



Property Council of Australia ABN 13 00847 4422
A Level 7, 50 Carrington Street, Sydney NSW 2000
T +61 2 9033 1900
E info@propertycouncil.com.au
W propertycouncil.com.au
T [@propertycouncil](https://twitter.com/propertycouncil)

11 August 2023

Better Regulation Division
Department of Customer Service

E: hbareview@customerservice.nsw.gov.au

Building Bill 2023 – Licensing Proposals

The Property Council of Australia welcomes the opportunity to provide a submission to the Department of Customer Service (the Department) on the proposed licensing framework of the draft Building Bill 2023.

The Property Council has been actively engaged in the building reform work underway in NSW, including making a submission in March 2022 regarding the *Home Building Act 1989 (NSW) & Tranche II Construct NSW Reforms*. We commend the NSW Government and the Building Commissioner on their achievements to date in progressing reforms to ensure the integrity and quality of built form in multiple classes of buildings.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable, and safe places.

The Property Council welcomes these reforms to the *Home Building Act 1989* to support quality assurance and confidence in the property industry. The amendments to building and construction licensing in NSW is a necessary component of this reform. These amendments will be largely welcomed by industry when supported by appropriate transitional arrangements and governance structures. The Property Council broadly supports the expansion of licencing requirements beyond existing building classes to restore confidence in the quality of the built product. We have provided specific feedback to the proposed outcomes and proposals in our Answer Sheet (p. 3).

In addition to these specific elements, we have developed some key principle-based recommendations which should be considered in advancing reform of building licences in NSW. Generally, regulation of licencing should be determined by both the cost and level of risk involved in the work.

- Industry supports deregulation of licencing that covers low-risk work, or where that work is already covered by existing safety regulation, including Australian Consumer Law (ACL) protections.
- We support simplification of the licencing framework where multiple licences could and should be consolidated into a single licence category, including retirement of licencing classes that are deemed low risk by reasonable standards.

- We encourage the use of clear definitions around the categories identified by the Better Regulation Division, including a simple definition of what is classified as supervision and the discrete obligations/responsibilities of a supervisor.
- To reduce the ongoing regulatory burden on the sector, once a building licence has been received, the process for renewal of that licence should be simple and streamlined to avoid additional hurdles and costs.
- Adopt a flexible approach for corporate licence holders to reflect their experience and operating sophistication.
- If the changes are expected to deliver an overall expansion of licence holders within the building system, a commensurate expansion of resources for disputes heard under the Tribunal should also be delivered.
- Provide longer implementation lead times for industry to ensure they understand the change in requirements under the new licencing provisions and avoid any adverse downstream or upstream impacts, including insurance of building work.

The Property Council thanks the Department for their ongoing commitment to industry consultation to ensure the Building Bill supports improved consumer protections and ensures industry delivers strong and safe buildings.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K Stevenson', with a stylized, flowing script.

**Katie Stevenson,
NSW Executive Director
Property Council of Australia**

Answer Sheet - Building Bill 2023 - Licensing Proposals

Q1: Do you agree with the proposal to reduce the value threshold from \$5,000 to \$3,000? If not, what value would be suitable and why?

A: No Comment.

Q2: Should endorsements only be available for certain licence classes with related or overlapping qualifications? Why / why not?

A: Agree, provided there is sufficient rigour to determine what experience is required to be endorsed.

Q3: Are there any specific circumstances where endorsements should not be made available? Why / why not?

A: No comment.

Q4: Please provide a list of Standards used to complete work.

A: It is difficult and expensive to obtain copies of relevant Standards.

Standards that are referenced within the NCC should be free to access to all licence holders. There are approximately 166 reference standards within the NCC.

The NCC is available online. Anyone accessing the NCC should be able to access a reference standard online by clicking through appropriate links.

We recommend improving the accessibility of the standards to make them both free and easily downloadable in PDF format.

Q5: Please indicate how many hours of CPD should be required to be completed per annum.

A: For each licence class held, the level of CPD per annum should be commensurate with the work undertaken under that licence type.

12 CPD points per annum is appropriate for those who hold a contractor licence.

Q6: Do you support the proposals to deregulate certain work listed in Table 5? Why / why not?

A: No comment.

Q7: Should any other types of work be considered for deregulation?

A: No.

Q8: Do you support the proposed approach to builder licence classes? Why / why not?

A: Agree with the proposed licence categories.

Q9: Do you support the indicative knowledge and experience requirements proposed for each builder licence class?

A: We suggest that the duration of practical experience should be determined based on time worked post-qualification, or in addition to experience gained during relevant tertiary or diploma studies.

Licence Class	Comment
Builder A	Five years' experience should be required across multiple classes in order to be eligible for an unrestricted building licence.
Builder B	Five years' experience should be required across multiple classes in order to be eligible for an unrestricted building licence.
Builder C	Two years' relevant practical experience is insufficient. As a minimum, this should be three years' experience working in class 1 and class 10.
Builder D	One year relevant practical experience is insufficient. As a minimum, this should be two years' relevant experience.

Q10: Is an endorsement approach appropriate for licence holders who wish to become pre-purchase building inspectors? Why / why not?

A: Yes.

Q11: Do you agree with the proposal to limit eligibility for this endorsement to persons licenced as builders, engineers, architects, and design building practitioners? If not, which other licence holders should be eligible for this endorsement?

A: Yes.

Q12: Do you think it is necessary to separate pre-purchase building inspections into areas of inspectors' expertise such as electrical, plumbing, or pest inspection elements? Would this be burdensome for industry?

A: No. Provided building inspectors are registered, outcomes from pre-purchase building inspections will be improved and introducing areas of expertise will not necessarily add any additional benefits.

If this was done, it would be burdensome.

Q13: Do you support the proposal to register pre-purchase pest inspectors and establish minimum standards for pre-purchase pest inspections? Why / why not?

A: Yes, we support this proposal.

Q14: Do you support the proposal to make waterproofing a new class of specialist work? Why / why not?

A: Yes, we support waterproofing as a new class of specialist work.

This should be a new class of specialist work because the effectiveness of the system relies on detailed technical knowledge of materials, building performance and detailing. Furthermore, it is reliant on the quality of installation, which requires experience, knowledge of products and application techniques.

We also propose a new class of specialist work for roof drainage and stormwater drainage, separate to roof plumbing specialist work. This is separate to the work defined as plumbing and drainage in the Plumbing and Drainage Act 2011.

Q15: Many tradespeople currently do waterproofing work as incidental to their primary vocation, e.g. tilers, bricklayers, bathroom renovators and swimming pool builders. How will this change affect those trades? Are any other trades impacted by this change?

A: If any tradesperson is required to undertake waterproofing work, then that tradesperson should be required to hold a waterproofing licence.

Where the scope of a licence currently covers waterproofing, then a tradesperson holding that licence should be permitted to carry on with waterproofing.

Q16: Should any of the alternative options explored by the Department be considered instead of, or in addition to the proposal?

A: Strengthening requirements and increasing education for designers involved in waterproofing would be a prudent step. Education is important and will enhance capability and outcomes. These education requirements should extend to complex waterproofing treatments, for example as may be required on hydrostatic basements, roof tops with plantings etc.

There should be a way that the licence framework for waterproofing recognises and is aligned with the complexity of waterproofing work being undertaken. This may be achieved through establishing multiple levels of waterproofing licence classes or identifying complex waterproofing work that requires a specialist licence.

Q17: Do you support the Department's proposals to introduce a new licence class for Type B gas fitting work, and to merge the gas fitting and LP gas fitting licences into one? Why/ why not?

Yes, the specialist work for gas fitting requires practitioners to keep up to date with changing requirements. Further, these roles come with a level of risk that should be reviewed regularly to ensure a high standard is met.

Q18: Do you support the proposal to include electrical connection/disconnection work as mandatory training components of the licence? Why / why not?

A: Additional training is not objected to. However, current licensing restrictions should remain.

Q19: Should the Department explore the creation of additional electrical licensing categories? Why / Why not?

A: Exploration of different categories of electrical licensing, potentially aligned with the builder licence classes, is supported. This will enable electrical licensing to align with the complexity of work being undertaken.

Q20: What areas of work would benefit from additional electrical licence classes? Please provide examples and descriptions of the work performed.

A: No comment.

Q21: Do you support the proposal to consolidate the Roof Slating and Roof Tiling licences into one Roof Tiling licence? Why / why not?

A: No comment, provided this does not incorporate a metal roofing / roof plumbers qualification.

Q22: Do you support the proposed changes to the fencing licence? Why / why not?

A: Agree.

Q23: Do you support swimming pool barrier work continuing to be included in the swimming pool builder licence? Why / why not?

A: No comment.

Q24: What qualification should be prescribed to support improved knowledge of swimming pool barrier installation and certification?

A: No comment.

Q25: Should any other painting applications be included in this licence class? If yes, why?

A: Painting for weather proofing and protecting purposes should require a licence.

The only type of painting that should not require a licence is internal decorative painting. Painting of external surfaces will generally include a protective / weatherproofing element.

Q26: Do you support the proposal to retain several licence classes without changes or with only minimal changes? If not, please identify which licence class(es) should be amended and why.

A: No comment, assuming the training and education required to obtain a licence in these classes adequately covers the potential complexities of different types of work that is covered by the relevant licence classes.

We should avoid stratification within licence classes, if possible, as this can create resourcing challenges.

Q27: Do you support the Department's proposal to introduce licencing requirements for building designers? Why / why not?

A: Agree. A base level should be accepted following the level of training received, number of years worked, and their portfolio of projects completed to standard. There should be an unrestricted class to allow talented persons to work across classes for ease and simplicity.

Q28: Do you recommend that the Department introduces licensing requirements for interior designers? Why / why not? If yes, please provide evidence of risks and harms caused by interior designers.

A: Agree with a licensing scheme, however, scope of those included under such a scheme requires further definition/clarification. This should be consistent with current scope for non-registered designers and those not regulated under separate schemes.

A defined scope for building designers and interior designers can ensure that their work does not clash with the kind of 'architectural services' expected of architects. Regulated Design, for example, can only be done by registered architects as registered practitioners.

Q29: Do you recommend that the Department introduces licensing requirements for landscape architects? Why / why not? If yes, please provide evidence of risks and harms caused by landscape architects.

A: Licensing requirement for landscape architects is supported. Landscape architects deal with not just plants but also water, irrigation, soils etc. In complex projects these elements can have a significant impact on structure (e.g., podium slabs), façade (e.g., green walls) and services.

Q30: Are there any other design roles that will be captured by the proposed definition of regulated work and general building design work?

A: We assume non-registered architects, engineers and draftspersons etc. are covered under Building Designers. With the inclusion of interiors and landscaping under this coverage, that should be sufficient.

Q31: Could a limited registration scheme for designers deliver sufficient regulatory benefits without the increased costs of a licencing scheme?

A: Yes. Many building designers (incl. draftspersons) provide invaluable service to the industry and their registered peers, so some form of licensing is important which will bring structure and ownership to this service.

Q32: What evidence should the Department consider in finalising a position statement on potential licencing requirements for project managers?

A: If an individual is directly required to manage operations of a construction site, then they should require a licence (e.g. project manager).

Pre-construction services such as Estimators should not require a license, however co-regulation is more appropriate.

Licensing eligibility criteria would need to be reviewed, and the required timeframe for those to obtain the required licence need to be considered, the transition period must be appropriate and achievable.

Q33: Should the Department consider co-regulation of quantity surveyors? If yes, please provide evidence of risks and harms caused by unregulated quantity surveyors.

A: Consideration of co-regulation of Quantity Surveyors (QS) with established bodies, such as the Australian Institute of Quantity Surveyors (AIQS) and the Royal Institution of Chartered Surveyors (RICS), is a good idea.

Inadequate budgets are usually the result of an error or omission. Inadequate budgets set prior to construction can create pressure / incentive during delivery to compromise on safety or quality in order to maintain profitability, for example, reduced supervision / quality assurance or the selection of cheaper and less qualified contractors without sufficient capability and experience.

It would be beneficial for co-regulation to be extended to Estimators given typical contracting fixed price risk and the lower incentive for budget shortfalls to be highlighted by client QS.

Tertiary education specific to QS and/or Estimating are becoming more limited with pathways into the role normally through a broader construction management/engineering degree or trade experience.

Co-regulation would ensure that QS and Estimators are provided bespoke training and educated on current and emerging legislation, building codes, standards, and changes over time, some of which are reactively provided as feedback from delivery teams.

Regulating the QS industry would proactively speed up the transition to improve quality and level the playing field currently underway in the industry.

The following questions have been formulated for the Department's consideration:

- Would the legislation prescribe certain ways of doing things i.e., ANZ AIQS Methods of Measurement?
- Do all practicing QS need to be licenced or only those providing sign off and prescribed project milestones?
- How would co-regulation impact the QS industry from the observed impacts on the design consultant and D&C subcontractor industry caused by the recently legislated regulated design process?
- The Certified Quantity Surveyor accreditation from the AIQS is appropriate but is this fit for purpose for the proposed co-regulation? Note – CQS is trademarked so AIQS controls the title "Certified Quantity Surveyor" or who uses the post nominal of "CQS" in a practitioner's title.
- Are existing levels of accreditation fit for purpose i.e., 'Chartered Surveyor' from the RICS? Note – RICS is an international organisation with 1250,000 members internationally and with a strong presence in NSW.
- Are there membership standards, e.g. Code of Conduct, in accordance with the proposed state legislation? Note the "Chartered Surveyor" title and the "MRICS" and "FRICS" post nominals for Chartered Surveyors is very tightly controlled by the RICS.

Anecdotally the number of complaints of member breaches of the code of conduct to the AIQS for infractions over their 2500 strong membership is extremely low, so this needs to be part of the consideration.

Q34: Do you agree with the proposed revisions to the descriptions of work? Why / why not?

A: Agree, in principle, with the introduction of the Class A, B, C, D licence for building work.

We do not agree with the removal of licence class kitchen, bathroom and laundry renovation as listed under "other Building Work" by NSW OFT.

The removal of this class leaves a void between the proposed licence classes C and D. Licence class D does not cover minor structural and renovation works. Licence class D seems more aligned to commercial definitions and building classes 2-9, as it references shop fitting and fit outs which are not works covered under class 1 and 10 buildings.

The refined definition of building works and minimal modification of existing licence classes categorised under "trade work" leaves no intermediate class as a stepping-stone between trade work and licence class C. Nor does the proposed licence class D create an intermediate class as a steppingstone to proposed licence class B.

Consideration needs to be given to a better definition and pathway in recognition of previous work experience and qualifications for class C and D building work. It is impractical for an individual to

garner the experience in all sub classes of the NCC as applicable to these classes to qualify for the licence.

Q35: Do the descriptions of work accurately capture work in all building classes? Are there any other revisions required to the descriptions of work due to the expansion into all building classes?

A: If anything, the classes are too general and open, consideration should be given to sub classes of the A, B, C, D licence class.

For example, a person with no experience in residential work could potentially qualify to build residential towers under class A, without experience in that asset class. For example, they may have the relevant experience in building commercial buildings or aged care facilities and vice versa.

The classes therefore seem too broadly defined.

Sub classes under the four main classes would also create a pathway from classes B, C and D and a potential pathway to full qualification in the main classes.

Q36: Do the descriptions of work accurately capture relevant building materials currently used and likely to be used in the future? Are there any new materials or technologies which should be included in the descriptions of work?

A: There does not appear to be any consideration of modular systems, including recognition of the combination of offsite construction and on-site construction methodologies, nor the hybrid construction methods used to achieve these construction solutions.

Some of these construction methods, that integrate alternative solutions and methodologies, require revised approval, certification, and sign-off process, that potentially may fall outside current legislative frameworks, of licenses and certification.

In addition, licence classes for metal fabrication exist as does erection of metal prefab and metal framed homes.

These licence classes may partially cover some of the future off site and modular construction methods, but do not seem to recognise all prefab methods, including, fully enclosed construction systems (that is, combined external and internal wall systems) as well as integrated systems that utilise both off site and on-site construction methods.

It is difficult to forecast the potential and advancement in these construction techniques.

Whilst it is difficult to foresee the potential of these systems, they should as a minimum be incorporated under classes A, B and C to prevent the potential for these types of hybrid construction methods from falling into a no mans-land of non-compliance or cover under the NSW OFT licensing framework.

Q37: The Department is considering the value of prescribing core capabilities and competencies for each licence class, in addition to other eligibility requirements. What other capabilities and competencies should the Department consider when determining the descriptions of work and CPD requirements for each licence class?

A: Refer to Q35, Q38 and response below.

Each licence class should have CPD requirements that are specific and relevant to that licence class.

Credit should also be given for additional core CPD programs that satisfy some of the minimum capabilities and competencies for other licence classes to incentivise and assist in practitioners applying for a higher licence class.

Pathways need to be clearly defined to assist in achieving this. The risk is that the proposed licence classes will unintentionally create an exclusivity that will further limit and dilute the pool of available practitioners in the industry.

Q38: If you have any further comments or general feedback on the Department's proposals for licensing, please provide them here.

A: Transitional provisions need to be considered.

Current licence holders should retain their licence if their old licence effectively covered a particular class previously. It could be argued that the proposed new license classes more clearly define the current licencing framework, yet now propose to exclude those who previously operated in those classes and who now perhaps do not hold the proposed revised qualifications to do so.

Grandfathering of licence classes needs to be considered as part of the transition protocol, especially between licence classes B and C.

Industry experience and tenure should be considered for those wishing to move from class C to class B, as well as the fact that a license was not previously required. Many of the holders of a builder's licence under the current system have either the experience or knowledge and understanding of many of the classes not covered under the proposed class C licence and on paper it appears the proposed changes would exclude them from a class B licence.

Despite this knowledge and experience, the framework as proposed for qualification of the revised licence classes may adversely affect business and industry veterans from operating in areas that previous licence classes covered, or for which they were not required.

The impact of the proposed changes could create a shortage of qualified, or lead to an exodus of, practitioners from these licence classes who either feel they cannot meet the requirements for that class of licence or find the process of re applying or upgrading too tiresome.