industry and assist in improving safeguards for consumers and building occupants.

A tiered regime will also assist Building and Energy in providing information to building practitioners and contractors on a more targeted basis, relevant to the type of building work they deliver.

2.2. Proposed tiered registration model for builders in WA

The NCC sets the minimum requirements for the design, construction and performance of buildings throughout Australia. Volumes One and Two of the NCC comprise the Building Code of Australia (BCA), and Volume Three is the Plumbing Code of Australia. The NCC has different fire, structural and other requirements depending on the complexity and height of the building. The ABCB publication 'Building Classifications' provides further information about the NCC and can be accessed at the ABCB website www.abcb.gov.au/Resources/Publications/Education-Training/Building-classifications.

'Types of construction' are defined in the NCC by reference to the NCC Class of building and the rise in storeys and determine the level of fire resistance particular elements of the building must achieve. There are three types of construction, A, B and C, which are determined by the building's NCC Class and rise in storeys. Type A includes buildings that have a higher risk such as high rise, high occupant buildings and is therefore the most fire resistant. Type B is medium risk. Type C includes buildings that have a lower risk and is the least fire resistant.

Builder registration classes or tiers in other states and territories use the NCC to define a restricted scope of work for each type or tier of builder registration. Recommendation 2 of the Building Confidence Report proposes that each jurisdiction prescribes consistent requirements for the registration of a range of building practitioners involved in the design, construction and maintenance of buildings. The Building Confidence Report recommends that each category of registration should have defined sub-categories.

The Building Confidence Report Implementation Team has been tasked by the BMF with developing nationally consistent proposals for the implementation of the Building Confidence Report recommendations. A National Registration Framework (NRF) covering a wide range of occupations in the building and construction industry, including builders has been developed.

The most recent NRF model proposes three levels of registered builder (individual) based on the NCC classifications, size and type of construction, as outlined in Table 1 below.

Table 1: Proposed NRF tiered registration model for building practitioners

Registration tier	Scope of work (refer to Appendix A)
Level 1 - Registered Builder (individual) – Open	<ul style="list-style-type: none"> • NCC Class buildings of any size.
Level 2 - Registered Builder (individual) – Medium rise	<p>Restricted to low to medium-rise buildings:</p> <ul style="list-style-type: none"> • NCC Classes 2 to 9 buildings to a maximum of three storeys above a storey used for the parking of vehicles but not including a building of Type A construction other than for NCC Classes 2, 3 or 9⁸; and • NCC Class 1 and 10 buildings of any size.
Level 3 - Registered Builder (individual) – Low rise	<p>Restricted to low-rise:</p> <ul style="list-style-type: none"> • NCC Class 2 to 9 buildings with a gross floor area of not more than 2,000m² but not including Type A or B construction; and • NCC Class 1 and 10 buildings of any size.

Appendix A provides further breakdown of the types of buildings and rise of storeys that may be built in each tier of registration.

All three tiers of builders in the NRF model can build low rise residential homes and attached garages without restriction. The term ‘commercial buildings’ used in this CRIS refers to a wide range of buildings, from buildings containing two or more sole occupancy units to multi-rise apartment buildings, hospitals, offices or laboratories (NCC Classes 2 to 9). For safety reasons, the NRF model limits more complex commercial buildings of four storeys and above to be built by Level 1- Open tier builders.

The Level 1- Open tier may build any type of commercial building regardless of size or rise in storeys, such as skyscrapers or high rise apartments. Level 2- Medium rise builders may construct commercial buildings of three storeys, with a further capacity to build to four storeys for certain NCC Classes but only if the additional storey is used for the parking of vehicles. These types of four storey buildings with parking would include residential units, boarding houses, hostel, aged care buildings and health care buildings. The Level 3- Low rise tier may only build small commercial buildings of not more than 2,000m² and these must not exceed one or two storeys depending on the NCC Class.

Comment is sought from the building and construction industry and other stakeholders and members of the community on these reforms. Building and Energy may make further changes to ensure consistency with any amendments to the NRF.

⁸ Another way of stating this is: NCC Classes 5 to 8 to a maximum of three storeys, and NCC Classes 2, 3 or 9 to a maximum of three storeys above a storey used for the parking of vehicles.

Company and partnership registration

While the proposed NRF model for builders focuses on the registration of individuals, the principles of this proposal will also be applied to companies and partnerships under the BSR Act. That is, building companies and partnerships that wish to carry out building work on behalf of others will need to obtain contractor registration in one or more of the above three tiers, according to the type or scope of work they wish to carry out. Contractors will continue to be registered as individuals (i.e. sole traders), partnerships or companies.

Nominated supervisors

Companies and partnerships registered in one of the three tiers will be required to have one or more nominated supervisors for each registration. The choice of nominated supervisor will be restricted to those entitled to build the NCC classes of building work.

For example, a company registered as a Level 1 Building Contractor (Open) will be required to have as its nominated supervisor a person who is registered as a Level 1 Building Practitioner (Open). A Level 2 Building Contractor (Medium rise) will be required to have as its nominated supervisor a person who is registered as either a Level 1 Building Practitioner (Open) or Level 2 Building Practitioner (Medium rise). A Level 3 Building Contractor (Low rise) may have a Level 1, Level 2 or level 3 building practitioner as its nominated supervisor.

Sole traders would continue to be required to obtain registration as a contractor and a practitioner. However, their practitioner registration would need to match their contractor registration. As the registered contractor and registered practitioner is the same person, that person will also automatically be the nominated supervisor.⁹

From a building safety perspective, the benefit of the tiered registration model is that it would encourage career pathways and require more specialisation.

For example, the model requires separate registration for the high risk Level 1 Open tier, enabling registration requirements for qualifications and experience for nominated supervisors to be more focused on this. In addition, the current contractor registration obligations for building businesses in the Level 1 Open tier, such as the financial requirements on initial registration and management and supervision systems, could be more appropriately tailored for companies that are responsible for more complex commercial building work.¹⁰

The BSR Act contains a range of obligations in relation to the work of building contractors and nominated supervisors and these will continue to apply in a tiered registration regime.

For example, the BSR Act requires that a building service contractor must not carry out, or undertake to carry out, a relevant building service during any period in which the contractor does not have a nominated supervisor for that class of building service contractor.¹¹

⁹ Section 21, BSR Act

¹⁰ Section 18, BSR Act

¹¹ Section 22(1), BSR Act

Building and Energy will be able to take disciplinary and enforcement action against practitioners and contractors that undertake work outside their scope of work. Section 20(1)(b) of the *Building Act 2011* (Building Act), which requires permit authorities to ensure the builder named on the building permit application is a registered building contractor, will continue to apply under tiered registration.¹² The impacts on permit authorities and building construction will require further examination during the consultation process.

Questions

1. Do you support the introduction of tiered registration of builders in WA? If not, why not?
2. Are the proposed types of work to be undertaken by each tier reasonable (Refer to Table 1 and Appendix A)? Why or why not?

Registration threshold

Persons or entities that carry out builder work in WA for any other person valued at \$20,000 or more, and for which a building permit is required, must be registered as a building contractor.

While building businesses operating under the registration threshold are not required to be registered, they are subject to some regulatory requirements. Disputes related to these works can be dealt with by either the Consumer Protection Division (Consumer Protection) of DMIRS using the powers provided by the Australian Consumer Law (ACL) or, by Building and Energy, under the *Building Services (Complaint Resolution and Administration) Act 2011* (BSCRA Act) (WA). Consumer Protection accepts complaints, conciliates in disputes and takes prosecution action where necessary under the ACL. If the building service has not been carried out in a proper and proficient manner or is faulty or unsatisfactory, the Building Commissioner may make a building remedy order for the work to be fixed.

The primary purpose of setting the registration threshold at \$20,000 is to exempt persons carrying out mostly low value, relatively low risk work, such as building small sheds and patios or undertaking minor renovations, etc., from the need to be registered. Under WA's current builder registration system, it would be unreasonable to require such persons to meet the same qualification and experience requirements of persons involved in the construction of large commercial buildings or apartment blocks.

Most other Australian states and territories have substantially lower registration thresholds, primarily because builders of Class 10 buildings are registered in those jurisdictions. In implementing tiered registration for builders in WA, consideration has been given to lowering the registration threshold. However, a reduction in the registration threshold in WA would require large numbers of small businesses to become registered for the first time.

At this time, the primary focus is on implementing the recommendations of the Building Confidence Report. There are no immediate plans to expand the registration regime to capture other businesses. This issue may be re-examined at a later stage after tiered registration has been successfully implemented.

¹² Section 20(1)(b)(i), *Building Act 2011*

The \$20,000 registration threshold has been in place in WA since July 2007. It is becoming increasingly difficult for shed and patio businesses to legally work under this value threshold.

We are seeking views as to whether it is appropriate to change this threshold and what the threshold value should be.

Registration exemptions and community safety

In addition to the current \$20,000 threshold, regulation 13(1)(d) to (m) of the BSR Regulations exempts certain types of buildings and structures, irrespective of the value of the building work, from needing to be carried out by a registered building contractor.

For example, all farm buildings and retaining walls are exempt from the requirement to be carried out by a registered building contractor. These exemptions were carried over from the now repealed *Builders' Registration Act 1939*. The exemptions are as follows:

- (d) construction of a farm building;
- (e) production of a prefabricated or transportable building in a manufacturing yard;
- (f) formation of a parking area;
- (g) formation of outdoor sporting surfaces including associated fencing and lighting;
- (h) construction of walkways, viewing and gathering platforms that do not form part of another building;
- (i) construction of a water tank that is not incorporated into the structure of another building;
- (j) construction of an incidental structure as defined in the Building Act section 3 (i.e. '...a structure attached to or incidental to a building and including a chimney, mast, swimming pool, fence, free-standing wall, retaining wall or permanent protection structure; and a part of a structure');
- (k) installation of fire sprinklers, free standing partitioning, safety systems, timber decking or glazing;
- (l) cabinet making and installation; and
- (m) joinery (2nd fixing) work.

Comments are sought on whether the current exemption for any of these types of work should be removed on the basis of community safety. The removal of any exemptions would mean that a registered building contractor would be required to carry out the work rather than other types of businesses.

Questions

3. Do you support changing the builder registration threshold and, if so, what is an appropriate threshold value?
4. Should any currently exempt work, or work under \$20,000, be subject to the requirement to use a registered building contractor on the basis of safety for the community? Why?

2.3. Proposed qualifications and experience requirements

There are currently five pathways to obtain building practitioner registration in WA (**Appendix B**). The most commonly used registration pathway is under Set 1, which has qualifications and experience requirements based on the Diploma of Building and Construction (Building) (Diploma).

Currently applicants for registration under Set 1 must complete the Diploma and demonstrate seven years' experience in carrying out or supervising building work. This pathway to registration was primarily designed for persons already working in the industry either onsite or in a trade and who were also studying part-time towards obtaining the Diploma.

The term 'carrying out or supervising building work' applies to a wide range of building work so that, in effect, any type of building work carried out or supervised by such persons would count as experience toward registration. For example, a person working as a bricklayer or other trade for seven years could obtain registration as a builder once they completed the Diploma.

The rationale behind Set 1 is that the Diploma provides applicants with all the necessary knowledge to be a competent builder such that only a narrow range of practical experience within the industry is required.

The remaining four registration pathways essentially require applicants who do not obtain the Diploma to demonstrate a much broader range of experience relating to the construction of entire buildings, as well as to sit a written examination. The examination is based on the Diploma. The required level of experience that must be demonstrated is much more extensive than in Set 1, such that five years instead of seven is required.

Feedback is sought on the following proposed NRF qualifications and experience requirements and how these could be applied in WA. In addition, input is sought on the current registration pathways that would be removed as part of these reforms. The BSB will have a decision-making role in relation to the tiered registration requirements.

Current registered practitioners: The following qualifications and experience requirements for tiered registration are not relevant to you and would apply only to new applicants for registration after the tiered registration regime has been implemented. Refer to Part 3 for information on transitional arrangements.

Proposed qualifications requirements for building practitioners

The vocational education and training (VET) system offers training to ensure students have the skills and qualifications to meet the needs of the Australian building and construction industry. The VET training package for technical building qualifications is currently being reviewed nationally by the consultant Artibus Innovation on behalf of the Construction, Plumbing and Services Industry Reference Group. A building industry technical advisory group and national consultation has been an important part of this process. Refer to www.artibus.com.au/national-projects under the heading 'Building and Construction,' for further information.

The national review has been endorsed by the Australian Industry Skills Committee subject to final approval by the Commonwealth, State and Territory Skills and Training Ministers. The revision of these qualifications is a positive initiative that should result in improved training quality for builders.

Table 2 below outlines the NRF proposal for qualifications requirements for applicants for building practitioner registration and proposes how this could be applied in WA. Registered training organisations (RTO's) provide a 'teach out' period of at least 12 months so that current students can transition to the new course.

In summary, the proposed qualification requirements in WA for the level 1 Open tier of registration will be strengthened to include degree and advanced diploma level options as well as the current diploma level. In addition, the years of required experience will be stepped depending on the level of the qualification. The degree level registration pathway will require three years' experience to be demonstrated for a person to obtain registration. The advanced diploma will require five years' experience and the diploma will require seven years' experience. Strengthened qualification requirements for the Level 1 Open tier reflect the broader range, size and complexity of building work that can be carried out.

Persons seeking registration in the Level 2 Medium rise tier will be required to obtain the Diploma, as is the case for most persons under the current registration framework in WA. For the Level 3 Low rise tier, the Certificate IV plus additional units from the Diploma is proposed.

Table 2: Proposed NRF qualifications for building practitioners and how these could be applied in WA

NRF proposed qualification framework and WA proposals	
Building Practitioner (Level 1 Open)	<p>NRF qualifications framework:</p> <p>Set 1 - Approved degree in construction management;</p> <p>Set 2 - Approved advanced diploma of building and construction</p> <p>Set 3 - Approved Diploma of building and construction</p> <p>Draft WA proposal:</p> <p>Set 1- Degree in construction management as endorsed by a building industry accredited scheme, such as the Australian Institute of Building's (AIB's) Higher Education Course accreditation scheme</p> <p>Set 2- CPC60219 Advanced Diploma of Building and Construction (Management) plus key prescribed units from the Diploma of Building and Construction (Building).</p> <p>Set 3- CPC50210/CPC50219 Diploma of Building and Construction (Building).</p> <p>Reasons why:</p> <p>Set 1-The content review of higher degrees is a specialised and complex area. The AIB has a Higher Education Course accreditation scheme that has operated since 1975 and may be appropriate (refer to the AIB website for more information www.aib.org.au). Set 2- The Advanced Diploma of Building and Construction (Building) was abolished some years ago so cannot be prescribed as proposed in the NRF at this stage. The Advanced Diploma of Building and Construction (Management) together with relevant NCC units from the Diploma are proposed to strengthen the building technical qualification. Set 3- Recognises the current Diploma of Building and Construction as well as the new Diploma to ensure current students are not disadvantaged.</p>
Building Practitioner (Level 2 Medium rise)	<p>NRF qualifications framework:</p> <p>Approved diploma in building and construction.</p> <p>Draft WA proposal:</p> <p>CPC50210/CPC50219 Diploma of Building and Construction (Building).</p>

NRF proposed qualification framework and WA proposals	
	<p>Reasons why: Recognises the current Diploma as well as the new Diploma to provide consistency for current students working towards registration in WA.</p>
Building Practitioner (Level 3 Limited/ Residential)	<p>NRF qualifications framework: Approved Certificate IV in building and construction</p> <p>Draft WA proposal: CPC40110/CPC40119 Certificate IV of Building and Construction (the Certificate IV) plus relevant building technical and NCC units from the Diploma of Building and Construction (Building), if needed.</p> <p>Reasons why: The national review of the Certificate IV has resulted in updates to this course, however, additional units from the Diploma would enhance the content of the building technical qualification for consumer protection and is more consistent with the current Diploma required in WA.</p>

Proposed experience requirements for building practitioners.

The NRF proposed framework for experience is outlined in Table 3 below.

Table 3: Proposed NRF experience requirements for building practitioners

NRF proposed experience framework	
Building practitioner (Level 1 Open)	<p>Set 1- A minimum of three years' experience under the direct supervision of a builder (individual) level 1.</p> <p>Set 2- A minimum of five years' experience under the direct supervision of a builder (individual) level 1.</p> <p>Set 3- A minimum of seven years' experience under the direct supervision of a builder (individual) level 1.</p>
Building practitioner (Level 2 Medium rise)	A minimum of three years' experience under the direct supervision of a builder (individual) level 1 or level 2.
Building practitioner (Level 3 Low rise)	A minimum of three years' experience under the direct supervision of a builder (individual) level 1, level 2 or level 3.

The NRF proposals for experience are substantially different from the current requirements in the BSR Regulations in WA (Appendix B). The requirement for three years' experience for the level 2 and level 3 pathways would result in a reduction in the net years of required experience in WA. Arguably the current requirement in WA for seven years' experience (Set 1), and proposed requirement for applicants for NRF Set 3, are too long, however, as many individuals cannot provide supporting paperwork for their work over this period of time. As a result, the evidence is less reliable. The process of gathering the evidence of experience and referees may also be unnecessarily onerous for applicants.

A reduction of years of experience to three years for level 2 and 3 applicants would enable stronger evidence to be obtained as the work takes place, for example, an electronic or hardcopy logbook to record evidence of experience and identifying names of supervisors and other key contacts. This process may help applicants gather a record of their experience as it is gained rather than having to recall this information at a later date. This will not suit all applicants, however, so alternative registrations would continue to be accepted and considered.

The NRF discussion paper proposes that acceptable experience for registration purposes should be undertaken under the supervision of a nominated supervisor with registration in the tier that the applicant is applying for. Since WA does not have a tiered registration regime, this requirement for applicants for registration would require a substantial lead-in time of at least three to five years after tiered registration has been established. The proposed WA experience requirements under a tiered registration regime have therefore been adjusted to refer to experience 'relevant to the tier.' The content and variety of experience is significant. To assist applicants to understand the required areas of expected experience, a proposed checklist has been developed in Table 5 below.

Table 5: Proposed experience requirements for tiered registration

A minimum of three¹³ years' experience relevant to the tier under the supervision of a nominated supervisor/registered building practitioner.

An applicant should provide evidence of experience, including:

- interpreting plans, documentation and specifications and building in accordance with the permit authority approvals;
- applying the NCC, Australian Standards, manufacturers' recommendations and acceptable building practices;
- strong record keeping, oral and written communication skills; and
- efficient management and supervision of trades, materials and site, including land, water, electrical and gas supply, and building that may be affected as a consequence of building work.

Questions

5. Do you support the proposed qualifications and experience requirements outlined in Table 2 and Table 3? Why or why not?
6. Should particular types of experience be clarified as unsuitable for builder registration? (e.g. experience gained during apprenticeship or training; unlicensed experience; experience in constructing retaining walls, dividing fences or structures not included in the NCC Volumes 1 and 2).
7. Would a standardised logbook (electronic or hardcopy) assist applicants for builder registration to record key information about their experience?

Architects and engineers: pathway to be removed

The BSR Regulations currently provide for persons with registration or qualifications as an architect, or qualifications as an engineer, to apply for registration as a builder. This registration pathway is known as Set 2 (refer Appendix B).

¹³ As identified in Table 3, longer time periods of five and seven years are envisaged for the Set 2 and 3 pathways for the level 1 Open builder.

While architects have strong design expertise and may also undertake building project management, similar to engineers they typically do not gain significant NCC content or experience in practical on-site supervision or management of building work and trades. As a result, relatively few applicants successfully enter under Set 2.

This CRIS proposes that this pathway to registration is removed. The proposed new pathways require a mandatory building technical qualification.

Question

8. Should the builder registration pathway for persons with architectural or engineering qualifications (Set 2) be removed? Why or why not?

Fellow or Member of the Australian Institute of Building: pathway to be removed

The BSR Regulations provide for a registration pathway (Set 3) for persons with:

“...qualifications acceptable for membership as Fellow or Member of the Australian Institute of Building evidenced by such membership.”¹⁴

Persons applying under this registration pathway must also demonstrate the equivalent of five years' full-time experience in carrying out, supervising or managing building construction. The experience requirements are assessed by Building and Energy and the BSB.

It is understood that a full Member (Corporate Member) of the Australian Institute of Building (AIB) is open to an individual who has an academic qualification at Australian Qualifications Framework (AQF) level (four year degree) in a building discipline and demonstration of employment for a minimum of three years in a construction position. Only five per cent of all applications for registration are received using this registration pathway.

This paper seeks comment on whether this pathway to registration should be removed or, if retained, to which class of registration under the proposed tiered registration model is it most equivalent.

¹⁴ Set 3, BSR Regulation 16

Questions

9. Should the builder registration pathway for persons with qualifications acceptable for membership as a Fellow or Member of the Australian Institute of Building (Set 3) be removed? Why or why not?
10. If the Set 3 Australian Institute of Building pathway is retained, to which tier of builder registration (Open, Medium rise, Low rise) should it apply?

Supervision of building and construction and BSB exam: pathway to be removed

The BSR Regulations provide for registration pathways (Sets 4 and 5) for persons without formal qualifications. Applicants under these pathways must either pass an examination based on the Diploma and demonstrate at least five years' experience in supervising or managing building construction, or have the Diploma issued through Recognition of Prior Learning based on experience only.

The use of examinations is costly to provide and maintain, with the most recent content updates costing \$10,000. The examination is also considered less thorough than the process of obtaining a building technical qualification from an RTO.

This paper proposes that, in implementing tiered registration, these two pathways be removed and all applicants be required to obtain a formal building qualification.

Question

11. Should the current builder registration pathways allowing persons to obtain registration by sitting an examination and demonstrating five years' experience in supervising or managing building construction (Set 4), or attaining the Building and Construction (Building) Diploma based on experience only (Set 5), be removed? Why or why not?

3. Transition to a tiered registration model for builders

The implementation of any reform to the building industry registration framework recognises that the timeframe for transition will depend on other Government priorities.

A sufficient lead-in period will be provided before changes commence to provide time for information to be disseminated and for industry to become familiar with the reforms. Significant revision of registration processes and policies, forms, website and IT capacity is required to deliver tiered registration. Industry guidelines and information to support the roll out of the new requirements will be developed.

Transitional laws can be introduced to stagger lead-in times for various parts of the reforms. Transitional laws can also ensure that building approvals and contracts commenced under the current registration requirements are not affected by the shift to tiered registration.

Possible impacts on existing businesses and contracts will be identified and addressed as part of the transition process. For instance, for advertising and consistency purposes contractors may wish to retain the same registration number where possible. Advice from stakeholders will be important in identifying operational concerns for business and local government and the best way to manage these.

Current registered building practitioners and contractors

A key concern identified in the Building Confidence Report relates to fire and structural issues in complex and high risk buildings, such as multi-storey residential apartments. These are primarily high rise NCC Class 2 and 3 buildings. Under the tiered registration proposal, all five storey and above high rise commercial building work will only be able to be undertaken by the Building Contractor (Level 1 Open) class of registration, with one or more nominated supervisors in the Building Practitioner (Level 1 Open) class. Refer to Part 2.2 for further information about the proposed model.

Given the high risk nature of this work, it is proposed that registered building practitioners who wish to continue to carry out work in the Level 1 Open tier be required to either:

- notify the BSB that they are currently a nominated supervisor or senior employee of a commercial building contractor; or
- apply for registration and meet appropriate assessment principles and requirements.

Building and Energy will engage the necessary expertise to develop assessment principles for the Level 1 Open builder tier. This information will then be used by the BSB to guide registration decisions.

Current building practitioners' registrations will be grandfathered into the Level 2 Medium rise tier, subject to any existing conditions on their registrations. As part of the transition process, registered contractors will be grandfathered into their preferred tier(s) of registration, subject to any existing conditions on their registration which will be carried over and continue to apply. Contractors will be required to comply with the ongoing requirement to have one or more nominated supervisor(s) entitled to build in that tier, which may influence their choice of tier.¹⁵ Registered practitioners and contractors will be issued with new certificates.

The majority of registered building contractors and building practitioners in WA will hold either a Level 2 Medium rise or Level 3 Low rise registration. Statistical information from Queensland and Tasmania suggests that approximately 67 per cent of builders will fall into Low rise, 11 per cent into Medium rise and 24 per cent into the Open builder tier.¹⁶

Registration fees

Registration fees paid by builders are based on a cost recovery model, in accordance with government policy. Included in these fees is a component related to auditing and enforcement activity where this relates to registrations.

As the Level 1 Open area of work involves the construction of higher risk buildings, the work of persons and contractors in this tier of registration is more complex to assess for registration, auditing and monitoring purposes than for the Level 2 Medium rise and Level 3 Low rise tiers. Consequently, registration fees will differ for applications for the Level 1 tier.

It is proposed that, when tiered registration is introduced, registered practitioners and contractors will be issued with new registration certificates in the relevant tier with the same expiry date as their current registration effective at that time. Upon expiry of that registration, the renewal fee relevant to their tier of registration will become payable.

Conditional registrations

There are many registered builders in WA who were first registered in another state or territory. These builders obtained registration through mutual recognition and were often granted registration subject to conditions restricting the type of work they do. Other builders may also have conditions on their registration which were carried over from the previous builder registration legislation in WA that applied prior to 2011. These conditions will continue to apply in the new registration regime.

Only where there is a close match between the conditions of registration and a proposed tier of registration will the conditions of those building practitioners or contractors be removed. For example, a builder from Queensland who obtained registration in WA through mutual recognition, but with conditions restricting their registration to work on NCC Class 1 and 10 buildings will likely be granted Level 3 Low rise registration with a condition restricting their work to Class 1 and 10.

¹⁵ As outlined in Part 2.2, under the proposed tiered regime, a Building Contractor (Level 1 Open) must have a nominated supervisor registered in the Level 1 Open tier; a Building Contractor (Level 2 Medium rise) must have a nominated supervisor in the Level 1 Open or Level 2 Medium rise tier; and a Building Contractor (Level 3 Medium rise) must have a nominated supervisor in Level 1, 2 or 3.

¹⁶ These figures are an estimate only based on the average proportion of builders in the Queensland and Tasmanian Open, Medium and Low rise builder categories

Questions

12. Do you have any suggestions to improve the transition process and limit impacts?
13. Should the current building contractor registration numbers on registration certificates be kept the same where possible? Why or why not?

4. Preliminary costs and benefits of tiered registration

The introduction of new legislation will have costs and benefits for homebuyers, businesses, permit authorities and government, so changes must be considered carefully.

The implementation of tiered registration will have different impacts depending on the tier of registration to which applicants apply. For example, there will likely be higher costs for persons seeking registration in the Level 1 Open tier for the first time as they will be required to meet higher qualification and experience requirements. This will benefit homebuyers and improve building confidence, as more tailored qualifications and experience requirements result in fewer building defects.

Building businesses registered in a particular tier of registration may need to obtain a new class of registration in order to undertake new areas of work. For example, a Building Contractor (Level 2 Medium rise) or Building Contractor (Level 3 Low rise) would need to obtain a Level 1 Open registration before carrying out high rise commercial building work. Building contractor registration requirements in WA include prescribed financial requirements, requirements for an eligible nominated supervisor and arrangements to ensure building services will be managed and supervised in a proficient manner¹⁷.

The ABCB commissioned the Centre of International Economics (CIE) to undertake a high-level impact assessment of implementing the recommendations of the Building Confidence Report, including the costs and benefits associated with the NRF model for registration. The CIE consulted with a broad range of stakeholders including state and territory governments and industry associations and provided its draft report to the ABCB at its meeting of 24 and 25 September 2020. The draft CIE report, titled *Building Confidence Report – A Case for Intervention* will be published on the ABCB's Consultation Hub for a six week consultation period. It is expected that the CIE's final report, taking into account any feedback from consultation will be publically released on the ABCB's website in the first half of 2021.

When the proposals arising out of this CRIS are finalised, a detailed cost benefit assessment will be carried out and included as part of the development of a final report (Decision Regulatory Impact Statement [DRIS]). This will be informed by the CIE cost benefit analysis but will also contain WA specific data.

The DRIS will be made available for stakeholder comment prior to the implementation of legislative proposals.

¹⁷ Sections 18, 21-22, BSR Act

5. Registration of project managers and owners' representatives: commercial buildings

The recommendations of the Building Confidence Report have the goal of improving quality and compliance in the construction process by ensuring that core work is carried out by skilled and experienced people.¹⁸ Key to achieving this is registration of individuals in core disciplines, including training in the NCC as a prerequisite for registration, and prohibiting unregistered individuals from doing core work unless under the direct supervision of a registered person.¹⁹

The NRF discussion paper proposes mandatory registration of project managers and owners' representatives for commercial buildings, as part of its recommendations (Part 1.2). The term 'commercial buildings' refers to a wide range of buildings, from buildings containing two or more sole occupancy units to multi-rise apartment buildings, hospitals, offices or laboratories (NCC Classes 2 to 9). Low rise residential dwellings and related structures (NCC Classes 1 and 10) are not included. Refer to the first three columns of Appendix A for an overview of NCC classes.

The proposed reforms would be a significant change to building regulation as these occupations are not currently subject to mandatory registration in WA. This CRIS therefore seeks preliminary feedback on the proposals in the WA context.

Costs of introducing registration under the BSR Act

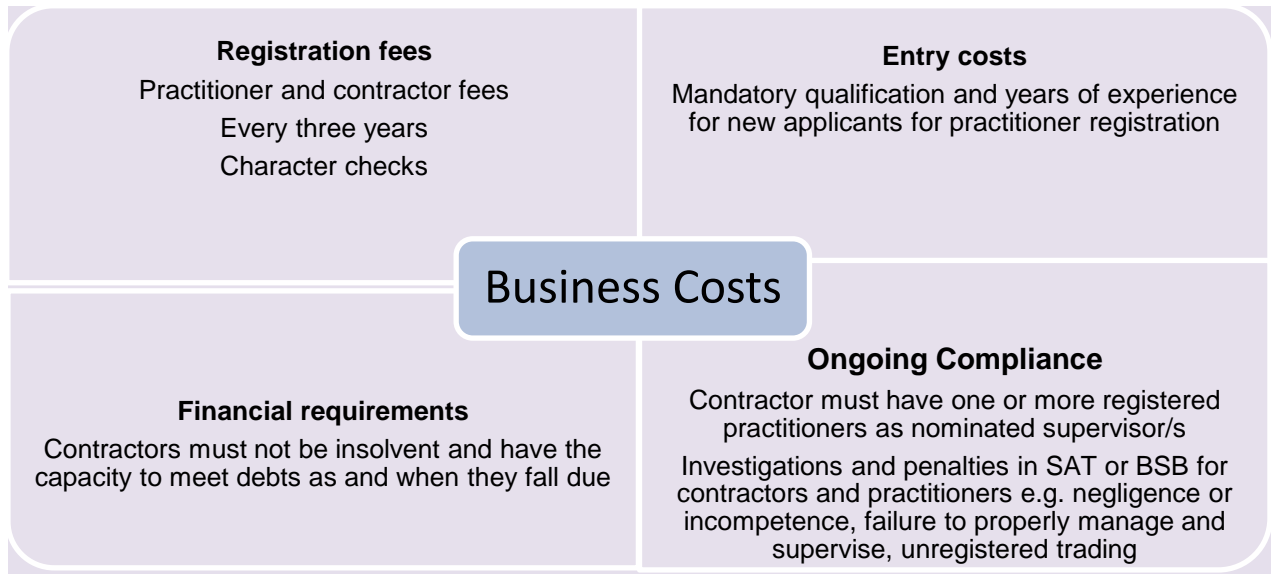
As outlined in Part 2, in relation to the registration of builders, the BSR Act registers both building practitioners and building contractors (businesses) in prescribed occupations:

1. **Building service practitioner** is a person or individual registered as being qualified and experienced to undertake a prescribed building service.
2. **Building service contractor** is a business (individual, partnership or company) registered to provide a prescribed building service to the public. In the case of individual contractors (i.e. sole traders), the registered contractor must also be a registered practitioner. In the case of companies and partnerships, these entities must have a nominated supervisor who is a registered practitioner in the appropriate tier of registration. Contractors must also meet prescribed financial, managerial and supervisory capacity requirements to provide a prescribed building service.

The following snapshot briefly outlines the types of costs that would apply to a business in implementing registration for a new occupation under the current BSR Act and BSR Regulations. Impacts on current practitioners and businesses would be minimised through transitional provisions, such as lead-in times and grandfathering of individuals already operating in the sector.

¹⁸ NRF discussion paper, op cit p 4

¹⁹ NRF discussion paper, op cit p 4



If the proposal proceeds at a national level, a cost benefit analysis of the proposals will be undertaken in WA following this consultation process. This information will form part of the Decision Regulatory Impact Statement paper recommending a final policy decision for Government to consider.

Why register commercial project managers?

A commercial project manager has a project coordination role in large construction projects. The project manager is employed by the building contractor and essentially plans a construction project to ensure it runs on time and on budget. For high rise commercial building projects, the construction or project manager will engage with a design team and experts such as the architect or architectural team, a range of engineers (fire safety, mechanical, hydraulic, electrical, etc.), a building surveyor and quantity surveyor. In medium rise commercial building projects, there is likely to be a smaller design team. The demand for construction/project managers has grown substantially over recent decades, in some cases replacing contract administration roles previously performed by architects.

Commercial project managers can influence decisions and priorities in a construction project, and therefore their work should arguably be subject to mandatory registration requirements. The intent of registering commercial project managers would be to ensure these individuals and entities are competent in their field, have a strong understanding of the NCC and their supervision obligations. Failure to comply with minimal standards could result in disciplinary action.

NRF framework for commercial project managers

The draft NRF model defines ‘project management work’ as follows:

Project management work is planning, organising, directing, controlling and coordinating design or construction of a new building or alteration to an existing building and the physical and human resources involved in the construction process.²⁰

²⁰ October 2020, draft NRF Model

The work of registered builders, building surveyors, architects and building designers falls, in part, within the scope of the work of project managers. The NRF discussion paper explains that exemptions from the need of those occupations to also be registered as project managers will apply:²¹

Project coordination must be done by registered project managers, unless the coordination is confined within one of the categories of design, construction or approval, in which case it can be done by a registered designer, registered building (individual) or a registered building surveyor. For example, the architect or building designer for a building can coordinate the design and documentation work of the specialist engineers, quantity surveyors and so on without requiring separate registration as a project manager.

*Coordination of the design, approval and construction of a single residential (Class 1) building does not present sufficient risk to require a registered project manager, or to prohibit an owner or project home builder coordinating this work.*²²

The NRF discussion paper proposed two tiers of project manager registration: Level 1 Open/Commercial and Level 2 Restricted/Commercial. The following two tables detail the proposed tiers of registration based on NCC classes and the qualifications and experience requirements. Some minor adjustments to the qualifications requirements have been made following the release of the NRF discussion paper.

Table 5: NRF registration framework: project manager registration tiers and scope of work²³

Registration Tier	Restrictions on scope of work
Level 1 – Open/Commercial	Project management work for a building of NCC Class 2 to 9 of any size.
Level 2 – Restricted/Commercial	Project management work for a building of NCC Class 2 to 9 no greater than three storeys in height and 2,000m ² in area.

Table 6: NRF registration framework: project manager qualifications and experience²⁴

Registration Tier	Qualifications	Experience
Level 1 – Open/Commercial	Approved degree or advanced diploma in building and construction management; or Approved degree in a relevant discipline plus postgraduate qualifications in project management	A minimum of three years' post-graduate experience under the direct supervision of a project manager level 1.
Level 2 – Restricted/Commercial	Approved diploma in building and construction management.	A minimum of three years' post graduate experience under the direct supervision of a project manager level 1 or project manager level 2.

²¹ The registration of building designers is another registration proposal in the Building Confidence Report and will be considered in a later CRIS.

²² NRF discussion paper, op cit p 161

²³ October 2020 version of NRF model

²⁴ October 2020 version of NRF model

Why register owners' representatives for commercial buildings?

An owner's representative is engaged by a project owner or developer. Their role is to represent the interests of the owner throughout the process of development. The owner's representative serves as a liaison, monitors the process, reports on project issues and progress. The owner's representative can alert the project owner to issues of concern.

The NRF discussion paper defines the owner's representative for the purposes of registration as follows:

Owner's representative means a person appointed by the legal or beneficial owner of a building project to organise and coordinate the design, approval and construction of a building project other than the registered building designer, registered building surveyor or registered builder.

The NRF discussion paper briefly references registration of an owner's representative by indicating that owners' representatives must be registered as project managers:

- *only a registered project manager level 1 may be appointed as owner's representative for a commercial building project of NCC Classes 2 to 9 of any size;²⁵ and*
- *only a registered project manager level 1 or level 2 may be appointed as owner's representative for a commercial building project of NCC Classes 2 to 9 up to three storeys in height and 2,000m².²⁶*

The intent of registering owners' representatives as project managers is to ensure these individuals and entities are competent in their field, have a strong understanding of the NCC and their supervision obligations. Failure to comply with minimum standards could result in disciplinary action. The NRF discussion paper further proposes that building owners would be subject to penalties if they engage unregistered persons to undertake the above work.

Challenges

The definition of the work of an owner's representative is complex to determine given their varied work. The qualifications and experience may not cover all elements of their role. In addition, the disciplinary definitions about what would trigger an investigation or disciplinary matter for owners' representatives would also be a challenge and requires further consideration.

²⁵ NRF Discussion Paper, op cit p 161

²⁶ NRF Discussion Paper, op cit p 163

Questions

14. Do you support the proposed registration of project managers working on commercial construction projects and qualifications/experience requirements? Why or why not?
15. Do you have concerns about the knowledge and expertise of project managers and/or owners' representatives working on commercial construction projects? If so, please outline your concerns and, where possible, provide examples.
16. Do you support the proposed registration of owners' representatives that work on commercial construction projects and qualifications/experience requirements? Why or why not?

6. Recognition of prior learning: concerns about training quality

6.1. Current provisions

Recognition of Prior Learning (RPL) is part of the national VET system in which a person with no formal qualifications can have their relevant skills, knowledge and experience assessed and a nationally recognised qualification issued.

RPL provides a useful recognition of skills and experience if conducted with rigor by a qualified assessor. A particular area of concern is when RTO's, and the BSB, are provided with false information about experience. This was demonstrated in mid-2017 when a company set itself up to assist people to obtain builder registration in WA for a fee. Part of its service was to prepare and deliver information required for RPL assessment to the RTO responsible for assessing and granting the Diploma. The company falsified some experience and qualifications details with the result that a small number of people were granted Diplomas and builder's registration. Similar problems have been identified in other jurisdictions.

The Australian Skills Quality Authority (ASQA) is the national regulator for Australia's VET sector. ASQA's role is to regulate RTO's to ensure nationally approved quality standards are met. Building and Energy has lodged details about the activities identified above with ASQA.

The BSB also undertook disciplinary action under section 53(1)(c) of the BSR Act as a result of false material submitted for registration through the third party company. A builder was fined \$5,000 and chose to cancel his practitioner registration prior to the BSB considering the issue. Several other investigations are currently ongoing.

Building and Energy can take prosecution action in the Magistrates Court if a person or entity makes false or misleading statements to the BSB or provides, or causes to provide, information that is false or misleading in a material particular.²⁷ The maximum penalty is a fine of \$25,000 for an individual and \$125,000 for a body corporate. Legal and enforcement action is therefore available to Building and Energy against third party companies in some circumstances.

Building and Energy alerted the building industry to the issue in a media release warning applicants about the company. A proposed reform to strengthen the legal actions available in these circumstances is outlined in Proposal 1 below.

The BSB and the Master Builders Association of WA have raised concerns about the RPL assessment for the Diploma of Building and Construction (Building) undertaken by some RTO's. A key concern is that in order to increase profits, some RTO's may not undertake a thorough RPL assessment. The issue was raised with the BSB by a builder who was *"...absolutely shocked at how easy it was for him to gain his Diploma...he ticked heaps of boxes on a computer and was given his qualification."*

Building and Energy has referred these and other complaints to ASQA. Data on the issue is difficult to obtain and the evidence is largely anecdotal.

²⁷Section 99, BSR Act

In the event that RPL assessments are not undertaken thoroughly, assessing applicants' experience becomes even more crucial to ensure only competent persons are registered. A reform to assist in the BSB's verification of experience is outlined in Proposal 2 below.

Question

17. Do you have any concerns about the quality of training providers delivering the Diploma of Building and Construction (Building)? If so, what evidence can you provide?

6.2. Proposals for change

Proposal 1: Require applicants to declare that they have read and approve all the contents of third party applications

The use of third party companies to assist applicants in their building practitioner application is reasonable and there is no intention to ban this practice. Concerns arise, however, when information about an applicant's experience is falsified to meet the prescribed requirements.

Proposal 1 is that the applicant declaration on the application form states explicitly that the applicant has read and approves all the content and attachments contained in their application for registration. This declaration may be used in evidence in subsequent disciplinary actions or prosecutions.

Question

18. Do you support requiring applicants for registration to declare that they have read and approve all the content and attachments contained in their application? Why or why not?

Proposal 2: Clarify in the BSR Regulations that the BSB may seek written verification of building experience from applicants

Some level of verification is considered essential to ensure that applicants have undertaken building work to a level sufficient to satisfy the BSB that they are competent for registration, as registration entitles the applicant to build without supervision. It is proposed that a regulation is introduced to place beyond legal doubt that the BSB can require an applicant's experience to be verified and signed by their employer or other person within the building industry who has supervised or seen the applicant carrying out the work. Further feedback and examples will be sought during consultation.

The proposal would not restrict the BSB's capacity to refer to alternative forms of verification or proof of building experience.

Question

19. Do you support clarifying, and placing beyond doubt, that the BSB can seek written verification of experience (referee checks) from an applicant for registration? Why or why not?

7. Continuing Professional Development: builders and building surveyors

The Building Confidence Report noted that not all practitioners operating in the building industry and associated professions have a sufficient understanding of the NCC, which is updated every three years. Recommendation 3 of the Building Confidence Report states:

‘That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the Construction Code’.

As part of the national framework for the Building Confidence Report, the ABCB is developing nine short training modules on the NCC for a range of building related occupations. Experts from relevant disciplines have contributed to developing course content and supporting materials. The courses will target key practitioner groups, such as building surveyors, builders, design and engineering practitioners, plumbers and fire safety practitioners.

Training will be provided online for a cost recovery fee and various courses are being made available to practitioners. As each CPD course becomes available, the ABCB will invite practitioners to enrol. For further information, refer to ABCB’s website www.cpd.abcb.gov.au/abcbncc/welcome.

Building and Energy will alert WA registered persons, industry associations and institutes to the training modules as they are released. In addition, the BSB may make these training modules a mandatory requirement by applying prescribed conditions on registration.²⁸ Where courses are not completed within a set time period, Building and Energy could issue a formal warning or infringement notice to a registered practitioner.

Building and Energy will consult further with relevant industries and stakeholders as appropriate on whether the NCC training modules should be made mandatory. Your preliminary feedback would be useful, however, for our understanding of the views in WA.

Questions

20. Do you support amending the BSR Regulations to require registered building practitioners and building surveying practitioners to complete online national training modules on the NCC in WA? Why or why not?
21. Are online training modules the best way to provide this training? Are there better ways of doing this?

²⁸ Section 23-25.

8. Disciplinary provisions

8.1. Current provisions and issues

The Building Confidence Report highlighted the need to provide stronger enforcement powers for regulators to ensure national building standards are met and the safety of building occupants is protected. Enforcement also supports businesses by strengthening consumer confidence and providing a fairer playing field for businesses that undertake compliant work.

In the BSR Act, the term ‘providers’ refers to all practitioners and contractors registered under the BSR Act, including builders, building surveyors and painters. The BSR Act provides power for the BSB to take registered providers who have committed serious breaches of discipline to the SAT for a disciplinary hearing. If the matter is proven, the SAT may do one or more of the following:

- order the BSB to amend the provider’s registration;
- caution or reprimand the provider;
- impose a condition on registration or amend an existing condition;
- order the building service practitioner or nominated supervisor to undertake and complete a specified further course of training or education;
- order registration to be suspended for a period not exceeding two years;
- order the provider’s registration be cancelled and name removed from the register; and
- order the provider to pay to the Building Commissioner a penalty of a fine not exceeding \$25,000.²⁹

Offences against the BSR Act by registered or unregistered providers are dealt with separately in the Magistrates Court.

The BSR Act also provides the BSB with disciplinary powers to consider minor complaints against registered providers.³⁰ Where the BSB finds a minor disciplinary breach to have been proven, the BSB may order payment of a fine not exceeding \$5,000.³¹ The BSB may also:

- (a) order that the provider’s registration be amended; or
- (b) issue a caution or reprimand; or
- (c) require the provider to give an undertaking about future conduct or comply with specified conditions in relation to the carrying out of the building service.³²

The BSB may, in addition to the above, order a provider to pay costs and expenses of or arising from the investigation of the complaint. Providers may appeal the BSB’s decision to the SAT.

²⁹ Section 58, BSR Act

³⁰ Section 57(1), BSR Act

³¹ Section 57(2), BSR Act

³² Section 57, BSR Act

Where a provider is subject to disciplinary action and is no longer registered, the SAT may still issue a caution or reprimand the provider and/or order the payment of a fine. As part of the proceeding, the SAT may impose a fine not exceeding \$25,000 on one or more persons, including the nominated supervisor of the contractor, partner or directors or person concerned in the management of the body corporate.³³ This provision enables key decision makers of a contractor's business, and therefore the persons responsible for an entity's non-compliance, to also be held accountable and penalised if they are involved in breaches of the law.

For particularly serious breaches of discipline involving cancellation or suspension of registration, the SAT may also declare an officer of the building contractor to be an 'ineligible person' for a period not exceeding three years.³⁴ This provision is discussed further in Proposal 1 below.

In undertaking investigations into providers, Building and Energy uses investigative powers provided under the BSCRA Act. Building and Energy has published an Enforcement Policy that outlines how it prioritises enforcement actions. A measured, risk-based approach is used for enforcement matters with both parties provided with the opportunity to have their say. Sometimes education, a warning, or monitoring may be more appropriate than taking disciplinary or prosecution action. Further information on Building and Energy's compliance and enforcement policy is available at: www.commerce.wa.gov.au/building-and-energy/enforcement-0.

The BSCRA Act also provides for a dispute resolution/conciliation function for 'building services complaints,' which essentially means complaints related to the quality of workmanship. Where a dispute cannot be resolved through conciliation the Building Commissioner may issue an interim order, a building remedy order or refer the matter to the SAT.³⁵

Building and Energy can also take actions in the Magistrates Court for various offences under the BSR Act, such as unregistered contractor activities and offences in other building legislation, such as failure to comply with a building remedy order under the BSCRA Act or breaches of the *Home Building Contracts Act 1991* (HBC Act).

Building providers are also subject to controls under the Building Act and the Building Regulations, where building approvals processes apply. Permit authorities may issue building orders in relation to deficient work they identify, and failure to comply with an order can result in a fine of \$50,000 for a first offence, \$75,000 for a second offence and \$100,000 and 12 months imprisonment for a third offence.

For further information on the building approvals process reviews, refer to DMIRS website at: www.commerce.wa.gov.au/building-and-energy/public-consultations-0.

³³ Section 97, BSR Act

³⁴ Section 60(2), BSR Act

³⁵ For further information refer to www.commerce.wa.gov.au/publications/building-complaint-resolution

The following case studies from Building and Energy's media releases illustrate the use of disciplinary penalties under the BSR Act and other building legislation. The BSB takes court outcomes and other factors into consideration when determining disciplinary action.

Case Studies

Case Study 1: Unsafe fire certifications by building surveyors

In October 2019, a Perth building surveying company and its two directors (both registered building surveying practitioners) were fined a total of \$35,000 in SAT for negligence under the BSR Act. The fines related to certification of three buildings that did not meet fire safety requirements.

One of the buildings was an \$11 million apartment development. Through a Certificate of Design Compliance (CDC), a building surveyor declares a building will comply with applicable building standards if completed according to the plans and technical details provided. The CDC did not include the performance based or alternative solution on fire protection with respect to the construction of the first-floor external walls.

Case Study 2: Negligent building work

In August 2019, the BSB found that a building contractor had been negligent under the BSR Act after he carried out work that differed from approved plans and did not have a valid building permit. Instead of providing a penalty, the BSB resolved to issue a caution after taking into consideration the contractor:

- was fined more than \$9,000 including costs at Perth Magistrates Court as a result of not having a valid building permit in 2015 (court action initiated by the permit authority under the Building Act); and
- paid \$74,000 in rectification and legal costs to the property owner in 2016 (as a result of a Building Commissioner building remedy order³⁶ referred to the SAT).

Case Study 3: Breach of conditions of registration

A building contractor's registration limited him to constructing single storey residential work and industrial sheds.

In May 2019, the BSB was advised that the contractor's 2013 building permit application described the project as a two-storey habitable barn. An audit by Building and Energy found that a two-storey dwelling had been constructed at the site. The project was the subject of a separate building dispute between the property owner and the builder.

Following SAT proceedings in 2018 taken by the property owner, the SAT made an order for the contractor to pay the owner more than \$140,000 to rectify defects in the building. The contractor was unable to pay the full amount.

In May 2019, the BSB issued the building contractor a \$2,000 fine, which considered the SAT findings and his financial position. The contractor surrendered his building contractor registration.

³⁶ The Building Commissioner's remedy orders are made under section 37, Part 3, BSCRA Act.

8.2. Proposals for change

The following proposals are intended to strengthen the BSR Act's existing disciplinary provisions and penalties to improve compliance levels and building safety.

Proposal 1 – Improve the 'ineligible person' provision of the BSR Act

Section 60 is aimed at ensuring officers of contractors (such as directors and partners) are ineligible for future management of a company if major misconduct has occurred. Decisions on whether to declare an officer of a contractor an 'ineligible person' may be made by the SAT following an application from Building and Energy. The SAT may declare an officer to be an ineligible person for up to three years if:

- the SAT cancels or suspends the registration of a contractor; and
- the SAT is satisfied that it is appropriate to make an order declaring an officer of the contractor to be an ineligible person.³⁷

If an ineligible person is, or has been, involved in the management of a registered building contractor, this is grounds for disciplinary action against the contractor.³⁸

The term 'officer' has a broad meaning in the BSR Act and covers:

- directors or the secretary of the corporation;
- persons who make, or participate in making decisions that affect the whole or a substantial part of the business of the corporation;
- persons who have the capacity to significantly affect the corporation's financial standing;
- persons in accordance with whose instructions or wishes the directors of the corporation are accustomed to act; or
- receivers, administrators, liquidators or trustees.³⁹

Section 60 has two key limitations.

First, before the SAT can cancel the registration of an officer of a contracting company, it requires that a proceeding has been taken against the relevant contractor that results in the contractor's registration being cancelled.. In some cases it is impossible to start a proceeding against the contractor because it is in liquidation or has been deregistered by ASIC.

Second, it does not provide a means to start a proceeding directly against an officer of a contractor (company). This can only be done if the officer is also a registered building practitioner.

It is proposed that an amendment is made to section 60 to address these deficiencies.

³⁷ Section 60(1), BSR Act

³⁸ Section 53(1)(m), BSR Act

³⁹ Section 3, 'officer' - defined with reference to section 9 of the Corporations Act

Question

22. Do you support the proposed amendments to the 'ineligible persons' provisions of the BSR Act? Why or why not?

Proposal 2 – Strengthen the capacity of the BSB to deal with minor disciplinary complaints

The BSR Act provides the BSB with disciplinary powers to consider minor complaints against registered providers if all of the following conditions are met:

- a complaint has been forwarded to the BSB by the Building Commissioner under the BSCRA Act; and
- it is satisfied that a disciplinary matter exists in relation to the provider; and
- it is of the opinion that a proceeding before the SAT is not warranted; and
- the provider consents to the exercise of power by the BSB under this section.⁴⁰

The first part of the proposal is to remove the final requirement: that the provider must consent to the exercise of power by the BSB. The removal of 'provider consent' would better align the BSB's minor disciplinary powers with those of the Plumbers Licensing Board, which have worked effectively and successfully.

As the provision stands, the provider may block rapid decision making by the BSB by withholding their consent for the BSB to determine the matter. The alternative of the BSB taking an allegation to SAT creates additional resourcing for Building and Energy to resolve relatively minor disciplinary matters and can result in delays. The penalties that can be issued by the BSB will continue to be significantly lower than the penalties available to SAT (refer to Proposal 5 below).

The second part of the proposal is to extend the BSB's powers so that, following an investigation of a complaint, the BSB may order that a practitioner or nominated supervisor undertake a specified further course of training or education.

The provider that is the subject of the complaint may appeal the BSB's decision in the SAT if they disagree with the decision.

Question

23. Do you support the removal of consent of the provider (i.e. the subject of a complaint) to the BSB choosing to hear a minor disciplinary matter?

24. Do you support the BSB having the power to order a registered practitioner to complete a specified further course of training following a disciplinary investigation and BSB hearing?

⁴⁰ Section 57(1), BSR Act

Proposal 3 – Extend the scope of BSB’s Interim Disciplinary Order

The BSB may by notice in writing⁴¹ under section 55 of the BSR Act require the Building Commissioner to make an ‘interim disciplinary order’ under the BSCRA Act.⁴² An interim disciplinary order of this kind may only be made if the BSB is of the opinion that:

- a provider has engaged in conduct that is likely to result in suspension or cancellation of registration;
- it is likely the provider will continue to engage in conduct of that kind; and
- there is significant risk that a person or persons may suffer significant loss or damage as a result of the conduct if immediate action is not taken.⁴³

An interim disciplinary order may suspend the provider’s registration, either generally or in relation to any circumstances or regulated building services specified in the order.⁴⁴ The interim building service order ceases to be in force 28 days after it is given to the person bound by the order, unless it is revoked by the SAT or Building and Energy provides an allegation about the disciplinary complaint to the SAT.⁴⁵ The evidence to support an interim disciplinary order must therefore be at a high level.

The interim disciplinary order has some limitations. For example, in one case a building contractor built several defective buildings but then abandoned them and could not be contacted to the frustration of the owners. An interim disciplinary order would have been useful to put a stop to the contractor potentially entering into new building contracts and permits. However, it was not possible to prove that ‘...it was likely the provider will continue to engage in conduct of that kind.’ The ‘immediate action’ requirement has also proven difficult to demonstrate to a level necessary for legal action. In addition, the 28 day timeframe for Building and Energy to provide an allegation to the SAT has also constrained the use of the interim disciplinary order as building related investigations are often complex and often take several months or more to finalise.

The proposal is to expand the scope of an interim disciplinary order to:

- allow an interim disciplinary order to be made if a provider has engaged in conduct that is likely to result in suspension or cancellation of registration, and there is significant risk that a person or persons may suffer significant loss or damage as a result of the conduct; and
- extend the suspension order, and time for Building and Energy to take an allegation to SAT, to 90 days (three months) or some other appropriate period.

⁴¹ Section 55, BSR Act

⁴² Section 31, BSCRA Act

⁴³ Section 55, BSR Act

⁴⁴ Section 31, BSCRA Act

⁴⁵ Section 31, BSCRA Act

Question

25. Do you support the proposed measures to increase the scope of the interim disciplinary order?

Proposal 4 – Penalties for breaches of discipline under the BSR Act, and carrying out a prescribed building service when unregistered, to be doubled

Financial impacts on homeowners of poor building work can be in the order of tens of thousands of dollars. In more complex multi-storey buildings, non-compliance in areas such as structural or fire matters risk the life safety of building occupants. The disciplinary penalties for building service providers and unregistered providers should provide strong penalties where appropriate.

At present, the maximum fine that the SAT can impose on a registered provider or former provider for breaches of discipline is \$25,000. Officers of a company can also be fined. For breaches of discipline dealt with by the BSB, a maximum fine of \$5,000 may be imposed.

Proposal 4 is that the maximum fine that may be imposed by the SAT and the BSB for disciplinary breaches of the BSR Act is doubled, from \$25,000 to \$50,000 for the SAT and from \$5,000 to \$10,000 for the BSB.

In addition, it is proposed that the maximum \$25,000 penalty for carrying out a prescribed building service without being registered be doubled to \$50,000.⁴⁶ Unregistered and unqualified builders and building surveyors represent a high risk to the public.

Questions

26. Do you support the doubling of penalties for breaches of discipline dealt with by the SAT and the BSB, and penalties for carrying out unregistered work?

27. Are there any other changes to the powers of the SAT and the BSB that would make them more effective?

Proposal 5 – New penalties and grounds for disciplinary action for building service practitioners operating outside their class of registration

The BSR Act prohibits a contractor from carrying out, or undertaking to carry out, a prescribed building service, such as operating outside their class of registration.⁴⁷ Building and Energy can take action in the Magistrates Court for this type of breach of the legislation. In addition, Building and Energy may take disciplinary action to the BSB or SAT for these type of breaches on the grounds of negligence. However, there are no clear BSR Act disciplinary penalties for practitioners operating outside their class of registration.

The following changes to the BSR Act are therefore proposed to clarify and strengthen the regulation of occupations with 'tiered' registration:

- a new provision and penalty be introduced to prohibit practitioners from operating outside their class of registration; and

⁴⁶ Section 7(1), BSR Act

⁴⁷ Section 7(1), BSR Act

- a new provision be introduced to enable disciplinary action to be taken where providers operate outside their class of registration.

This proposed reform would affect building surveyors, and builders after the proposed introduction of tiered registration. As painters have a single class of registration, the change would not affect them.

Questions

28. Do you support new penalties and grounds for disciplinary action if a building practitioner or building surveying practitioner works outside their class of registration?

Proposal 6 – Contractors to provide notification of a merger or sale of a company within seven days

Mergers or sales of companies can significantly change the financial standing of businesses and, in some cases, increase the risk of insolvency. This can put consumers and subcontractors at increased risk of financial loss. Although these changes are important for Building and Energy and the BSB to be aware of, on many occasions, this information is not provided.

Proposal 6 is that the BSR Act is amended to require registered contractors to give the BSB written notice of a sale or merger of a company within seven days of its occurrence. Using current investigations powers, if concerns are identified, Building and Energy may require details be provided to ascertain the impact of the merger or sale on the entity's financial position to ensure that the changes have not put it into financial difficulty.

Question

29. Do you support amending the BSR Act to require registered contractors that are companies to give the BSB written notice of a sale or merger within seven day of its occurrence? Why or why not?

Proposal 7 – Expand grounds for disciplinary action for management and supervision of building work (builders only)

In the building and construction industry, a central responsibility of registered building contractors is to schedule, manage and supervise building work undertaken by trade subcontractors or employees. Strong project planning, building knowledge, as well as checking and inspection systems help to ensure building contractual requirements are met on schedule and to the required standard.

The disciplinary provisions of the BSR Act place an ongoing responsibility for contractors and nominated supervisors to maintain processes to ensure the proper management and supervision of builder work at all times.⁴⁸ Contractors may be subject to disciplinary action if they fail to ensure that a building service carried out by the contractor has been properly managed and supervised.⁴⁹ Nominated supervisors may also be subject to separate disciplinary action when work is not properly managed and supervised.⁵⁰

These provisions are intended to ensure that building contractors and nominated supervisors are held to account for failure to have sufficient expertise and resourcing to deliver proper management and supervision. However, these provisions require a great deal of investigative proof and, arguably the proof of supervision can only be established after the event.

In *Building Services Board and Cramphorn* (2016) WASAT 57, the SAT quoted the Builders' Registration Board of Western Australia and Elliott (2009) WASAT 44 on the meaning of section 10AA under the now repealed *Builders' Registration Act 1939* (WA):

“(T)he obligation to ensure that management and supervision was sufficient to ensure that the whole of the building work was carried out in a proficient and workmanlike manner meant that not only must the building work when completed be free of any defect, other than of an insignificant nature, but also that the method of carrying out the building work was proficient and workmanlike.”

The failure to manage and supervise would therefore be judged not only by whether the end product is free of defects, but also by whether, even if it is free of defects, the method of carrying it out was proper and proficient. A provision of this kind would provide Building and Energy with a more efficient and effective way to enforce higher standards of management and supervision. Proposal 7 is for an amendment to provide that:

- the disciplinary requirements for management and supervision shall not have been complied with unless the building contractor can show that its management and supervision arrangements were sufficient to ensure that the whole of the building work was carried out in a proficient and workmanlike manner, similar to section 10AA of the now repealed *Builders' Registration Act 1939* (WA); and
- disciplinary action could be taken against the registered building contractor and/or nominated supervisor, similar to other disciplinary matters under the BSR Act.

⁴⁸ Section 53(1)(b),(f) and (g), BSR Act

⁴⁹ Section 53(1)(f), BSR Act

⁵⁰ Section 53(1)(g), BSR Act

Question

30. Do you support amending the BSR Act, in relation to serious cases of poor quality work, to require the building contractor to demonstrate that the management and supervision of the work was sufficient to ensure that the whole of the building work was carried out in a proficient and workmanlike manner? Why or why not?

Proposal 8 – Expand grounds for disciplinary action in relation to misleading, deceptive or fraudulent material

A limitation in the current wording of the disciplinary provisions is that Building and Energy can take disciplinary action for fraudulent, misleading and deceptive conduct by a provider in connection with a building contract and the carrying out of a building service.⁵¹ As a result, Building and Energy has limited capacity to take disciplinary action over general fraudulent or deceptive conduct, such as early or preparatory work with the client and advertising material. Builders who engage in deceptive conduct can bring the building industry into disrepute and gain an unfair competitive advantage.

As an example, Building and Energy received complaints that a builder made false commitments to include air conditioning, fencing and free rent to home purchasers if the building was not constructed within a certain time period. These representations were included in advertising and the Preliminary Agreement. Although the complainants chose to sign a building contract on the basis of these commitments, Building and Energy could not take disciplinary action.

A building company was successfully prosecuted by the ACCC for manipulating reviews on its website. However, Building and Energy could not take disciplinary action as the conduct was not in connection with a contract or building work.

Misleading and deceptive conduct penalties apply to all service providers under the Australian Consumer Law so conciliation and other action may be taken by Consumer Protection on these types of issues. However, a stronger course of action and more joined-up service would be possible if disciplinary action and penalties were available under the BSR Act.

The BSB and Building and Energy should have the capacity to take disciplinary action if there are significant misleading statements or patterns of deceptive conduct by registered building service providers. It is therefore proposed that the current capacity to take disciplinary action in the BSR Act is expanded to include broader circumstances where the provider has:

- engaged in fraudulent conduct in documents and advertising⁵²; or
- engaged in conduct that is harsh, unconscionable, oppressive, misleading or deceptive in its preparatory contracts, documents and advertising.⁵³

⁵¹ Section 53(1)(h)(i) and (j), BSR Act

⁵² Section 53(1)(h)(i), BSR Act

⁵³ Section 53(1)(h)(j), BSR Act

Question

31. Do you support amending the BSR Act to expand the grounds for disciplinary action to include fraudulent conduct and misleading and deceptive conduct?

Proposal 9 – Expand grounds for disciplinary action to include breaches of WA building laws

The BSR Act provides for disciplinary action to be taken where a building service provider has been convicted of an offence under the BSR Act and other building related Acts in WA⁵⁴. However, the process of taking disciplinary action often takes several months or even years before a decision is made. In cases of repeat or serious behaviour, where there is clear evidence of breaches but a final conviction has not yet been reached, a more rapid disciplinary action process is required to protect consumers.

It is proposed to extend the current disciplinary provisions to enable disciplinary action such as suspension of registration where there is evidence the building service provider has contravened a requirement under other building related Acts in WA, including the BSCRA Act, the Building Act, the *Local Government (Miscellaneous Provisions) Act 1960* or the HBC Act.⁵⁵

The intent of these proposed amendments is to enable targeting of serious or repeat offenders.

For example, for a building contractor this may include repeated failure to obtain home indemnity insurance as required under the HBC Act or failure to obtain a building permit before commencing building work under the Building Act. It may be appropriate in such circumstances to seek suspension or, in some cases, require further training and impose conditions on registration. In these cases, taking a matter directly to the SAT, rather than a prosecution of an offence in the Magistrates Court, may result in a more rapid outcome for consumers and send a clear message about expectations of registered providers.

Question

32. Do you support amending the BSR Act to allow disciplinary action for breaches of WA building related laws?

Proposal 10 – Increase the time period for when Building and Energy and local governments can issue infringement notices from 21 days to 12 months

Infringement notices provide a timely, cost-efficient enforcement option for regulators in relation to relatively minor contraventions of legislation. The issue of infringement notices for an alleged offence allows persons to accept responsibility by paying the infringement (prescribed modified penalty) rather than facing a potential prosecution where higher penalties and costs may apply.

In April 2019, the Commerce Regulations Amendment (Infringement Notices) Regulations 2019 introduced infringement notices for non-indictable offences under the Building Act, the Building Regulations, the BSCRA Act, the BSR Act and the BSR Regulations.

⁵⁴ Section 53(1)(a)(ii), BSR Act

⁵⁵ In jurisdictions such as Queensland and the ACT, the state regulatory authorities have the capacity to take disciplinary action in the event of a contravention of broader building related legislation.

As a result of these amendments, authorised officers from Building and Energy may issue infringement notices for a wide range of offences under the BSCRA Act, the BSR Act and the BSR Regulations. Authorised officers appointed by local government may also issue infringement notices for certain offences that fall under their jurisdiction under the Building Act and Building Regulations. A list of offences for which infringement notices can be issued under those Acts and regulations is included at **Appendix C**.

The infringement notices introduced in April 2019 rely on the standard provisions set out in the *Criminal Procedure Act 2004 (WA)*. Section 8 of that Act requires notices to be served on alleged offenders within 21 calendar days after the offence has been committed.

Providing a 21 day maximum limit on when an infringement notice can be issued works well in relation to 'simple offences', such as traffic offences, where the offence is detected instantly. However, many building offences do not come to the attention of Building and Energy or local government until several months after the offence occurred. In addition, the 21 calendar day period does not allow Building and Energy or local government sufficient time to speak to the parties, review the evidence and assess whether an infringement notice or another enforcement outcome, such as education, a formal warning, or prosecution, is the more appropriate course of action.

Some other Acts provide for an infringement notice scheme entirely separate, or partially separate, from the *Criminal Procedure Act 2004 (WA)*. For instance, the *Plumbers Licensing Act 1995* has a separate head of power for an infringement notice regime. The *Plumbing Standards Regulations 2000* enables infringement notices to be issued within 12 months of when the breach was committed.

Given the operation of the *Criminal Procedure Act 2000 (WA)*, consultation with the Department of Justice, permit authorities and other parties will be needed to determine the appropriate course of action on this issue.

Questions

33. Do you support extending the time period in which an infringement notice can be issued for building related offences, for example, from 21 days to 12 months after the offence has been committed?
34. Are there any other ways to make infringement notice provisions more effective for local governments?

9. Extending builder registration to regional and remote Western Australia

9.1. Current provisions and issues

WA has a population of 2.6 million people, most of whom (more than 2 million) live in the State's capital city and surrounding suburbs.⁵⁶ The remainder live in regional and remote areas across the State.

Due to low population densities, and difficulties in getting qualified and experienced builders to service all regional and remote areas of WA, exemptions from the requirement to use a registered builder have been in place since builder registration requirements were first introduced in the 1930's. These exemptions were carried into the building services legislation introduced in 2011.

The BSR Regulations establish both when and where builder registration is currently required in WA. Regulation 13 of the BSR Regulations defines 'builder work' for which registration is required as building work:

- for which a building permit is required; and
- has a value of \$20,000 or more; and
- is carried out in an area of the state set out in Schedule 3.⁵⁷

Schedule 3 of the BSR Regulations lists those areas of the state where a registered builder is required. In brief, builder registration requirements apply in all areas of the Great Southern Region and in most towns throughout the rest of the State. The map at **Appendix D** provides a pictorial representation of where builder registration is required in WA.

Building industry stakeholder groups in WA have called for the extension of registration requirements to the whole of the State for a number of years, on the grounds that the current exemptions provide an unfair competitive advantage to unregistered builders in those areas, as well as concerns about building standards.

Exemption from registration is primarily a legacy of the past when buildings were much less complex and modes of transport and the system of roads in WA were less advanced than they are today. While the availability of qualified builders in more remote areas of WA may still be an issue, given the significant health and safety risks involved in the building and construction industry today, it is appropriate to consider extending builder registration requirements to all areas of the State.

It is critically important that buildings in all areas of the State meet the required standards, as the properties can and will be on-sold in the future. The new owners are entitled to have confidence it has met relevant standards to ensure their safety. This can only be achieved uniformly by extending the builder registration regime across all of the State.

⁵⁶ Greater Perth 2,059,484 and rest of WA 535,708. Australian Bureau of Statistics, *Estimated Resident Population, States and Territories- Greater Capital City Statistical Areas*, 3218.0 Regional Population Growth, Australia, 2017-18

⁵⁷ Regulation 13(1)(c) and Schedule 3, BSR Regulations

9.2. Proposals for change

This paper proposes that the registration requirements for builders be extended to all areas of the State by repealing Schedule 3 of the BSR Regulations. As builder registration is only required in WA when a building permit is also required, the effect of this change will be that builder registration is not required in those very limited areas of the State where a building permit is not required.

Schedule 4 of the Building Regulations sets out the areas of the State, as well as the types of work in those areas, where a building permit is not required. The vast majority of exemptions from requirements for a building permit in Schedule 4 are for Class 10 buildings, which are relatively low risk, non-habitable buildings or structures, or incidental structures.

Only areas with particularly low levels of building work and populations are exempt from building permits for more complex building work other than Class 10 buildings/structures. For example, the Murchison Shire is exempted under Schedule 4: it has no town site, covers 50,000 kilometres and has a population of around 113 people.

Despite the exemptions provided by Schedule 4, the repeal of Schedule 3 will effectively result in a significant expansion in the areas of the State and the types of building work where registered building contractors must be used.

The Building Regulations, including Schedule 4, is available at the following website link: www.legislation.wa.gov.au/legislation/statutes.nsf/law_s43955.html

A key advantage of extending registration requirements for builders to currently exempt areas of the State is that consumers can check whether the builder they are considering engaging is registered and therefore qualified and fit and proper to carry out work on their property. Consumers can also have more confidence that if they have a dispute with their builder they are more likely to be willing to resolve the dispute in a reasonable way, because poor behaviour can have disciplinary consequences

The proposal to extend builder registration to the whole of the State is consistent with registration requirements for building surveyors, plumbers, electricians and gas fitters.

9.3. Transitional issues

If the Government decides that builder registration requirements should be extended to the whole of WA, it is proposed that this takes place after the establishment of the tiered registration laws and when all systems have been implemented and are operating. At this point, following an education campaign to alert regional business, unregistered building practitioners would have a lead-in period (such as 12 months) to obtain an RPL assessment from an approved RTO for the relevant tier.

To ensure that building services in low population areas may continue to be provided, it is proposed that applicants for practitioner registration that do not meet the preconditions for RPL requirements may apply for registration but have restrictive conditions placed on their registration ('restricted registration'). For example, the certificate of registration could specify that the builder's scope of work is restricted to single storey buildings only. Where a registered building practitioner's RPL assessment, or the BSB's assessment of qualifications and experience suggests they would benefit from additional training, a further condition of registration could entail a requirement to complete a specific course or unit within a specified period while they remain registered.

After a lead-in period, this transitional pathway to registration would cease and all new applicants for practitioner registration would be required to meet the same qualifications and experience requirements for registration that apply elsewhere in the State.

Companies and partnerships will be grandfathered into their preferred contractor tier. As with all contractors, they will have an obligation to have a nominated supervisor entitled to build in that tier (Refer to Parts 2 to 4 of this paper).

For builders who are unable to meet the minimum requirements for registration but provide services in especially remote areas of the State where no other providers operate, consideration of further flexibility may be required. Comment is sought on whether it would be appropriate to provide for such persons to apply for a special category of restricted registration, i.e. "special remote". This means registration where the builder is issued with registration but subject to defined stringent geographical restrictions, as well as a requirement for a final inspection of the work by an independent qualified person. If supported, this type of registration is expected to be granted only in exceedingly rare circumstances and eventually phased out.

The BSR Act requirements for registration do not allow registration with restrictive conditions to be issued unless the practitioner already meets the prescribed qualification and experience requirements. In order to deliver the more flexible categories of restricted registration outlined above, amendments to the BSR Act will likely be required.

Responses to this consultation paper, and a cost benefit analysis, will provide further information to assist the Government's decision making on the final policy settings and implementation process.

If proposals to extend builder registration to the whole of the State is supported by the Government, Building and Energy will provide extensive information to explain the changes, how and where to obtain RPL, the registration process and the time allowed to apply for registration before the new requirements come into force. Lead-in times and transitional provisions will apply to limit impacts.

Questions

35. Do you support extending builder registration requirements to most areas of WA by the repeal of Schedule 3 of the BSR Regulations? Why or why not?
36. In your view, what are the costs and benefits of introducing mandatory builder registration in currently exempt areas of remote and regional WA?

Appendix A

Proposed NRF Registration: overview of buildings and structures that can be constructed or renovated in each tier

NCC Classes (an overview)			Low rise	Medium rise	Open
Class 1	Class 1a	A single dwelling (home) being a detached house, or one of a group of two or more attached dwellings, each being a building, separated by a fire-resistant wall, including a row house, terrace house, town house or villa	✓ Any size	✓ Any size	✓ Any size
	Class 1b	A boarding house, guest house, hostel or the like with a total area of all floors not exceeding 300m ² , and where not more than 12 people reside, and is not located above or below another dwelling or another Class of building other than a private garage	✓ Any size	✓ Any size	✓ Any size
Class 2	-	A building containing two or more sole-occupancy units (apartments) each being a separate dwelling	✓ Max 2,000m ² and one storey	✓ Max 3 storeys above a storey used for vehicles	✓ Any size
Class 3	-	A residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated people. Examples: boarding-house, hostel, backpackers accommodation or residential part of a hotel, motel, school or detention centre	✓ Max 2,000m ² and one storey	✓ Max 3 storeys above a storey used for vehicles	✓ Any size
Class 4	-	Part of a building that is a dwelling or residence with a building of a non-residential nature, such as a caretaker's residence in a storage facility. A dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building	✓ Max 2,000m ² and two storeys	✓ Max 3 storeys	✓ Any size
Class 5	-	An office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9. Examples: offices for lawyers, accountants, general medical practitioners, government agencies and architects.	✓ Max 2,000m ² and two storeys	✓ Max 3 storeys	✓ Any size
Class 6	-	A shop or other building for the sale of goods by retail or the supply of services direct to the public. Example: café, restaurant, kiosk, hairdressers, shopping centre, showroom or service station.	✓ Max 2,000m ² and two storeys	✓ Max 3 storeys	✓ Any size
Class 7	Class 7a	A building which is a car park	✓ Max 2,000m ² and two storeys	✓ Max 3 storeys	✓ Any size
	Class 7b	A building which is for storage or display of goods or produce for sale by wholesale. Examples: warehouses, storage buildings.	✓ Max 2,000m ² and two storeys	✓ Max 3 storeys	✓ Any size

NCC Classes (an overview)			Limited/ Residential	Restricted/ Commercial	Open/ Commercial
Class 8	-	A laboratory, or a building which a handcraft or process for the production, assembling, alternating repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, gain or sale. Examples: factory, laboratory, mechanic's workshop, abattoir.	✓Max 2,000m ² and two storeys	✓ Max 3 storeys	✓Any size
Class 9	A building of a public nature				
	Class 9a	A health care building, including those parts of the building set aside as a laboratory	✓ Max 2,000m ² and one storey	✓ Max 3 storeys above a storey used for parking vehicles	✓Any size
	Class 9b	An assembly building, including a trade workshop, laboratory or the like, in a primary or secondary school, but excluding any other parts of the building that are of another class. Examples: theatre, schools, universities, childcare centres, sporting facilities.	✓Max 2,000m ² and one storey	✓ Max 3 storeys above a storey used for parking vehicles	✓Any size
	Class 9c	An aged care building	✓Max 2,000m ² and one storey	✓ Max 3 storeys above a storey used for parking vehicles	✓Any size
Class 10	A non-habitable building or structure		✓ Any size	✓ Any size	✓ Any size
	Class 10a	A private garage, carport, shed or the like			
	Class 10b	A structure being a fence, mast, antenna, retaining or free standing wall, swimming pool or the like			
	Class 10c	A private bushfire shelter			

Note: The above table does not identify all types of work associated with building that must be carried out by a registered building contractor or work that does not require registration (Refer to Part 2.1).

The definition of 'storey' is taken from the NCC, BCA Volumes 1 and 2:

Storey means a space within a building which is situated between one floor level and the next above, or if there is no floor above, the ceiling or roof above, but not-

(a) a space that contains only- (i) A lift shaft, stairway or meter room; or (ii) a bathroom, shower room, laundry, water closet, or other sanitary compartment; or (iii) accommodation not intended for not more than 3 vehicles; or (iv) a combination of the above; or

(b) a mezzanine.

Appendix B

Current WA Qualifications and Experience: applicants for building practitioner registration⁵⁸

Set	% (no) total applications 2018/19	Qualification	Experience
Set 1	45% (781)	CPC50210 Diploma of Building and Construction (Building) including specified course units ⁵⁹ , or an equivalent qualification as determined by the Board ⁶⁰ .	Carrying out or supervising building work for periods totalling at least the equivalent of 7 years full-time
Set 2	10% (174)	Qualifications acceptable for- (a) Membership as member (level 1) or Member (Level 2) of the Australian Institute of Architects (b) Registration under the <i>Architects Act 2004</i> (c) Membership as Professional Engineer (MIEAust or FIEAust) of the Institution of Engineers, Australia; or (d) Membership as Fellow or Member of the Australasian Institute of Mining and Metallurgy, Evidenced by such membership or registration.	Supervising building construction for periods totalling at least the equivalent of 5 years full-time
Set 3	5% (87)	Qualifications acceptable for membership as Fellow or Member of the Australian Institute of Building evidenced by such membership	Carrying out, supervising or managing building construction for periods totalling at least the equivalent of 5 years full-time
Set 4	40% (695)	Note: BSB requires Board exam or successful completion of the Diploma of Building and Construction (Building) (RPL) under Regulation 16 (Set 4- experience) and Regulation 17.	Experience in supervising or managing building construction (a) For periods totalling at least the equivalent of 5 years full time; and (b) Sufficient to gain knowledge and skills equivalent to those possessed by a person who has successfully completed a qualification referred to in Set 1 (i.e. the Diploma plus mandatory units).

⁵⁸ Building Services (Registration) Regulations 2011

⁵⁹ These units were considered essential to include as 'mandatory' rather than an elective or optional part of the Diploma e.g. produce labour and material schedules for ordering, apply site surveys and set out procedures, select and manage building and construction contractors, administer the legal obligations of a building construction contract, develop workplace policies and procedure for sustainability, prepare simple building sketches and drawings, work safety in the construction industry.

⁶⁰ The Board has not chosen to identify other 'equivalent qualifications'.

Set	% (no) total applications 2018/19	Qualification	Experience
Set 5	0% (0)	Note: BSB requires Board exam or Diploma of Building and Construction (Building) (RPL) under Regulation 16 (Set 5- experience) and Regulation 17.	Experience in carrying out, building work, other than in excluded remote and regional areas of the State, as set out in Schedule 3 or the area of the State within which the Builders Registration Act applied before it was repealed- (a) For periods totalling at least the equivalent of 7 years full-time; and (b) Sufficient to gain knowledge and skills equivalent to those possessed by a person who has successfully completed a qualification referred to in Set 1 (i.e. Diploma plus mandatory units).

Appendix C

Infringement notices that may be issued under the BSCRA Act, BSR Act and BSR Regulations (issued by Building and Energy)

Section	Offence	Penalty
BSCRA Act		
Section 25(2)	Failure to attend a conciliation proceeding as requested by the Building Commissioner	\$1,000
Section 47(2)	Failure to comply with a direction of the Building Commissioner to provide information or produce records	\$2,000
Section 4(1)	Using a title when not registered in a class of building service contractor or building service practitioner	\$2,500 title of a builder or building surveyor \$1,250 title of painter
Section 5(1)	Falsely claiming to be registered in a class of building service practitioner	\$2,500 title of a builder or building surveyor \$1,250 title of painter
Section 5(2)	Falsely claiming to be registered in a class of building service contractor	\$2,500 title of a builder or building surveyor \$1,250 title of painter
Section 6(1)	Falsely claiming an entitlement to carry out a prescribed building service	\$2,500 builder or building surveyor work \$1,250 painter work
Section 7(1)	Subcontracting a prescribed building service to a person who is not entitled to carry out the building service	\$2,500 builder or building surveyor work \$1,250 painter work
Section 8	Failure to cause building service contractor's registration number to appear in an advertisement	\$250
Section 22(2)	Carrying out or undertaking to carry out, building service without a nominated supervisor	\$2,500 builder or building surveyor work \$1,250 painter work
Section 22(3)	Failure to notify the BSB of ceasing to have a nominated supervisor	\$500 builder or building surveyor \$250 painter
Section 25	Contravening a condition of a building service provider's registration	\$500 builder or building surveyor \$250 painter
Section 32(1)	Failure to notify the Board of a change of address	\$250
Section 33(1)	Failure to notify the BSB of a change in circumstances affecting eligibility to remain registered	\$1,000
Section 34(1)	Failure to notify the BSB of financial difficulty	\$1,000
Section 35(1)	Failure to notify the BSB of being charged with a serious offence	\$500
Section 35(2)	Failure to notify the BSB of being convicted of a serious offence	\$500
Section 35(3)	Failure to notify the BSB of a conviction of an offence against the Commonwealth or another jurisdiction	\$500
Section 36(1)	Failure to notify the BSB of disciplinary action	\$500
Section 37(1)	Failure to return registration certificate	\$500

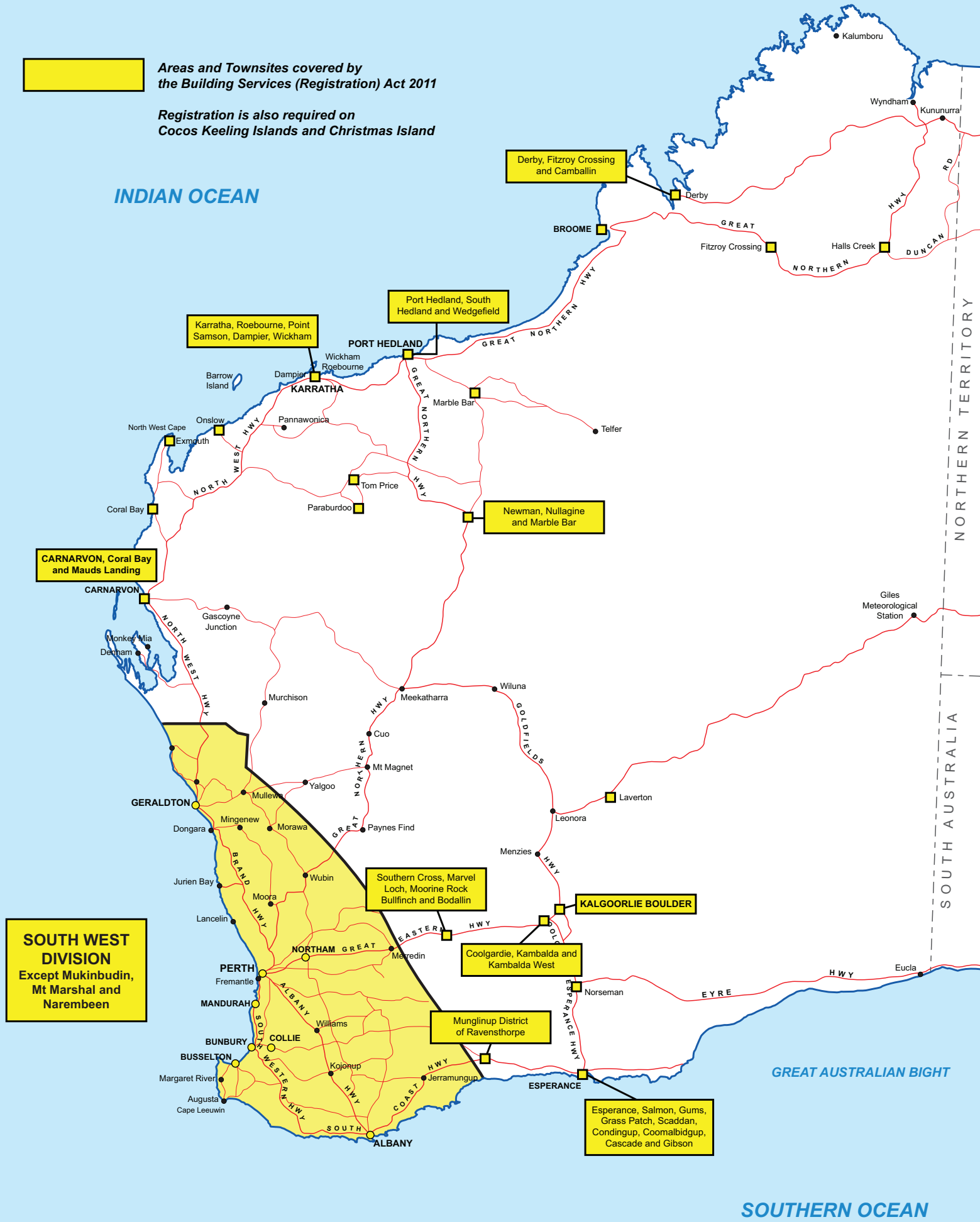
Section	Offence	Penalty
BSR Act		
Section 49	Contravening a condition that applies to owner builder approval	\$2,500
Regulation 21, 27(2), 28J(1), 28K(1)	Failure to display sign- building contractor, owner-builder, building surveying contractor	\$200
Regulation 28J(1)	Failure to display certificate of registration- building surveyor contractor	\$200
Regulation 36	Failure to display sign- painting contractor	\$100

Infringement notice that may be issued under the Building Act and Building Regulations by local government

Section	Offence	Penalty
Section 33(1)	Failure to give notice of completion (BA7)	\$500
Section 43(3)	Failure to give notice of cessation	\$250
Section 42	Failure to display or bring attention to occupancy permit details	\$250
Section 76(1)	Encroachment beyond boundaries without consent, court order or other authority	\$2,500
Section 80(1)	Removal of fence, gate or other barrier to land without consent, court order or other authority	\$1,000
Section 80(3)	Failure to erect adequate temporary barrier	\$1,000
Regulation 50(1)	Failure to install barrier around private swimming pool	\$1,000
Regulation 56(1)	Failure to ensure smoke alarms are compliant prior to transfer to dwelling	\$1,000
Regulation 58	Failure to ensure smoke alarms are compliant prior to tenancy	\$1,000
Regulation 59	Failure to ensure smoke alarms compliance prior to hiring of dwelling	\$1,000

APPENDIX D

Map 1: Areas of the state where builder's registration is required (Schedule 3)
(White areas show where registration is currently not required).



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