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# New Licensing Regime for NSW and the Commercial Construction Sector

9 January, 2023

If you are carrying out commercial construction work or considering moving into the commercial construction sector on the basis of its (currently) relaxed licensing requirements, we recommend that you read this article.

NSW is the only jurisdiction in Australia that does not require a building licence to carry out general commercial (non-residential and non-specialist) building work.

The NSW Government has proposed a new licensing regime that will bring NSW in line with other states. The new regime is likely to cause disruption to the commercial construction sector.



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The *Home Building Act 1989* (NSW) (**HBA**) provides licensing requirements for residential building work and “*specialist work*”. Currently, the HBA also distinguishes between “*doing*” work and “*contracting to do*” work.

- Section 4 prohibits a person from contracting to do residential building work or specialist work without a “*contractor licence*”.
- Section 12 also prohibits individuals from doing residential building work or specialist work unless the person either has a contractor licence, or is employed by someone who does.
- Furthermore, sections 13 to 15C prohibit individuals from doing residential building work (or certain specialist work) unless they are a “*qualified supervisor*” or a holder of a “*tradesperson certificate*”. Varying requirements apply to each type of specialist work.

A licence is required in relation to all residential building work, irrespective of whether a person *contracts to do* or is *doing* the residential work.

The distinction between *doing* and *contracting to do* work matters when it comes to commercial and non-residential buildings. To illustrate:

- a licence is not required to do (or contract to do) commercial building work unless it is “*specialist work*” such as plumbing, electrical, mechanical or gas-fitting; and
- a builder in the commercial sector can only contract to do “*specialist work*” (without a licence) if the builder engages a licensed subcontractor to actually do the work.

## The New Regime

There will soon be no such thing as a “contractor licence” in NSW. “*Carrying out*” any type of building work will require a licence, regardless of whether it is residential or commercial.

- Section 12 of the current *Building Bill* prohibits a person from “*carrying out*” building work unless the person is licensed, or working under the supervision of a licence holder.

Depending on how the term “*carry out*” is interpreted, the effect of the law may have both positive and negative impacts on contractors currently working exclusively in the commercial space:





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available to carry out work.

We consider the term “*carry out*” should be clarified as to whether (and in what circumstances) “*contracting to*” do work will constitute “*carrying out*” work under the new meaning of the *Building Bill 2022*. In the absence of clarification – and for abundance of caution – the term should be interpreted broadly to capture “contracting to do work”, even where the entirety of the works are subcontracted to (and supervised by) licensed tradespersons. Contractors and tradespersons should make inquiries as to obtaining new licences at the earliest opportunity.

Call **James Gilronan** or **Brett Vincent** on **(02) 9261 5900** if you have any questions about the impact of these changes.

**BH: If section 12 of the Building Bill is passed, ‘any type’ of building work (ie Commercial, Industrial) must be carried out by a licensed person or someone working under the supervision of a license holder.**

**Even if ‘carry out’ is less strictly defined as doing the work, not contracting to do the work, pods, awnings, kitchens, windows install (even wheel stops & bollards) would require a licensed person to at least supervise the works on site.**

**Does it apply to manufacturing panels? Unsure where the Building Bill starts/ends but I’d say surely not.**

**Action: We stay in touch with this bill’s progression through review**

**JB —> advise our main trades & work to ensure no disruptions over bill transition to law**

**Both —> identify who internally needs what licensing —> plan to get them licensed.**

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