



Factsheet: Overview of the building and construction industry review

The building and construction industry employs thousands of South Australians, drives growth and provides homes and important infrastructure. Reforms are proposed to modernise the laws which govern builders and tradespeople in South Australia (SA) to better support consumers and the building industry across five key areas.

More detail on each reform is provided in the discussion paper, along with information about how you can provide feedback, at yoursay.sa.gov.au/building-industry-review.

Part 1 – Improving building dispute resolution

Consumer and Business Services (CBS) receives a significant number of complaints about domestic building work each year. CBS provides a conciliation service for consumers, and if a dispute cannot be resolved, consumers can take civil court action. However, this can be a costly and time-consuming process. The Government is considering options for cheaper and more timely resolution of domestic building disputes.

1.1 Binding rectification order scheme

Such a scheme could be used where the contract value exceeds a certain amount. If a party applies to CBS for a binding rectification order, the process might involve the following:

- CBS engaging an independent building expert to assess the work (to be paid for by the lodging party), with a report provided to both parties for consideration and an opportunity to negotiate an agreement via conciliation.
- If the dispute isn't resolved, the Commissioner could make an order. The builder or consumer could apply for a review of the decision.
- If a builder doesn't comply with the order, CBS could take action – e.g. suspend the builder's licence. The consumer or builder could also end the contract and apply to another forum (e.g. the South Australian Civil and Administrative Tribunal (SACAT) or the courts) for an order.

1.2 Moving domestic building work disputes to SACAT

Matters heard by SACAT might be resolved more quickly and with less formality and cost than going to court. SACAT would need assistance from building experts, as is the case for building matters heard in the Magistrates Court. The law could be changed, so a SACAT order about a building matter could be enforced by a court as a minor statutory proceeding.

Alternatively, the monetary limit for building matters that can be heard in the Civil (Consumer and Business) Division of the Magistrates Court could be increased. This court already offers a low application cost, access to a court-appointed mediator at no cost, and orders that can be enforced.

1.3 Compulsory conciliation conferences for building disputes

Many building disputes are resolved through CBS' conciliation service. While CBS has no legal authority to impose an action or resolution on a builder or consumer, the Commissioner can call a Compulsory Conciliation Conference (CCC) where the builder must attend to discuss the issues with the consumer and a CBS conciliation officer. If a builder fails to attend, CBS can issue an expiation notice of \$315 for minor offences (where the dispute value is \$1,000 or less) or choose to prosecute, where the maximum penalty is \$5,000 for minor offences or \$10,000 in any other case.

It is proposed:

- to increase the expiation amount
- to allow CBS to issue an expiation notice when a builder fails to attend, regardless of the dispute amount. CBS could still choose to prosecute instead of issuing an expiation notice.

Part 2 – Regulation of building and construction industry contracts

2.1 Certificate of Occupancy and swimming pool requirements

A Certificate of Occupancy (COO) is issued by a private certifier or a council, indicating the dwelling is suitable for occupation and complies with certain legal requirements. Councils are also required to inspect swimming pools to ensure compliance with safety features. It is an offence to not comply with COO and swimming pool safety requirements, however enforcement could be strengthened. Some offences lie against the building owner, but the owner could defer non-compliance issues to the builder relying on the implied statutory warranty in the *Building Work Contractors Act 1995*.

It is proposed that domestic building work contracts must include information in relation to:

- the requirement to install smoke alarms.
- bushfire protection requirements where a building is in a high-risk bushfire zone.
- the required safety features where a swimming pool will be constructed.

The building owner would then be on notice of these requirements. If a COO could not be issued due to non-compliance, enforcement action against the building owner could be more effective.

2.2 Sunset clauses

A sunset clause allows either party to terminate a contract if building work is not completed within a set period of time. These clauses are designed to protect the parties if there are factors outside their control – e.g. unforeseen weather. There is concern that developers may be exploiting sunset clauses to cancel contracts and sell property at a higher price. SA is considering whether to limit when a seller can use a sunset clause for off-the-plan contracts – e.g. only with the purchaser's consent or court permission.

Part 3 – Licensing and registration reforms

3.1 Building inspections

Inspections during construction

The 'Building Confidence' Report delivered to the Building Ministers Forum in 2018 recommended each jurisdiction require on-site inspections at key stages during construction. In SA, councils undertake some inspections of building work.

The Government is seeking feedback about whether the current inspection scheme is effective and inspections are consistent across council areas and building types. The Government is also considering whether inspections could be done by other suitably qualified and experienced building professionals – e.g. private building certifiers, architects or engineers.

Building inspectors

Building inspectors are considered 'building consultants' under the *Building Work Contractors Act* and CBS can take disciplinary action for conduct such as acting negligently. Under the Australian Consumer Law, inspectors must also provide their services with due care and skill and take all necessary steps to avoid loss and damage. However, building inspectors do not need to be licensed, hold qualifications, demonstrate industry experience or have particular insurance. There is a risk inspectors could fail to identify defective building work or make incorrect findings. The Government is considering requiring building inspectors to be licensed or registered.

3.2 Regulation of owner builders for domestic building work

Genuine owner builders are not required to take out building indemnity insurance (BII). However, some people pose as owner builders to avoid builders licensing BII requirements and statutory warranty obligations. There is also concern that some builders are persuading people to submit development applications as owner builders, so that builders can avoid BII requirements.

The Government is considering closer monitoring of 'owner builder' development applications through information sharing with councils, or a permit or notification system administered by CBS.

3.3 Regulation of residential building developers

Consumers and subcontractors are disadvantaged when developers do not meet their contractual obligations. In one high profile case, a developer failed to complete an internal access road and common infrastructure services on a community title development which stopped building work for an extended time. CBS has seen similar behaviour with other developers, along with requests for additional payments that appear unfair or unjustified. The Government is looking at new measures to improve developer behaviour, such as registration requirements or sanctions for failure to meet contractual obligations.

3.4 Qualifications and Recognition of Prior Learning

CBS must accept qualifications obtained through Recognition of Prior Learning (RPL) when considering licence/registration applications. A person can apply to a Registered Training Organisation to have their prior learning assessed. However, there are concerns some qualifications obtained through RPL are being issued without proper assessment, putting consumers and licensees at risk. The Government is considering giving CBS discretion to reject qualifications gained through RPL. Such applicants would need to provide evidence of similar qualifications or experience used to gain the qualification.

3.5 Setting plumbing, gas fitting and electrical worker qualifications

The required qualifications and experience for plumbing, gas fitting and electrical licences/registrations are prescribed by regulations and set by the Commissioner. Some qualifications in the regulations are almost 30 years old. It is proposed that qualifications and experience requirements are only set by the Commissioner, noting that older qualifications would continue to be accepted by CBS as they are included in the Commissioner-approved list.

3.6 Reviewing the scope of electrical work

As renewable energy and other technologies develop, the way electricity is generated, stored and used is changing. Electricians now commonly use unskilled labour, or trade assistants, to perform some low-risk manual handling tasks. The Government is looking to update the scope of work for electricians, without adding regulatory burden for industry, or compromising safety.

'Off-grid' electrical work

The current definition of 'electrical work' in the *Plumbers, Gas Fitters and Electricians Act 1995* and Regulations does not capture 'off-grid' installations – e.g. solar panels and fuelled generators. Changes are proposed to clarify that workers who install 'off-grid' electrical systems, and wiring and hard-wired electrical equipment connected to these systems, must be licensed/registered.

Electrical trade assistants and exempt electrical work

It is proposed that trade assistants be permitted to perform low risk activities on un-energised installations under the supervision of an electrician. In addition, some types of electrical work do not require a licence or registration, such as where the work is low risk or already managed by other regulatory schemes. For example, working on plug-in appliances. The Government is considering whether all current exemptions are appropriate.

3.7 Installation of stormwater piping

Plumbing and drainage work must be performed by a registered plumber, unless working on stormwater drainage pipes that are 90mm or less in diameter. This means anyone, including homeowners, can perform this work. Concerns have been raised about the quality of stormwater piping work done by people other than plumbers. The Government is considering whether to remove the exemption for work on pipes of 90mm or less, so that only licensed plumbers can install stormwater pipes connected to public disposal systems.

3.8 Access to Australian Standards

Builders and tradespeople may need to access an Australian Standard to ensure their work is compliant. It can cost between \$75 and \$500 to access an individual standard or purchase a bundle or subscription package, although some industry associations provide members with access to Standards at a discounted rate. The Government is considering options to advocate for fair and equitable access to the standards for builders and tradespeople working in SA.

Part 4 - Continuous Professional Development for workers

The 'Building Confidence' report found significant problems with the industry across Australia and recommended each jurisdiction require compulsory Continuous Professional Development (CPD) on the National Construction Code for some building workers. CPD could improve competency and the safety and quality of building work. Although in some cases, non-compliance may be due to a deliberate choice to cut corners and cost-save rather than a lack of knowledge. The Government is considering introducing mandatory CPD for builders, electricians, plumbers and gas fitters.

Part 5 – Strengthening compliance and enforcement

5.1 Increasing penalties

Penalties and expiations can apply for a range of offences such as: unlicensed/unregistered work; misleading or non-compliant advertising; providing false or misleading information; and failing to comply with contract requirements. Penalties range from an expiation fee of \$80 to maximum penalty amounts of \$50,000 for individuals and \$250,000 for a company. Maximum imprisonment terms of 6 to 12 months also apply for third and subsequent offences of a more serious nature, such as unlicensed work.

All offences in the *Building Work Contractors Act* and *Plumbers, Gas Fitters and Electricians Act* are being reviewed to ensure current penalties are an effective deterrent and reflect the seriousness of the offence.

5.2 Using another builder's licence in advertising

The law requires that licensed builders include their name and licence number in all advertising. It is an offence to provide false and misleading statements. However, there is no offence provision for an unlicensed builder who advertises using another person's licence number. A new offence is proposed to prohibit unlicensed builders from advertising using another builder's licence number.

5.3 Unlicensed subcontractors

Anyone who contracts for building work must be licensed. A contractor's licence covers all employees as they perform work under the direction and control of their employer. Subcontractors must have their own licence, although CBS is aware a number of subcontractors have been operating unlicensed.

A new offence is proposed to prohibit building work contractors from engaging unlicensed subcontractors. The Government is also considering whether subcontractors must demonstrate to a building work contractor that their licence covers the work they are contracting for.

5.4 Building work supervision requirements

Building work supervisors must ensure all work is performed to proper trade standards and building work complies with all codes and plans. The *Building Work Contractors Act* does not define the role or tasks of building work supervisors or provide a description of 'proper supervision'. CBS is aware some defects are not being identified by supervisors at an early stage, and in some cases supervisors are engaged in 'name only' and not overseeing building work.

The Government is considering putting a clearer description of supervision requirements into legislation, and requiring record-keeping of supervisor's inspections at key stages of the building process. New penalties are also being considered for supervisors who fail to meet supervision and record-keeping requirements.

5.5 New Commissioner powers relating to practitioner training

The Commissioner can suspend a licence/registration until conditions imposed on the licence/registration are met, such as completing further training in a specific area. However, these powers can only be used where the circumstances are serious or the practitioner would no longer be granted a licence/registration if they were to re-apply.

It is proposed the Commissioner be allowed to direct a person to undertake training without suspending their licence/registration. For example, if a practitioner's work is defective in one area, they could do specific training whilst retaining their licence/registration to earn an income.

More information

For more information about consultation on the building and construction industry reforms visit yoursay.sa.gov.au/building-industry-review.