Licensing Domestic Contractors: An International Perspective

An Assessment of International Schemes for the licensing of building trades operating in the home

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1. Executive Summary

The aim of this review was to examine schemes for occupational licensing of building trades working in the home in the domestic repair, maintenance and improvement (RMI) market. The research reviewed the nature and scope of 12 licensing regimes in total – in Australia, USA and EU states – as well as their level of impact on construction trades in those nations/states.

The report was commissioned simply for the purpose of providing factual information and a broad analysis of schemes which were found to be ‘in-scope’ with the aims of the study. Therefore no recommendations are presented and none should be inferred from the text. The study did not cover non-licensing accreditation schemes or similar trade type schemes and therefore no inference on the relative merits between the licensing or non-licensing accreditation schemes can be drawn.

The study involved a two stage research programme in which extensive secondary research was followed-up and supplemented by contributions from 56 organisations and with key experts from across the nations in different fields, on the relative merits of different policy approaches to the issue of occupational licensing.

The idea of a licensing scheme can be approached from a number of different policy perspectives each one influencing, in quite different ways, the way in which the concept is progressed and evaluated. These overarching policy perspectives can be summarised under the following headings:

- Health & Safety
- Occupational competence, and,
- Consumer protection

In Europe and, to a large extent in the UK up to the present day, the approach taken is largely from the standpoint of individual job competence and occupational health & safety supported by national legislation in critical domestic safety areas such as electrics and gas. The levels of competence in construction trades have therefore been guided by, and measured against, occupational qualifications and standards.

In the European nations (in scope to this work) Governments have taken a fairly neutral role in the actual provision of domestic construction services while working to ensure that standards and qualifications are of an appropriate level. The usual approach adopted has been to ensure the availability of qualifications but to restrict legislation on minimum requirements-to-practise. Critically, however, in a European context, the approach is applied within systems in which it is virtually unknown for people to practise a trade without having achieved the required qualifications. These systems are sometimes underpinned by national schemes for the reporting and investigation of abuses.
In the United States the emphasis, by contrast, is less on the job competence of the tradesperson than a wider menu of consumer-protection measures including, in addition to “tests” of job knowledge and evidence of qualifications, such features as insurance of various types, evidence of home and business addresses, finger-printing, and the lodging of financial bonds.

Businesses and individuals working in the construction sector in Australia are regulated at a state/territorial level through occupational licensing. For each regulated occupation licensees must meet determined minimum competency and non-competency requirements with the aim of reducing the public risk factors for that particular industry or occupation.

This study has identified a number of key characteristics and features of current international examples of licensing schemes. The findings suggest that, although there is little hard evidence in the form of existing analysis or proven statistics to demonstrate beyond doubt the benefits of occupational licensing within international domestic building trades, where schemes do exist there are identifiable strengths that may warrant greater scrutiny. Anecdotal evidence provides some indication of the success or otherwise of the schemes, but in the absence of solid baseline statistics it is impossible to establish whether the nation/territory is any better off because of occupational licensing.

Not all schemes are universally successful however those that might be considered among the ‘toughest’ in their regulation of the industry include both educational attainments in the trade in question, coupled with the achievement of an examination or supplementary qualification in business operation and/or business law. In addition, tests of propriety – in terms of financial statements, identification evidence, and credit scores, for example – provide greater assurance of an individual’s competence in business management and the possibility of being able to trace those who abuse the system. These tests and assurances are usually augmented with various other ‘financial’ requirements, in the form of insurances, warranties and/or bonds.

However, the key to achieving consumer confidence in any licensing scheme is public awareness of both the licensing requirements and the rigour with which they are imposed, combined with ready access to a facility for verifying every contractor’s credentials.

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1 As the scope of this study extended to formal licensing schemes only, it would be impossible without further research to identify whether these same strengths could be said to apply to non-licensing accreditation schemes.
2 The same features may equally apply to a good quality non-licensing scheme; further research would need to be undertaken to say with any certainty however.
2. Introduction and methodology

In February 2013, the Department for Business Innovation and Skills (BIS) commissioned Pye Tait Consulting to conduct an assessment of international schemes for the licensing of building trades operating in the home.

The purpose of the work was to update the Department’s knowledge on the operation of such schemes and their impact.

The research sought to answer the following key questions:

- How do international licensing schemes operate – in terms of policy origination and philosophy; trades covered; business model; structure; costs/benefits; fees charged; regulatory requirements; monitoring arrangements?

- What is the impact of licensing schemes on their construction trades?

Focussing specifically on construction trades which operate in the domestic repair, maintenance and improvement (RMI) sector, the research methodology comprised two separate, but mutually reinforcing, activities: 1) a detailed literature and desk based review, 2) interviews with a very wide variety of international organisations including licensing bodies, government agencies, consumer bodies, construction industry bodies.

A sample of nations and component States and their licensing schemes was selected with a view to providing broad coverage of different approaches and philosophies behind licensing systems – ranging from the largely laissez-faire models adopted in Europe, to the more heavily regulated schemes common to Australia and the USA.

The research has examined 12 licensing regimes in total:

<table>
<thead>
<tr>
<th>Australia</th>
<th>Europe</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Australia</td>
<td>Germany</td>
<td>California</td>
</tr>
<tr>
<td>ACT (Capital Territory)</td>
<td>Denmark</td>
<td>Florida</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Netherlands</td>
<td>New Mexico</td>
</tr>
<tr>
<td>Queensland</td>
<td></td>
<td>New York City</td>
</tr>
</tbody>
</table>

August 2013 Page 5 ISO9001:2008 QAP 01/01 Issue 7
Very few studies have been conducted on occupational licensing, with the result that there is little robust evidence on their value to consumers or their impact on the industries in question.

What little research does exist tends to focus on the economic impacts of licensing, such as increased contractor wages and increased costs to consumers; the effects on skills and competence or comparisons with the concept of unionisation.

Comparator studies which examine and contrast schemes in different nations are scarce.

"occupational licensing remains one of the most under-researched labor market institutions"

The current research, has involved the interrogation of hundreds of UK and international sources, including: official government websites; registers of licensed contractors; Acts of Parliament; Regulations; evaluation reports; annual reports; minutes of meetings; press articles; academic studies; government reports; official statistics; guidance documents, factsheets, newsletters and FAQs; as well as numerous consumer websites.

In so doing we have compiled a base of evidence on the operation, structure, and key characteristics of the licensing schemes in each of the selected nations, states and territories.

Good and detailed intelligence exists on the many characteristics of licensing schemes, in terms of the mechanical facets such as eligibility requirements, fees and so on; however much of these data are scattered across numerous different sources, and are fragmented in nature. Information on the operation of schemes has been mainly drawn, wherever possible, from official sources such as directly from the licence scheme operator or from recognised directories.

Qualitatively speaking, objective and impartial information on the impact of licensing schemes – in terms of their effectiveness at improving standards, driving out ‘cowboys’, and improving consumer protection – is extremely limited.

Anecdotal evidence in the form of press articles, for example, provides some indication of the success or otherwise of the schemes, but in the absence of solid baseline data it is impossible to arrive at a reliable answer to the fundamental question ‘are the industry, the nation/state, and consumers, any better off because of occupational licensing?’.

From an analysis of the available evidence, this study has, however, been able to identify the main characteristics of occupational licensing schemes, and their common components. Where possible we have attempted to chart the development of some of the schemes in recent years in terms of how and why they have been amended to their current form.

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The object has been to provide an indication of success and to identify components which might, therefore, be considered critical to any successful scheme in addressing issues resulting from unscrupulous repair and maintenance traders.

Qualitative interviews have supplemented the findings from the highly detailed desk research, and have been supported by such quantitative data as are available on such variables as numbers of licences held; numbers of disputes; numbers of disciplinary actions; numbers of licences suspended or revoked; numbers of building permits; numbers of building approvals etc.

Such comprehensive data are not routinely held by every licensing scheme and we have found that deeper monitoring and evaluation of licensing schemes is also not routinely undertaken.

This point is borne out by a study of occupational licensing by Kleiner and Krueger in 2009 which draws attention to the limitations of available data on occupational licensing specifically in the United States. It noted incomplete data or limited coverage occurs for example, at the local and federal level. 4

The matter is further complicated by the fact that direct comparison of statistics (even if they existed in matching, comprehensive and comparable form) would only provide a very crude measure of the relative success of different licensing schemes, as it would ignore the fundamental environmental, and cultural differences between the nations, states, or territories (not to mention the economic, political and social landscape).

It is understandably difficult to cater for the sheer diversity and variations which might occur with householder interactions with the construction industry and particularly so where disparate international legal, commercial and consumer customs are being considered. The report has tried to maintain a strict focus on domestic RMI where the householder (a member of the public) is the client or is significantly involved in the decision making process in the selection of a trader, however this has not always been possible.

Segregated data do not exist in an accessible way permitting a clear distinction to be drawn between the domestic RMI market and that of licensing of trades operating in the general construction market. It is also the case that some of the schemes are operated on a ‘trade’ basis, e.g. ‘builder’, ‘plumber’ etc. and do not differentiate between new build and RMI. Others do.

In some cases this is owing to the markets between domestic and contracting being more ‘blurred’ than in the UK. For example, where there is significant self-build house-building (as in some Australian states) and the same firms are employed in this activity as well as RMI, or where the number of firms is such that it allows for a blanket scheme. Other schemes license builders on the basis of the type and size of building (e.g. medium or low rise) rather than on the type of work being

carried out. We have taken a view to present these schemes but urge some caution when making comparisons.

In total, over 300 individuals across the study’s twelve nations, states and territories have been approached to participate and/or provide information on the operation and impact of the licensing schemes with which they are familiar. In all, more than 700 telephone calls were made and 56 organisations have contributed to the research. Researchers have studied in excess of 285 secondary sources, a good deal of which were recommended by research participants.

Whilst strenuous efforts have been made to pursue all relevant lines of enquiry within the given timescales, we cannot claim that the research is exhaustive. It does however provide a detailed picture of the relevant licensing schemes and meets the need for an evidence base for further consideration.

In the context of an examination of licensing it is important to stress the impact of the terminology in place which refers to various types of ‘unscrupulous’ workers within the repair and maintenance sector. We have provided a glossary in Section 10 of this report.

Whilst in developing this report we have used the English spelling of ‘licence’, we have retained the American and Australian equivalent – ‘license’ – in direct quotes and in the titles of organisations and licence categories, for example.

**Report structure**

The following sections (4-6) provide a detailed evidence base, describing the key features of each of the international licensing schemes reviewed for this study.

A ‘quick guide’ summary of the key features of each of these schemes is given in Section 7.

A thematic review of the research findings can be found in Section 8; Section 9 describes the main strengths of the schemes we have examined.

Appendix 1 lists the organisations contacted for this research; Appendix 2 contains further details of the different types and classes of licences studied.
3. International Licensing Schemes

The sections that follow describe the individual characteristics of each of the licensing schemes operating in the nations, states and territories within the scope of this review.

The findings are presented firstly for Australia, then for the European Nations and finally for the United States of America, as follows:

| Australia       | • South Australia  
|                 | • ACT (Capital Territory) 
|                 | • New South Wales 
|                 | • Queensland 
| Europe          | • Germany 
|                 | • Denmark 
|                 | • Netherlands 
| USA             | • California 
|                 | • Florida 
|                 | • New Mexico 
|                 | • New York City 
|                 | • Washington State 

Each section describes the individual licensing regimes in terms of their operation, including the body responsible for administering the schemes; the relevant fees (although in many cases this varies by class, trade or scope of work so where necessary averages have been given); eligibility requirements; insurances, bonds and warranties required; dispute and disciplinary procedures, and, penalties for unlicensed contractors.

Where possible, additional information is included on amendments to relevant legislation and review of the schemes, for example, where this information serves to provide a qualitative indication of the success or impact of the scheme.

The bulk of the evidence base has been obtained from the desk review, supplemented where appropriate by findings from the supporting qualitative interviews. Some of the information referenced in this report has been provided directly, or signposted to, by interview respondents.
4. Australia

Occupational licensing

Business and individuals working in the construction sector in Australia are regulated at a state/territorial level through occupational licensing with little distinction drawn between those involved in general contracting and those involved in domestic RMI. State/territorial licensing is a feature common to many different occupations in Australia which are regulated in order to reduce risk factors such as health and safety (both public and occupational) to protect consumers and the environment.

In Australia an occupational licence is described as:

“...any form of regulation that restricts entry to an occupation or profession to people who meet requirements stipulated by a regulatory authority”.

The construction occupations regulated in Australia vary by state or territory, however for each regulated occupation licensees must meet determined minimum competency and non-competency requirements with the aim of reducing the public risk factors for that particular industry or occupation.

Licensees must meet various other requirements, aside from proving their competence however, which in some territories include mandatory home warranties. Although the warranty schemes differ between jurisdictions, the principles of each scheme are the same: to protect homeowners against financial loss arising from defective or incomplete building work. Licensed builders carrying out work for homeowners must have in place the appropriate insurance requirements as specified by each individual state or territory. A warranty is required to be in place before a contractor begins work above a certain value threshold (i.e. not dependent on the type of work) on a residence.

In addition to the mandatory qualification and warranty stipulations, licensing schemes vary in terms of their requirements for trade experience, insurance requirements, fees and means of dealing with consumer complaints and disputes, for example.

Various press coverage highlights the problem of unlicensed builders and cites individual cases of malpractice, or ‘rogue’ builders - the terms seems to be commonly used in Australia, as does ‘shonky builder’ which is frequently used by Australia’s press.

Anecdotally, it appears the different schemes in operation have varying levels of success. For example a 2012 article in the Herald Sun Newspaper suggested schemes currently operating in New

5 http://www.licensinglinenews.com/stakeholder-information/occupational-licensing-overview.aspx
6 http://www.licensinglinenews.com/stakeholder-information/occupational-licensing-overview.aspx
South Wales and Queensland were more effective than those in Victoria – based on numbers of ‘deregistrations’ in the previous three years. The article stated that the number of licenses taken off rogue builders in Victoria – an average of four a year – was “a fraction of the numbers expelled in NSW and Queensland”.

However, interview findings for this research suggest, anecdotally, that public awareness of occupational licensing is high, with campaigns and publicity carried out through various channels, such as at sports events and on community radio.

**Regulation of the construction industry**

Licensing is currently administered variously through consumer protection bodies and building authorities; for example, in New South Wales the scheme is operated by the Office of Fair Trading, in ACT through the ACT Planning and Land Authority. This is explained in further detail in the sections below.

The regulators for the territories within the scope of this research are listed in the table below:

| State                      | Regulator for carpenters, joiners, builders and building related occupations, bricklayers  
<table>
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</thead>
<tbody>
<tr>
<td>South Australia</td>
<td>Office of Consumer and Business Affairs</td>
</tr>
<tr>
<td>Australian Capital Territory (ACT)</td>
<td>ACT Planning and Land Authority</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Office of Fair Trading</td>
</tr>
<tr>
<td>Queensland</td>
<td>Building Services Authority</td>
</tr>
</tbody>
</table>


For individuals and companies operating across territories the cost of holding multiple licenses can be many hundreds of dollars, and running costs, (such as administration and operation costs) are incurred by those managing the multiple regulatory regimes. Despite a system of ‘Mutual Recognition’, multiple licences must be held for traders wishing to carry out work between jurisdictions, and they must also comply with the different non-skills requirements.

The table below illustrates the possible number of different licence categories, classes and subclasses, as well as licence levels and endorsements listed, or expected to be listed, in the mutual recognition ministerial declaration for occupations connected to the construction industry.

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8 Many other trades connected with the construction industry – such as gas fitters and electricians - are regulated by many of the same bodies in each of the above territories.
At the time the above data was compiled (2009), the minimum number of ‘building’ licenses held (nationally) was recorded at 98,511.9

The Mutual Recognition Act 1992 allows “people registered to practise an occupation in one jurisdiction” to “practise an equivalent occupation in other jurisdictions”10. The Mutual Recognition Agreement that followed in May 1992 was between made between all territories, including Tasmania and the Commonwealth of Australia11.

Since February 2007 arrangements have been put in place to make it “easier for licensed tradespeople, and the authorities that issue licenses to know what a worker is entitled to when applying for a license in another jurisdiction”12.

A central service – accessible via a website – allows individuals to look up licence entitlements and equivalences between states or territories based on their currently-held licence. Whilst the service is intended to aid the process of mutual recognition and introduce clarity on the different requirements between states, contractors are still obliged to apply to the relevant authority, hold a current valid licence and pay the appropriate fee13.

Mutual recognition arrangements exist for the following trades:

- auto-gas installers
- carpenters and joiners, bricklayers
- electrical contractors
- electrical fitters, lineworkers, and cable jointers
- electricians
- motor vehicle repairers
- plumbers and gas-fitters
- refrigeration and air-conditioning mechanics
- restricted electrical licence holders
- driving instructors, drivers transporting dangerous goods and explosives, passenger vehicle

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drivers, pilot and escort vehicle drivers
- property agents, valuers and conveyancers
- maritime occupations
- gaming occupations
- shotfirers and pyrotechnicians
- pest and weed controllers
- building related occupations

A 2008 evaluation of Mutual Recognition suggested that, rather than being driven by a desire to improve labour mobility between states and territories, the attractiveness of Mutual Recognition lay in its potential to reduce regulatory burden and cost.

The reform agenda was further progressed in 2008 by the Council of Australian Governments (COAG) which agreed, on 3rd July that year, to the development of a national licensing scheme in the context of its agenda for regulatory reform with further aims of increasing productivity through improved labour mobility, for example. The principle objective however being to “remove overlapping and inconsistent regulation between jurisdictions in the way that they licence occupational areas.” The National Occupational Licensing Authority (NOLA) is the independent statutory authority responsible for establishing the National Occupational Licensing System for specific occupations across Australia.

An initial stakeholder consultation followed in late July 2008 which informed the development of a broad framework and principles which would underpin the system. The proposed framework was consulted on later that year, in October, in the form of a Consultation Regulation Impact Statement. Respondents to the two consultations mainly comprised employers and trade associations, including the Construction Industry Training Council, Master Builders and the Royal Institute of Chartered Surveyors, amongst others.

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15 The Allen Consulting Group (2008), Evaluation of COAG initiatives for full and effective Mutual Recognition
16 The Australian Government (2009), National Licensing System for Specified Occupations: Decision Regulation Impact Statement p.4
17 The Australian Government (2009), National Licensing System for Specified Occupations Decision Regulation Impact Statement p.11
Although the exact model for the national scheme has not as yet been officially confirmed, two options\(^{20}\) have been put forward:

**Option 1: A National Single Agency Model** – this would see the establishment of a national licensing body with branches in each state and territory. The new single agency would ensure a uniform approach to policy development (by advising the responsible Ministerial Council) and service delivery.

**Option 2: National Delegated Agency Model** – a national licensing body would assume responsibility for developing national licensing policy and administration, with the operation of the licensing service delegated to each jurisdiction.

The Decision Regulation Impact Assessment report recommended that the National Delegated Agency Model be adopted, with the option to move to the National Single Agency over time. According to the Decision RIS written consultation submissions showed overwhelming support for the National Delegated Agency model\(^{21}\).

The National Occupational Licensing Board Chair, Elizabeth Crouch, outlined in an October 2012 NOLA newsletter:

“Whatever system we finally settle on, national licensing should be effective, light touch and proportional to the consumer risks it seems to address… These overarching principles should guide the work of the Authority in further developing the national licensing scheme”\(^{22}\).

At a roundtable event on 31\(^{st}\) October 2012 industry representatives “reaffirmed their support for national licensing and identified areas where agreement had been reached across the relevant industries”\(^{23}\).

The new system would be based on recognised best practice from the various licensing systems currently in operation, along with consistent standards and greater transparency of information to all stakeholders, including regulators, businesses and consumers; the objectives being to:

\[ a) \text{ ensure that licences issued by the national licensing body allow licensees to operate in all Australian jurisdictions; } \\
 b) \text{ ensure that licensing arrangements are effective and proportional to that required for} \]

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\(^{20}\) A further two options were considered by the Business Regulation and Competition Working group with assistance from the COAG Skills Recognition Steering Committee; these included maintaining the status quo (this option was discounted as it was seen to perpetuate existing inconsistencies) and a drivers’ licence model (this option was seen to ‘import’ the existing complexities of each jurisdiction’s licensing system into every jurisdiction).


\(^{22}\) National Occupational Licensing Authority (2012), *NOLS Update, Issue 2*, 16 October 2012 p.1

consumer protection and worker and public health and safety, while ensuring economic efficiency and equity of access;

c) facilitate a consistent skill base for licensed occupations;

d) ensure effective coordination exists between the national licensing body and relevant jurisdictional regulators;

e) promote national consistency in:

I. licensing structures and policy across comparable occupational areas;

II. regulation affecting the conduct requirements of licensees;

III. the approaches to disciplinary arrangements affecting licensees;

f) provide flexibility to deal with issues specific to particular jurisdictions or occupations;

g) provide the public with access to information about licensees 24.

The National body will be responsible for various matters including administering the system; policy reviews; managing resourcing, including budgets; recommending licence fees; delegating operational performance to jurisdictions; maintaining an up to date national register of licensees, for example.

Characteristics of the national licensing system have been established through an analysis of current jurisdictional licensing systems by NOLA. The proposed functions are outlined below.

<table>
<thead>
<tr>
<th>National system policy functions</th>
<th>Jurisdictional legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Occupational area coverage</td>
<td>✓ Conduct requirements</td>
</tr>
<tr>
<td>✓ Licence policy and enforcement</td>
<td>✓ Related consumer protection and public safety laws</td>
</tr>
<tr>
<td>✓ Skill and education requirement policy</td>
<td>✓ Consumer complaints</td>
</tr>
<tr>
<td>✓ Financial arrangements</td>
<td>✓ Consumer remedies</td>
</tr>
<tr>
<td>✓ Disciplinary arrangements</td>
<td>✓ Appeals mechanisms</td>
</tr>
<tr>
<td>✓ Appeal rights</td>
<td></td>
</tr>
</tbody>
</table>

Operational responsibility for issuing and renewing licenses would depend on the national licensing model adopted.

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National Single Agency Model: the state or territory office would issue and renew licences

National Delegated Agency Model: existing state and territory offices would issue and renew licences in compliance with eligibility requirements set by the national licensing body

Licensing fees will be determined as part of the development of the national licensing system.\(^25\)

This new system is to be implemented by 2013 according to information on the NOLA website, and is dependent on the progress of individual jurisdictional parliaments in passing the required legislation.

As of 20\(^{th}\) March 2013 adoption of the legislation that has facilitated these changes – the Occupational Licensing National Law Act (2010) (National Law) – has so far been enacted by six state Parliaments, with the State of Victoria taking the lead in passing the national licensing system legislation to establish the system.\(^{26,27}\) The following states have enacted the Act:

| • Victoria | • South Australia |
| • New South Wales | • Tasmania |
| • Queensland | • Northern Territory |

The National Act is currently before the Parliament of Western Australia; the Australian Capital Territory is “still in discussions about its participation in national licensing.”\(^28\)

Whilst enactments of the National Law continue, NOLA has been consulting on the first wave of occupations to be licensed under the national system.

Consultation packages were progressively released in the summer of 2012 by the COAG National Licensing Taskforce for ‘Wave 1’ occupations only (Property; Plumbing and Gasfitting Electrical; Refrigeration and air conditioning mechanics). The consultation closed on 12\(^{th}\) October 2012; as the responses number into the thousands, they have not been analysed as part of this research.\(^29\)

Wave 2 occupations will include building and building-related occupations, such as conveyancers and valuers.\(^30\) A NOLA representative has confirmed, for this research, that policy development is underway for Wave 2, including building occupations. NOLA anticipates publishing and consulting on a Regulation Impact Statement for a national building licence during 2014.


\(^{26}\) This system of establishing cooperative national legislation has previously been used to establish COAG’s National Registration and Accreditation Scheme for the Health Professions.


\(^{29}\) http://nola.gov.au/ris-consultations/

Some opposition to the introduction of a National Licensing scheme highlights concerns around the possible number of licence classes, perceived by some as heralding a decline in standards and inadequate protection of consumers. Further concerns have been expressed over the extent to which a national scheme will sufficiently address regional and jurisdictional variations in ‘climatic challenges’ and the different building standards therefore required\textsuperscript{31}.

A third COAG priority – alongside mutual recognition and national licensing – is to integrate licensing arrangements into vocational education and training (VET), with the purpose of more closely aligning the licensing and training systems. Hitherto separate systems, the integration process would see skill related requirements for licensing integrated into national training packages or accredited courses\textsuperscript{32}.

One would presume that an implicit objective of closer integration of the two systems is to prevent occupational standards from declining.

\textsuperscript{31} Transport, Housing and Local Government Committee (2012), \textit{Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012: Report No.14} p. 74
\textsuperscript{32} \url{http://www.licensinglinenews.com/Licensing-reforms.aspx}
4.1 South Australia

In the year to 2008 there were 65,400 people employed in the Construction industry in South Australia at which time it was the fifth largest employer in the state and contributed $4,045 million (6.2%) to the Gross State Product (GSP)\(^33\). At the time of writing the latest figures for the region (February 2013), show an increase in employment – with 66,500 employed in the construction sector. The sector remains the fifth largest employer (the largest being ‘healthcare and social assistance’ followed by the ‘retail trade’)\(^34\). These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

Tradespeople and related workers constitute the largest section of employment, accounted for mainly by carpenters, electricians, plumbers and painters\(^35\).

Any person (including a company) who carries on business as a building work contractor, including conducting the business of performing building work with a view to the sale or letting of land or buildings, must be licensed as a contractor under the Building Work Contractors Act 1995 (including sub-contractors)\(^36\).

Licensed activities include altering, repairing, improving and adding to existing buildings or structures, as well as constructing new builds, and a range of other activities.

Consumer and Business Services (an amalgamation of the former Officer of Consumer and Business Affairs with the Office of the Liquor and Gambling Commissioner) defers responsibility for licensing a range of occupations and tradespersons to ‘Licensing and Registration’\(^37\).

The Office of Consumer and Business Affairs issues licenses for the following trades:

- Builders
  - Contractor
  - Supervisor\(^38\)
- Conveyancers
- Land Agents
- Plumbers, Gas Fitters and Electricians
  - Contractor
  - Worker Registration\(^39\)

\(^38\) These licence categories are listed in the Licensing Public Register
\(^39\) These licence and registration categories are listed in the Licensing Public Register
The Building Work Contractors Regulations 2011 set out four classes of building work:

1. Any building work
2. Light commercial/industrial and residential work (e.g. house construction, multi-storey buildings)
3. Residential building work (e.g. building work limited to houses, additions and alterations to houses)
4. Other specified building work (e.g. trade work - bricklaying, carpentry and joinery, painting and decorating, air conditioning installation, and various other combinations of commercial, industrial and residential building work).

There are two main type of licence required under the Building Work Contractors Act 1995:

<table>
<thead>
<tr>
<th>Building Work Contractors Licence</th>
<th>Building Work Supervisors Registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person must be licensed as a building work contractor if they carry on the business of performing building work for others or performing building work with a view to the sale or letting of land or buildings improved by that work. All partners in a partnership must hold their own licences, even if they do not physically perform building work.</td>
<td></td>
</tr>
<tr>
<td>Every building work contractor must have a registered building work supervisor to properly supervise their building work and ensure that it meets required standards. It is common for licensed contractors to also be registered as supervisors and to perform this role themselves. If a contractor is not also registered as a supervisor or is registered but will not be supervising the building work themselves, they must have a nominated and approved supervisor to perform this role.</td>
<td></td>
</tr>
</tbody>
</table>

Information from: Guidelines to apply for a Building Work Contractors Licence and/or Building Work Supervisors Registration.

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41 As defined in the Building Work Contractors Regulations 2011 under the Building Work Contractors Act 1995
Plumbing, gas fitting or electrical work must be carried out by a person holding a worker’s registration under the Plumbers, Gas Fitters and Electricians Act 1995.

Exemptions to building licences are only applicable to trades subject to the Plumbers, Gas Fitters and Electricians Act 1995 and which conduct business in these trades; conduct business as a pest controller and are licensed under the relevant Regulations; or are installing or maintaining a security alarm and are licensed under the relevant Act\textsuperscript{43}.

A contractor is only entitled to hold a contractor’s licence if he or she:

- holds the approved qualifications or meet the performance criteria in Schedule 1 (Part A) of the Regulations (or one of your business partners is qualified);
- has sufficient business knowledge, experience and financial resources (or together your business partnership does);
- has not been, in the last ten years, an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors;
- has not been, in the last ten years, a director of a company wound up for the benefit of creditors;
- is not suspended or disqualified from practising or carrying on an occupation, trade or business; and
- is a fit and proper person\textsuperscript{44}.

The fee for applying for a building licence is currently (as of 21\textsuperscript{st} March 2013) $179.00; ‘periodic’ fees payable annually vary according to the type of licence described on the previous page; different fee rates are in operation for individuals (‘natural persons’) which are on average (mode) $383 and companies (‘body corporate’), which are on average (mode) $844\textsuperscript{45}.

In addition to paying the appropriate fees all applicants must provide the following information:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Supervisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A National Police Certificate (exemptions apply)</td>
<td>• Qualifications (relevant trade and technical qualifications)</td>
</tr>
<tr>
<td>• Business qualifications (copy of)</td>
<td>• Work history (plus two written work references, where possible)</td>
</tr>
<tr>
<td>• Financial information</td>
<td></td>
</tr>
</tbody>
</table>

Information from: Guidelines to apply for a Building Work Contractors Licence and/or Building Work Supervisors Registration\textsuperscript{46}.

\textsuperscript{43} http://www.cbs.sa.gov.au/licensing/buildingworkers/definition.html
\textsuperscript{44} http://www.cbs.sa.gov.au/licensing/buildingworkers/entitlement.html
\textsuperscript{45} http://www.cbs.sa.gov.au/licensing/fees.html
\textsuperscript{46} http://www.cbs.sa.gov.au/assets/files/builders_infosheet.pdf , all pages
In the development of the new, 1995 Act, industry strongly advocated the inclusion of business educational criteria as a requirement to obtain a building work contractors’ licence, in addition to the appropriate technical criteria to obtain a building work supervisors registration. A single set of ‘performance criteria’ was devised with provided a broad framework for the Commissioner for Consumer Affairs to set more detailed competency requirements for each type of building work.

“This approach is considered to significantly improve the previous approach to assessment of builders licences and supervisors registrations, as it provides clear and useful information for applicants on the broad range of knowledge and experience that is required for a licence and or registration. Schedule 2 also provides a fair and consistent basis for the assessment of skills.”

An individual will receive a photographic licence/registration card; a company will receive a licence certificate. The licence and/or registration lasts until it is suspended, cancelled or surrendered, if the individual dies, or the company is dissolved. A representative of the South Australian Government told this research that the registration card was designed in collaboration with industry and with support from the Master Builders Australia and the Housing Industry Association and incorporates “100 points of identification”. According to the same source, the card is valid for 10 years, with the photograph updated annually.

The Act 1995 bestows certain obligations on licence holders:

- Contractors must use their name as it appears on their licence and their licence number in advertising (other than job adverts and adverts aimed at other building work contractors)
- An annual return must be completed and returned with the annual licence fee
- Changes to personal or business details must be communicated to the Commissioner in writing (within 14 days)
- For domestic building work a written contract must be made if the value of the building work is $12,000 and over
- Contractors must place a sign in a prominent position on every building site on which they are working (unless as a subcontractor) which must display the same name and licence details as required on advertisements
- Contractors have responsibility for issuing Statements of Compliance (SOCs) for building work performed where approval is required

47 Building Work Contractors’ Act Schedule 2 – Building Work Contractors Regulations, Performance Criteria, p. 1
48 Building Work Contractors’ Act Schedule 2 – Building Work Contractors Regulations, Performance Criteria, p. 1
When surrendering a licence, contractors must do so in writing.\(^{57}\)

**Dispute resolution and disciplinary action**

Consumer and Business Services (the body responsible for issuing licenses in South Australia) suggested in a December 2012 article that a “significant number” of people paid “large deposits above what is allowable for work that is incomplete or never started”\(^{58}\). The inference here however is that these tradespeople are not properly insured, and/or licensed.

According to the same article, the CBS investigated 662 breaches of the Building Work Contractors Act for building work in the financial year 2011/2012.

In circumstances where a licensee breaches the terms of their licence they can be disciplined under the Building Work Contractors Act 1995. “The forum for disciplinary action is the Administrative and Disciplinary Division of the District Court and any person, including the Commissioner, may lodge a complaint to the court alleging grounds for disciplinary action to be commenced”\(^{59}\).

A number of circumstances may give rise to disciplinary action against a building work contractor, such as obtaining a licence improperly, acting “contrary to an assurance accepted by the Commissioner under the Fair Trading Act 1987”, or acting contrary to the BWC Act, for example\(^{60}\).

Disciplinary action can take a number of forms, including a reprimand, a fine (of up to $20,000), suspension of cancellation of the licence, or the imposition of conditions. In some circumstances a licensed or registered individual can be disqualified, or prohibited from being employed or otherwise engaging in the business of a building work contractor\(^{61}\).

Interview feedback from the South Australian Government had suggested that ‘significant’ penalties exist for carrying out work without a licence, however this is discretionary based for example on the quality of the work carried out. In such circumstances the tradesperson is encouraged to apply for a building licence.

The public can search for a licensed tradesperson, or check if a tradesperson is licensed by using a dedicated website, the ‘Licensing Public Register’\(^{62}\).

Consumer and Business Services encourages the public to play a role in the monitoring of unlicensed

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traders through outreach work for example - CBS recently ran a campaign ‘Dob in a dodgy tradie day’ (19\textsuperscript{th} March 2013)\textsuperscript{63} as part of this remit.

4.2 Australia Capital Territory

The dominant sector of employment in the ACT is ‘public administration and safety’ accounting for approximately one third of all employment in the area, with construction employing roughly 6% of the total number of employed persons, aged 15 or over (as at 2011, according to ABS Census of Population and Housing figures)\(^{64}\). At the time of writing the latest industry figures (February 2013) put employment in the construction sector at 13,100 – the sixth largest sector employer in the territory\(^{65}\). These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

According to the ACT Government, Environment and Sustainable Development, “builders must be licensed”. There is no indication of a minimum value threshold above which a licence is required\(^{66}\). Within ACT there are seven trades that are classed as construction occupations, these are\(^{67}\):

- builders
- electricians
- plumbers
- drainers
- gas-fitters
- plumbing plan certifiers
- building certifiers

The ACT Government defines construction practitioners as, “an individual, corporation or partnership who provides, has provided or proposes to provide a construction service. Supervising construction work is also providing a construction service. A construction practitioner provides a construction service if they do or supervise work in a construction occupation”\(^{68}\).

ACT Planning and Land Authority (ACTPLA) - which is now part of the Environment and Sustainable Development Directorate, bringing together environmental policy, with heritage and conservation, for example - issues building licences. The Office of Regulatory Services also deals with building quality.

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The current builders’ licensing classes are:

<table>
<thead>
<tr>
<th>Class</th>
<th>Scope of work</th>
</tr>
</thead>
<tbody>
<tr>
<td>A (unlimited)</td>
<td>building work other than specialist building work or handling asbestos</td>
</tr>
<tr>
<td>B (medium rise)</td>
<td>(a) building work (other than specialist building work or handling asbestos) in relation to a building that is 3 storeys or lower; and (b) basic building work</td>
</tr>
<tr>
<td>C (low rise – residential)</td>
<td>(a) building work (other than specialist building work or handling asbestos) in relation to a building that is 2 storeys or lower and is a class 1, class 2 or class 10a^ building; and (b) building work (other than specialist building work or handling asbestos) in relation to a building that is a class 10b structure (other than a swimming pool or swimming pool fence) and is ancillary to a building mentioned in paragraph (a); and (c) basic building work</td>
</tr>
<tr>
<td>D</td>
<td>non-structural basic building work, other than specialist building work or handling asbestos</td>
</tr>
<tr>
<td>Owner Builders</td>
<td>building work, other than specialist building work or handling asbestos, in relation to a class 1, class 2* or class 10 building that is, or is to be, the licensee’s main home or ancillary to it</td>
</tr>
</tbody>
</table>

*this provision is in place to allow owners to undertake additions and alterations to their own sole occupancy unit. It has not been exercised in relation to constructing a class 2 building.

Taken from: ACT Planning & Land Authority, Building Quality in the ACT Report to the ACT Legislative Assembly Pursuant to resolution of the Assembly of 1 July 1020, September 2010, p.13

Any class of builder’s licence may be issued with a condition, restriction or endorsement. Conditions are usually determined in the application assessment process.

- **Restrictions** – these may include certain classes of building work or height restrictions
- **Endorsements** – these may apply to certain types of building work such as swimming pool construction or demolition

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For exemplar purposes, some restrictions that may apply to a building licence in ACT include:

- restriction to building work of certain Building Code of Australia (BCA) classes
- height restrictions on certain classes of work.

Some endorsements that may apply to a licence include, for example:

- swimming pool construction
- demolition
- internal fit-out work
- the construction a particular project at a particular address which may be outside the scope of the class of licence.

Qualifications and experience required by licence holders are:

<table>
<thead>
<tr>
<th>Licence class</th>
<th>Qualification and experience requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A</td>
<td>A degree in the relevant discipline (at bachelor’s degree, graduate certificate, graduate diploma, master’s degree or doctoral degree); Documentary evidence of at least 2 years relevant building work experience.</td>
</tr>
<tr>
<td>Class B</td>
<td>Diploma or advanced Diploma in the relevant discipline; Documentary evidence of at least 2 years relevant building work experience.</td>
</tr>
<tr>
<td>Class C</td>
<td>Certificate IV in building; Documentary evidence of at least 2 years relevant building work experience.</td>
</tr>
<tr>
<td>Class D</td>
<td>Documentary evidence of at least 3 years relevant building work experience for the type of work to be undertaken under licence.</td>
</tr>
</tbody>
</table>

Class D Building Licenses are the most suitable to be used for the issuance of more unconventional builders’ licenses – this is the lowest class of builder’s licence in terms of the level of work it authorises. In these cases an endorsement will be added to the licence, which must be assessed under the Construction Occupational Licensing Act 2004 Regulation 32.

Separate requirements are stipulated for owner-builders.

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An example of a licence card with conditions\textsuperscript{75}.

Licences are typically valid for up to four years and are issued for individuals, for companies and partnerships\textsuperscript{76}. Mandatory qualification requirements exist for the different types of licences “these include tertiary qualifications and work experience”. In addition, an applicant must demonstrate that he or she has access to financial resources adequate to complete any work under the licence being applied for; a letter from the applicant’s bank, financial provider or accountant must be provided\textsuperscript{77}.

In July 2011 a new fee structure for licences was introduced. For Builder’s licences the fees are currently set at\textsuperscript{78}:

<table>
<thead>
<tr>
<th>Licence type</th>
<th>Licence fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application</td>
<td>$207.00</td>
</tr>
<tr>
<td>Re-application</td>
<td>$31.00</td>
</tr>
<tr>
<td>1 year licence (excluding owner-builder)</td>
<td>$207.00</td>
</tr>
<tr>
<td>3 years licence (excluding owner-builder)</td>
<td>$466.00</td>
</tr>
<tr>
<td>Owner building (includes application fee)</td>
<td>$207.00</td>
</tr>
<tr>
<td>Application for amending a licence not at time of renewal</td>
<td>$207.00</td>
</tr>
</tbody>
</table>

Builders in ACT must have residential building insurance policy or a “fidelity certificate” to protect consumers/homeowners against defective and incomplete work\textsuperscript{79}.

\textsuperscript{75}\url{http://www.actpla.act.gov.au/topics/hiring_licensing/licence_registration/builders/licence_restrictions_and_endorsements}

\textsuperscript{76}\url{http://www.actpla.act.gov.au/topics/hiring_licensing/licence_registration/builders}


\textsuperscript{78}\url{http://www.actpla.act.gov.au/__data/assets/pdf_file/0004/18148/2012-13_Fee_and_Charges_book.pdf}

\textsuperscript{79}\url{http://www.actpla.act.gov.au/topics/hiring_licensing/employ_professional/builders}
A contractor must enter into a contract with a homeowner before conducting building work. The contract must:\n\n- be signed and dated by the customer and the builder (not the company or any other person who contracted the builder);
- state the customer’s name and the builder’s name;
- have the address where the work is to be carried out;
- state the builder's licence details;
- state the start and completion dates;
- state the payment arrangements;
- have the plans and specifications attached;
- contain the statutory warranties; and
- display the total contract price.

“All licensees must demonstrate at least two years experience relevant to the class of licence they apply for, but not necessarily for the full scope of work the licence permits. At present experience is not competency-based. In the case of company licences, it is only the skills of the nominee (an individual that must also hold a building licence for the type of work to be undertaken) that are assessed. The nominee is then responsible for all work performed by the company.

“For licensees qualified under the vocational education sector (TAFE), assessment of ‘relevant experience’ (not further defined in training materials) has now been included in building qualifications. Under national agreements on training made through COAG, it is expected that regulators will rely on that assessment rather than performing their own.

If a licensee keeps their licence current, renewal of a licence is automatic on payment of the renewal fee. Qualifications, current experience and professional development are not reassessed at the time of renewal, but licensees must maintain ongoing eligibility during the period of the licence.”

“The ACT licenses primary occupations such as builders, electricians and plumbers, but does not license each and every tradesperson or worker that may be involved in a project. The builder is ultimately responsible for ensuring that work they have contracted under their licence is completed in accordance with the relevant standards and fair trading obligations. It is not common practice for builders to insist on a particular level of qualification or experience when engaging sub-trades.”

Breaches of contract and contractual disputes are matters for resolution by the courts or Office of Regulatory Services (ORS) under fair trading laws. As these can be highly complex matters relating to non-payment, for example, due to perceived of actual building defects, they are not conciliated by

From February 2009, the ACT Civil Administrative Tribunal (ACAT) assumed responsibility for disciplining serious matters of disciplinary action against people in construction occupations, under the ACT Civil and Administrative Tribunal Act 2008. The responsibility was previously held by the Construction Occupations Registrar under the Construction Occupations (Licensing) Act 2004 (COLA). The Construction Occupations Registrar still deals with minor disciplinary matters and investigates complaints against licence holders.

Disciplinary orders are varied and wide-ranging, including reprimands, written warnings, cancellation or suspension of a licence, conditions imposed on the persons’ licence. In some situations, demerit points may be applied, which last for 3 years. If a licensee incurs 15 or more demerit points in a construction occupation within the previous three years, a notice of licence suspension, disqualification, or other disciplinary action will be issued.

Infringement notices (consisting of a fine) may be issued for a number of offences, including working without holding the appropriate licence or pretending to be licensed, for example.

For trades not included within the scope of existing licensing schemes, alternative solutions exist. Master Painters Australia (ACT) offers membership to tradespeople who meet a number of conditions:

- Achievement of the required qualifications
- Extensive industry experience (length of experience not defined)
- Adherence to a Code of Ethics
- Insured appropriately

Membership of Master Painters is advertised as one of the few ways in which consumers can check on the reputation of a prospective contractor.

Members are offered cheaper insurance through named brokers, work leads, fleet owners’ discounts on certain new vehicles, and a number of other benefits.

**Monitoring of licensing schemes, and review**

In June 2010, talks were held between the construction industry and the ACT Planning and Land Authority (ACTPLA) to discuss the issues and possible solutions surrounding poor quality building in...
Canberra. The meeting was, in part, an acknowledgment of concerns raised by the public in response to building quality issues.

In an article by Andrew Barr, member of the Australian Capital Territory Legislative Assembly (since April 2006) and Deputy Chief Minister (since May 2011) he explains that the building sector has acknowledged the problem and is working with government and the ACTPLA to address it. Possible solutions put forward in June 2010 included:

**Short Term:** increasing the number of inspections during construction including having frame and pre-sheet inspections made mandatory on commercial projects and requiring wet seal inspections to be made mandatory on all residential and commercial projects.

**Long Term:** a building defects pool fund into which developers would be required to place funds. These funds would then be used to compensate building owners where poor construction workmanship comes to light after a number of years and can be attributed to poor construction practice.\(^{88}\)

These talks may also respond to earlier announcements, for example in 2008 a 4-point plan and an industry consultation group facilitating greater collaboration between the ACTPLA and the building industry. The impetus behind convening this group is more aligned with a desire to cut planning administration however, rather than in response to concerns about building quality.\(^{89}\)

In July 2010 the Minister for Planning, Andrew Barr, established a building quality forum in response to a government requested report on building quality issues identified in the ACT. The resulting forum variously comprised of industry, unions and government departments. The objectives set for this group suggest a lack of understanding of the scale of the problem, or the extent to which the current licensing system works to address issues of building quality; objectives included “forming an accurate picture of the scale of the problem” of building ‘quality’, further:

- “clarifying complaints processes and monitoring recurring issues and offenders
- owners’ rights and consumer issues
- delineation between fair trading issues and building regulatory issues
- responsibilities of owners, industry and regulators in education and addressing complaints
- insurance coverage for building defects”\(^{90}\).

Four Working Groups established by the Forum “examined in detail reform in the areas of owners’ rights, industry skills and competence, effective supervision and insurance for building defects.”

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The scope of the ‘building quality’ issues included:

- Structural issues (e.g. fire safety, noise attenuation with reference to the Building Code of Australia)
- Issues related to the Building Act (e.g. construction process and requirements for plumbing, electrical and gas-fitting)
- Consumer issues (e.g. contractual problems and non-building work, and some trade work completed outside of the construction process dealt with under fair trading and consumer laws)

In their review, the Forum identified the following issues:

- the role of building certifiers, builders and other practitioners,
- regulatory functions and complaints processes, and
- the coverage of mandatory building insurance for low-rise buildings.

Challenges encountered by the Forum in their investigations included quantifying the scale of the problem based on government statistics, due to under-reporting of problems and lack of resolution, or because problems are resolved privately between owners and builders.\(^91\)

In the September 2010 report that followed, the authors restated the difficulties in obtaining reliable data, particularly on the scale of the problem and highlighted that “only a fraction of issues encountered by building owners are reported to ACTPLA and ORS. Some information is held by industry associations that offer a complaints resolution service, but these statistics are not available to ACTPLA, primarily due to privacy reasons.”\(^92\) Further, there was reported to be no single database against which incidents of building quality complaints are recorded, with current sources of information not easily interrogated.\(^93\) The report suggests that the ACTPLA would, in response to the findings, update its information systems to improve case management, data capture and data analysis.

The report goes on to identify three shortcomings of the current licensing approach; these, in brief, relate to the sufficiency of testing competences and skills requirements and, interestingly, the length of the licensing period in contrast with the pace of new developments in the industry.\(^94\) The message is that a licensed tradesperson will still retain their licence even if they have not practiced for a number of years; no reassessment at the time of renewal could potentially lead to sub-standard work.

The same report suggests that as at 2010, increased demand for labour in the construction industry – combined with an absence of licensing and industry quality assurance for certain trades – meant...
that unlicensed trades had a low completion rate for Apprenticeships. The result described is of progression into full time employment with less knowledge “rather than deferring a higher income for a higher qualification. More advanced skills development undertaken in the latter stages of formal training is often missed”\textsuperscript{95}.

The situation was apparently perpetuated because it was not common practice for builders to insist on a particular level of qualification or experience when engaging sub-trades; a circumstance which would be remedied by requiring trade certifications or other completed qualifications as a condition of employment\textsuperscript{96}.

Following publication of the report there has been little further information on how the findings were addressed. The impetus appears to have been lost – the 2012 and 2013 ACT Government Strategic Plans are lacking in any action to address the issues identified.

A number of factors have contributed to what the ACT see as a “perception that builders are not regulated by government, and to slippages in the overall quality of work, not only those aspects checked by a certifier.”\textsuperscript{97} Resourcing appears to be main issue identified at the time of the report publication, with only four building inspectors operating in the ACT, and auditing between 5-10\% of jobs\textsuperscript{98}.

In September 2012 the ACT government began an enquiry into safety in the construction industry following the recent death of a worker on an ACT construction site “the fourth work related fatality in the ACT in seven months and the third within the ACT’s construction sector in that same period”\textsuperscript{99}. The report found – amongst other things – that the “competence of high risk work licensed operators contributes substantially to a company’s risks on certain construction sites”\textsuperscript{100}. The report is focused on the construction sector, of which RMI is a part (i.e. rather than the report having a specific focus on RMI alone).

\textsuperscript{95} http://www.actpla.act.gov.au/__data/assets/pdf_file/0006/19851/Building_Quality_in_the_ACT-Report_to_the_Legislative_Assembly_September_2010.pdf p.15
\textsuperscript{97} http://www.actpla.act.gov.au/__data/assets/pdf_file/0006/19851/Building_Quality_in_the_ACT-Report_to_the_Legislative_Assembly_September_2010.pdf p.18
\textsuperscript{98} http://www.actpla.act.gov.au/__data/assets/pdf_file/0006/19851/Building_Quality_in_the_ACT-Report_to_the_Legislative_Assembly_September_2010.pdf p.18
\textsuperscript{100} CT Government (2012), Getting Home Safely: Inquiry into Compliance with Work Health and Safety: Requirements in the ACT’s Construction Industry p.51
4.3 New South Wales

At the time of writing, latest employment figures – for February 2013 – put the construction sector as the fifth largest employment sector in the state (the largest being ‘healthcare and social assistance’, followed by the ‘retail trade’). The construction sector in New South Wales currently employs approximately 289,400 individuals\textsuperscript{101}. These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

From 1972 all builders have required a licence, as a consequence of the introduction of the Building Licensing Act 1971. Since then, licensing schemes have developed and expanded most notably in the period from 1977-1980 as various trades were introduced. In November 1989 the Home Building Act 1989 took effect, and remains in force today.

Licences are issued to individuals, companies and partnerships. Currently – according to statistic published by NSW Fair Trading - over 150,000 home building licence applications, renewals and variations are processed each year. Other statistics include:

- Over 170,000 licensees hold over 250,000 authorities
- Approximately 50% of licensees have taken up the three year renewal option (licenses are valid for either 1 year or 3 years) \textsuperscript{102}.

The table below, taken from a 2012 consultation on the Home Building Act 1989, illustrates the numbers of individuals, partnerships and companies holding licences under the Act, 2000/01 to 2010/11. There was a sustained increase in the number of licenses issued during the 11 year period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Individuals</th>
<th>Partnerships</th>
<th>Companies</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000/01</td>
<td>130,127</td>
<td>5,703</td>
<td>14,478</td>
<td>150,308</td>
</tr>
<tr>
<td>2001/02</td>
<td>130,538</td>
<td>6,071</td>
<td>15,368</td>
<td>151,977</td>
</tr>
<tr>
<td>2002/03</td>
<td>134,431</td>
<td>6,513</td>
<td>16,123</td>
<td>157,067</td>
</tr>
<tr>
<td>2003/04</td>
<td>136,981</td>
<td>6,757</td>
<td>16,665</td>
<td>160,403</td>
</tr>
<tr>
<td>2004/05</td>
<td>137,289</td>
<td>7,032</td>
<td>17,464</td>
<td>161,785</td>
</tr>
<tr>
<td>2005/06</td>
<td>135,811</td>
<td>6,881</td>
<td>17,778</td>
<td>160,470</td>
</tr>
<tr>
<td>2006/07</td>
<td>137,931</td>
<td>6,811</td>
<td>18,508</td>
<td>163,250</td>
</tr>
<tr>
<td>2007/08</td>
<td>139,407</td>
<td>6,529</td>
<td>19,005</td>
<td>164,941</td>
</tr>
<tr>
<td>2008/09</td>
<td>144,748</td>
<td>6,424</td>
<td>20,820</td>
<td>171,992</td>
</tr>
<tr>
<td>2009/10</td>
<td>143,892</td>
<td>6,276</td>
<td>21,086</td>
<td>171,254</td>
</tr>
<tr>
<td>2010/11</td>
<td>148,131</td>
<td>5,908</td>
<td>21,851</td>
<td>178,890</td>
</tr>
</tbody>
</table>

\textsuperscript{101} \url{http://lmip.gov.au/default.aspx?LMIP/LFR/NSW_LFR_Industry_Total}
\textsuperscript{102} \url{http://www.fairtrading.nsw.gov.au/Tradespeople/Home_building_licensing/Applying_for_a_licence_or_certificate.html#Your_application}
\url{http://www.fairtrading.nsw.gov.au/About_us/How_Fair_Trading_works/Protection_schemes_and_systems/Home_building_licensing_in_NSW.html}
From: NSW Fair Trading, Reform of the Home Building Act 1989, Issues Paper p.6, 103

The Home Building Act 1989 requires builders and tradespeople to be licensed for the work that they do, and to have proper contracts and insurance in place for most jobs. The Act is administered jointly by the Minister for Commerce and the Minister for Fair Trading 104.

The day to day operation of the Act is the responsibility of New South Wales Fair Trading which, as well as fair trading:

- protects consumers within the NSW residential building industry
- assumes responsibility for setting and maintaining the standard of competence for builders and tradespeople working in the industry.

The Office operates a website for consumers to check whether a contractor’s licence is current and valid for the work in question; a customer service helpline is also available 105. The ‘Golden Rule’ is to make sure all builders and tradespeople have a valid licence.

“By law, all builders and tradespeople must display their licence number on any advertisement for their services” 106.

Only a builder or trader who is properly trained and has the relevant experience to do the work may be licensed with NSW Fair Trading. There are four types of licence/certificate:

1. Contractor Licence
   This type of licence falls into two categories:
   
   I. A person who carries out residential building work over $1,000 in labour and material content
   
   II. Specialist tradespeople who carry out the following work – regardless of the cost:
       - Electrical wiring
       - Plumbing, draining and gas-fitting work
       - Air conditioning and refrigeration work (except plug-in appliances) 107

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2. **Qualified Supervisor Certificate**
   This allows the holder to supervise and carry out the work as described on their certificate.

   The licensing system distinguishes between ‘builders’ and ‘tradespeople’ separately. The following licence and certificate classes are issued to individuals and company/partnerships:

<table>
<thead>
<tr>
<th>Building</th>
<th>Trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Builder</td>
<td>General</td>
</tr>
<tr>
<td>Erection of Pre-fabricated metal-framed home additions and structures</td>
<td>Concretor</td>
</tr>
<tr>
<td>Kitchen Bathroom Laundry Renovator</td>
<td>Glazier</td>
</tr>
<tr>
<td>Structural Landscaping</td>
<td>Joiner</td>
</tr>
<tr>
<td>Swimming Pool Builder</td>
<td>LP Gasfitter</td>
</tr>
<tr>
<td></td>
<td>Metal Fabricator</td>
</tr>
<tr>
<td></td>
<td>Minor Maintenance/Cleaning</td>
</tr>
<tr>
<td></td>
<td>Minor Trade Work</td>
</tr>
<tr>
<td></td>
<td>Painter</td>
</tr>
<tr>
<td></td>
<td>Plumber</td>
</tr>
<tr>
<td></td>
<td>Plumber And Roof Plumber</td>
</tr>
<tr>
<td></td>
<td>Refrigeration</td>
</tr>
<tr>
<td></td>
<td>Roof Plumber</td>
</tr>
<tr>
<td></td>
<td>Roof Slater</td>
</tr>
<tr>
<td></td>
<td>Roof Tiler</td>
</tr>
<tr>
<td></td>
<td>Stonemason</td>
</tr>
<tr>
<td></td>
<td>Swimming Pool Repairs and Service</td>
</tr>
<tr>
<td></td>
<td>Underpinning and Piering</td>
</tr>
<tr>
<td></td>
<td>Wall and Floor Tiler</td>
</tr>
<tr>
<td></td>
<td>Water Plumber</td>
</tr>
<tr>
<td></td>
<td>Waterproofing Technician</td>
</tr>
<tr>
<td></td>
<td>Wet Plasterer</td>
</tr>
</tbody>
</table>

3. **Nominated Supervisor**
   This is an individual who holds an endorsed contractor licence or a qualified supervisor certificate, and who is registered against a contractor licence as the person supervising the residential building work or specialist work.
4. Tradesperson Certificate

A range of different classes of certificate are issued to individuals:

- Air Conditioning
- Discon/Recon Fixed Elect Equip
- Drainer
- Electrician
- Gasfitter
- LP Gasfitter
- Plumber
- Plumber And Roof Plumber
- Refrigeration
- Roof Plumber
- Water Plumber

Information from:

Applicants for a licence must provide evidence of relevant qualifications – trade certificate or proof of the technical qualifications required for the type of work the applicant wishes to conduct. Qualification and experience requirements vary depending on the type of licence being applied for; trade qualifications are required in the specific trade category for example, bricklaying, decorating, flooring etc. In addition to evidence of qualifications, referee statements must be provided by licensed supervisors confirming the applicant possesses the necessary practical experience (for certain applications). Proof of identity must also be submitted with the application.

Licence and certificate fees vary considerably depending on the class of licence or certification, whether it is an individual, partnership or corporation licence. Different fees apply whether the licence is valid for 1 year, or 3 years.

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#Your_application


#Your_application
Examples of the different fees for a building contractor licence are given below:

<table>
<thead>
<tr>
<th>Building Contractor</th>
<th>Fee level $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual - new licence - 1 year (includes processing fee of $260)</td>
<td>599</td>
</tr>
<tr>
<td>Individual - new licence - 3 year (includes processing fee of $260)</td>
<td>1,119</td>
</tr>
<tr>
<td>Individual - renewal - 1 year (includes processing fee of $61)</td>
<td>400</td>
</tr>
<tr>
<td>Individual - renewal - 3 year (includes processing fee of $61)</td>
<td>959</td>
</tr>
<tr>
<td>Partnership - new licence - 1 year (includes processing fee of $609)</td>
<td>1,001</td>
</tr>
<tr>
<td>Partnership - new licence - 3 year (includes processing fee of $609)</td>
<td>1,529</td>
</tr>
<tr>
<td>Corporation - new licence - 1 year (includes processing fee of $664)</td>
<td>1,201</td>
</tr>
<tr>
<td>Corporation - new licence - 3 year (includes processing fee of $664)</td>
<td>1,917</td>
</tr>
</tbody>
</table>

In addition to contractors possessing the relevant licence, all residential building work worth over $1,000 must have a written contract. There are two different types of contract, depending on the value of work:

- $1,001 - $5,000: requires a ‘small jobs’ contract – this covers minimum information such as dates, names, signatures, contractor’s licence number, price and description of work
- Over $5,000: a more extensive home building contract

Insurance

A number of insurances exist for home building and renovation work; the homeowner is encouraged to check that the builder or tradesperson they employ has the appropriate insurance in place and that certificates are current.

Contract works insurance

This is insurance obtained by the builder or tradesperson and is for the protection of the consumer covering loss or damage to the materials and work.

Public liability insurance

Covering industry as a result of building works.

Workers compensation or WorkCover insurance

All employees should be covered by their employee for workers compensation; in the absence of such insurance the homeowner will be liable for any injury befalling an employee on the construction site.

111 Professional Indemnity Insurance is only applicable to occupations such as certifiers, architects, engineers and building consultants.
Warranties

By law builders, developers, owner-builders and tradespeople must warrant that “their work has been performed in a proper and workmanlike manner. By law a home owner or subsequent purchaser, has the right to enforce these warranties within certain time periods after the work was completed”.

The warranties are as follows:

| From 1 February 2012, the statutory warranty period is 6 years for structural defects and 2 years for non-structural defects. If the loss becomes apparent in the last 6 months of the statutory warranty period then the home owner has a further 6 months from becoming aware of the loss to enforce the statutory warranty. Prior to 1 February 2012, the statutory warranty period was 7 years for structural and non-structural building work defects. |

Coinciding with the changes to the statutory warranty period, the NSW Insurance Corporation (trading as the NSW Home Warranty Insurance Fund) assumed responsibility as the sole provider of home warranty insurance in NSW. From this period home warranty insurance is required where the contact price is over $20,000112.

Claims against the home warranty insurance scheme can be made following the disappearance of a builder. A homeowner concerned about defective or incomplete building work and who is unable to locate their builder should, firstly, lodge a complaint with NWS Fair Trading. In such circumstances Fair Trading will investigate the builder and, in the event that he or she cannot be found, a letter will be issued to the homeowner on completion of the investigation. The letter will be accepted by the insurers as evidence “of the homeowner’s belief that the contractor has disappeared and of the home owner having made all efforts to locate the builder”113.

Working without the proper licence is against the law, and offenders can be fined. Further, unlicensed contractors are unable to enforce a contractor for the work against the other party.114

Dealing with disputes and complaints

In cases where a resolution cannot be reached between the homeowner and the builder or tradesperson either party can contact the Office of Fair Trading and make a formal request for it to assist.

The homeowner must then notify their insurer immediately in writing of the nature and circumstances of the loss. A Fair Trading building inspector will meet with both parties to inspect the work under dispute. Where it is concluded that the contractor is at fault a ‘Rectification Order’ will be issued listing the work that is to be rectified or completed, the conditions that both parties must meet and the date by when the work must be completed. If the Rectification Order is not complied with, then a claim may be lodged with the Consumer, Trader and Tenancy Tribunal (Tribunal). The homeowner may also be able to lodge a claim under their home warranty insurance policy.

The Home Building Advocacy Service (HoBAS) also exists to help consumers after they have completed the NSW Fair Trading dispute resolution process\textsuperscript{115}.

Contractors can face licence suspension or cancellation for a number of disciplinary reasons, such as becoming involved in unlawful activity, obtaining a licence by misrepresentation or fraudulent means, or becoming bankrupt or subject to a winding up order.\textsuperscript{116}

**Monitoring of licensing schemes, and review**

The Home Building Act 1989 contains within it provisions for on-going review to determine whether the policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

During the early part of the 21\textsuperscript{st} Century a number of reviews were undertaken into legislation of relevance to building licensing:

**The Campbell Inquiry into the Quality of Buildings, 2002**

This made a number of recommendations focusing on building quality; licensing and regulation; building codes and standards; consumer advice and information; dispute management, for example. The intention was, amongst other things, to consolidate building regulatory functions within Government and improve features such as industry education, consumer awareness and systems for resolving disputes\textsuperscript{117}.

It should be noted however that “The Committee does not propose to centralise all industry functions in such a body, but it has recognised the need to bring a number of functions into a single location, to provide a more focused and effective government organisation solely responsible for co-ordinating


\textsuperscript{116} http://www.fairtrading.nsw.gov.au/Tradespeople/Home_building_licensing/Cancelled_or_suspended_building_licences.html

and regulating the essential elements of the home building industry”\textsuperscript{118}.

**Report on the Home Building Amendment (Insurance Act) 2002**

As a consequence of passing the Amendment Act the legislation was referred to a Standing Committee on Law and Justice for Enquiry whose terms of reference included investigating the impact of the Amendment Act on home warranty insurance, builders and consumers. The Committee’s then Chair noted that the move to a “last resort” scheme would align NSW with the schemes in Victoria, South Australia, Western Australia, the ACT and Northern Territory\textsuperscript{119}.

**Inquiry into the Home Warranty Insurance Scheme, 2003**

The Inquiry reviewed the effectiveness of the legislative framework governing home warranty insurance (including the changes outlined above). The ensuing report recommended the retention of the current licensing system with a number of enhancements. “The Inquiry also supported the current licensing system and recommended that it be strengthened\textsuperscript{120}.

As a consequence of the 2002 Campbell Inquiry, the following year the Home Building Service, through which the building licensing scheme is currently operated, was established by the NSW Fair Trading.

The Home Building Amendment Act 2004\textsuperscript{121} was passed by parliament in December 2004 (which made changes related to insurance, licensing, discipline and compliance).

Since 2004 a range of enhancements have been made to the licensing system. Those of relevance to the repair and maintenance market include:

- abolition of ‘20 year rule’ (20 years’ experience used as pathway to obtain builders licence) on 1 January 2006
- proof of identity for individuals applying for a licence or certificate required from 1 March 2006
- qualification requirements for all licence trade categories (excluding swimming pool building) introduced in 2006
- as of 1 July 2007, three year licences became available, offering a fee saving of 20%
- a letter of eligibility for Home Warranty Insurance no longer required to be submitted with applications or renewal notices, information obtained directly from insurers
- Council of Australian Governments working with all jurisdictions on introducing a national licensing regime for certain building occupations to commence in 2012\textsuperscript{122}.

\textsuperscript{118} http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/ceb0c4be044a64d4ca256cf4000ace2d/$FILE/Report\%20upon%20the%20Quality%20of%20Buildings%20V2.pdf, p. 27
\textsuperscript{119} http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/5966dfcc1d624630ca256cfd002a9273/$FILE/Final\%20Report%20on%20the%20Outcome%20of%20the%20Review%20of%20the%20Home%20Building%20Act%201989.pdf, p. 25
\textsuperscript{120} Office of Fair Trading (2005), Report on the Outcome of the Review of the Home Building Act 1989 p.4
A further, comprehensive, review of the Act was undertaken in 2012 by NSW Fair Trading, and a formal 6-week consultation period commenced on 3rd July 2012. The ‘issues paper’ developed for this consultation described the background to the review, which included an earlier 2011 review which itself reformed the Act with respect to improving “the operation of the home building legislation in the short term by addressing unexpected court decisions, cutting red tape and helping to stimulate home building and construction work in NSW”.

The consultation did not address issues related to “the processes or qualifications for issuing licenses”, in the wake of the creation of the national occupational licensing system.

According to the NSW Fair Trading website, work is continuing on developing a package of reforms, a round of public consultation is advertised on the website for the first half of 2013, but no further information is available at the time of writing.
4.4 Queensland

At the time of writing over a quarter of a million individuals (234,400) are employed in the construction industry in Queensland, making it the third largest sector of employment after ‘healthcare and social assistance’ and the ‘retail trade’, respectively\(^\text{127}\). These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

The state licensing scheme is operated by the Building Services Authority (BSA) - a statutory authority – whose charter is to...

“regulate the building industry through the licensing of contractors, educate consumers about their rights and obligations, make contractors aware of their legal rights and responsibilities, handle disputes fairly and equitably, protect consumers against loss through statutory insurance, implement and enforce legislative reforms and where necessary prosecute persons not complying with the law”\(^\text{128}\).

The Queensland Building Services Act 1991 (which came into force in 1992) established the BSA\(^\text{129}\), and introduced controls over the format of domestic building contracts, established a specialist building tribunal, and a statutory insurance scheme in the domestic building market to jointly protect consumers against company failures during construction and provide a fund to rectify defects arising approximately 6 years from the date of building work completion. The latter is performed by the BSA through its administration of the Queensland Home Warranty Scheme.

According to a review of the BSA by accounting firm KPMG in 2010 the organisation then employed 349 FTE individuals; regulated 83,000 licensees; and managed approximately 6,000 disputes annually\(^\text{130}\). The QBSA consists of the Queensland Building Services Board, the General Manager and the organisational unit under the control of the General Manager\(^\text{131}\).

The BSA also licenses building certifiers under the Building Act 1975. The BSA’s role in relation to certification includes building development approvals, building work, building classification, building certifiers and pool safety inspectors\(^\text{132}\).

The BSA has four main responsibilities in its role as certifier:

- Certifier licensing, auditing and investigating complaints in relation to certifiers in Queensland
- Administering a register of certifiers and recording any changes of certifier information
- Investigating complaints made by others against a licensed certifier

\(^\text{128}\) http://www.bsa.qld.gov.au/Pages/BuildingServicesAuthority.aspx
\(^\text{129}\) http://www.bsa.qld.gov.au/Pages/BuildingServicesAuthority.aspx
• Auditing certifier operations in relation to building practices and other requirements of the
  governing legislation (occur randomly approximately every three - four years)\textsuperscript{133}

As at June 2012 the QBSA had 84,436 licensees registered under the QBSA Act and 398 building
certifiers licensed under the Building Act\textsuperscript{134}.

October 1999 saw the Queensland Building Services Act 1991 amended to introduce tighter controls
by the BSA in regard to financial and licensing requirements “for everyone engaged in the building
industry in Queensland and extends the legislative scheme to control both contract requirements and
the parties’ dealings in the commercial liability sectors”\textsuperscript{135}.

Currently (as at March 2013), any contractor performing building work valued over $3,300\textsuperscript{136}
(including labour and materials) must hold a BSA licence and the contractor will be obliged to ensure
that he or she meets the correct contractual requirements in relation to the Queensland Building
Services Authority Act 1991 and the Domestic Building Contracts Act 2000\textsuperscript{137}.

Carrying out or undertaking ‘building work’ is defined by the BSA as:

- Directly or indirectly causing building work to be carried out
- Providing advisory, administrative, management or supervisory services in relation to
  building work
- Entering into a contract or submitting a tender for building work or offering (quoting and
  tendering) to carry out building work
- Receiving payment; arranging payment of subcontractors; arranging labour; arranging and
  conducting on-site meetings & inspections; preparing plans and specifications; co-ordinating
  the scheduling of work by building contractors including as an agent for another person,
  obtaining engineering or soil reports; arranging for certificates from Local government to be
  issued etc.
- Contracting for work as a subcontractor to a builder\textsuperscript{138}.

The BSA issues four different occupational grades in many different licence classes and sub-classes.
The four grades are: contractor; nominee supervisor; site supervisor; fire protection\textsuperscript{139}. A licence can
only be issued to a company or individual – a trust or partnership is not eligible to hold a building

\textsuperscript{133} \textcolor{red}{http://www.bsa.qld.gov.au/Certifiers/Pages/RoleofBSAinCertification.aspx}
\textsuperscript{134} \textcolor{red}{Transport, Housing and Local Government Committee (2012), Inquiry into the Operation and Performance of the
  Queensland Building Services Authority 2012: Report No.14 p.7}
/June_2000,_Lawyers_Education_Channel,_Queensland_Building_and_Construction___The_New_Legislation.html}
\textsuperscript{136} \textcolor{red}{http://www.bsa.qld.gov.au/BuildersContractors/LicensingInformation/Pages/WhenIsALicenceRequired.aspx}
\textsuperscript{137} \textcolor{red}{The Domestic Building Contracts Act 2000 regulates domestic building contracts to achieve a reasonable balance
  between the interests of building contractors and building owners, and to maintain appropriate standards of conduct in
  the building industry. The BSA is authorised to prepare and publish suggested forms of domestic building contracts; the
  Authority also investigates and prosecutes breaches of the DBC Act.}
\textsuperscript{138} \textcolor{red}{http://www.bsa.qld.gov.au/BuildersContractors/LicensingInformation/Pages/TypesOfLicenceAvailable.aspx}
\textsuperscript{139} \textcolor{red}{http://www.bsa.qld.gov.au/BuildersContractors/LicensingInformation/Pages/WhenIsALicenceRequired.aspx}
There are currently 5 classes of building licence issued in Queensland, each with a number of subclasses dependent on such aspects as structural profile (e.g. low or medium rise) and type of trade (e.g. cabinet making, drainage, emergency lighting, stone masonry). Further, certain subclasses of licence are required to hold Professional Indemnity (PI) insurance; these are mainly related to specialist occupations – those works associated with what might be regarded as particular health and safety risks such as fire detection, sprinkler and suppression systems, chemical termite management and so on.\footnote{http://www.bsa.qld.gov.au/BuildersContractors/Licence%20Classes/Pages/LicenceClasses.aspx}

The 5 main classes comprise:
1. Builder
2. Builder Restricted
3. Building Design
4. Completed Residential Building Inspection
5. Trade Contractor\footnote{http://www.bsa.qld.gov.au/BuildersContractors/Licence%20Classes/Pages/LicenceClasses.aspx}

Further, each licence class has ‘scope of work’\footnote{http://www.bsa.qld.gov.au/BuildersContractors/LicensingInformation/Pages/WhenisaLicenceRequired.aspx}; a licensee must only carry out work that is covered in the scope of work for the licence held.

Individuals applying for a Builders’ licence must meet the following requirements and provide evidence of their eligibility; they must be able to:

1. Demonstrate two to four years’ relevant experience in the scope of work for which they are applying
2. Hold the relevant technical qualification (or have their skills formally assessed through Recognition of Prior Learning (RPL))
3. Obtain three written references confirming the individuals’ supervisory experience
4. Demonstrate financial capability by meeting the Financial Requirements for Licensing\footnote{http://www.bsa.qld.gov.au/BuildersContractors/LicensingInformation/Pages/LicencingInformation.aspx}
5. Proof of identity in the form of a certified copy of the individuals’ driving licence or passport
6. For those operating under a trading name, a current copy of their Record of Registration from the Australian Securities and Investments Commission (ASIC)
7. For those operating under a partnership, proof of the business Partnership or an original or certified copy of BSA’s Statutory Declaration for Partnership\footnote{http://www.bsa.qld.gov.au/BuildersContractors/Applying%20for%20a%20BSA%20licence/Pages/Builders.aspx}

Various other eligibility requirements exist for applicants to other licence classes; for example, applicants for a Trade Contractors’ licence are required to provide evidence of completion of a BSA approved Managerial Course.\footnote{http://www.bsa.qld.gov.au/BuildersContractors/Applying%20for%20a%20BSA%20licence/Pages/Builders.aspx}
In addition to the various eligibility requirements applicants must also meet the criteria of a ‘fit and proper’ person.\(^{146}\)

Licence application fees for Builder of Trade Contractor Grade vary - dependant on the financial information supplied – from $524.90 to $1,150.80. The total application fee for a Nominee or Site Supervisor Grade is $340.10. Additional licence fees apply for traders wishing to hold multiple licences. Company licence application fees vary from $951.45 to $2,086.30, again dependant on the financial information supplied.\(^{147}\) (Fees stated here are valid until 30th June 2013).

All licence holders are required to renew their licence annually.\(^{148}\)

Different grades and classes of licenses are subject to certain restrictions and conditions – such as financial requirements, or conditions relating to occupational licenses. For example, a licensee who receives a licence under Mutual Recognition might have conditions or restrictions imposed on the scope of work covered by the licence, depending on the state from which they are originally licensed.\(^{149}\) This is pertinent in cases where there are not exact equivalences between states or territories.

The BSA provides insurance for consumers who contract with a BSA-licensed contractor to perform residential construction work valued at over $3,300. This is offered through the Queensland Home Warranty Scheme and provides cover for up to 6.5 years after the date of payment of the insurance premium, or the date of the contract to build (whichever is earlier).\(^{150}\)

Contractors who carry out domestic building work must take Building Indemnity Insurance, where the domestic building work is $12,000 and over – and council approval is required.\(^{151}\)

Dealing with disputes and complaints

A key part of the BSA’s role is to prevent disputes arising between contractors and consumers through educating licensees on technical issues and good business practices. Consumer advice is also given on dispute resolution.\(^{152}\)

In instances where a consumer lodges a complaint against a contractor the BSA must investigate it. The dispute resolution service follows standard procedures which consist of the completion of a Complaint Form by the consumer, followed by initial contact being made with the complainant by the assigned File Manager or Building Inspector. If the matter cannot be resolved at that point a meeting is arranged between both parties at which subsequent action will be agreed; this may consist of a direction to rectify or complete.\(^{153}\)

Failure to comply with a BSA directive can result in serious consequences for a licence holder, such as ‘demerit’ points on their licence; a financial penalty of up to $27,500 for an individual, or $137,000 if prosecuted in the Tribunal/Courts; disciplinary action; the imposition of conditions on a licence; or further action which can result in a suspension or cancellation of their licence.\(^{154}\)

Under the QBSA Act the Authority does not have the function of, or powers in relation to, formal conciliation or arbitration services regarding building disputes.\(^{155}\) Consumer and trader disputes up to and including $25,000 are dealt with by the Queensland Civil and Administrative Tribunal and are defined by the Tribunal as a “dispute against another person, trader or company arising out of a contract for the supply of goods and services”. Claims must be lodged within six years of the incident happening.\(^{156}\)

The BSA will also investigate complaints regarding unlicensed builders. “BSA investigates every reported allegation of unlicensed contracting where sufficient information has been provided”\(^{157}\). The BSA has the authority to impose fines on unlicensed contractors, and is also able to commence proceedings against the unlicensed person through the Magistrates Court or the Queensland Civil and Administrative Tribunal (QCAT).\(^{158}\)

There is some anecdotal evidence to suggest that the dispute service is not working as it should, however. A July 2011 article on the website news.com.au suggested that “The Building Services

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Authority is facing a wave of complaints that its disputes system is broken, with costly battles dragging on for years\textsuperscript{159}.

Figures used in the article showed there were 5,625 complaints to the BSA in the 2010-11 financial year; 2,915 pay outs in “insurance claims worth $39 million in the same period for defective, incomplete or subsistence-affected work, with 80 per cent of claims accepted”\textsuperscript{160}.

The article goes on to claim that 4,638 licences were cancelled - presumably in the same period, but this is unclear.

Statistics for the financial year 2011-2012 record approximately 4,726 building disputes relating to defective and incomplete work compared to 73,256 building contracts for insurable residential projects. The QBSA issued 896 directions to rectify with 95% of these decisions being upheld upon review (60 cases were reviewed). The number of directions has remained fairly even over the last four year, with a slightly larger number of 1,188 recorded in 2009-10\textsuperscript{161}.

**Monitoring of licensing schemes, and review**

A 2010 review of the BSA by KMPG found the Authority to be effective in its role as building industry regulator and consumer protection advocate, with room for improvement in terms of communication with and education of both consumers and contractors\textsuperscript{162}. The dispute and claims process was perceived by consumers as “complex, lengthy and costly”\textsuperscript{163} — whether this serves as a disincentive to lodge a complaint with the Authority is unknown, however the KPMG report found that relatively few residential projects end in a dispute between the consumer and the contractor.

The KPMG report found that builders sought a continued focus on education and increased focus on proactive inspections by the Authority in future.

However an apparent, recent ‘backlash’ against the dispute system has reportedly prompted a review of the BSA to recommend an overhaul of the building dispute process, according to the news article cited in the previous section of this report\textsuperscript{164}.

A formal enquiry into the Queensland Building Services Authority was conducted in 2012 by the Transport, Housing and Local Government Committee of the Parliament of Queensland in response to an August 2012 motion in the Legislative Assembly that the Committee “inquire and report on the


\textsuperscript{161} Transport, Housing and Local Government Committee (2012), \textit{Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012: Report No.14} p.viii, p.7 & p.22

\textsuperscript{162} KPMG (2011), \textit{Queensland Building Services Authority: Organisation Review Project: Final Report}

\textsuperscript{163} KPMG (2011), \textit{Queensland Building Services Authority: Organisation Review Project: Final Report, p. 7}

operation and performance of the QBSA in its regulation of the industry, including the maintenance of proper standards in the industry”165.

The report found that “there are many who believe [the current licensing regime] is too onerous, wasteful and inefficient for a range of reasons” citing ‘licence creep’, and the increasing numbers of licence classifications as a significant factor. The dispute resolution service was variously criticised in evidence submissions for the poor quality of some building rectification work, and the level of qualification and ‘knowledgeability’ of some BBSA building inspectors. In its mission to provide a ‘one stop shop’ for licensing, dispute resolution and warranty provision, the BSA was criticised for perceived conflicts of interest and the inquiry received requests that the insurance function of the Authority be transferred to the private sector.

Of the Committee’s 41 recommendations the first suggested that the QBSA be disbanded “as soon as alternative mechanisms for delivering its functions can be established” in the interests of “improved confidence and transparency”. Interim measures recommended include the restructure of the organisation to separate the functions of licensing, management of directions to rectify and complete work, and management of the limited home warranty scheme166.

The QBSA still exists today however and operates the Queensland Home Warranty Scheme, which offers BSA Home Warranty Insurance167.

5. Europe

In most European nations the Government has taken a fairly neutral role in the actual provision of domestic construction services while working to ensure that standards and qualifications are of an appropriate level. The usual approach has been to ensure the availability of qualifications but to restrict legislation on minimum-requirements-to-practice to critical professions such as electrician and gas fitter. The job competence of other, non-critical trades has been left, essentially, to employers and their representative bodies with minimal central intervention.

However, this approach only governs the job competence of the individual tradesperson and does nothing to guard the consumer against unscrupulous and incompetent practice by individuals pretending to be suitably experienced and qualified. Furthermore, consumers can fall prey to poor service at three different levels: from otherwise ethical organisations; from incompetent and unethical tradespeople, and through deliberate, criminally-inspired deception and fraud.

5.1 Germany

The environment and cultural factors

The German construction industry is one of the most important sectors of the country’s economy. Despite the difficult position of the industry at present, well over half of all investments are still made in this sector and approximately 2 million people are employed in the construction industry proper (preparatory building site work, structural and civil engineering) and within finishing trades (building installations, other building trades)\(^\text{168}\).

Based on the revised national accounts (VGR) and the latest VAT statistics, nominal construction volume in Germany was an estimated 307 billion euros in 2011\(^\text{169}\). The finishing trades account for the largest share of construction volume in almost all regions. Despite very dynamic growth in 2011, the proportion of new construction activities as a share of overall residential construction volume only amounted to a real value of 25 percent\(^\text{170}\).

Residential construction is a key pillar of Germany’s economic activity; residential buildings account for around 6% of German GDP\(^\text{171}\). Despite this The German Way & More, a US magazine which aims to provide would be North American ex patriots with information about German culture and language, describes home ownership in Germany as “a very expensive dream”\(^\text{172}\). The magazine claims that as a result of high land costs and the requirement for buyers to make a downpayment of

\(^{168}\) [http://www.bmvbs.de/EN/BuildingAndHousing/ConstructionIndustry/construction-industry_node.html]


\(^{171}\) Deutsche Bank Research (August 2011), Residential Construction in Germany – Tobin’s q pointing to regional recovery. [https://www.dbresearch.com](https://www.dbresearch.com)

between 30 and 50 percent only 39% of Germans own their own home, compared to 64% of Americans and 68% of people in the UK\textsuperscript{173}.

Depending on the situation in the housing markets, German housing policy focuses more or less extensively on new construction or conservation of the existing housing stock. The regional profile at present is divergent, with the majority of markets balanced and a number of expanding conurbations revealing housing market bottlenecks. Due to the high level of housing provision achieved in the majority of regions, the policy of conserving the existing housing stock is becoming increasingly important\textsuperscript{174}.

Interview findings for this research suggest that the prospects for increasing the value of a home in Germany by modification or improvement are not favourable. Compounding this issue, there appears to be little hope of any substantial increase in the price of property and earnings from profit made would be taxable if the resale occurred within 10 years of purchase\textsuperscript{175}. Add to this the fact that it is common for estate agents to charge buyers a commission of around 7% of the property purchase price plus the cost of property transfer tax, administrative costs and notary fee (usually around 2% of the purchase price, this fee covers preparation of the contract, negotiations, the signing of the contract and entry in the land registry)\textsuperscript{176}.

There is a high supply of rented housing across all areas of Germany. The Federal Ministry of Transport, Building and Urban Development attributes this, at least in part, to publicly assisted and privately financed housing construction by private owners, construction companies and cooperatives\textsuperscript{177}. The private rented market also provides social housing with two thirds of all housing benefit recipients living in privately financed, rented dwellings. In Germany investment in property construction yields a return comparable with other areas of investment making the general housing sector very important to the German economy\textsuperscript{178}.

An in-depth evaluation of housing stock in Germany both on a local and national scale was carried out in 2007\textsuperscript{179}. This work enabled the German authorities to draw up a typology of existing building stock as regards its technical characteristics, its heating needs and the retrofitting works that should be implemented to reduce its energy consumption. This work also proved to be very useful to professionals and local authorities, by helping them to define the best actions to undertake.\textsuperscript{180}

Subsidies and low interest loans are sometimes available to encourage home owners to make their homes more energy efficient - the KfW banking group, for example, offers various programmes of

\textsuperscript{173} http://www.german-way.com/house.html
\textsuperscript{175} http://www.howtогermanу.com/pages/housebuying.html
\textsuperscript{176} http://www.howtогermanу.com/pages/housebuying.html
\textsuperscript{179} ECEEE (2011), Barriers and drivers to energy-efficient renovation in the residential sector. Empirical findings from five European countries p.2
\textsuperscript{180} ECEEE (2011), Barriers and drivers to energy-efficient renovation in the residential sector. Empirical findings from five European countries p.2
funding that support the renovation of residential properties\textsuperscript{181}. However, confusing policitical signals are reported to be a barrier to having retrofit or enhancement construction work carried out on properties to increase their energy efficiency\textsuperscript{182}. For example, as result of the economic and financial crisis the economic development promotion programme, which supported facilities using renewable energy was temporarily stopped\textsuperscript{183}.

Our research suggests that although the licensing of individuals is not commonplace within the German domestic residential construction sector, the quality of workmanship in Germany is nevertheless regarded to be of a high standard, not only by German nationals but also by professionals internationally. Secondary research indicates that construction workers who have undergone training within the German VET system, or who have spent some time working within the industry in Germany, are held in high regard by organisations in the UK. A brief investigation of job adverts for construction workers has revealed that experience of working within Germany is a desireable commodity. Equally, advertisements for construction organisations have been identified which advertise the fact that staff have been worked in or been trained in Germany with the implication being that their work is of a high standard.

“The quality of workmanship is strictly regulated in Germany. There is hardly any [construction] profession without detailed training requirements resulting in a mandatory exam (one exception is the real estate agent). Despite this, the quality of work differs from one company to another or even within a company. There is in general no need for further certificates.”

DIN German Institute for Standardisation Consumer Council

How is the problem dealt with?

In Germany, rarely are subcontractors required to give collateral warranties to an employer or indeed to funders, purchasers or tenants\textsuperscript{184}.

It is not uncommon in Germany for purchasers to take over any claims that a developer may have against companies involved in the design and construction of the building. This gives the purchaser remedies against the professional team and contractor under the original contracts. These are in addition to its remedies against the developer itself but they are valuable if, for example, the developer becomes insolvent\textsuperscript{185}.

\textsuperscript{181} http://www.bmu.de/en/topics/climate-energy/\textsubscript{transformation-of-the-energy-system/faq/modernisation-of-building-stock/}
\textsuperscript{182} ECEEE (2011), Barriers and drivers to energy-efficient renovation in the residential sector. Empirical findings from five European countries p.9
\textsuperscript{183} ECEEE (2011), Barriers and drivers to energy-efficient renovation in the residential sector. Empirical findings from five European countries p.9
\textsuperscript{184} http://www.building.co.uk/professional/legal/auf-wiedersehen-warranties/?1014746.article
\textsuperscript{185} http://www.building.co.uk/professional/legal/auf-wiedersehen-warranties/?1014746.article
The German Building Ministers Conference coordinates activities in regard to the building laws and regulations within Germany and gives advice to its members concerning the application or interpretation of the regulations. All building laws, ordinances and regulations are based on models which are elaborated by the ARGEBAU. Founded in 1949, the ARGEBAU operates by using a standing committee and different sub-committees and expert committees\(^{186}\).

A website for sourcing reliable tradesmen, MyHammer has been operating in Germany since 2005.\(^ {187}\) The website is an online marketplace and directory which helps home owners to find tradespeople. The home owner posts a description of the work to be done and tradespeople interested in the job respond with quotes. The service is free for homeowners but there is a small fee attached for tradespeople. The company has around 70 employees at its head office in Berlin and claims to have 1.5million users\(^ {188}\).

MyHammer operates in Germany, Austria and the UK. The company claims that it verifies the personal details and qualifications of all tradespeople before they are allowed to use the site. Once work has been completed customers are asked to publically rate the quality of work carried out and the tradesperson.\(^ {189}\)

Where building projects run into problems within the German system, dispute resolution depends heavily on the court system and there appears to be no system for attempting mediation between opposing parties. There is a Court of Arbitration for Private Construction Law\(^ {190}\).

**Contract procedures**

Consumers are encouraged to enter into a written contract with a construction contractor. It is generally advised that this contract should describe the work and the aims and desired outcomes of the project are carefully detailed so that both consumer and contractor are very clear about what is required.

All aspects of tendering, the execution of construction work, the perimeter and standards and the settlement of building projects are regulated to a degree by the German Construction Contract Procedures or Construction Tendering and Contract Regulations (Verdingungsordnung fur Bauleistungen (VOB))\(^ {191}\).

The VOB sets out basic uniform rules in 3 parts\(^ {192}\):


\(^{188}\) [http://www.crunchbase.com/company/my-hammer](http://www.crunchbase.com/company/my-hammer)

\(^{189}\) [http://news.myhammer.co.uk/company/about-myhammer](http://news.myhammer.co.uk/company/about-myhammer)

\(^{190}\) IBA Arbitration Committee (date unknown – possibly 2010), Germany Arbitration Guide p.1

\(^{191}\) Hartmann. M. (2011), Building Contract in Germany: Legal points, approval and warranties p.2

\(^{192}\) Hartmann. M. (2011), Building Contract in Germany: Legal points, approval and warranties p.2
1. VOB/A Regulates all parts of a submission or tender;

2. VOB/B Regulates all aspects concerning the period of construction: delays, interruptions, changes in construction, elimination of defects, warranties, payments and acceptance;

3. VOB/C Generally accepted rules of technology

In German federal law the warranty period for building work is five years, this is reduced to four years according to VOB and for certain types of work this may be just two years. There are different types of warranties such as performance warranties and warranty bonds\textsuperscript{193}.

**The situation for individuals in the German construction sector**

“Tradespeople can’t carry out building work in somebody’s home without having completed an Apprenticeship in the trade being practiced. The Apprenticeship is specific to the different types of work tradespeople can carry out and involves sitting one exam at the end of the training”

**DIN German Institute for Standardisation Consumer Council**

German construction workers are required to have completed formal accredited training in their area of expertise. Germany has a regulated vocational education system which establishes a three tier structure of “apprentice”, “journeyman”, and “master” (very similar to the old Guild system in the UK) and appears to underpin high quality throughout and to align costs and benefits of high quality training. The entry level is Apprenticeship, and in the German system this is almost always taken up by young people shortly after the completion of compulsory general education\textsuperscript{194}.

The structure of the Apprenticeship programme is underpinned in law, and overall regulatory control is, in practice, based on the recommendations of a single, national institution: the Federal Institute for Vocational Education (Bundesinstitut für Berufsbildung, BIBB)\textsuperscript{195}.

The BIBB is a tripartite body, with representation from government, employers and the unions. It advises the government on the content of ‘Training Orders’ (Ausbildungsordnungen, which are issued by the Ministry for Education and Research). For each Apprenticeship craft or occupation, the Training Order defines the scope of the occupation, the content and structure of the curriculum, and the assessment standards and processes. Employers as a group, however, have extensive influence over how the Training Orders are defined through their membership of the BIBB. Information and ideas are systematically channelled to the BIBB from employers in the regions, both large and small, principally through the guilds and professional associations, and through the regional Chambers of Commerce.

\textsuperscript{193} Hartmann, M. (2011), Building Contract in Germany: Legal points, approval and warranties p.3
\textsuperscript{194} CITB, (2011), Incentivising Apprentice Recruitment – Pye Tait report
\textsuperscript{195} http://www.bibb.de/en/faq.htm
A young person wanting to enter the construction industry, finds an employer with which to set up a training contract (Apprenticeship). There is usually two years of generalist training and one year (not compulsory) specialising in one of 16 recognised specialist trades. German construction employers pay the appropriate levy and receive the equivalent of 17 months of an apprentice’s wages over a three year period. Training has three main components: broad based theory education in vocational school, practical skills training in a construction centre and work experience with employer.

In effect, an Apprenticeship acts as a licence to practice and to that extent is a mandatory route for anyone wishing to enter the construction industry. This is an important foundation for the overall image and quality of the industry in Germany. Research suggests that because the system produces high quality workers, overall employers work on the principal that the entire industry benefits by enjoying ready access to a wide pool of skilled employees and are therefore very willing to employ apprentices.

The apprentice begins their studies in the first year with wide-ranging courses that are intended to introduce the entire construction sector to apprentices and build a foundation of basic skills. In this first year, most of the apprentices’ time is spent in the inter-company training centre and the vocational school, acquiring this core of basic skills and knowledge, and only a minority of time (sometimes as little as 13 weeks) is spent with the employer.

This is followed in the second year by further training in the vocational school and in the inter-company training centre, combined with a greater proportion of work experience. This second year course is more specialised, but still very broad-based in comparison with its UK equivalent: at this stage apprentices train to be skilled labourers in one of three broad areas or subsectors, Tiefbau, Hochbau and Ausbau (corresponding roughly to civil engineering, building construction/structural engineering, and finishing trades respectively)\(^\text{196}\).

At the end of the second year, apprentices undergo their first stage of formal assessment and certification. It should be noted that certification in all components of the German Apprenticeship (which includes a skills assessment, assessment of theoretical and broader skills, and an employer report) are graded, enabling employers to make fine differentiations of ability and attitude.

Once they have achieved certification at this level apprentices can finish their training and be considered fully trained as a Skilled Building Construction Worker (Hochbaufacharbeiter) in their chosen broad subsector. However, those apprentices who wish to develop a deeper occupational specialism (in practice the vast majority of apprentices), supplement the two year initial training programme (Stage 1) with a third year of focused skills and occupational training, and a still greater proportion of work experience (Stage 2). Upon completion of the formal assessment and certification, the apprentice is formally recognised as a Specialised Skilled Building Construction Worker (Spezialhochbaufacharbeiter).

\(^{196}\) CITB (2012), Incentivising Apprentice Recruitment – Research by Pye Tait
There is also a third layer to vocational qualifications, that of Master. This is a qualification that can only be attained after additional occupational experience and demanding specialist training in higher level vocational schools. The master must demonstrate high-level skills, and in addition have pursued technical, theoretical and pedagogical training. In other words, the master must not only demonstrate occupational skills and knowledge, but have developed teaching and learning skills as well. The prestige of the master qualification is high: it has been recognised as equivalent to a Bachelor’s degree in the German qualifications framework.

As with the journeyperson, the status of master is underpinned in statute law. In Apprenticeship occupations, every enterprise must either be run by, or employ, a fully qualified master. Consequently, only masters are able to set themselves up in self-employment in those occupations. In addition, on-the-job training of apprentices must be undertaken by a qualified master. In this way, both occupational progression routes and the approach to pedagogy form an interlinked, self-sustaining cycle: all businesses have internal access to employees who combine high level occupational skills with pedagogical training, and are thus well-placed to undertake high quality skills training in-house with relatively little external support or supervision.

In addition, because only highly-qualified masters are able to establish their own businesses, newly qualified journeymen cannot leave their employer to become self-employed immediately after the conclusion of their Apprenticeship. Thus, while there is no guarantee that an apprentice will stay with their initial employer, there is at least some assurance to employers collectively that they will benefit from a significant ‘payback period’ from newly qualified journeymen.

“No building and construction company will hire someone without having seen the evidence for the Apprenticeship and the exam certification and having checked both sources for accuracy. Therefore, when customers approach such companies, they do not ask to see such paperwork because they automatically know that the worker is competent. It is a cultural thing in Germany – no one hires anyone without having seen the full paperwork and having it verified to ensure the competency and skill of the worker.”

Expert in Consumer Affairs

“The European Directive is suggesting changes in which if a tradesperson from a different European Country wants to do work in Germany then they can work without having to provide evidence of their competency - which will have already have been checked through other procedures before they can work in Germany.”

Construction Industry Expert

Consumer Protection and insurances

The reunification of Germany brought about major changes in consumer affairs.

Verbraucherzentrale Bundesverband (Consumer Central Federal Association), claims the “implosion
of the German Democratic Republic can partly be put down to the centrally planned economy’s failure to fulfil the needs of consumers”\textsuperscript{197}.

Monetary union had the effect of bringing East Germans into contact with consumer items previously not available to them. East German consumers quickly became the target of unscrupulous businesses keen to cash in on their naivety and a need for reliable consumer advice, information and protection became apparent. In response a Consumer Centre was founded in every East German federal state\textsuperscript{198}.

During the early 1990s a debate took place about a possible financial and structural reform of the German consumer organisations. The reform process began in 1992 when the central government handed over responsibility for the funding of the Consumer Centres to the federal states. The structural debate also led to a reappraisal of the roles of the different consumer organisations. The result was that resources were pooled and responsibilities centralised. At the same time a new umbrella organisation was created to lobby on the national and international stage\textsuperscript{199}.

The result was the merger of the three major German consumer organisations (AgV, Verbraucherschutzverein and Stiftung Verbraucherinstitut) into the Verbraucherzentrale Bundesverband - Federation of German Consumer Organisations - (vzbv) in November 2000\textsuperscript{200}. The new umbrella organisation took over what had previously been the role of the AgV's in political lobbying and also took additional responsibility for legal matters and for the education of consumer affairs workers. In January 2001 a new Ministry for Consumer Affairs, Food and Agriculture was created. The new ministry took all responsibility for Consumer affairs away from the Ministry of Economic affairs\textsuperscript{201}.

Deutsches Institut fur Normung (DIN, the German Institute for Standardisation) is a non profit organisation which offers stakeholders a platform for the development of standards. DIN specialise in work relating to voluntary standardisation of the technical requirements such as certification issues across a number of sectors. DIN also operates a sub-section on Consumer Protection, known as the German Consumer Council. By agreement with the German Federal Government, DIN is the acknowledged national standards body that represents German interests in European and international standards organisations. The German Consumer Council is responsible for all sorts of consumer protection issues, including the quality of workmanship in the building and construction sector\textsuperscript{202}.

“\textbf{There are many types of certificates that construction companies can apply for. For example, there is one for Quality Management – which provide consumers with transparency – giving insight into procedures and processes involved in the company and another one is for Environment and}
Management. However, such certificates don’t really provide any indication of the competency of the tradespeople within the company. More than anything, they indicate that the company is genuine. However, consumers don’t usually ask for such evidence. Because no one can apply for a job without having gone through a rigorous process of having all training, qualifications and exam results checked - there is very little chance of people securing jobs who are not competent.”

Industry Expert

If a person is a self employed tradesperson they may be required to register with the local Trades Office (Gewerbeamt) depending on where they live. They will most likely be required to register their business and get a certificate of registration (Gewerbeschein). To get this certificate trades persons have to demonstrate that they are of reliable character and qualified to run a business. Having a Gewerbeschein obligates the holder to pay local trade tax (Gewerbesteuer) and requires that they become a member of the local Chamber of Commerce (Industrie- und Handelskammer - IHK) and to pay a yearly membership fee.

Research suggests that various methods exist for construction contractors to protect themselves against risk in the construction process. There is contractors liability insurance (Haftpflichtversicherung), work in progress can be insured through Bauleistungversicherung which covers all risks, and there is also Gebäudeversicherung, an advanced building insurance which covers damage caused through natural disaster.

From stakeholder interviews it is reportedly the case that contractors are encouraged to take out liability insurance as they are liable for any damage at the site that building work takes place. Builders can be financially ruined by accidents such as falling scaffolding; care costs can include compensation for pain and suffering along with possibly a lifelong pension. Builders Liability insurance usually covers: defence of liability at the building site in case of non-conforming lighting and unsafe storage of building materials; rejection of unjustified claims for damages – if necessary in court; protection for builders against cases are brought for personal injury, property damage and financial loss.

5.2 Denmark

Output in the Danish construction industry represents approximately 5% of GDP. In 2011 the industry employed approximately 145,000 people - an increase on the figure of 138,000 for the same period in 2010.

The sector comprises many small enterprises or single tradesmen. It enjoyed massive growth.

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203 http://www.existenzgruender.de/englisch/self_employment/launch/formalities/
204 http://dla-piper-dev.intendance.net/country_profile/germany/construction/insurances_what_insurances_need_to_be_put_in_place_by_la w_or_under_a_typical_construction_contract?SQ_PAINT_LAYOUT_NAME=compare&queries_country_query=Bulgaria&qu eries_topic_area_query=Construction&queries_order_number_query=020
throughout the 1960s until the early 1970s when house building reached a peak. Subsequently, the industry suffered a decline in activity, especially in house building, shedding almost 43,000 jobs until 1996, which marked a return to modest levels of growth\(^{206}\). Currently residential construction amounts to roughly 1/3 of the total construction volume\(^{207}\).

In Denmark today, there are around 1.7 million households, which all need maintaining, extending, rebuilding, as well as larger projects which are usually publicly funded. Investments in building depend very much on a number of external factors such as economic conditions, interest rates available and law changes for land use, but in general around 160,000 are employed in the industry each year, with an annual turnover of around € 32 billion. 18,000 new building craftspeople of all types qualify each year\(^{208}\).

The large numbers of building craftspeople entering the market appears to be justified. For example, the population of Copenhagen is predicted to grow by some 100,000 people by 2025 and, consequently, the city authorities are investing in, and facilitating, major retail, commercial and residential developments across the city to accommodate this growth. About 45,000 new homes are thought to be required and the Lord Mayor of Copenhagen has confirmed that the city expects to invest approximately 0.5 billion Euros annually to cover the capital costs\(^{209}\).

Municipal building societies manage social housing, for example, FSB which manages about 13,000 dwellings in Copenhagen and 1,200 in Gladsaxe Kommune, as well as 1,100 student housing units. Different building societies manage from under 10 to up to 50,000 dwellings each. The municipal building societies are mostly part of Denmark’s Almene Boliger, a public housing organisation with about 650 social housing management societies (more than 560,000 dwellings, nearly a fifth of the Danish housing stock) as members. Also, there are private co-operative housing buildings managed by the respective association ABF, an NGO with more than 4,800 members in Denmark\(^{210}\).

Due to geographical proximity, a large part of the foreign companies in the Danish construction sector are Polish firms, which frequently do not report their activities in Denmark and often do not take up the formally required relations with the local unions and authorities\(^{211}\). Despite no real-estate price bubbles building up (due to the stringent tax system in Denmark), residential construction volumes and their forecasts remain moderate\(^{212}\).

The Danish labour market model is characterised by its strong labour market organisations. Danish employers and employees are typically members of a union organisation. About 75 per cent of Danish employees are members of a trade union with union density varying from sector to sector\(^{213}\).

\(^{210}\) Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.14
\(^{211}\) Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.4
\(^{212}\) [http://forsiden.3f.dk](http://forsiden.3f.dk)
\(^{213}\) Ministeriet Beskaeftigelseres (2009), Working in Denmark p.2
Members of Dansk Byggeri, the Danish Construction Association, are automatically covered by collective agreements. Moreover, the Danish Construction Association can answer questions concerning collective agreements and labour market legislation. In connection with industrial disputes, the Danish Construction Association may provide legal assistance, and in some cases, members may also receive compensation in connection with industrial disputes\textsuperscript{214}.

Not all construction professions are regulated. Danish workers in the following unregulated construction trades will usually have completed a three or four year programme of vocational education and training:

- Bricklayer (Murer)
- Construction training within the timber industry (Træfagenes byggeuddannelse)
- Groundwork and paving (Struktør og brolægger)
- Industrial carpenter within the timber industry (Træfagenes industrielle snedkeruddannelse)
- Joiner (Maskinsnedker)
- Heating, plumbing and ventilation (VVS teknisk installation)

Denmark, unlike Germany, does not restrict apprenticeships to young people and substantial numbers of apprentices are aged over 30. Across industry sectors all employers regardless of whether or not they provide training placements contribute to a fund which is known as the Employers Reimbursement Scheme. In 2012 the amount payable was DKK 2,921 per full time employee. The funds achieved by this system are allocated to businesses that take on apprentices to provide wage reimbursement to employers during apprentices’ periods of college based training\textsuperscript{215}.

In Denmark, union and employer representatives sit on the boards of vocational schools that provide off-the-job training for apprentices and appoint the school Director. Employers now discriminate much more than in the past in favour of apprentices with good or very good school achievements. Many less-qualified young people have had to accept a period of remedial education after compulsory school and thus the age of entering apprenticeship has risen\textsuperscript{216}.

The Danish VET system is a national system which offers qualifications that are valid throughout the country and recognised by employers, trade unions and the educational providers. The system is characterised by a close institutionalised tripartite collaboration at all decision levels. Since the Reform of the Vocational Education System in 1991 the Danish VET system has been highly decentralised, based on a principle of management by objectives\textsuperscript{217}. The system has evolved since its inception; this has resulted in the delegation of greater responsibility to social partners and vocational colleges.

\textsuperscript{214} http://www.danskbyggeri.dk/
\textsuperscript{216} ILO (2012), Overview of Apprenticeship Systems and Issues – ILO Contribution to the G20 Task Force on Employment p.17
\textsuperscript{217} European Federation of Building and Woodwork (2008), Bricklaying Country Report
In vocational education and short-cycle higher vocational education, representatives of local trade and industry act as external examiners in final examinations. This ensures that the knowledge and academic standards attained by students are relevant and live up to the demands of the programmes of study and the requirements of the labour market. Sectoral trade committees determine the content of individual educational provisions. Locally, labour-market partners serve on the board of governors of vocational schools as well as on local education committees. Their task is to improve the links between the school’s educational provision and the current and anticipated needs of the local labour market\textsuperscript{218}.

**The scale of the problem**

There is concern with quality of construction in Denmark, which is thought to be due to the country’s experience with faulty construction in the 1960s-1970s. This has led to contractor insurance being mandatory in Denmark as of 2008 (unlike in the other Nordic countries), and in the creation of relatively many construction quality control bodies, e.g. the Danish Building Defects Fund and the Benchmark Centre for the Danish Construction Sector\textsuperscript{219}.

The Benchmark Centre for the Danish Construction Sector (Byggeriets Evaluerings Centre) is a business foundation that was established in 2002. The benchmarking system uses general statistical tests to evaluate links in cause and effect. The data structure is hierarchical and permits analyses at contract level, project level and, lastly, sector level. Since 2004 the use of the benchmarking system has been mandatory in government construction and social housing\textsuperscript{220}.

The Danish Building Defects Fund is a privately owned institution that was set up in 1986; it comprises around 210,000 publically subsidised housing estates, youth housing, housing for the elderly, privately owned cooperative housing associations and cooperative house shares\textsuperscript{221}. The fund covers all building defects claims for the first twenty years of a building’s existence. It therefore covers 40% of all Danish business, public and residential housing schemes since 1987\textsuperscript{222}.

**How is the problem dealt with**

Legislation regarding construction in Denmark is generally similar to that of other Nordic countries, yet there are some local requirements, for example, that foreign construction workers - if staying in Denmark for more than 3 months - must within this time apply for a registration certificate issued by the Regional State Administration. Also, foreign subcontractors must register in the RUT system of foreign service providers to Denmark\textsuperscript{223}.

\textsuperscript{218} Organisation for Economic Co-operation and Development (2004), Role of National Qualifications Systems in Promoting Lifelong Learning – Report for Denmark P.48
\textsuperscript{219} Ministeriet Beskaeftigelser (2009), Working in Denmark
\textsuperscript{220} http://www.linkedin.com/company/the-benchmark-centre-for-the-danish-construction-sector
\textsuperscript{221} http://www.bsf.dk/translation.aspx
\textsuperscript{222} http://www.bsf.dk/translation.aspx
\textsuperscript{223} http://en.sbi.dk
This research has found that relatively little information exists around licensing of building trades in Denmark. The building trade, both domestic and commercial, appears not to be governed by strict regulation when it comes to licensing, possibly in part at least, because Denmark has had considerable problems with the lack of labour and has encouraged considerable numbers of foreign workers to come and work in the country, mostly from Germany and Eastern Europe.

In Denmark some regulated professions are governed by special rules, for example a Danish Nationality requirement or international sectoral agreement. Regulations exist in Denmark around what types of building work must be carried out by an authorised professional. For example, home owners are permitted to carry out some types of electrical work but sewerage work must always be carried out by a professional. The regulations exist for securing public safety, hygiene and fire safety\(^{224}\).

Regulated Occupations within the residential/domestic building sector are\(^{225}\):

- Certified Structural Engineer
- work with asphalt materials
- work with epoxy and isocyanates
- work with styrene
- asbestos removal
- building expert
- electrical contractor
- gas plumbing and sanitation fitter
- sewerage contractor
- crane driver
- land surveyor
- scaffold erector


In order to work in one of these professions applicants must provide the following documentation to the Danish Working Environment Authority:\(^226\):

- Proof of nationality
- Attestation of personal competence
- Evidence of formal qualifications
- Proof that you have practiced the occupation for at least two years
- Proof of address

**Building licensing**

Konstruktorforeningen (KF) is the industry association for architects, quantity surveyors and construction project managers, energy managers, risk assessors, health and safety professionals, and other construction industry professionals. Qualifying members have to have a Danish 3.5 years’ full-time degree in architectural technology and construction management (a bachelor programme). Members of KF are entitled to use the designation “maximum” in their work title\(^227\).

There are a number of industry specific legal acts for the Danish construction industry, including for example, the Building Act (Byggeloven) of 1977 (updated several times, last time in 2010), which applies to most buildings, except for small dwellings, for which there are the Building Regulations for Small Dwellings of 1998 (updated in 2008). Contract wordings are defined by the standards AB 92 (regarding works and supplies in building and civil engineering construction), ABR 89 (for design and professional consultations) and ABT 93 (for design and build types of projects; also includes provisions on the supplier’s liability for design). The AB 92 contract form serves as the basis of most construction agreements\(^228\).

The Quality Assurance and Liability Reform Act of 1986 (Kvalitetsikringsreformen), came about with the purpose of balancing the cost of construction versus the cost of management and the cost of repair for defects via the following actions taken\(^229\):

- new design and performance guidelines launched to integrate quality reporting in the early stages of a construction project, i.e., the design phase;
- a unified 5 years defects liability period was introduced (previously it had varied from 1 to 20 years);
- the Danish Building Defects Fund was created;
- building maintenance guidelines were introduced;
- compulsory building inspections 1 and 5 years after completion of works

In 2002 the Danish Agency for Trade and Industry together with the Ministry of Housing and Social

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\(^227\) Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.13

\(^228\) Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.11

\(^229\) Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.11
Affairs set up the Benchmark Centre for the Danish Construction Sector (BEC). The reason behind this move was in response to problems tracking liability for defects in concrete structures. BEC identifies good practice in construction based on a benchmarking system and a set of 14 key performance indicators. A database of construction companies including a record of their past performance is maintained by BEC. As of 2005 contractors tendering for public projects have had to prove their capabilities and capacity based on KPIs from previous projects. The construction benchmarking system has also been very popular in the private sector, with 80% of private projects being evaluated on a voluntary basis⁹²⁰.

Overall, research suggests that these relatively extensive regulations and specific quality assurance systems are considered to provide enough security with regard to suppliers in construction in Denmark, and hence there exists no separate contractor and subcontractor database for the domestic residential sector⁹²¹.

**Consumer protection**

There are three complaints boards for consumers who wish to bring a complaint about domestic construction and or building services. These have been approved by the Minister for Family and Consumer Affairs. There are some overlaps between the three complaints boards, but there are also differences regarding which cases each Complaint Board can handle⁹²².

The **Byggeriets Ankenaevn** (Danish Complaints Board for Building and Construction) and **Handvaerkets Ankenaevn** (Danish Complaints Board for Trades and Crafts) handle complaints about new building, rebuilding, extension and repair works that include bricklaying, joinery, carpentry, sewage, paint and landscape gardening work, as well as complaints about windows and doors⁹²³.

To make a complaint about plumbing, heating, sanitation and electrical work consumers must approach the **Ankenaevnet for Tekniske Installationer** (Danish Complaints Board for Technical Installations). A complaint may only be handled by one of the boards. If the complaint concerns a business operator that is associated organisationally with one of the boards (i.e. a member of the organisation), that board will handle the complaint. Membership can be checked on the complaints boards’ websites⁹²⁴.

Denmark’s **Byggeriets Ankenaevn** (Danish Complaints Board for Building and Construction) is a private board of appeal; the board’s statute has been approved by the Government Department for Economic and Business affairs. Behind the appeals board stands a Consumer Council, Detached Owners’ Association and the Danish Construction Association. The Board does not deal with

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⁹²⁰ Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.11
⁹²¹ Citation required: Gateway Baltic (2012), Sector Based Factsheet. The Construction Industry in Denmark p.13
⁹²² http://www.danskbyggeri.dk/english/english
⁹²³ http://www.byggerietsankenaevn.dk/
⁹²⁴ http://www.danskbyggeri.dk/english/english
complaints relating to properties with a value in excess of $1 million\textsuperscript{235}.

It costs 300 krone to submit a complaint - this is payable when a completed complaint form is submitted to the secretariat - and it can typically take around 6 months to process a complaint. If it is necessary to appoint a valuer to assess the building work that has been carried out, the Board will decide at the conclusion of any investigation whether the consumer or the builder is liable to meet the cost of the valuation. If the appeal is not upheld, responsibility for meeting all costs accrued during the appeals and complaints process falls upon the consumer who can be ordered to pay up to a maximum of £3,000\textsuperscript{236}.

The Board for Technical Installations is a publicly approved appeal board established by the Consumer Council, Detached owners' association and TEKNIQ Fitters Organization. The board only deals with complaints pertaining to domestic electricity and plumbing work. The board consists of an independent chairman who is a judge and four council members consisting of one representative appointed by Detached Tenants Association, a representative designated by the Consumer Council and two representatives appointed by TEKNIQ\textsuperscript{237}.

\textsuperscript{235} www.byggerietsankenaevn.dk
\textsuperscript{236} www.hvanke.dk
\textsuperscript{237} www.el-vvs-anke.dk
5.3 The Netherlands

It is common in the Netherlands for families to rent their homes. In 2011, more than 7.1 million households in the Netherlands lived in homes they rented or owned; 59 percent were owner-occupiers. The ratio between tenant-occupied and owner-occupied homes has not changed since 1986 as the first results of the Netherlands Housing Research 2012 (WoOn2012) show.

In many areas of life Holland is highly regulated. The government of the Netherlands recognises that complying with official rules and applying for permits costs both private individuals and commercial companies a lot of time and money. To reduce the regulatory burden, the government is in the process of abolishing or simplifying many of the rules and regulations that currently exist and is making efforts to improve its electronic services.

The government intends to cut compliance costs by the following means:

- reducing the regulatory burden on enterprises
- reducing the regulatory burden on citizens
- reducing the regulatory burden on professionals in the public sector
- reducing the regulatory burden on provinces, municipalities and water authorities
- simplification in case of grants

The Rutte-Asscher government plans to reduce the regulatory burden, specifically in the following sectors: chemicals, logistics, agri-food, life sciences, construction, youth care, education and policing.

Based on empirical research in the Dutch construction industry, a study carried out by the Faculty of Economics and Business Administration Vrije Universiteit Amsterdam has found that “Quality management practices do support the management of strategically important innovation processes.”

General construction law is, in principle, governed by Dutch civil law, as codified in the Dutch Civil Code. The Dutch legislature has created a separate section in the Dutch Civil Code for a number of special agreements: this includes specific rules for general construction contracts. In addition, Dutch construction law is created in detail by uniform general conditions or unilateral general conditions. Parties must explicitly or tacitly agree to the applicability of these conditions. Finally, public law lays down the rules regarding spatial planning and safety within which parties are permitted to carry out construction projects.

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239 http://www.government.nl/issues/reducing-the-regulatory-burden
240 http://www.government.nl/issues/reducing-the-regulatory-burden
241 http://www.government.nl/issues/reducing-the-regulatory-burden
242 http://www.dlapiperrealworld.com/topics/construction.html?r=1
When asked for a study by the Technical University of Delft what their criteria were for selecting a building contractor to work on a small domestic project, consumers surveyed reported their priorities to be:

1. Reliability of contractor
2. Quality of contractor
3. Price
4. Contractor being customer orientated
5. Experience of contractor

Domestic building contractors are not required by Dutch law to hold licenses or to otherwise prove competency. Building standards appear heavily regulated as is building compliance protocol but this does not relate to the competency of construction operatives carrying out building work.

How the problem is dealt with

In the Netherlands it is common practice that construction disputes are solved by means of arbitration. There is a special arbitration institute for construction matters, the Court of Arbitration for Construction. Arbitration proceedings are also held before the Netherlands Arbitration Institute (NAI). As a consequence of alleged cartel agreements and bribery of construction companies, most government agencies have turned away from arbitration and choose to resolve disputes before courts. There are indications, however, that the government will return to arbitration. For example, in the new draft DBFM standard by the Rijkswaterstaat, the choice is made to settle disputes by means of arbitration. In public procurement matters disputes are settled by civil courts.

A construction contract often contains a clause that, in case of disputes, the Court of Arbitration for the Building Industry (RvA) in The Netherlands is solely competent. A number of widely used general terms and conditions also state that the RvA shall hear legal disputes arising from the agreement that the parties have entered into. The parties are also free to conclude that only when a dispute occurs to submit that dispute to the RvA.

A contracts advisor for an independent residential contracting organisation told this research there are some organisations which work on behalf of contractors and consumers and will guarantee building work. For example, a business called SWK offers guarantees to homeowners that work will be completed even in the event that the contractor becomes bankrupt. There are other similar companies that will offer warranties for glazing and façade work.

Interview participants have reported that guaranteeing organisations usually have standard lists of guarantees for a specific part of domestic buildings for example, a typical guarantee period for paint or decoration is usually 5 years or for an extension is 10 years. In this way consumers are also afforded some protection against sub-standard workmanship. Interviewees explained that Dutch

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244 AKD Prinsen van Wijmen (2009), Getting the Deal through – construction jurisdictions in the Netherlands

consumers are also protected by central Dutch government and European legislation but in practice very few law suits are brought.

Typically the contractor will be a member of the guaranteeing organisation. The organisation guarantees that if building work is less than satisfactory they will complete the work on behalf of the contractor to the consumer’s satisfaction. This system is also beneficial to the contractor. If the company became bankrupt they can rely on the organisation to intervene to complete the work. The contractor pays a membership fee for this service. However, for smaller companies, this constitutes a one-off annual fee.

We have been advised that these private organisations often offer further protection to the consumer by providing information on the background of individual tradespeople and details of previous work they have carried out.

“In short, no formal training, qualification or licensing schemes are required – all performance and competency is based on a past track-record and being a member of an organisation that suggests legitimacy.”

Building Sector Analyst.

Interview respondents for this research have reported that in a broader sense than described above consumers are afforded a minimum guarantee of construction quality through the Building Code legislation Woningwet and Bouwbesluit (2012). This legislation serves two purposes: it protects public safety by setting minimum requirements for structural integrity, fire safety, and accessibility, as well as setting a minimum quality standard for usability – for example, determining minimal sizes for spaces by their proposed purpose.

Building licensing

With regard to vocational requirements or professional licenses the Establishment of Businesses Act is relaxed. Since 2001, registration in the trade register is still compulsory for almost every company, but no diplomas or permits are required. In construction (and allied trades) no special conditions have to be fulfilled to start-up companies offering basic activities such as ‘handyman’ services and other ‘basic’ services such as painting or pointing activities, making furniture, carpentry (with a non ‘constructive’ character). If someone wants to operate as a self-employed in these activities, they only need to register at the Chamber of Commerce (trade register) and can start next day.\(^\text{246}\)

Because knowledge of the professional discipline is seen as indispensable for entrepreneurs, the Establishment of Businesses Act assumes that the entrepreneurs have or will obtain the necessary professional knowledge and expertise anyhow, without the necessity of any legal pressure. The idea is that professional knowledge will be gained in order to guarantee the quality of the products or

\(^{246}\) Article 5 Commercial Registers Act (Handelsregisterwet).
services (because consumers will ask for quality) or because banks often set conditions related to professional knowledge when giving loans, or because they wish to be recognised as professionals by their colleagues\textsuperscript{247}.

An interviewee from an international construction certification body headquartered in Holland suggests that because regulatory and certification guidelines and frameworks prioritise products rather than individuals the requirement for construction operatives to be highly regulated is lessened on the grounds that in order to correctly and competently navigate the regulatory requirements to use building products, workers must be extremely competent.

\textsuperscript{247} European Institute for Construction Labour Research (2006), Undeclared Labour in the Construction Industry – The Netherlands p.5
6. The USA

Occupational licensing

Many occupations within the United States are licensed at the state, or local, level. A two-tier system is operated in some states, which may require business registration locally, and occupational licensing, or certification, at a state level; the reverse is to be found in a number of other states.

Occupational licensing in the USA began in the 19th century with the regulation of traditional occupations such as doctors and lawyers248.

By the early 1950s less than 5% of the workforce was required to hold a licence for their trade or occupation, that number increasing to 29% in the present day (based on a 2010 study by Kleiner and Krueger, using a specially designed labour force survey)249.

There are generally accepted to be three forms of occupational regulation currently operating in the United States:

1. registration which requires an individual to register their personal details with a government agency before practicing their occupation;
2. certification, based on examination – usually – of occupational skills and knowledge and;
3. licensure which, by law, requires an individual to obtain a licence in order to practice250.

Approximately two thirds of occupational regulation is at the state level251.

Although research into the effects of occupational licensing is limited, in the United States it has been estimated that licensing is associated with approximately 14% higher wages, with licensing by multiple political jurisdictions – such as at federal and states level - having a greater impact on wages than local regulations. Further, education requirements are positively associated with wages.

This pattern of results is consistent with a monopoly model of occupational licensing; where supply is more restricted if the licensing authority operates on a wider geographic level252.

The construction industry in the United States

The construction sector within the United States is recognised as comprising of three, main subsectors:

1. Construction of Buildings
2. Heavy and Civil Engineering Construction
3. Specialty Trade Contractors

Construction of Buildings (further sub-categorised into Residential and Non-residential) includes new work, additions, alterations or maintenance and repairs – onsite assembly is also included within this category. Part or all of this work may be sub-contracted to other construction establishments – usually specialty trade contractors (which include such trades as electrical, plumbing, painting and site preparation, for example).

Preliminary figures for March 2013 put employment (seasonally adjusted) in the Construction of Buildings at 5,802,000, with ‘construction labourers’ accounting for the largest occupational group – followed by carpenters, electricians, operating engineers and other construction equipment operators and, finally, construction managers. These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

The number of private industry establishments as at the 3rd quarter 2012 is believed to be 750,039 (based on preliminary figures), although in the data no distinction is drawn between the type of building work undertaken – i.e. new build or RMI – by these private industry establishments.

Since 2004, GDP for the United States has decreased in absolute terms in relation to the construction industry, as demonstrated by the data in the table below. With gross output in 2011 showing a substantial decline since a 2006 high.

<table>
<thead>
<tr>
<th>Year</th>
<th>Gross Output</th>
<th>Value Added</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>1113.9</td>
<td>554.2</td>
</tr>
<tr>
<td>2005</td>
<td>1246.1</td>
<td>612.5</td>
</tr>
<tr>
<td>2006</td>
<td>1328</td>
<td>651</td>
</tr>
<tr>
<td>2007</td>
<td>1317.4</td>
<td>653.8</td>
</tr>
<tr>
<td>2008</td>
<td>1259.6</td>
<td>614.2</td>
</tr>
<tr>
<td>2009</td>
<td>1095.3</td>
<td>542.9</td>
</tr>
<tr>
<td>2010</td>
<td>1002.3</td>
<td>523.3</td>
</tr>
<tr>
<td>2011</td>
<td>981.7</td>
<td>529.5</td>
</tr>
</tbody>
</table>

In 2011 spending on home improvements and repairs totalled $275 billion, down 4% from 2009 levels and 16% below the market peak in 2007.

253 http://www.bls.gov/iag/tgs/iag23.htm#about
258 http://www.bea.gov/index.htm
259 US Department of Commerce: Bureau of Economic Analysis
According to figures produced by the Joint Center for Housing Studies of Harvard University, consumer spending on home improvement projects is predicted to accelerate as 2013 progresses\textsuperscript{260}.

Estimates by the Joint Center suggest that more than 650,000 contractors operated in the remodelling market at the peak of the housing boom in 2007, with two-thirds being self-employed. The remodelling market is described as ‘fragmented’, characterised by much lower concentration than other housing-related industries and a diversity of market segments “ranging from general remodelling (full-service, design/build, and handyman repair) to specialty trades (such as roofing, siding, plumbing/HVAC, electrical, and painting). Of all remodelling businesses with payrolls in 2007, about two-thirds were in specialty trades\textsuperscript{261}.

Relatively low start-up costs combined with a booming market are two factors attributed to driving the increase in the number of businesses at this time. A high degree of churn meant large numbers of businesses entering and exiting the market every year\textsuperscript{262}.

\textsuperscript{259} Joint Center for Housing of Harvard University (2013), \textit{The US Housing Stock: Ready for Renewal: Improving America’s Housing 2013} p.2

\textsuperscript{260} http://www.jchs.harvard.edu/momentum-building-home-improvement-activity

\textsuperscript{261} Joint Center for Housing of Harvard University (2013), \textit{The US Housing Stock: Ready for Renewal: Improving America’s Housing 2013} p.11

\textsuperscript{262} http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/2011_remodeling_color.pdf, p. 14
Between 2007 and 2011, the number of general residential remodelling businesses declined by just over 8% (much less than the 25% reduction in homeowner improvement spending), however employment “fell much more sharply and was still down in 2011 by more than 22 percent from the 2006 peak.” The sharp decline in employment meant that the 241,000 individuals employed at general remodelling firms in 2011 were barely more than levels nearly a decade before 263.

**Regulation of the construction industry**

In the construction industry varied forms of licensing have been in place for a number of decades – schemes vary from State wide regimes, to local certification and registration arrangements. Each state operating such a licensing scheme is a member of the National Association of State Contractors Licensing Agencies (NASCLA), formed in 1962 as a not for profit organisation.

As well as the individual licensing bodies, the NASCLA promotes checking of licenses through a number of channels such as bill board advertising and local radio advertising. Leaflets and information are available to download from the NASCLA, and the Agency also undertakes various advocacy and outreach programmes, for example with the elderly.

A further responsibility involves the development and maintenance of the NASCLA Contractor’s State Licensing Information Directory – the purpose of the publication is to “identify the state agencies involved in the regulation of construction work and to summarize the qualifications, licensing, examinations and financial responsibility policies of each state” 264.

“There are no consistent means by which the effectiveness of schemes are measured and I imagine that even if I had the statistics for litigation rates in each state I still wouldn’t be able to come up with a reliable answer to what works and what doesn’t because the system is so disparate.”

Executive Director, Professional Body

An additional role performed by the Agency is the development and publication of model legislation for agencies or boards in the various states which license residential and commercial construction. The NASCLA completed the NASCLA Model Legislation for Residential Construction Licensing in March 2009 265.

“Many states either require no education or experience or do not license these occupations at all.” 266

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264 [http://www.nascla.org/publications](http://www.nascla.org/publications)

265 [http://www.nascla.org/publications](http://www.nascla.org/publications)

The problem of ‘rogue’ or unlicensed traders appears to be a recognised problem in the United States, if using as a measure the volume of press coverage and quantity of available consumer support. The National Center for the Prevention of Home Improvement Fraud (NCPHIF) offers resources and workshops to homeowners advising them of the dangers of employing rogue, unlicensed traders with the aim of empowering the consumer. Pre-screening services also exist to provide a referral service for consumers, a brief internet search revealed numerous different referral businesses operating at a state level. The NASCLA publishes guides – as mentioned above - with the aim of educating consumers in hiring contractors and commissioning construction projects. \[267\]

Anecdotally, telephone interview participants to this research have suggested that little distinction is drawn in the United States between traders who act unscrupulously or with criminal intent and those who are incompetent or for other reasons produce work which is substandard. This would seem to be substantiated by the broad range of press coverage reviewed for this research which on the whole does not define what is commonly termed ‘shoddy work’ by the means or manner in which either the work or the behaviour of the contractor is substandard. A 2007 New York Daily News article describing New York’s Building Department’s crackdown on what it calls ‘unscrupulous builders’ claimed, “Shoddy construction has driven neighbors from their homes, damaged existing buildings and sent workers to their deaths.” \[268\]

Another example is the Honor Guard Residential Business Services (HGRBS) which exists as a “support network against home fraud”, claiming to represent the interests of homeowners and renters against “corrupt residential contractors” \[269\]. Various websites have been developed to help consumers avoid fraudulent or ‘rogue’ traders, such as ‘Contractors from Hell’ which appears to be widely cited in press and media reports.

“In my humble opinion, the disciplinary action imposed upon these contractors isn’t severe enough to prevent them from breaking the laws or repeating their behavior. It has to really hurt them hard – which for these characters is all about the money – and is the only thing that matters to the unethical contractor. Then we need to disclose and expose these crooks as quickly as possible. Until we can make these changes (via the Legislature) American consumers will continue to be plagued by corrupt contractors.” \[270\]

Indeed, at least for the past two years for which figures are available (2010 and 2011), ‘Home Improvement/Construction’ – specifically shoddy work and/or failure to start or complete the job - has featured in the top 3 consumer complaints in the USA reported in the ‘North American Consumer Protection Investigators Consumer Complaint Survey Report’. The top two complaints respectively being related to new and used car sales, and credit/debit disputes, mortgage fraud and

![Image](453x718 to 522x759)

Licensing Schemes - An International Perspective

\[267\] http://www.nascla.org/publications
\[269\] http://www.hgrbservices.net/network-profile.php
\[270\] http://www.contractorsfromhell.com/why-contractors-from-hell-continued/
In the aftermath of a natural disaster, homeowners may be more likely to consider employing an unlicensed trader, or at least be less concerned about a trader’s credentials, than they are about ensuring repairs and rebuilding work is completed as quickly as possible.

According to various sources - national press, consumer protection websites and so on - the incidence of natural disasters prompts a very specific kind of ‘rogue’ trader, the opportunist seeking to scam vulnerable homeowners. Tips and good practice guides, authored in the wake of such events, and available widely, provide tailored information for consumers on how to avoid falling victim to scams; legislation has also been enacted. Some examples are provided below.

- The practice of “price-gouging” was addressed in the State of Florida following Hurricane Andrew in 1992, enacting a law which prohibits such practices during a declared state of emergency (this relates primarily to the rental or sale of commodities such as lumber, water, chemicals etc.)\(^\text{272}\). A further 29 US states have in place similar legislation.

- Hail damage was reported in 2010 as prompting a 202% increase in questionable insurance claims from the period 2008-2009 according to a report “2009 Questionable Claims Comparison Report” issued by the National Insurance Crime Bureau (NICB)\(^\text{273}\).

- In various press coverage “Home improvement” loan scams are highlighted in those states prone to earthquakes, hurricanes and floods for example. The practice is reported as following an established pattern instigated by a doorstep sale, and involving pressurised sales tactics to take-on a third party loan once the contractor has commenced work\(^\text{274}\).

Anecdotally, asphalt paving and driveway repairs are apparently one of the most recent scams to be encountered, as well as a variety of other home improvement and repair activities such as painting and roofing. This practice of doorstep sales of unnecessary repairs (which traders then overcharge for and often use intimidation tactics to gain payment for) is reported as often being conducted by ‘travellers’ and door to door salespeople\(^\text{275}\).

Penalties for ‘scamming’ or ‘ripping off’ consumers can be severe however, and are dealt with either by criminal or civil proceedings, or both. In many states and localities operating without a contractors’ licence is a criminal offence, the penalties for which can include fines, jail time and vehicle impoundment.

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\(^{272}\) [http://myfloridalegal.com/pages.nsf/Main/351A2341C335428185257038005FB8AB](http://myfloridalegal.com/pages.nsf/Main/351A2341C335428185257038005FB8AB)


\(^{275}\) [http://www.contractorfraud.net/scams.htm#asphalt](http://www.contractorfraud.net/scams.htm#asphalt)
Where consumers have employed a licensed contractor, the consumer is protected usually by a bond or in some cases a ‘trust fund’ into which the licensee pays an annual premium. The bond is then disbursed by the licensing scheme operator in the event that disputes between contractors and consumers cannot be mediated – for example, if the contractor’s business fails, or the individual ‘disappears’ without completing the work to an accepted standard.

The situation is not one-sided however; contractors are protected by a Mechanics’ Lien. This is a guarantee against labour or works, and is sometimes referred to as a construction lien. It can be applied in a number of circumstances throughout a variety of industries. In the United States of America, a Mechanics’ Lien is an insurance strategy that can be placed against a home owner/estates landlord in post-contract form, to protect the contractor, sub-contractor or other parties involved in the construction and/or amendment of works to a building(s) to be compensated in the event of not being paid. The Mechanics’ Lien can affect the sale or re-sale/mortgage of a property and it also blocks the action of a foreclosure.

A construction lien exists in every state of America, but each differs slightly as to how and for what purpose the permits exist. For example, in New York State the law permits a number of property related trades to benefit from filing a lien and the notice can be placed during or after the work or, within eight months of a contract being signed off, however this time is reduced to four months where it has just been a improvement or renovation to a property. In Florida the lien is known as a ‘lienor’, but the general principles remain the same, however the state law permits avoiding the lien being imposed by taking out a bond to protect the householder prior to work commencing.

Each state has its own separate legal proceedings to follow through, and some are more lenient than others.

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Unless otherwise stated below, in the information that follows – all references have been taken from the Contractor’s State Licensing Information Directory 2012 Edition, NASCLA. This information source, produced annually since 1993 was undergoing review at the time of writing – the 2013 Edition was to be published mid-way through this research. The information contained within the 2012 directory is the result of surveys of the agencies listed and reviews by the NASCLA of statutes, rules, applications and other documents submitted from the various state licensing bodies.

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276 Lien – from the French ligare meaning to bind is the right to keep possession of property belonging to another person until a debt owed by that person is discharged (OED)
277 http://www.saclaw.lib.ca.us/pages/mechanics-lien.aspx
6.1 California

In 2011, according to data collected by the US Department of Commerce – Bureau of Economic Analysis, the Gross Domestic Product (GDP) for construction in California was $58,959 (millions of current dollars)\(^{280}\). Within the construction industry, the 2010 census carried out by the United States Census Bureau revealed that there were a total of 66,055 firms and 66,999 establishments. The work carried out, covered an annual payroll of ($1000’s) $29,321,874, for a work force of 584,801 in employment\(^{281}\). These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

“Few states emulate California’s onerous licensing of construction trades. California imposes four years of education and experience requirements with attendant fees and examinations on would-be workers.”\(^{282}\)

The Contractors State Licence Board is responsible for licensing and regulating contractors in 43 licence classifications comprising the construction industry. The Board was established in 1929 as the Contractors State License Bureau under the Department for Professional and Vocational Standards and is today part of the Department of Consumer Affairs\(^{283}\). Its mission is to protect “consumers by regulating the construction industry through policies that promote the health, safety and general welfare of the public in matters relating to construction”\(^{284}\).

Currently (as at 2013) the Board employs approximately 400 individuals at its headquarters in Sacramento, California and as field offers throughout the state.

<table>
<thead>
<tr>
<th>Headquarters staff</th>
<th>• Receives and processes licence applications: new applications, changes to records, additional classifications, renewals.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Reviews and maintains records of disciplinary actions, provide verified certificate of licensure used in court or other legal actions; provide the status of licensure and other support services</td>
</tr>
<tr>
<td></td>
<td>• Directs the activities of field offers</td>
</tr>
<tr>
<td></td>
<td>• Initiates disciplinary actions resulting from investigations</td>
</tr>
</tbody>
</table>

| Field staff | • Investigates consumer complaints against contractors |


\(^{281}\) United States Census Bureau [http://www.census.gov/econ/susb/](http://www.census.gov/econ/susb/)


The **Statewide Investigative Fraud Team** (SWIFT) addresses unlicensed activity\(^{285}\).

In the State of California licensing requirements exist for all commercial, residential and public works construction involving projects to a value of $500 or more (labour and materials); the requirements pertain to all businesses and individuals “who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California”\(^{286}\).

- Certification is required before any contractor may engage in asbestos-related work. Certification is required for the remediation of contaminated soils at specified sites and for the installation or removal of underground storage (fuel) tanks.

- Property owners performing work themselves or contracting with licensed sub-contractors or general building contractors are exempt from licensing requirements under certain conditions.

First time applicants are subject to a business law examination and a trade examination, the results of which are valid for 5 years. The applicants must demonstrate at least four years of experience/education in the trade for which they are licensed, be fingerprinted, have an FBI background check, and be bonded\(^{287}\). Criminal history background checks required as a condition of employment are provided by the California Department of Justice\(^{288}\).

Applicants must also verify that their operating capital exceeds $2,500.

<table>
<thead>
<tr>
<th>Application Fee</th>
<th>Licence Fee</th>
<th>Biennial Renewal Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300</td>
<td>$180</td>
<td>$350</td>
</tr>
</tbody>
</table>

*This table has been reproduced from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition*

The licence is issued for 2 years.

Licensed entities include sole proprietorships, corporations, partnerships, joint ventures and limited liability companies. Corporations and limited liability companies must register with the California Secretary of State prior to obtaining a licence. Any two or more licences desiring to act in the capacity of a joint venture must secure an additional licence prior to the award of the contract. Licensees may submit a bid as a joint venture prior to obtaining the joint venture licence.

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\(^{287}\) [http://www.cslb.ca.gov/GeneralInformation/About/BasicFactsAboutCslb.asp](http://www.cslb.ca.gov/GeneralInformation/About/BasicFactsAboutCslb.asp)

\(^{288}\) [http://oag.ca.gov/fingerprints](http://oag.ca.gov/fingerprints)
A contractor’s bond in the amount of $12,500 is required on all active licenses. A separate “Bond of Qualifying Individual” in the amount of $12,500 is required for a responsible managing employee. A separate “Bond of Qualifying Individual” in the amount of $12,500 is required for a responsible managing officer, responsible managing manager or responsible managing member owning less than 10% of the voting stock of a corporation or membership interest of a limited liability company. A responsible managing officer owning 10% or more of a voting stock of a corporation is exempt from posting this additional bond. A responsible managing officer, responsible managing manager, or a responsible managing member owning 10% or more of the membership interest of a limited liability company is exempt from posting this additional bond. A $100,000 surety bond (in addition to the $12,500 contractor bond) is also required for all active limited liability company licenses.

A certificate of insurance for workers’ compensation is required on all active licenses if employees are hired. An exemption from workers’ compensation form must be filed if no employees are hired. All contractors holding a C-39 Roofing licence must provide proof of workers’ compensation coverage regardless of whether they hire employees or not. C-39 licence holders cannot file an exemption from workers’ compensation. Liability insurance with the minimum aggregate limit of $1 million is required for all limited liability licenses with five or fewer persons listed as members of the personnel, plus an additional $100,000 is required for each additional member of the personnel of record, not to exceed $5 million total.

Limited reciprocal agreements exist with Arizona, Nevada and Utah. The benefit of the reciprocal is limited to a waiver of the trade examination, if the applicant is applying for a comparable classification. The out-of-state licence must be current and in good standing and in effect for at least the past five years.

“...reciprocity is specified in classifications where the scope of practice and licensing requirements are either identical or fundamentally indistinguishable in each state with California which makes it easier to get a license”289.

The State of California issues the following Licence Classifications:

A  General Engineering
B  General Building

Forty-one “Speciality Contractor Classifications” (C Classifications) exist which include those for MES occupations, and other specialisms such as ‘Solar’ and ‘Swimming Pool’ construction.

Speciality Contractor Classifications of relevance to home improvement, maintenance and repair include, for example, ‘Cabinet, Millwork and Finish Carpentry’ and ‘Painting and Decorating’; a

289 [http://www.cslb.ca.gov/Applicants/Reciprocity/GeneralReciprocityInfo.asp](http://www.cslb.ca.gov/Applicants/Reciprocity/GeneralReciprocityInfo.asp)
separate Registration exists for ‘Home Improvement Salespersons’\textsuperscript{290}. Similar licensing arrangements exist in other states for Home Improvement Salespersons, such as in New York City.

Further details are provided in Appendix 2.

As of 31\textsuperscript{st} December 2012 the number of contractor licence holders in the state of California totalled 295,065; their status was as follows:

\begin{itemize}
  \item 228,019 (77\%) registered as “active”
  \item 67,046 (23\%) registered as “inactive”\textsuperscript{291}
\end{itemize}

Of the licenses held at the beginning of 2013, the three most commonplace were (in order of number of licensees):

1. General Building Contractors (Class “B”) – 105,654
2. Electrical Contractor (Class C-10) - 25,035
3. Painting and Decorating (Class C-33) – 15,872\textsuperscript{292}

Overall, the number of licensees has declined since a peak in 2008, with the current number (as at end 2012) reducing by 2.7\% on the previous year\textsuperscript{293}.

According to the Contractors State Licensing Board unlicensed contractors are “part of the $60-140 billion underground economy that does not pay taxes, insurance, or follow safety laws”\textsuperscript{294}. Other recognised practices include “off-the-books” payments and fraud.

According to the CSLB the organisation’s State-wide Investigative Fraud Team (SWIFT) conducts stings and sweeps somewhere in California each week\textsuperscript{295}. Their most recent newsletter reports a March 2013 ‘sting’ operation resulting in 78 arrests on misdemeanour charges of contracting without a licence\textsuperscript{296}.

\begin{footnotes}
\footnote{290}{“A "home improvement salesperson" (HIS) is defined in Business and Professions Code section 7152 as a person who is employed by a licensed contractor to solicit, sell, negotiate or execute contracts under which home improvements may be performed, a swimming pool constructed, or home improvement goods or services installed or furnished.” http://www.cslb.ca.gov/applicants/HomeImprovementRegistration/}
\footnote{291}{http://www.cslb.ca.gov/Newsletter/2013-Spring/licenseAps.asp ; ‘Inactive’ contractors are those who opted not to practice as a contractor or submit bids for work}
\footnote{292}{http://www.cslb.ca.gov/Newsletter/2013-Spring/licenseAps.asp}
\footnote{293}{http://www.cslb.ca.gov/Newsletter/2013-Spring/licenseAps.asp}
\footnote{294}{http://www.cslb.ca.gov/GeneralInformation/about/basicfactsaboutcslb.asp
\footnote{295}{http://www.cslb.ca.gov/GeneralInformation/About/BasicsFactsAboutCslb.asp
\footnote{296}{Under the Business and Professions Code section 7028 “It is a misdemeanor for a person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.” http://www.cslb.ca.gov/Newsletter/2013-Spring/blitz.asp}}
• First-time offenders often are issued a Notice to Appear (NTA) for misdemeanour charges of contracting without a licence or illegal advertising. The NTA carries a maximum penalty of six months in jail and/or up to a $5,000 fine (and potential administrative fines of $200 to $15,000).\(^{297}\)

• Additional convictions raise the fines to $10,000 and a mandatory 90-day jail sentence\(^{298}\).

CSLB investigators can suspend on-site work in instances where the contractor (whether they are licensed or not) does not have workers’ compensation insurance coverage for employees\(^{299}\).

In cases where contractors are left out of pocket, under civil code in the State of California, in order to file a lien, first a 'preliminary twenty day notice' must be served against the owner, this allows an objection to be raised of a 'notice of nonresponsibility' if they are unhappy with the work\(^{300}\).

A lien claim must be recorded ninety days after completion of improvements and within sixty days after cessation of other works carried out. Additionally a construction lien is served with 'stop notice' this combination 'gives the claimant [...] undisbursed construction funds in the possession of the owner'\(^{301}\).

There are four ways that a construction lien can be released in California civil code law, these are:

• Conditional Waiver and Release Upon Progress Payment;
• Unconditional Waiver and Release Upon Progress Payment;
• Conditional Waiver and Release Upon Final Payment;
• Unconditional Waiver and Release Upon Final Payment.

**Monitoring of licensing schemes, and review**

Anecdotal evidence from consumer websites and press articles reviewed for this research suggests the licensing system would benefit from improvement. Indeed, a 2004 article for the Los Angeles Times reported that the Contractors State Licensing Board, which issues building licenses, was not performing its responsibilities adequately. The article went on to state that a 2004 review by the State Governors California Performance Review task force called for the elimination of the Board, responsibility for investigating ‘incompetent and unscrupulous contractors’ being passed to a consumer affairs department, reporting to the Governor\(^{302}\).
The report from that committee commented:

“Licensing boards in California have had a troubled history. By the late 1920s, 10 boards existed -- certifying accountants, architects, barbers, cosmetologists, dentists, embalmers, optometrists, pharmacists, physicians and veterinarians. The Little Hoover Commission\textsuperscript{303} notes that while “inspired by consumer protection, once established the boards functioned more like professional guilds than regulatory watchdogs. Examinations did as much to limit competition and hold up prices as they did to screen out incompetence. Investigation and enforcement efforts were lax.”\textsuperscript{5}

In the 1970 Consumer Affairs Act, the Legislature sought to significantly augment the consumer protection mandate by creating a Division of Consumer Services within DCA and by charging the Department with an affirmative consumer protection mandate.\textsuperscript{6} The Legislature directed the DCA in Business and Professions Code § 301 to “facilitate the proper functioning of the free enterprise market economy,” but the Little Hoover Commission report, citing testimony from the Center for Public Interest Law, wryly observed:

“It is unclear why the Legislature would direct DCA to ‘facilitate the proper functioning of the free enterprise market economy’ but then place it over 40 semiautonomous occupational licensing agencies -- many of which are deliberately designed to limit ‘the proper functioning of the free enterprise market economy’ without consumer benefit. And we fail to understand why the Legislature would charge DCA with ‘fostering competition’ without also giving the DCA director sufficient authority to interfere with the cartel-like function of its boards which serve to suppress competition, limit consumer choice in the marketplace and artificially inflate the price of the services performed.”\textsuperscript{7}

\begin{flushright}

6 Business & Professions Code § 301 states: It is the intent of the Legislature and the purpose of this chapter to promote and protect the interests of the people as consumers. The Legislature finds that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free enterprise market economy. The Legislature declares that government advances the interests of consumers by facilitating the proper functioning of the free enterprise market economy through (a) educating and informing the consumer to insure rational consumer choice in the marketplace; (b) protecting the consumer from the sale of goods and services through the use of deceptive methods, acts, or practices which are inimical to the general welfare of consumers; (c) fostering competition; and (d) promoting effective representation of consumers’ interests in all branches and levels of government.

\end{flushright}

In seeking to separate the disciplinary functions from the Board’s regulatory duties, the 2004 report recommended that the State Contractors License Board (along with 29 other licensing Boards) be ‘eliminated’\textsuperscript{304}.

\begin{flushright}
303 The Little Hoover Commission on California State Government Organization and Economy is an independent State oversight agency, created in 1962. The Commission selects study topics raised by citizens, legislators and other sources. (From: \url{http://www.lhc.ca.gov/about/about.html})

304 \url{http://cpr.ca.gov/CPR_Report/pdf/GRP1.pdf}
\end{flushright}
The task force recommended that, in place of the Boards, administrative law judges should consider complaints lodged against licensees (as is currently the practice in New York City)\(^\text{305}\).

In Larry Booth’s newsletter article upon his 2004 re-election as Chair of the Board, following the publication of the task force’s report, he noted that the “CBLB will monitor the Commission’s work as it evolves”\(^\text{306}\).

The following January, 2005 Governor Schwarzenegger submitted a reorganisation plan to the Little Hoover Commission calling for the elimination of the 88 Boards and Commissions in question\(^\text{307}\).

Following that submission, however, the trail appears to have gone cold; the SCLB still exists today.

Nonetheless, anecdotal evidence suggests that the issue is far from resolved, the impetus for reform persisting due to the on-going economic crisis of the mid to late 2000s. Indeed, a 2009 article by a professor of Economics at California State University called for the elimination of the State’s Licensing Boards as a means of cutting-back state spending. In place of the Boards, private enterprise would benefit from providing the core services of education and criminal record checks on behalf of consumers\(^\text{308}\).

\(^{305}\) California’s Governor Schwarzenegger, A. (2004?) Governor’s Reorganization Plan 1: Reforming California’s Boards and Commissions : (A government for the People for a Change), p. 14

\(^{306}\) http://www.cslb.ca.gov/Resources/Newsletters/ContractorNewsletter2004Fall.pdf

\(^{307}\) http://www.cpr.ca.gov/

6.2 Florida

In Florida, there was a total GDP (in millions of current dollars) of 29,989 in 2011 according to data gathered by the US Department of Commerce – Bureau of Economic Analysis. Data gathered in accordance with the 2010 census revealed that within Florida there were a total of 44,414 firms and 45,041 establishments, with a total number of 297,998 in employment. The annual payroll for Florida totalled $11,654,395. These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

“The state requires four years of education or experience to work in many of the construction trades studied – a requirement that far exceeds most other states. For instance, only 30 states license contractors working in carpentry. Of these, 19 have no training requirement at all. Likewise, 22 of the 34 states that license door repair contractors have no education and experience requirements. In Florida, it takes four years to obtain a license in both.”

In the State of Florida regulation of the construction industry is operated at a dual level;

- **Registration** - local registration arrangements through a local, county or city contracting licence. Licensees are restricted to practice in the locale, county or city in which they are registered, and any adjoining areas that will accept the registration.

- **Certification** – a licence to work throughout the state

Contractors in the State of Florida are licensed by the Department of Business & Professional Regulation (DBPR). The Construction Industry Licensing Board (CILB) - responsible for licensing and regulating the industry – meets regularly to consider licence applications, review disciplinary cases and to conduct informal hearings relating to both matters.

A statewide-certified licence is granted by the construction or electrical licensing boards for most categories of licensure.

In order to become licensed as a **registered** contractor the applicant must provide a copy of their local contractor’s licence. To become licensed as a **certified** contractor, the applicant must complete

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312 “However, cities and counties who are members of the Construction Licensing Officials Association of Florida have reciprocal agreements, which allow for the portability of the local license throughout the state. Additionally, if the category of license is one that falls under the jurisdiction of the state, the licensee must register his or her local license with the state.” Extract from the NASCLA Contractors State Licensing Information Directory, 2012 Edition
The Florida contractor’s examination, meet financial stability and responsibility requirements and provide proof of experience for the category in which he or she wishes to become licensed.\textsuperscript{315}

The CILB issues the following classes of licence:

- **Division I Construction**:
  - Building
  - General
  - Residential
  - Specialty Structure
- **Division II Construction** (consisting of 12 sub-divisions)
- **Electrical** (consisting of 18 sub-divisions)

Further details are provided in Appendix 2.

**Contractors**\textsuperscript{316}: Applicants must pass a written (open-book) exam covering business, finance and construction subjects with a passing grade of 70%. Applicants must document four years of experience, as well as provide a credit report and a financial statement, not more than twelve months old. A net worth ranging from $2,500 to $20,000 (depending on the classification) is required. Renewal is good for a two year period. Application processing time averages 30 days. Fourteen hours of continuing education are required for each two-year renewal cycle.

<table>
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<th>Exam Fee</th>
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<tr>
<td>$135</td>
<td>$409 Certified $309 Registered</td>
<td>$200</td>
</tr>
</tbody>
</table>

This table has been reproduced from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition

In addition to maintaining workers compensation coverage (or an exemption), active licensees must maintain minimum amounts of insurance at all times. General and building contractors must maintain $300,000 liability insurance and $50,000 property damage insurance. All other categories must maintain $100,000 liability and $25,000 property damage insurance, or in amounts as defined by board rule.\textsuperscript{317}

Since July 1, 1993, a recovery fund for the benefit of consumers has been in effect: the Florida Homeowners’ Construction Recovery Fund. The fund receives its revenue from a building permit surcharge and fines. The fund will reimburse consumers up to $50,000 per claim or transaction, not to exceed a lifetime cap of $500,000 per contractor. Approximately $600,000 was collected for fiscal

\textsuperscript{315} DBPR (2013), *Construction Industry Licensing Board: Frequently Asked Questions and Answers*  p.3
\textsuperscript{316} Highway and Bridge Pre-Qualification Applicants and Electricians are subject to different requirements, according to the NASCLA Contractors State Licensing Information Directory, 2012 Edition
\textsuperscript{317} DBPR (2013), *Construction Industry Licensing Board: Frequently Asked Questions and Answers*  p.6
year 2010-2011.  

**Other:** Contractors must execute a payment/performance bond when awarded a public works contract exceeding $100,000. The governing authority awarding the contract may exempt the contractor from the bond requirement, if the contract does not exceed $200,000.

Although Florida has no reciprocal agreements the state does endorse certain examinations from California, Georgia and North Carolina for electrical contractors in select categories where either the examination or the out of state licence requirements are demonstrably equivalent to that which are required in Florida.

In Florida the Statutes for lien are easier when a 'privity' between a worker (whether direct or 2nd source) and the owner has been established, this contract, as long as it satisfies the language of the law, enables a labourer to have the same entitlement of works and materials as a contractor. The claim for lien can then be processed by filing for a ‘Contractor’s Final Payment Affidavit and a Final Payment Affidavit – One Other than Contractor’. Where a contract has not been drawn up, (no privity exists), the contractor must first serve a notice on the owner to make them aware of their presence and to avoid the owner paying potential monies owed to the wrong person. This order must be served under registered mail and before forty five days from the first work commencing or materials being delivered.

"The obvious implication of the slow-paced recovery is that there still is not enough work for contractors to reach their comfort zone yet. But a less obvious implication is that the money behind the projects is still more tentative than the recent boom years. Although projects are starting, the money behind them remains tight, meaning any little thing can cause a payment dispute that could turn the already small margins into losses at the blink of an eye."

Where payment has not been received, the claimant must within ninety days issue a notice against the property with the local public records. Although this can be protected against, in the form of a bond, or conditional bond.

Unlicensed contractors have no rights under their contracts or the Lien Law. As a result of a January 2013 ruling by the Supreme Court, those who contract (either consumers or subcontractors) with unlicensed contractors “retain all their legal rights to enforce the contract and claim against the
contractor’s bond”. This ruling, therefore, firmly places responsibility for ensuring compliance with licensing rules with the contractor, as opposed to the consumer or ‘client’.

Any unlicensed person acting in the capacity of a contractor, or advertising as a contractor, is committing a **misdemeanour of the first degree**, punishable by 0-12 months in jail and a maximum fine of $1,000; also if the person:

- Falsely holds himself or herself out as a licensee
- Falsely impersonates a licensee
- Knowingly gives false evidence to the regulatory authority

“Well unlicensed person who commits any of the above violations after having been previously found guilty of such violation commits a **felony of the third degree** (0-5 years, maximum fine of $5,000)”.

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328 Hellberg, A. for The Joint Legislative Task Force on the Underground Economy (2009), *Criminal penalties for unlicensed contractor activity in selected states* p.2
6.3 New Mexico

GDP in construction for New Mexico in 2001 was 3387 (in millions of current dollars)\(^{329}\). Within the construction industry, there were a total number of 4,695 firms and 4,738 establishments. In total, there were 41,359 workers in employment and an annual payroll of $1,161,475 according to the data gathered in the 2010 census by the United States Bureau\(^{330}\). Patterns of employment have shown a rise and fall as highlighted by the data in table 3. More recent data for January and February of this year suggests that although employment continued to fall at the start of the year, there was a slight increase in numbers employed within the industry in February 2013. These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

“...New Mexico has higher barriers for more occupations than most states... New Mexico’s most burdensome occupations are in construction. The state requires a two-year apprenticeship to become a general contractor. New Mexico is one among only a third of the licensed states that require any experience to work as a commercial or general contractor in the field. New Mexico also charges between $168 and $318 in fees to be licensed in the construction trades.”\(^{331}\)

The Construction Industry Division (CID) of the New Mexico Regulation and Licensing Department is responsible for a range of activities related to the construction industry, including reviewing plans, issuing permits, conducting inspections and dealing with consumer complaints.

‘Contracting’ activities in New Mexico are defined in the Construction Industries Licensing Act, NMSA 1978\(^{332}\).

The licensing and examination services are provided by a third party - psi exams - which manages e-services for the States of New Mexico and Colorado.

Virtually every aspect of commercial, residential and public works construction is regulated at the state level in New Mexico. This includes general, mechanical, plumbing, electrical, natural and LP gas work, Manufactured Housing regulated by HUD and crane operators.

Homeowners performing work themselves or contracting with licensed sub-contractors are exempt from the licensing requirements; however, such homeowners must obtain a Homeowners Permit, inspections and a Certificate of Occupancy from the state or local jurisdiction that have their own building departments. The Homeowners Permit exemption only applies to general construction. It does not cover electrical, mechanical, plumbing or gas work. This work must be performed by validly licensed contractors unless, in the case of electrical or plumbing work, the homeowner qualifies to...
do this work by passing an exam.

New Mexico issues four main classes of licence:

- GA Asphalt, Bitumen and Concrete Construction: Vehicular traffic only, not airborne craft
- GB General Building
- GF Fixed Works
- GS Building Speciality classifications

Within these four main classes there are, collectively, 81 sub-classifications (including those for MES and Civil trades). Those relevant to domestic building work include:

**GB General Building**
- GB-2 Residential Building – Includes work authorised by GS Specialities
- GB-98 General Building – Includes work authorised by GB-2 and GS Specialities

Licenses are issued for a three year period.

Additionally, the state issues a Handyman Certificate to individuals who “works on one undertaking or project at a time which, in the aggregate or singly, does not exceed seven thousand two hundred dollars ($7,200) compensation a year, the work being casual, minor or inconsequential such as, but not limited to, handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978”.

Other restrictions apply.

When applying for a contractors’ licence, the applicant’s Qualifying Party (QP) must submit evidence of experience required for the licence classification being sought (two or four years), as well as passing both a trade and a business law exam with a minimum score of 75%. A 20-hour course taken from a school approved by the division may be substituted for the business law examination.

CID only issues licenses to qualified business entities that employ or are owned by one or more Qualifying Parties “who are validly certified by CID to perform the scope of work in which the licensee intends to engage”.

Applicants must be pre-approved to test; those considered eligible must test within 6 months of the date of eligibility, or reapply to the CID.

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334 New Mexico Contractor Licensing, Frequently Asked Questions, psi exams
335 PSI (2012), *State of New Mexico: Contractor Examinations Candidate Information Bulletin* p.1
<table>
<thead>
<tr>
<th>Licence Type</th>
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<th>Exam Fee</th>
<th>Licence and renewal fee</th>
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<td>N/A</td>
</tr>
</tbody>
</table>

*Classifications require multiple exams. Renewal cycle is three years.

This table has been reproduced from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition.

The applicant must provide a complete licence application; a copy of a valid qualifying certificate (or exam score report); a Bond; proof of current (with the last year) New Mexico Tax ID number application with official stamp or registration certificate. For Corporations, Companies or Partnerships, other proof of registration is required.

Workers compensation insurance must be filed with the New Mexico Workers’ Compensation Administration.

A $10,000 Consumer Protection Code Bond is required of all new licenses and all renewals of current CID issued licenses (also referred to as ‘proof of financial responsibility’).

Reciprocity arrangements only exist for journeyman electricians only. No other reciprocity agreements exist for other trades.

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336 Penalty fees are incurred for late renewal: [http://www1.qa.rld.state.nm.us/uploads/files/License_Fees.pdf](http://www1.qa.rld.state.nm.us/uploads/files/License_Fees.pdf)
338 PSI (2012), How to Obtain a New Contractor License  p.1
339 According to guidance issued by psi, since 2008 Bond requirements replaced three options previously available to contractors to satisfy the financial responsibility requirement. The bond has been required for all new licenses since July 2009. PSI (2012), How to Obtain a New Contractor License  p.8
340 This is according to information in the 2012 Edition of the Contractor’s State Licensing Information Directory, National Association of State Contractors Licensing Agencies
Unlicensed contractors

Contracting without a licence in the State of New Mexico is against the law. Under the Construction Industries Licensing Act (CILA) unlicensed contractors may be issued a contractor’s licence as long as the individual can meet all regular licensing requirements and four additional conditions:

1. Pay a fee of 10% of the value of all non-licensed contracting work performed in New Mexico during the past year;
2. Pay a fee of 5% of the total bid amount for construction projects for which the applicant bid or offered a price, but was not awarded the job;
3. Resolve any outstanding consumer complaints; and
4. Show there has been no monetary damage to anyone as a result of his unlicensed contracting activity

If an unlicensed contractor does not wish to become licensed the individual must either meet all of the above requirements, plus pay a service fee of 10% of the total administrative fee, or, face criminal charges of unlicensed contracting. Charges can result in a county jail sentence and/or the issuing of a fine – dependent on the dollar value of the unlicensed work carried out.

Dealing with disputes and complaints

If a contractor fails to correct code violations that are identified through an investigation process, a consumer is able to attach the bond for assistance in correcting building code violations caused by a licensee.

The Construction Industries Division (CID) will investigate a number of different complaints related to sales, violations of building codes, failure to permit or inspect, unlicensed activity, aiding and abetting unlicensed activity for example. In these cases an investigation will be opened, and an investigator will be assigned to the case with the purpose of determining whether a licensee has violated the Construction Industries Licensing Act, or the Manufactured Housing Act. Code Bond disbursements are not dealt with by the CID.

The result of CID investigations will relate solely to disciplinary action – it will not result in financial reimbursement or payment of damages. If a licensee is found to be in breach of their licence this will be reported to the Construction Industries Commission or the Manufactured Housing Committee and this may result in the licensee being fined or subject to licence revocation. The

341 http://www.rld.state.nm.us/construction/Get_Licensed.aspx
342 http://www.rld.state.nm.us/construction/Get_Licensed_FAQs.aspx
343 NASCLA, Contractor’s State Licensing Information Directory, 2012 Edition
Commission/Committee has up to two years to impose discipline on a licensee\textsuperscript{345}.

The New Mexico Attorney General's Consumer Protection Division deals with consumer complaints regarding, amongst other things, home building and home improvement repairs. The office will provide a range of services in this regard, including tracking complaints, offering dispute resolution services, educating the public about consumer issues, for example\textsuperscript{346}. The division does not, however, represent individual consumers\textsuperscript{347}.

In New Mexico State, contractors/subcontractors and individuals who perform work or supply materials to a build or alteration/demolition are entitled to file for a lien. A direct contractor must file within one hundred and twenty days of completion, while an indirect contractor has ninety days.\textsuperscript{348} For a claim of $5,000 or more, written notice must be given by the claimant not more than 60 days after initially providing work or material, or the lien is unenforceable\textsuperscript{349}. Unless the proceedings are being heard, the lien will dissolve after two years, however the lien in New Mexico State is not assignable to other parties.\textsuperscript{350} Additionally the state allows diminished responsibility by those with interests, by posting visibly, a notice at the said property, as long as this is within three days of obtaining knowledge of the works\textsuperscript{351}.

\textsuperscript{345} \url{http://www.rld.state.nm.us/uploads/files/FILING%20A%20COMPLAINT%20-%2012-31-12(1)-1.pdf} p.4

\textsuperscript{346} \url{http://www.nmag.gov/consumer/consumer-information}

\textsuperscript{347} \url{http://www.nmag.gov/the_office/Communications-Division/consumer-protection}

\textsuperscript{348} \url{http://constructionliens.uslegal.com/state-laws/new-mexico-construction-lien-law/}

\textsuperscript{349} \url{http://constructionliens.uslegal.com/state-laws/new-mexico-construction-lien-law/}

\textsuperscript{350} \url{http://constructionliens.uslegal.com/state-laws/new-mexico-construction-lien-law/}

\textsuperscript{351} \url{http://constructionliens.uslegal.com/state-laws/new-mexico-construction-lien-law/}
6.4 New York City

The GDP for New York in 2011 (in millions of current dollars) was $33,929\(^{352}\). Within the construction industry there was a total number of 45,014 firms and 45,293 establishments with 301,502 in employment. The annual payroll for the collective workforce within the construction industry was $17,751,543\(^{353}\). These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

"New York licenses fewer lower-income occupations than most states, only 33, but for those it does licence, it imposes substantial barriers."\(^{354}\)

At the state level, there are no licensing requirements for public or private construction work, except for asbestos handling; licensing information is available from the State Department of Labour, Division of Safety and Health. The Division issues licenses for certain occupations for which there is a public safety and health concern (other licensed occupations include crane operators, explosives dealer, pyrotechnician, for example).

In New York City, registrations are required for a number of occupations including General Contractors; categories of registration include: New Buildings; Alterations; Demolitions; Foundations/Excavation; Concrete. Registrations are valid for 3 years, subject to an initial registration fee of $300 and a renewal fee of $240\(^{355}\).

Home Improvement Contractors’ (HIC) Licenses are issued by the Department of Consumer Affairs (DCA) to persons or businesses “engaged in the construction, repair, remodelling, or addition to any land or building used as a residence. This includes, but is not limited to, the construction, replacement, or improvement of basements, driveways, fences, garages, landscaping, patios, porches, sidewalks, swimming pools, terraces, and other improvements to structures or upon land that is next to a home or apartment building”\(^{356}\). A ‘home’ is defined as either a condo unit; a co-op unit; a rented apartment; a private dwelling with four or fewer residential units\(^{357}\).

A licence is required when performing home improvement work in New York City of a value in excess of $200\(^{358}\).

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\(^{353}\) United States Census Bureau [http://www.census.gov/econ/susb/](http://www.census.gov/econ/susb/)


\(^{357}\) NYC Department of Consumer Affairs (no year?), *Home Improvement Consumer Guide* p.5

According to a November 2012 release on the New York City official website, there are in excess of 13,200 Home Improvement Contractors licensed by the DCA\(^\text{359}\).

Some additional activities are licensed separately:

- those who negotiate home improvement contracts are required to obtain a **Home Improvement Salespersons License**\(^\text{360}\)

- home improvements that involved plumbing, electrical work, pointing or extensions to a residence require a permit from the NYC Department of Buildings

Further permits will be required by contractors if they plan to conduct work to sidewalks, and separately for hauling or transporting waste produced from business operations\(^\text{361}\).

First time applicants for a HIC licence or the Salespersons licence are required to pass an examination testing their understanding of their responsibilities under the law. From December 2012 the NYC Department for Building became responsible for administering all construction trade licence exams; at the same time updated fees were introduced for written and practical licensing examinations and background investigations\(^\text{362}\).

Prior to completing an application all prospective licensees must obtain an applicable Business Certificate (based on the businesses legal structure) which can be requested by the DCA at any time. Licence applications must show evidence of the following:

- Sales Tax Identification Number (or, if the business has submitted an application and is awaiting an ID number, the Certificate of Authority Application Confirmation Number)
- Proof of business address
- Proof of home address
- Fingerprints *(which will be checked for any criminal record)*
- Workers’ Compensation Insurance
- DCA Trust Fund Enrolment or Copy of Surety Bond (or Third Party Bond)
- Home Improvement Contractor Exam**
- Roster of Employees (of licensed salespersons)
- Contractual Compliance Agreement

*All sole proprietors, general partners, directors, corporate officers, and all shareholders owning 10% or more of company stock must be fingerprinted at the Department of Consumer Affairs (DCA) Licensing Center.*


\(^\text{361}\) http://www.nyc.gov/html/dca/html/licenses/100.shtml

\(^\text{362}\) NYC Buildings (2012), *Notice of Upcoming Change: Licensing: New Examination and Background Investigation Fees* p.1
**Exemptions apply.**

**A sole proprietor, general partner, director, corporate officer, or shareholder owning 10% or more of company stock must visit the DCA Licensing Center, located at 42 Broadway, 5th Floor, in lower Manhattan, to take the Home Improvement Contractor Exam.**

If the applicant’s business is a sole proprietorship or general or limited partnership, the proprietor or each individual general partner must submit a Child Support Certification Form. If the application is filed by someone other than the applicant the applicant must submit a Granting Authority to Act Affirmation.[363]

The associated fees are as follows:

- $75 processing fee for fingerprinting
- $50 HIC Exam Fee
- Licence fees vary between $25 and $125 depending on the time of year the application is filed, and whether it is done so in a year ending in an odd digit, or a year ending in an even digit.[364]
- $200 must be paid into the Trust Fund or a bond must be posted (an additional payment of $200 is required every two years when the licence is renewed)

**Dealing with disputes and complaints**

Where disputes arise between consumer and contractor – and where these cannot be resolved between the two contracting parties – a complaint can be filed with the DCA. In such circumstances the DCA will investigate the complaint and try to mediate the dispute with the contractor on the consumer’s behalf.

An administrative hearing may be held if the matter is unable to be resolved, with an administrative law judge conducting the hearing; an administrative order may be the result of such a hearing which will require the contractor to make restitution.

Should a contractor fail to comply with an administrative order the DCA Trust Fund, supported by mandatory payments from contractors, provides compensation to consumers; however this is usually the last resort, and restrictions apply.[365] In addition, the DCA will revoke the contractor’s licence.

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[365] The homeowner must have hired and paid the contractor; the licensed contractor must have contributed to the Trust Fund during the relevant licence period; an administrative law judge determined that the contractor violated the law causing the homeowner to suffer monetary damages; and the licensed contractor cannot be located or made to pay. From: http://www.nyc.gov/html/dca/downloads/pdf/Home_Improvement.pdf
In New York a Mechanics’ lien should be served against the owner and recorded, five days before or thirty days after filing for proof of service with the county clerk, otherwise it will be deemed invalid and terminated. A lien under New York law lasts ‘for a period [no] longer than one year’ and are assignable. The state also protects the subcontractors and laborers who can apply for contract details between the owner and construction company/worker and then file their own separate charge. In addition the state does not permit 3rd parties with an interest in the property from being exempt. The release of the lien is only permitted when a bond has paid the full amount or a certificate by the lien holder is produced to the local courts.

A contractor must be licensed when they perform home improvement work and when they commence a lawsuit to recover monies due to them for the work.

In many counties and municipalities it is a Class A misdemeanor to undertake home improvement work without a licence. Punishment for such an offence can include a fine of between $500 and $5,000 for each offence and civil penalties can be $100 per day. In New York City, offenders’ vehicles can be seized and under many statutes imprisonment is authorised.

Furthermore, the unlicensed contractor has no recourse to obtain compensation for their services – New York State law states that an unlicensed contractor cannot enforce a contract against a property owner, nor seek the reasonable value of the services rendered. Whether the consumer was aware that the contractor was unlicensed prior to commencing the work is immaterial.

According to press articles a summer 2012 enforcement sweep the DCA caught one in five home improvement contractors operating without a licence. In the previous year the DCA conducted 755 inspections in the City, issuing nearly 400 violations, seizing 134 vehicles and revoking or suspending in excess of 60 licenses.

A similar ‘sweep’ was conducted in 2009, resulting in “1,524 inspections, 468 violations, 17 criminal summonses or arrests, and 175 seizures of vehicles owned by unlicensed home improvement contractors during a 10-week, multi-county enforcement sweep in New York City and Nassau and Westchester counties... Regional officials also reclaimed $8.6 million in restitution for consumers.”

Monitoring of licensing schemes, and review

In response to the damage caused by Hurricane Sandy in 2012, the Mayor and the Consumer Affairs Commissioner took steps in November 2012 to ‘expedite’ additional Home Improvement Contractor

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368 http://www2.nycbar.org/Publications/construc.htm
369 http://www2.nycbar.org/Publications/construc.htm
370 http://www2.nycbar.org/Publications/construc.htm
371 Reported in Rockaway’s 'The Wave Newspaper (2012), One In Five Contractors Are Unlicensed and on the ABC ‘local’ website
372 The Wave Newspaper (2012), One In Five Contractors Are Unlicensed
Licenses to respond to the increased demand for work by homeowners. Supporting the move was a widespread publicity campaign alerting consumers to the importance of ensuring that they carry out the proper checks to ensure their contractor is licensed. As part of the move, unlicensed contractors could see their applications processed in as little as two days\textsuperscript{374}.

According to one press article, between 2003 and 2012 the number of licensed contractors doubled to nearly 13,000 due to aggressive enforcement and focused outreach work by the DCA\textsuperscript{375}.


\textsuperscript{375} The Wave Newspaper (2012), \textit{One In Five Contractors Are Unlicensed}
6.5 Washington State

In 2011, Washington’s GDP relating to the construction industry was $12,883 (millions of current dollars)\(^{376}\). The 2010 census identified a total of 20,842 firms and 21,027 establishments in Washington and total employment numbers of 140,964. The annual payroll for the construction industry was $7,186,254\(^{377}\). These figures are for the whole of the construction sector; individual figures for the RMI industry were not available.

“Washington’s licensing burdens are lower than most states... Most of Washington’s licenses require only fees\(^{378}\).”

Construction work of all kinds - including asbestos abatement - at the state level, is regulated by registration.

General and speciality contractors must register with the Department of Labour & Industries (L&I); these trades are defined as follows:

**General Contractor**: can perform or supervise numerous building trades or crafts
**Speciality Contractor**: can perform one building trade or craft\(^{379}\)

A range of different types of work require a contractor to be registered with the L&I; registration is required for a contractor to carry out, or to offer or submit a bid to carry out the following:

- Construct
- Alter
- Repair
- Consult or superintend
- Add to or subtract from real property
- Improve, move, wreck or demolish
- Develop residential property for sale
- Install cabinets, remove trees, or “flip” houses\(^{380}\)

For new businesses the applicant must – before they register – decide on their business structure and either register the business with the Washington Secretary of State’s Office, or apply for a Washington Business License.

Once a business has been established and a UBI number received, the applicant must:

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380 Washington State Department of Labor & Industries (no year), *Construction Contractors: Get the Facts, Get Registered: Contractor Registration* p.1
• Obtain a Contractor Registration Application
• Purchase bond and liability insurances
• Provide paperwork (original copy of complete and notarised Application for Contractor Registration; original copies of insurance and bond documents)
• Pay the appropriate fee

Contractor registration is valid for two years from the registration or renewal date, unless the bond or insurance is cancelled or impaired.

When advertising, soliciting bids or offering to carry out work, registered contractors must include their registration number on business cards, adverts, company listings, signs, estimates and bid proposals.

Applicants for a Contractors’ licence are not required to take any examinations or document experience for the general contractor or specialty contractor licenses. Contractors are required to carry liability insurance in the amount of $200,000 for public liability and $50,000 for property damage. In addition, they must post cash deposits or surety bonds of $12,000 for general and $6,000 for specialty contractors.

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Application Fee</th>
<th>Biennial Renewal Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>General and Specialty</td>
<td>$113.40</td>
<td>$113.40</td>
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</tbody>
</table>

*This table has been reproduced from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition.*

**Electricians:** Trade examinations are required for electricians, electrical administrators and master electricians. Electricians and Master Electricians require prior approval for examination. Electrical Administrators contact the exam contractor directly, and then contact the department once the exam is passed. A $4,000 bond is required for electrical contractors. Telecommunication contractors must also be insured in the amount of $20,000 property damage and $150,000 public liability.

Continuing education is required for electricians, administrators, trainees and master electricians (except for telecom administrators).

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381 Washington State Department of Labor & Industries (no year), *Construction Contractors: Get the Facts, Get Registered: Contractor Registration* p.2
382 Washington State Department of Labor & Industries (no year), *Construction Contractors: Get the Facts, Get Registered: Contractor Registration* p.4
383 NASCLA, *Contractor’s State Licensing Information Directory*, 2012 Edition
384 NASCLA, *Contractor’s State Licensing Information Directory*, 2012 Edition
Licensing Schemes - An International Perspective

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Application Fee</th>
<th>Renewal</th>
<th>Late Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Contractor</td>
<td>$255.20</td>
<td>$255.20 (2 years)</td>
<td>N/A</td>
</tr>
<tr>
<td>Electricians</td>
<td>$82.80</td>
<td>$76.80 (3 years)</td>
<td>$153.70</td>
</tr>
<tr>
<td>Electrical Administrator (except telecom)</td>
<td>$115.40</td>
<td>$145.90 (3 years)</td>
<td>$291.80</td>
</tr>
<tr>
<td>Telecommunication Administrator</td>
<td>$76.80*</td>
<td>$97.20 (2 years)</td>
<td>$194.50</td>
</tr>
<tr>
<td>Electrical Trainee</td>
<td>$40.60</td>
<td>$49.10 (2 years)</td>
<td>$68.90</td>
</tr>
<tr>
<td>Master Electrician</td>
<td>$147.60</td>
<td>$145.90 (3 years)</td>
<td>$291.80</td>
</tr>
</tbody>
</table>

*Includes original certification & Application processing fee

This table has been reproduced from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition

Plumbers: Trade examinations are required for specialty and journeyman plumbers with a minimum score of 70%. All plumbing work must be conducted through registered contractors. Experience requirements are 6,000 hours for residential specialty and 8,000 hours, of which 4,000 must be commercial, for journeyman. Backflow specialty requires an active BAT card.

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Application Fee</th>
<th>Renewal</th>
<th>Late Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Journeyman/Residential</td>
<td>$151.90</td>
<td>$121.60</td>
<td>$243.20</td>
</tr>
<tr>
<td>Backflow Specialty</td>
<td>$151.90</td>
<td>$83.90</td>
<td>$167.80</td>
</tr>
<tr>
<td>Medical Gas</td>
<td>$55.90</td>
<td>$83.60</td>
<td>$167.20</td>
</tr>
<tr>
<td>Trainee</td>
<td>$45.20</td>
<td>$45.20</td>
<td>N/A</td>
</tr>
<tr>
<td>Domestic Pump Specialty</td>
<td>$151.90</td>
<td>$182.50</td>
<td>$365.00</td>
</tr>
</tbody>
</table>

This table has been reproduced from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition

Other: Continuing education is required for journeyman, residential specialty, plumber trainees and domestic pump and pump irrigation plumbers.

For electrician certification, reciprocal agreements exist with Alaska, Arkansas, Colorado, Massachusetts, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Texas, New Hampshire and Wyoming. Plumbing agreements exist with Idaho.

Dealing with disputes and complaints

In Washington State indirect/sub-contractors are able to enact a construction lien for works and applications.

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385 NASCLA, Contractor’s State Licensing Information Directory, 2012 Edition
materials, but must first issue a formal secured notice that requires a signature, to either the primary contractor or the property holder\(^{386}\). Failure to follow the specifics within this notice can regard it as invalid against who it is issued to and potential future property owners.

The Washington State Statute also stipulates that the worker must hold the correct licence, but that their ‘right shall not be lost by suspension or revocation of registration or license without their knowledge’\(^{387}\).

The release of a lien on payment is controlled through the courts and is binding. However, ‘frivolous’\(^{388}\) claims of lien deemed inaccurate can also be dealt with by the defendant in the superior court of the county, and enable them, where proof is justified, to cancel the lien. Again a lien in Washington State should be issued prior to ninety days of the work completed.

Within Washington State it is a gross misdemeanour to perform as a contractor, or to offer to do work, submit a bid, or advertise without being registered. Other offences include using a false or expired registration number, transferring a registration to an unregistered contractor (or to allow an unregistered contractor to work under a registration issued to another contractor) and subcontracting to or using an unregistered contractor. Offenders can be punished by a sentence of 0-12 months and a maximum fine of $5,000\(^{389}\).

**Monitoring of licensing schemes, and review**

According to a news article published by the Washington Department of Labour and Industries (L&I), four ‘sweeps’ were carried out between August and November 2012 by construction compliance inspectors at 257 work sites, resulting in 41 citations for registration problems. On average, inspectors issue seven such citations each month\(^{390}\).

The manager of L&I’s construction compliance programme stated in the same November 2012 article that “his program has stepped up staffing and focus in the past year and a half, with the welcome support of builder groups. In the last fiscal year alone, L&I inspected more than 10,000 jobsites — 56 percent more visits and 39 percent more violations uncovered than in the previous year”\(^{391}\).

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\(^{389}\) Hellberg, A. for The Joint Legislative Task Force on the Underground Economy (2009), *Criminal Penalties for Unlicensed Contractor Activity in Selected States* p.1

\(^{390}\) Washington State Department of Labor & Industries (2012) *News Release: Surprise Wenatchee sweep of 63 work sites uncovers unregistered contractors*

\(^{391}\) Washington State Department of Labor & Industries (2012) *News Release: Surprise Wenatchee sweep of 63 work sites uncovers unregistered contractors*
7. Comparison of schemes table

The following pages summarise the main components of licensing schemes in the form of a ‘quick comparison’ guide\(^\text{392}\). The information summarised includes the following:

- Number of licence classes/grades
- Minimum value of work above which a licence is required
- Licence fee
- Licence validity period
- Qualification/education requirements
- Experience requirements
- Insurance, warranty or bond requirements
- ‘Other’ requirements
- Penalty for licence infringement
- Penalty for operating without a licence

\(^{392}\) As stated in the introduction to this report, it hasn’t always been possible to separate out domestic works from those operating in the contracting environment.
<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Name and number of licence classes/grades</th>
<th>Minimum value of work</th>
<th>Licence fee</th>
<th>Validity period (yrs)</th>
<th>Qualifications/ Education requirements</th>
<th>Experience</th>
<th>Insurance, Warranty or Bond requirements</th>
<th>‘Other’ requirements</th>
<th>Penalty for infringement</th>
<th>Unlicensed penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Australia</td>
<td>Building Work Contractors Licence Building Work Supervisors Registration</td>
<td>$12,000</td>
<td>$179.00</td>
<td>10 years</td>
<td>All licensees must demonstrate at least two years’ experience relevant to the class of licence they apply for, but not necessarily for the full scope of work the licence permits. At present experience is not competency-based.</td>
<td>A broad range of knowledge and experience must be proven</td>
<td>Insurance must be taken out by building work contractors when performing domestic building work costing $12,000 or more and requiring council approval. This includes: • building a house • doing renovations • building an extension.</td>
<td>n/a</td>
<td>Up to $20,000, cancellation of licence, ban from holding a licence.</td>
<td>Significant penalties can be imposed for operating without a licence. This is discretionary</td>
</tr>
<tr>
<td>ACT</td>
<td><strong>Class A</strong> Unlimited – building work in relation to a building that is 3 storeys or lower (not including specialist work or handing asbestos). <strong>Class B</strong> incorporates Class A as well as basic building work. <strong>Class C</strong> incorporates Classes A &amp; B as well as</td>
<td>n/a</td>
<td>Application $207.00, Re-application $31.00, 1 year licence $207.00, 3 year licence $466.00, Owner Builder $207.00, Amend to a licence (not)</td>
<td>1 or 3 years</td>
<td>Class A Degree, Class B Diploma or Advanced Diploma Class C Certificate IV in building</td>
<td>Class A documentary evidence of 2 years’ experience Class B documentary evidence of 2 years’ experience Class C documentary evidence of at least 2 years</td>
<td>Builders in ACT must have a residential building insurance policy or a “fidelity certificate” to protect consumers/homeowners against defective and incomplete work. There is currently one type of residential building insurance product required by law. Insurance covers residential buildings of three storeys or</td>
<td>There must be a written contract between a contractor and a homeowner.</td>
<td>Include reprimands, written warnings, cancellation or suspension of a licence, conditions imposed on the persons’ licence. Demerit</td>
<td>Infringement fines.</td>
</tr>
<tr>
<td>Building work (other than specialist building work or handling asbestos) in relation to a building that is a class 10b structure (other than a swimming pool or swimming pool fence) and is ancillary Class D non-structural basic building work, other than specialist building work or handling asbestos</td>
<td>Made at the time of renewal $207.00</td>
<td>Relevant building work experience Class D documentary evidence of at least 3 years building work experience of the type of work to be undertaken under licence</td>
<td>Less and has a maximum payout of $85,000 for each premises.</td>
<td>Points may be applied, which last for 3 years</td>
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Owner Builders this provision is in place to allow owners to undertake additions and alterations to their own sole occupancy unit. It has not been exercised in relation to constructing a class 2 building.
<p>| NSW | Contractor Licence – A person who carried out residential work over $1000. Specialists in electrical wiring, plumbing, gas-fitting; air conditioning and refrigeration (except of plug-in appliances) Supervisor Certificate Nominated Supervisor Tradesperson Certificate | Application 1 year licence $599 Application 3 year licence $1,119 Renewal 1 year licence $ 400 Renewal 3 year licence $959 Application Partnership 1 year licence $1001 Application Partnership 3 year licence $1,529 Application Corporation 1 year licence $1,201 Application Corporation 3 year licence $1,917 | Qualification requirements for all licence trade categories (excluding swimming pool building) introduced in 2006 | For a “Building” licence 2 years’ experience. | Contract works insurance – Protection of the customer Public liability insurance – Injury as a result of building works Workers compensation – For employees | Warranty period 6 years for structural defects and 2 years for non-structural defects | Suspension or cancellation of licence | Fines can be imposed on unlicensed traders. |</p>
<table>
<thead>
<tr>
<th>Queensland</th>
<th>Class 1 Builder</th>
<th>Licence application fees for Builder of Trade Contractor Grade vary - dependant on the financial information supplied – from AU$24.90 to AU$1,150.80</th>
<th>1 year</th>
<th>Relevant technical qualification (or recognition of prior learning)</th>
<th>2 – 4 years’ relevant experience</th>
<th>Contractors who carry out domestic building work must take Building Indemnity Insurance, where the domestic building work is $12,000 and over – and council approval is required.</th>
<th>Three written references</th>
<th>Up to $27,000 for an individual. $137,000 if prosecuted in the Tribunal/Courts.</th>
<th>BSA has the authority to impose fines on unlicensed contractors, and to start (civil) court proceedings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>Licensing Requirements</td>
<td>Warranty Period</td>
<td>Contractors</td>
<td>Consumers</td>
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<tr>
<td>Germany</td>
<td>A self-employed tradesperson may be required to register with the local Trades Office (Gewerbeamt) depending on where they live. They will most likely be required to register their business and receive a certificate of registration (Gewerbeschein).</td>
<td>German federal law: warranty period for building work is five years, reduced to four years according to VOB.</td>
<td>Contractors are very rarely required to give collateral warranties to an employer, purchaser or tenant. In German federal law the warranty period for building work is five years, this is reduced to four years according to VOB and for certain types of work this may be just two years. There are different types of warranties such as performance warranties and warranty bonds.</td>
<td>Consumers are encouraged to enter into a written contract with a construction contractor.</td>
<td>n/a</td>
<td>n/a</td>
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<tr>
<td>Denmark</td>
<td>Expected to have completed formal accredited training in their area of expertise.</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
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<tr>
<td>Netherland</td>
<td>Expected to have completed formal accredited training in their area of expertise.</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
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<tr>
<td>Licensing Schemes - An International Perspective</td>
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<td><strong>California</strong></td>
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<td>Classes A (General Engineering Contractor); B (General Building Contractor; C Specialty Contractor (incl. 41 separate C classifications); C-61 Limited Speciality classifications are listed in D subcategories).</td>
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<td>California</td>
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<tr>
<td>$300 application; $180 licence; $360 biennial renewal</td>
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<td>2 for active status; 4 years for inactive status.</td>
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<tr>
<td>No education requirement. Written business and law exam. Written specific trade exam.</td>
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<td>4 years in the last immediate 10 years</td>
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<td>Contractors bond of £12,500 Workers Compensation Coverage for all licensees, or an exemption</td>
<td></td>
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<tr>
<td>Fingerprinting and FBI background check Minimum operating capital of $2,500</td>
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<tr>
<td>Revocation or suspension; disciplinary bond filed for the licence to be reinstated or reissued, or for a new licence.</td>
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<tr>
<td>0-6 months in jail and/or $5,000 fine.</td>
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</tbody>
</table>

| Florida                                       |
| 3 main licence classes. Division I Construction: | n/a |
| • General                                     | $135 exam; $200 financially responsible officer; Initial licensure $309-$409 (depending on even/odd year) and an exam pass prior to Jan 1st 2009; $149-$249 (depending on even/odd year) and an exam pass after Jan 1st 2009 For businesses a Business Registration fee of $50 applies. |
| • Building                                   | 2-active and inactive licenses |
| • Residential                                | No construction related education required. Written examination covering business, finance and construction subjects; pass grade of 70% |
| • Specialty Structure                        | 4 years in the category of licensure (one of these years must be supervisory experience) |
| Division II Construction (12 subclasses)      | $300,000 liability Workers Compensation Coverage for all licensees, or an exemption |
| Electrical (16 subclasses)                   | Credit report showing a FICO credit score of 660 or higher (for a score of under 600 a bond or letter of credit must be supplied by applicants) Bond value of $20,000 for Division I Contractors; $10,000 for Division II Contractors. For licence renewal contractors are required to undertake 14 hours of |
| Information in this table is for 'Contractors'. | Licence suspension Licence probation. |
| 0-12 months in jail and a maximum fine of $1,000 |

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<table>
<thead>
<tr>
<th>Licensing Schemes - An International Perspective</th>
</tr>
</thead>
</table>

| New Mexico | 40 Classes and speciality classifications (this includes MES trades). Info in this table is for the ‘Residential Building’ class. | $36 application (including certificate and 2 cards) $300 licence fee (new and renewal) $100 exam | 3 | Written examinations – trade (applicable to the classification being sought) and business law; minimum score of 75%. | 2 or 4 yrs in the 10 yrs immediately preceding application (depending on licence class) | $10,000 consumer protection code bond Workers Compensation Coverage for all licensees, or an exemption | A current New Mexico Tax ID number application with official stamp or registration certificate. | Disciplinary action by CID – a fine or licence revocation. | Can obtain a licence on meeting conditions and paying a percentage fee from all contracting work performed in the State in the past year. |

| New York City | General Contractor Home Improvement Contractor (information in this table is for the HIC licence) | $200 | $75 processing fee for fingerprinting $50 HIC Exam $25-$125 licence | 2 | HIC business exam | n/a | $200 payment into the DCA Trust Fund; or a $20,000 surety bond If an employer, Workers Compensation Coverage | Business Certificate Sales Tax ID number Roster of employees Contractual Compliance Agreement Fingerprinting and criminal record check | Licence suspension or revocation. | Fine of $500 to $5,000 for each offence; vehicle seizure; possible imprisonment |

- Continuing Education (CE) across a range of subject in each renewal cycle.
- A current New Mexico Tax ID number application with official stamp or registration certificate.
<table>
<thead>
<tr>
<th>Washington</th>
<th>Contractors’ Registration and Speciality Contractors’ Registration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Electricians must be licensed – 16 classes of licence</td>
</tr>
<tr>
<td></td>
<td>Plumbers must be registered - 6 classes exist.</td>
</tr>
<tr>
<td></td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>£113.40 application fee</td>
</tr>
<tr>
<td></td>
<td>$113.40 biennial renewal fee</td>
</tr>
<tr>
<td>2</td>
<td>n/a</td>
</tr>
<tr>
<td>n/a</td>
<td>$200,000 public liability</td>
</tr>
<tr>
<td></td>
<td>$50,000 property damage</td>
</tr>
<tr>
<td></td>
<td>Cash deposit or surety bond of $12,000 for general or $6,000 for speciality contractors</td>
</tr>
<tr>
<td></td>
<td>If an employer, Workers Compensation Coverage</td>
</tr>
<tr>
<td></td>
<td>The contractor must have a current business licence.</td>
</tr>
<tr>
<td></td>
<td>A contractor must provide a ‘Notice to Customer’ for any residential project with a projected cost of $1,000 or more and any commercial project of $1,000 to $60,000</td>
</tr>
</tbody>
</table>

The contractor must have a current business licence. A contractor must provide a ‘Notice to Customer’ for any residential project with a projected cost of $1,000 or more and any commercial project of $1,000 to $60,000.
8. Thematic review

This study has identified a number of key characteristics and features of current international examples of licensing schemes which are summarised in the following sections. Many of the schemes have features in common – such as qualifications and experience requirements – whilst other features serve to demonstrate the difference between the ways in which occupational licensing is administered. For example, licensing at an individual and company level in Australia, and licensing at a “company” level (which more often than not means individuals) in the United States.

We have summarised, in very brief terms, the key issues under a number of themes, as follows:

<table>
<thead>
<tr>
<th>Licensing system structure</th>
</tr>
</thead>
</table>

- Currently there are no single ‘national’ – i.e. Federal - licensing bodies or schemes in Australia or the USA.

- A national licensing scheme is being introduced in Australia to overcome the challenges of multiple licences and the reported ineffectiveness of mutual recognition; primarily to reduce regulatory red tape, but also to increase economic mobility, improve productivity and integrate the licensing and Vocational Education and Training (VET) systems.

- In many states in America a ‘two-tier’ system is in operation, with combinations of registration, certification, and licensing at state and/or local level (for example, at a county or city level).

- Within nations (e.g. Australia and USA) there are many differences between territorial and state schemes – for example in terms of the types and scope of licenses, qualification requirements, insurance requirements. However, most licensing schemes have a number of features in common:
  - Qualifications/education or examination requirements
  - Experience
  - Required proof of identity prior to registration (sometimes including required business addresses, and/or fingerprinting)
  - Insurance and/or bonds
  - Financial standing or a credit score
  - Value of work threshold

- There are few direct equivalences between different state or territorial licenses, hindering
‘mutual recognition’ in Australia and ‘reciprocity’ in the USA (unlike the Canadian Red Card scheme based on qualifications).

Qualifications and competence

- Without a formal ‘licensing’ system in European nations, the industry is largely self-regulating through the qualifications system.

- The German model relies on highly detailed training requirements and mandatory examination, through an Apprenticeship, with the structure underpinned by law. Other European nations operate in very similar ways but the approaches do not meet the need to control unscrupulous trading.

- Qualification requirements in the Australian and American licensing models vary, for example:
  - In the USA, licensing schemes do not always require competence/trade examinations; some states instead require a business examination; some states require both; some states require none.
  - In Australia, licensees are required to have obtained relevant trade qualifications, however the requirements currently vary by state or territory.

Experience

- All licensing schemes in Australia require the individual to have a set number of years’ experience in order to obtain a licence; the requirements vary between state and territory.

- In the USA some schemes require proven experience while others do not; where experience requirements do exist, they vary.

- One possibly important requirement in many US schemes is that of business knowledge and skills. Correct and efficiency management of work is often cited as a major issue in the UK for example.
Company or individual licence

- Contractors’ businesses are licensed in the USA, with a named ‘qualified person’ completing the required exams on behalf of the company.

- In reality and due to the structure of the building industry in the US, the system usually licenses individuals but – in most cases - is ensuring that they have business knowledge, a business address, and either or both minimum competence or financial backing in the form of a bond or insurance.

- In Australia both individuals and companies are licensed.

Insurance and bonds

- In German Federal law the warranty period for building work is up to five years; different warranties exist including performance warranties and warranty bonds. The effect of this is to ensure that consumers ask for proof of insurance cover from contractors.

- Various insurance, warranty and bond schemes exist in the Australian and American systems, with some mandatory requirements. The amount of the bond is forfeit if negligence is proven and the bond schemes, where they exist, operate to compensate homeowners.

- In the USA, Contractors’ Liens exist to protect the contractor; however homeowners can purchase lien waver insurance.

- Home Warranties are a mandatory requirement in Australian states and territories.

- Although it is common across the countries and states reviewed for this research for there to be insurance requirements in place for contractors, we have found no evidence to suggest that the holding of insurances and bonds has a direct effect on reducing the instances of substandard or unscrupulous building practice.
Publicity and public awareness

- In Australia and the USA the licensing systems are well publicised, with wide-spread coverage in telephone directories and websites and even advertisements at local sports events and on local radio.

- Most nations and states that operate licensing schemes also maintain a central online database and/or helpline through which householders can check the accreditation of a prospective tradesperson.

- In Australia and in many US states, contractors are required to display their trading name and licence number on advertisements, signs, publicity and company paperwork.

- Some schemes have now developed fraud-proof identity cards for registered tradespeople.

- In European nations the Vocational Education and Training (VET) system is widely understood to equip individuals with the necessary competence to work in the construction industry, to the required standard. Culturally, the public is assured of the individual’s ability due to the rigour of the VET system, and due to usual practice of employers in verifying an individual’s competence upon entering employment (however, wilful fraud and deception cannot be addressed by such an approach).

Value of work threshold

- Many licensing schemes in Australia, and in the US, set a minimum threshold value for work, above which – by law – a contractor is required to obtain a licence.

- Licensing of ‘handymen’ is not common practice; minimum threshold requirements mean that the relatively low value ‘odd-job’ market is not suffocated by onerous and expensive licensing requirements.

- It should be noted however that thresholds that are set too low also permit cowboys to trade as low as they undercut the stated amount. This can often be accomplished by breaking up any piece of work into several sub-projects.
Penalties for contravening licensing laws

- In the USA and Australia, various penalties can be applied to licensed contractors for breaking licensing rules (for example, not maintaining insurance, not displaying an ID number). These include penalty point systems, restrictions on trading, or even de-registration.

- Where disputes arise and these cannot be resolved between the builder and the consumer, these are dealt with, usually – in the first instance – by the licensing scheme operator, for example through an assigned case manager or inspector.

- Licensees can be fined and have their licence suspended or revoked for performing sub-standard or incomplete building work.

- Loss of bond is usually the first stage of penalty and the bond fund is used to help compensate the aggrieved home-owner.

Penalties for contracting without a licence

- Unlicensed contractors can be reported to the licensing body; managing organisations usually encourage the public to report anyone they suspect of operating without a licence (and there are instances where – to protect the majority of law-abiding contractors – other licensed contractors have reported unlicensed ones).

- ‘Sting’ operations are conducted from time to time in Australia and the United States to catch unlicensed contractors.

- Unlicensed contractors can face imprisonment, fines and various other penalties – such as vehicle impoundment - varying according to the individual territorial or state licensing laws.

- Unlicensed contractors are typically encouraged to obtain a building licence in order to avoid criminal proceedings.
9. Components of occupational licensing schemes

Effects of occupational licensing

The findings of this research suggest that, although there is little hard evidence in the way of existing analysis or proven statistics to demonstrate beyond doubt the benefits of occupational licensing within international domestic building trades, where schemes do exist there are identifiable strengths. These strengths can be summarised as:

- Improvement in quality derived from educational, experience and examination requirements, combined with ‘tests’ of propriety;
- Monitoring of standards by oversight bodies;
- Imposition of disciplinary action to discourage infraction of licensing conditions thereby discouraging unscrupulous tradespeople from even considering such practices;
- Increased income for licensees (achieved through discouraging cowboys and the resulting consumer assurances of quality, stimulating the market);
- Increased willingness of individuals in occupations to invest in their skills in return for higher wages;
- Improved industry status in the eyes of consumers;
- Reduction in legal and administrative costs for dispute procedures;
- Reduced consumer stress and anxiety due to unscrupulous activity;
- A possible increase in market activity due to reduced consumer fear and greater confidence in dealing with tradespeople.

Conversely, there are a number of weaknesses that have been identified. In the main the most prevalent weaknesses centre on concerns to do with cost, both to the industry and to consumers. This research suggests that occupational licensing may have the effect of restricting entry to professions through the requirement of high fees from practitioners. Additionally, the findings imply that a knock-on effect of requiring traders to meet the cost of licensing fees would result in

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393 However, this should not be construed as implying that similar strengths could not be achieved by accreditation schemes.
consumers being charged higher prices for domestic building work. The likely impact on prices is, at this stage, not clear, although within the current highly competitive market it may well be minimal.

The sections below list the components that might be considered desirable to derive the positive effects of occupational licensing.

**Qualifications and experience**

Qualifications and experience are clearly a critical dimension for demonstrating skills and underpinning occupational licensing. Requirements relating to qualifications and experience are a feature common to all but one of the licensing schemes studied in this research and are understood to have the effect of increasing consumer confidence, as well as quality.

Such eligibility requirements in the comparator nations and states, variously comprise:

- Pre-existing trade-related educational/qualifications (i.e. already gained by the individual)
- Examinations or tests undertaken at or near the licensing centre and at the time of application (these can relate to trade and/or business operation, or business law)
- Experience in the relevant trade over a stated period of time.

Schemes that might be considered among the ‘toughest’ in their regulation of the industry include both educational attainment in the trade in question, coupled with the achievement of an examination or supplementary qualification in business operation and/or business law.

The offering and administration of an examination regime would appear to benefit all parties:

1. Consumers are likely to regard the industry in a more favourable light and have greater confidence in the competence and ability of the tradespersons they employ.

2. The tradesperson or contractor themselves becomes competent, and therefore confident, in performing his or her job and, because of consumer confidence, is more able to gain higher wages.

3. For the operator of the licensing scheme sustained revenues are derived from the administration of tests and licences and other income streams such as continuing education and examination fees.

**Publicity**

The critical key to achieving consumer confidence in any licensing scheme is public awareness of both the licensing requirements and the rigour with which they are imposed, combined with ready access to a facility for verifying a contractor’s credentials.
The scheme must be clearly branded with a simple but highly recognisable logo and be promoted to consumers as a mark of quality and business propriety which is also promoted, and given legitimacy by the trade or industry in question.

**Tests of propriety**

In addition to demonstrating knowledge of business operation and business law, tests of propriety – in terms of financial statements and credit scores, for example - provide greater assurance of an individual’s competence in business management.

Combined with criminal background checks (in Australia and the United States performed through fingerprinting), evidence of financial standing helps to provide an indication of an individual’s position as a ‘fit and proper’ person.

Additional requirements in many licensing schemes for a business address, home address and fingerprints also have the advantage of enabling the tracing of miscreants.

Such ‘tests’ are common features of the international schemes studied for this research and are viewed as a means of reducing risk to the consumer. Within the trades in question they are also regarded as safeguarding honest traders and ensuring an enhanced status for them and their trade.

**Disciplinary procedures and penalties**

Recourse in the event of unsatisfactory work, or business dissolution, for example, is a critical requirement of any licensing scheme. As mentioned in the section above on ‘publicity’, consumers must have confidence in the rigour with which a licensing scheme is imposed.

Identification and traceability of licensed contractors is vital to deal effectively with instances of dispute between consumer and contractor, and other disciplinary matters.

The licensing authority must have powers to suspend or revoke licences (and impose other punishments where appropriate).

The regimes studied in the United States and Australia – underpinned by law – make it a criminal offence for an unlicensed individual to operate in a licensed trade. Robust powers for monitoring, detection and punishment are a key component of licensing schemes, usually performed by a dedicated task force.

Such features are undoubtedly resource heavy, but are crucial to an efficient and well regarded scheme.

The costs are arguably more than outweighed by the benefits to licensed trades and to the consumer and to the nation.
Bonds and insurance

Financial compensation for consumers when things go wrong must be considered a fundamental feature to any licensing scheme; it serves not only to underpin consumer confidence, but provides a tangible benefit for using a licensed contractor.

This is a feature common to licensing schemes in Australia and the United States – either through insurance, warranties, bonds, or a combination thereof. In European states many such insurance and warranty schemes are in operation.

There must however be in place strict conditions for invoking insurance and warranty payouts, linked very closely to the disciplinary and penalties procedures, and investigative powers, embodied in the licensing scheme operator.

It is worth considering, also, the role of commercial home insurers in underpinning any licensing scheme. If such organisations were to invalidate claims or significantly reduce payouts on claims resulting from the householder’s use of unlicensed traders the message would quickly be embedded. This is part of the approach used in Canada for the critical trades of electrician and gas engineer.

Consistency in licensing policy

Whatever model is used to operate occupational licensing, centrally set policy is the key to ensuring consistency in the overall structure, and integrated approaches to the various component features of, for example, occupational standards/qualifications requirements; disciplinary procedures and consumer compensation, for example.

An overarching, single agency isn’t necessarily the only, or best, way to achieve this – the reform of occupational licensing in Australia attests to the fact – but centralised powers of policy making would appear to be the most desirable model.
10. Glossary

Note: the definitions below have been developed by Pye Tait Consulting, in discussion with BIS, for the purposes of this report.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational licence</td>
<td>The definition of these terms differs between nations and states. A description is provided in the introduction to each nation within the scope of this research.</td>
</tr>
<tr>
<td>Licensing scheme</td>
<td></td>
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<tr>
<td>Certification</td>
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<tr>
<td>Accreditation</td>
<td></td>
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<tr>
<td>Registration</td>
<td></td>
</tr>
<tr>
<td>Cowboy builder</td>
<td>Any trader who engages in poor workmanship and bad trading practice. This will range from those with criminal intent to those who are merely incompetent, but are not acting maliciously.</td>
</tr>
<tr>
<td>Rogue trader</td>
<td>The definition is not precise, but is intended to cover the spectrum of bad practice.</td>
</tr>
<tr>
<td>Incompetent trader</td>
<td></td>
</tr>
<tr>
<td>Remodelling</td>
<td>This is a term typically used in the USA and is commonly included, along with ‘modernisation’ and ‘additions’, in definitions of home improvement.</td>
</tr>
<tr>
<td></td>
<td>For the purpose of this research, repair, maintenance and improvement (RMI) includes remodelling work.</td>
</tr>
<tr>
<td>Home improvement</td>
<td>Modernisation, remodelling, additions and major replacements to owner-occupied properties after the completion of the original building.</td>
</tr>
<tr>
<td>Bond</td>
<td>A financial bond, payable by the contractor – typically on an annual basis – into a central fund. The funds are used to compensate consumers in the event of a valid claim against a contractor.</td>
</tr>
<tr>
<td>Warranty</td>
<td>This is similar to an insurance policy and covers contractors’ work for building defects or other issues as defined by the warranty issuer. The warranty is usually valid for a period of time after building works are completed.</td>
</tr>
<tr>
<td>--------------------------------</td>
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</tr>
<tr>
<td>Consumer</td>
<td>A member of the public who has paid for a service. For the purposes of this research a consumer is a home-owner who has paid for repair, maintenance or improvement work to be completed on their home.</td>
</tr>
</tbody>
</table>
## Appendix 1 – Organisations contacted

### Australia

<table>
<thead>
<tr>
<th>Organisation</th>
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</thead>
<tbody>
<tr>
<td>ABLIS Australian Business Licence and information service</td>
</tr>
<tr>
<td>Australian Contractors Association</td>
</tr>
<tr>
<td>Australian Institute of Building</td>
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<tr>
<td>Australian Institute of Property Surveyors</td>
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<tr>
<td>Australian Property Institute</td>
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<tr>
<td>Australian Sustainable Built Environment Council</td>
</tr>
<tr>
<td>CHOICE - Australian Consumers' Association (Council)</td>
</tr>
<tr>
<td>Communications Electrical Plumbing Union (CEPU)</td>
</tr>
<tr>
<td>Construction Industry Training Board (CITB)</td>
</tr>
<tr>
<td>Council of Australian Governments (COAG)</td>
</tr>
<tr>
<td>Housing Industry Association</td>
</tr>
<tr>
<td>Master Builders Association</td>
</tr>
<tr>
<td>National Centre for Vocational Education and Research</td>
</tr>
<tr>
<td>National Electrical Contractors Association</td>
</tr>
<tr>
<td>National Occupational Licensing Authority (NOLA)</td>
</tr>
<tr>
<td>Standards Australia</td>
</tr>
<tr>
<td>The National Occupation of Licensing Authority</td>
</tr>
<tr>
<td>The National Skills Standards Council (NSSC) of Australia</td>
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<tr>
<td>The Property Council of Australia</td>
</tr>
</tbody>
</table>

### South Australia

<table>
<thead>
<tr>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Builders Regulation Board of South Australia</td>
</tr>
<tr>
<td>Civil Contractors Federation</td>
</tr>
<tr>
<td>Construction and Property Services Industry Skills Council</td>
</tr>
<tr>
<td>Consumer and Business Services, Government of South Australia</td>
</tr>
<tr>
<td>Consumers Association of SA</td>
</tr>
<tr>
<td>Department of Planning, Transport and Infrastructure</td>
</tr>
<tr>
<td>Master Builders Association of South Australia Inc.</td>
</tr>
<tr>
<td>National Electrical Contractors Association SA</td>
</tr>
<tr>
<td>Office of Consumer and Business Affairs</td>
</tr>
<tr>
<td>SA Association of Consulting Architects</td>
</tr>
<tr>
<td>SA Building Services Contractors Association</td>
</tr>
<tr>
<td>Licensing Schemes - An International Perspective</td>
</tr>
</tbody>
</table>

| SafeWork SA |
| South Australia Office of Consumer and Business Affairs |

| ACT |
| ABLIS Australian Business Licence and information service |
| ACT Association of Consulting Architects |
| ACT Building Services Contractors Association |
| ACT Planning and Land Authority |
| Confederation of ACT Industry |
| Green Building Council of Australia |
| Housing Industry Association |

| NSW |
| NSW Association of Consulting Architects |
| NSW Federation of Housing Associations (community housing) |
| Office of Fair Trading |
| Property Owners Association of NSW |
| Safework ACT |
| Standards Australia |
| The Australian Competition and Consumer Commission |
| The Property Council of Australia |
| Master Plumbers and Electrical Contractors Association of New South Wales |
| National Electrical Contractors Association of New South Wales |
| Building Services Contractors Organisation of New South Wales |

| Queensland |
| Australian Competition and Consumer Commission |
| Housing Industry Association |
| Master Builders Association |
| Master Painters Australia NSW Association Inc. |
| National Electrical Contractors Association of Queensland |
| Office of Fair Trading |
| Queensland Association of Consulting Architects |
| Queensland Building Services Authority |
| Queensland Building Services Contractors Organisation |
| The Property Council of Australia |
# Licensing Schemes - An International Perspective

## Germany

<table>
<thead>
<tr>
<th>Organisation</th>
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<tbody>
<tr>
<td>ARGEBAU</td>
</tr>
<tr>
<td>ARUP (International specialists in residential builds and design)</td>
</tr>
<tr>
<td>Bauer Spezialtiefbau (International Construction, Industry and Resources Group)</td>
</tr>
<tr>
<td>BIBB - Bundesinstitut für Berufsbildung (Institute for Vocational Education and Training)</td>
</tr>
<tr>
<td>Bildungszentren des Baugewerbes (Education centres in the construction industry)</td>
</tr>
<tr>
<td>Bilfinger SE (International construction, building and facility services group)</td>
</tr>
<tr>
<td>Bundesverband Deutscher Bausachverständiger e.V. - BBauSV (Surveyors)</td>
</tr>
<tr>
<td>Bundesvereinigung der Prüfingenieure für Bautechnik e.V. - BVPI (National building control organisation)</td>
</tr>
<tr>
<td>Bundeswirtschaftsministerium</td>
</tr>
<tr>
<td>Chamber of Industry and Commerce in Germany</td>
</tr>
<tr>
<td>Committee for the Construction Industry (CEETB is a European Association promoting high quality standards in building work, inspection and maintenance)</td>
</tr>
<tr>
<td>Department of Trade and Investment</td>
</tr>
<tr>
<td>Deutscher Industrie und Handelskammertag (Chambers of Commerce Association)</td>
</tr>
<tr>
<td>Deutsches Handwerksinstitut</td>
</tr>
<tr>
<td>DGNB (German organisation dealing with certification and sustainable buildings)</td>
</tr>
<tr>
<td>DIBT in Europe (Approval body for construction to support safe and innovative buildings)</td>
</tr>
<tr>
<td>Die Verbraucher Inititve E.V. (The consumer initiative focuses on health and safety/environment consumer protection issues)</td>
</tr>
<tr>
<td>DIN - Deutsches Institut für Normung e.V (German Institute for Standardisation that promotes safety of consumers and workers in German Industry)</td>
</tr>
<tr>
<td>Economy and Technology Ministry (Co-runs an Apprenticeship training programme in the construction sector and this responsibility is shared with the government in association with trade unions and trade bodies)</td>
</tr>
<tr>
<td>Ed. Züblin (International construction company)</td>
</tr>
<tr>
<td>European Consumer Centre Germany (Deals with consumer protection issues when buying services from within internal market of Europe)</td>
</tr>
<tr>
<td>European International Contractors (Organisation that pursues international policy on construction excellence)</td>
</tr>
<tr>
<td>Federal Institute for Occupational Safety and Health (BAUA)</td>
</tr>
<tr>
<td>Federal Institute for Research on Building, Urban Affairs and Spatial Development</td>
</tr>
<tr>
<td>Federal Institute for Vocational Education and Training</td>
</tr>
<tr>
<td>Federal Ministry of Education and Research</td>
</tr>
<tr>
<td>Federal Ministry of Food Agriculture and Consumer Protection</td>
</tr>
<tr>
<td>German Confederation of Skilled Crafts</td>
</tr>
<tr>
<td>German Construction Confederation (ZDB – Zentralverband des deutschen Baugewerbes e.V.) in Berlin - National Organisation of the Construction Sector</td>
</tr>
<tr>
<td>Organization</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Goldbeck Construction Limited (international company based in Germany)</td>
</tr>
<tr>
<td>Hauptverband der Deutschen Bauindustrie</td>
</tr>
<tr>
<td>HOCHTIEF Aktiengesellschaft (international construction service specialists)</td>
</tr>
<tr>
<td>HOCHTIEF Projektentwicklung (international company offers consultancy services in building-related works)</td>
</tr>
<tr>
<td>HOCHTIEF Solutions AG format (international company in construction services offering knowledge and experience)</td>
</tr>
<tr>
<td>Industrial Union Building Agriculture and Environment</td>
</tr>
<tr>
<td>Industriegewerkschaft Bauen-Agrar-Umwelt (German Trade Union)</td>
</tr>
<tr>
<td>Max Boegel (International Building Construction Division)</td>
</tr>
<tr>
<td>Ministry of Building and Transport</td>
</tr>
<tr>
<td>Ministry of Transport, Building and Urban Development</td>
</tr>
<tr>
<td>Royal Institute of Chartered Surveyors (European national group providing membership and information for construction professionals)</td>
</tr>
<tr>
<td>Stiftung Warentest (German equivalent to the UK-based Which? Organisation)</td>
</tr>
<tr>
<td>STREIF (international company specialising in sustainable building systems including residential)</td>
</tr>
<tr>
<td>Supreme Building Authorities and Housing (responsible for all building and housing matters in Germany)</td>
</tr>
<tr>
<td>The Federal Cartel Office / Bundeskartellamt (Office of Fair trading)</td>
</tr>
<tr>
<td>The IG Bauen-Agrar-Umwelt (German Trade Union)</td>
</tr>
<tr>
<td>VZBV Federation of German Consumer organisations</td>
</tr>
<tr>
<td>Zentraluerbon des Deutscen Handwerks</td>
</tr>
<tr>
<td>ZVEH (German-based residential electrical works contractor)</td>
</tr>
</tbody>
</table>
### Denmark

<table>
<thead>
<tr>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Erhvervsstyrelsen) Danish Business Authority</td>
</tr>
<tr>
<td>3XN (international construction, architecture and engineering specialists)</td>
</tr>
<tr>
<td>aarhus aarkitekterne (internationally-based consultants in sustainable construction and residential design)</td>
</tr>
<tr>
<td>ARUP (international specialists in residential building and design)</td>
</tr>
<tr>
<td>Association of European Building Surveyors and Construction Experts</td>
</tr>
<tr>
<td>Bassenan Legoni Architects</td>
</tr>
<tr>
<td>Bedsted Lø Grusværker (Denmark-based organisation within construction Industry)</td>
</tr>
<tr>
<td>BG Stone (International Construction-Based Company)</td>
</tr>
<tr>
<td>Byggeriets Ankenaeun (Denmark Complaint Board of Building Services - deals with poorly carried out construction work)</td>
</tr>
<tr>
<td>Chambers and Partners (Denmark-based expertise/practising in construction</td>
</tr>
<tr>
<td>Construction Sustain.eu (UK-based but expands training and legal requirements in Construction across Europe)</td>
</tr>
<tr>
<td>DABYFO (Denmark-based Association engaging in planning all constructional matters including building control)</td>
</tr>
<tr>
<td>Danish Association of Architectural Firms (Danske Ark)</td>
</tr>
<tr>
<td>Danish Association of Consulting Engineers</td>
</tr>
<tr>
<td>Danish Building and Urban Research</td>
</tr>
<tr>
<td>Danish Building Research Institute</td>
</tr>
<tr>
<td>Danish Construction Association</td>
</tr>
<tr>
<td>Danish Consumer Council</td>
</tr>
<tr>
<td>Danish Enterprise and Construction Authority</td>
</tr>
<tr>
<td>Danish Ministry of Climate, Energy and Building</td>
</tr>
<tr>
<td>Danish Ministry of Economics and Business Affairs</td>
</tr>
<tr>
<td>Danish Society of Engineers (IDA)</td>
</tr>
<tr>
<td>Dansand (Denmark-based construction services)</td>
</tr>
<tr>
<td>Dansk Industri (The Confederation of Danish Industries -DI)</td>
</tr>
<tr>
<td>Dansk Standards (Danish Standards Agency for the protection of consumers and workers)</td>
</tr>
<tr>
<td>DLA PIPER (international law firm with specialism in construction and building laws)</td>
</tr>
<tr>
<td>E. Pihl &amp; Søn A.S. (international building company)</td>
</tr>
<tr>
<td>EKPIZO Consumers’ Association (Denmark-based consumer advice and legislation information)</td>
</tr>
<tr>
<td>European Consumer Centre Denmark (organisation dealing with consumer protection issues when buying services from within internal market of Europe)</td>
</tr>
<tr>
<td>European Society of Construction Law</td>
</tr>
<tr>
<td>Forbrukerrådet (Denmark Consumer Protection Council)</td>
</tr>
<tr>
<td>Horten Law Firm (construction law and contracts experts based in Denmark)</td>
</tr>
<tr>
<td>Keurmerkinstituut (Certification Institute for quality/safety of products/services in Denmark)</td>
</tr>
<tr>
<td>Organization/Individual</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Konstruktørforeningen (KF) (the Danish Association of Building Experts, Managers and Surveyors.)</td>
</tr>
<tr>
<td>Kroghs (International Construction Services Company)</td>
</tr>
<tr>
<td>Legal and Economic Department of The European Consumer Organisation</td>
</tr>
<tr>
<td>LO The Danish Confederation of Trade Unions (training and education)</td>
</tr>
<tr>
<td>Lund Elmer Sandager (international legal advisors on construction laws and projects)</td>
</tr>
<tr>
<td>MAG Centre For Consumer Studies (Consumer safety and information point in Denmark)</td>
</tr>
<tr>
<td>Mary-Ann Knudstrup (Professor of Architecture and Design at Aalborg University in Denmark)</td>
</tr>
<tr>
<td>MT Hojgaard (internationally-based construction and refurbishment services)</td>
</tr>
<tr>
<td>National Agency of Enterprise and Construction</td>
</tr>
<tr>
<td>National Association of Local Authorities in Denmark</td>
</tr>
<tr>
<td>NCC Construction Danmark AS (leading construction company in Denmark)</td>
</tr>
<tr>
<td>Per Aarsleff (international construction contractor services)</td>
</tr>
<tr>
<td>Per Heiselberg (Professor of Indoor Built Environment at Aalborg University in Denmark)</td>
</tr>
<tr>
<td>Rockwool International (Denmark-based producer of insulation materials)</td>
</tr>
<tr>
<td>Royal Institute of Chartered Surveyors (European national group providing membership and information for construction professionals)</td>
</tr>
<tr>
<td>Safety and Environment Department of The European Consumer Organisation</td>
</tr>
<tr>
<td>Technical University of Denmark</td>
</tr>
<tr>
<td>TEKNIQ (Denmark-based employer body for construction sector (insulation and plumbing))</td>
</tr>
<tr>
<td>The Danish Safety Technology (standards in safety, based in Denmark)</td>
</tr>
<tr>
<td>The European Consumer Organisation (deals with consumer protection matters in Europe including Denmark)</td>
</tr>
<tr>
<td>Training Department of The European Consumer Organisation</td>
</tr>
</tbody>
</table>
### The Netherlands

<table>
<thead>
<tr>
<th>Organization</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ad Van Der Aa (international consultancy engineers)</td>
<td></td>
</tr>
<tr>
<td>Af-erkend (well-known for certification/consumer protection guarantees to protect/rectify against faulty residential building works in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>Arcadis (International consultancy on design in infrastructure and buildings)</td>
<td></td>
</tr>
<tr>
<td>ARUP (international specialists in residential builds and design)</td>
<td></td>
</tr>
<tr>
<td>Association of Construction and Infrastructure Companies</td>
<td></td>
</tr>
<tr>
<td>Association of European Building Surveyors and Construction Experts</td>
<td></td>
</tr>
<tr>
<td>BAM Utiliteitsbouw (construction and property services)</td>
<td></td>
</tr>
<tr>
<td>Bellast Nedam (Netherlands-based construction and development company)</td>
<td></td>
</tr>
<tr>
<td>Bouwend Nederland (largest employers’ organisation in the construction and infrastructure industries in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>BouwGarant (Similar to SWK - consumer protection services to protect against faulty residential construction work in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>Bureau Veritas (international organisation specialises in quality, health, safety and environment related certification)</td>
<td></td>
</tr>
<tr>
<td>Committee for the Construction Industry (CEETB (is a European Association promoting high quality standards in building work, inspection and maintenance)</td>
<td></td>
</tr>
<tr>
<td>ConsuWijzer (free consumer advice and information in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>De Consumentenbond for the Netherlands</td>
<td></td>
</tr>
<tr>
<td>DHV (consultancy group in building and manufacturing based in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>Dura Vermeer Groep (leading company in the Dutch construction industry)</td>
<td></td>
</tr>
<tr>
<td>Dutch Government</td>
<td></td>
</tr>
<tr>
<td>Emsbroek installatietechniek (Netherlands-based flexible and project construction)</td>
<td></td>
</tr>
<tr>
<td>European Consumer Centre Netherlands (deals with consumer protection issues when buying services from within internal market of Europe)</td>
<td></td>
</tr>
<tr>
<td>European Federation of Building and Woodworkers</td>
<td></td>
</tr>
<tr>
<td>Government of the Netherlands</td>
<td></td>
</tr>
<tr>
<td>Heijmans, V.C. (major European construction company)</td>
<td></td>
</tr>
<tr>
<td>Jeroen van der Heijden - Dept. of Technology and Policy at Delft University of Technology in the Netherlands</td>
<td></td>
</tr>
<tr>
<td>Kiwa Partners for progress (international certification, inspection, research and consultancy body)</td>
<td></td>
</tr>
<tr>
<td>KVK - Dutch Chamber of Commerce (manages the trade register)</td>
<td></td>
</tr>
<tr>
<td>Ministry of Infrastructure and the Environment</td>
<td></td>
</tr>
<tr>
<td>Nederlands Normalisatie Instifuit (Institute for consumer and worker safety and protection based in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>Nederlandse Vereniging van Bouwkostendeskundigen (Dutch Association construction cost experts)</td>
<td></td>
</tr>
<tr>
<td>Netherlands Foreign Investment Agency (NFIA) (helps advise new companies setting up in the Netherlands on legal and practical matters)</td>
<td></td>
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<tr>
<td>Organisation</td>
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<tr>
<td>------------------------------------------------------------------------------</td>
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<tr>
<td>NOVEM - Netherlands Agency for Energy and Environment (includes housing)</td>
<td></td>
</tr>
<tr>
<td>Organisation for the electrical and mechanical installers</td>
<td></td>
</tr>
<tr>
<td>Professor R. Geraedts (Delft University of Technology - Faculty of Architecture)</td>
<td></td>
</tr>
<tr>
<td>Proper-Stok Ontwikkelaars (construction contractors based in the Netherlands, one specialism is residential and housing building works)</td>
<td></td>
</tr>
<tr>
<td>Royal Institute of Chartered Surveyors (European group providing membership and information for construction professionals)</td>
<td></td>
</tr>
<tr>
<td>Slavenburg (international consultancy in personalised construction and building projects)</td>
<td></td>
</tr>
<tr>
<td>Stichting Geschillencommissies voor Consumentenzaken (the disputes committee - handles disputes across a number of industries in Netherlands)</td>
<td></td>
</tr>
<tr>
<td>SWK (consumer protection services for protecting against faulty residential construction work in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>TBI Holding BU (real estate, construction and engineering group in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>The Federatie Nederlandse Vakbeweging (Federation Dutch Labour Movement; FNV)</td>
<td></td>
</tr>
<tr>
<td>Vereniging Bouw (Consortium of European Building Control - Institute in Netherlands dealing with all matters relating to Housing and Building Control)</td>
<td></td>
</tr>
<tr>
<td>VKG-Keurmerk (consumer protection against faulty building works carried out in the home based in the Netherlands)</td>
<td></td>
</tr>
<tr>
<td>VNO-NCW Confederation of Netherlands Industry and Employers (cover most sectors of the economy)</td>
<td></td>
</tr>
<tr>
<td>VolkerWessels - concernkantoor (international group based in the Netherlands and specialise in construction work)</td>
<td></td>
</tr>
<tr>
<td>Wolter &amp; Dros TBI Techniek (contracting company in construction and maintenance in the Netherlands)</td>
<td></td>
</tr>
</tbody>
</table>
United States of America

<table>
<thead>
<tr>
<th>All USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Council for Construction Education</td>
</tr>
<tr>
<td>American Construction Inspectors Association</td>
</tr>
<tr>
<td>American Council for Construction Education (ACCE)</td>
</tr>
<tr>
<td>American Institute of Constructors &amp; Constructor Certification (AIC)</td>
</tr>
<tr>
<td>American Subcontractors Association, Inc.</td>
</tr>
<tr>
<td>Angieslist</td>
</tr>
<tr>
<td>Associated Builders and Contractors (ABC)</td>
</tr>
<tr>
<td>Associated Speciality Contractors</td>
</tr>
<tr>
<td>Better Business Bureau</td>
</tr>
<tr>
<td>Centre for Effective Government</td>
</tr>
<tr>
<td>CertainTeed Corporation</td>
</tr>
<tr>
<td>Consumer Federation for the USA</td>
</tr>
<tr>
<td>Department of Consumer Protection - Administration</td>
</tr>
<tr>
<td>Department of Consumer Protection - Licensing</td>
</tr>
<tr>
<td>Dun &amp; Bradstreet</td>
</tr>
<tr>
<td>Finishing Contractors Association</td>
</tr>
<tr>
<td>ICAA Insulation Contractors Association of America</td>
</tr>
<tr>
<td>National Association of State Contractors Licensing Agencies (NASCLA)</td>
</tr>
<tr>
<td>National Association of the Remodelling Industry (NARI)</td>
</tr>
<tr>
<td>National Association of Women in Construction</td>
</tr>
<tr>
<td>National Centre for Construction Education and Research</td>
</tr>
<tr>
<td>National Insulation Association</td>
</tr>
<tr>
<td>National Roofing Contractors Association</td>
</tr>
<tr>
<td>National Subcontractors Alliance</td>
</tr>
<tr>
<td>Painting and Decorating Contractors Association</td>
</tr>
<tr>
<td>Professional Construction Estimators of America</td>
</tr>
<tr>
<td>The American Society of Professional Estimators</td>
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<tr>
<td>The Association of General Contractors of America</td>
</tr>
<tr>
<td>The Association of the Wall and Ceiling Industry</td>
</tr>
<tr>
<td>The Federal Trade Commission</td>
</tr>
<tr>
<td>The International Union of Bricklayers and Allied Craftworkers /International Masonry Institute</td>
</tr>
<tr>
<td>The Roofing Industry Alliance for Progress</td>
</tr>
<tr>
<td>United States Department of Labour, Employment and Training</td>
</tr>
<tr>
<td>USA Consumer Watchdog</td>
</tr>
<tr>
<td>California</td>
</tr>
<tr>
<td>--------------------</td>
</tr>
<tr>
<td>American Construction Inspectors Association (ACIA)</td>
</tr>
<tr>
<td>BBB Accreditation</td>
</tr>
<tr>
<td>California Building Industry Association</td>
</tr>
<tr>
<td>Consumers Union</td>
</tr>
<tr>
<td>Contractors State License Board</td>
</tr>
<tr>
<td>Department of Consumer Affairs - California</td>
</tr>
<tr>
<td>Louisiana Municipal Association</td>
</tr>
<tr>
<td>United States Department of Labour, Employment and Training</td>
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<table>
<thead>
<tr>
<th>Florida</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building and Construction Trades Department</td>
</tr>
<tr>
<td>Building Officials Association of Florida</td>
</tr>
<tr>
<td>City of Margate Building Department</td>
</tr>
<tr>
<td>Construction Industry Licensing Board of Florida</td>
</tr>
<tr>
<td>Department of Community Affairs Building Codes and Standards</td>
</tr>
<tr>
<td>Division of Consumer Services</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
</tr>
<tr>
<td>Florida Department of Business and Professional Regulation</td>
</tr>
<tr>
<td>Florida Department of Business and Professional Regulation - Building Codes and Standards</td>
</tr>
<tr>
<td>Florida Department of Business and Professional Regulation - Licensing/Complaints</td>
</tr>
<tr>
<td>Florida Department of Business and Professional Regulation - Unlicensed Activity</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>New Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building and Construction Trades Department</td>
</tr>
<tr>
<td>Office of Attorney General Consumer Protection Division</td>
</tr>
<tr>
<td>Regulation and Licensing Department - Construction Industries Division</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>New York City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building and Construction Trades Department</td>
</tr>
<tr>
<td>Consumers Union</td>
</tr>
<tr>
<td>Department of State Division of Corporations, State Records and UCC</td>
</tr>
<tr>
<td>Department of State Division of Licensing Services</td>
</tr>
<tr>
<td>New York City Department of Building - Department of Construction Codes</td>
</tr>
<tr>
<td>New York City Department of Consumer Affairs</td>
</tr>
<tr>
<td>New York City Department of Housing Preservation and Finance</td>
</tr>
<tr>
<td>New York City Department of Housing Preservation and Finance - Licensing Division</td>
</tr>
<tr>
<td>New York City Licensing Division</td>
</tr>
<tr>
<td>New York State Department of Labour</td>
</tr>
<tr>
<td>Office of Technical Certification and Research</td>
</tr>
<tr>
<td>Rochester Institute of Technology</td>
</tr>
<tr>
<td><strong>Washington</strong></td>
</tr>
<tr>
<td>American Road and Transportation Builders Association</td>
</tr>
<tr>
<td>Bricklayers and Trowel Trades International Pension Fund / Bricklayers and Allied Craftworkers International Health Fund</td>
</tr>
<tr>
<td>Building Construction, Trades Department</td>
</tr>
<tr>
<td>Construction Management Association of America</td>
</tr>
<tr>
<td>Construction Office of Occupational Safety and Health Administration (OSHA)</td>
</tr>
<tr>
<td>Consumer Federation of America (CFA)</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
</tr>
<tr>
<td>Consumer Protection Division</td>
</tr>
<tr>
<td>Department of Labour and Industries - Speciality Services Division - Contractors Division</td>
</tr>
<tr>
<td>Department of Labour and Industries - Speciality Services Division - Compliance Division</td>
</tr>
<tr>
<td>International Code Council</td>
</tr>
<tr>
<td>International Council of Employers of Bricklayers and Allied Craftworkers</td>
</tr>
<tr>
<td>International Union of Bricklayers and Allied Craftworkers</td>
</tr>
<tr>
<td>National Association of Home Builders</td>
</tr>
<tr>
<td>The Design-Build Institute of America (DBIA)</td>
</tr>
</tbody>
</table>
Appendix 2 – Types and classes of licence

California

Types of Licenses

General Licence Classifications:
   A  General Engineering
   B  General Building

Specialty Contractor Classifications:
   C-2  Insulation and Acoustical
   C-4  Boiler, Hot-Water Heating and Steam Fitting
   C-5  Framing and Rough Carpentry
   C-6  Cabinet, Millwork and Finish Carpentry
   C-7  Low Voltage Systems
   C-8  Concrete
   C-9  Drywall
   C-10  Electrical
   C-11  Elevator
   C-12  Earthwork and Paving
   C-13  Fencing
   C-15  Flooring and Floor Covering
   C-16  Fire Protection
   C-17  Glazing
   C-20  Warm-Air Heating, Ventilating and Air Conditioning
   C-21  Building Moving/Demolition
   C-23  Ornamental Metal
   C-27  Landscaping
   C-28  Lock and Security Equipment
   C-29  Masonry
   C-31  Construction Zone Traffic Control
   C-32  Parking and Highway Improvement
   C-33  Painting and Decorating
   C-34  Pipeline
   C-35  Lathing and Plastering
   C-36  Plumbing
   C-38  Refrigeration
   C-39  Roofing
   C-42  Sanitation Systems
   C-43  Sheet Metal
   C-45  Electrical Sign
   C-46  Solar
C-47 General Manufactured Housing
C-50 Reinforcing Steel
C-51 Structural Steel
C-53 Swimming Pool
C-54 Ceramic and Mosaic Tile
C-55 Water Conditioning
C-57 Well Drilling (Water)
C-60 Welding
C-61 Limited Specialty

Certifications:
   Asbestos
   Hazardous Substances

Registrations:
   Home Improvement Salespersons

*Information taken from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition*

**Florida**

**Types of Licenses**

Division I Construction
   Building
   General
   Residential
   Speciality Structure

Division II Construction
   Class A & B Air Conditioning
   Commercial Pool/Spa
   Various Specialty Categories
   Mechanical
   Plumbing
   Pollutant Storage Systems Speciality
   Pool/Spa Servicing
   Residential Pool/Spa
   Roofing
   Sheet Metal
   Solar Energy
   Underground Utility

Electrical:
   Certified Electrical Contractor (EC)
Registered Electrical Contractor (ER)
Certified Alarm Systems Contractor I (EF)
Registered Alarm Contractor I (EY)
Certified Alarm Contractor II (EZ)
Certified Electrical Specialty Contractor (ES)
  Residential Electrical Speciality
  Utility Line Speciality
  Lighting Maintenance Speciality
  Sign Speciality
  Limited Energy Speciality
Registered Electrical Specialty Contractor (ET)
  Residential Electrical Speciality
  Utility Line Speciality
  Sign Speciality
  Limited Energy Speciality

Information taken from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition

New Mexico

Types of Licenses
GA  Asphalt, Bitumen and concrete construction: Vehicular traffic only, not airborne craft.

GB  General Building
GB-2  Residential Building – Includes work authorised by GS Specialities
GB-98  General Building – Includes work authorised by GB-2 and GS Specialities

GF  Fixed Works

GS  Building Specialty Classifications

Electrical Classifications:
ER-1
EE-98
EL

Electrical Contractor Specialty Classifications:
ES-1
ES-2
ES-3
ES-7
Electrical Journeyman Classifications:
EE-98J
ER-1J
EL-1J
ES-1J
ES-2J
ES-3J
ES-7J

Mechanical Contractors Classifications:
MM-1
MM-2
MM-3
MM-4
MM-98

Mechanical Contractors Speciality Classifications:
MS-3
MS-6
MS-12
MS-14

Mechanical Journeyman Classifications:
JP
JPF
JG
JPG
JR
JS
JSM
JW
MS-12J
MS-14J
MGE

Other Classifications under Mechanical Journeyman Program
BO1
BO2

*Information taken from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition*
New York City

Categories of Licence:
- Concrete Safety Manager
- Concrete Testing Laboratory
- Construction Superintendent
- Contractor
  - General Contractor Registration
  - Safety Registration Number
  - Insurance Tracking Number
  - Home Improvement Contractor License*
- Electrician
- Elevator Agency Directors & Inspectors
- Filing Representative
- General Contractor Registration
- High Pressure Boiler Operating Engineer
- Hoisting Machine Operator
- Oil Burner Equipment Installer
- Plumbing and Fire Suppression
- Professional Identification Card
- Rigger
- Safety Registration
- Sign Hanger
- Site Safety Professional
- Special Inspection Agency Registration
- Welder


Washington

Types of Licenses/Registration

Trainee
Electrical Contractor
Master Electrician
Administrator

Asbestos Certification:
  Asbestos Worker
Licensing Schemes - An International Perspective

Asbestos Supervisor
Asbestos Contractor

Electrician:
General (01)
Residential (02)
Pump & Irrigation (03)
Domestic Well (03A)
Signs (04)
Limited Energy (06)
HVAC/refrigeration (06A)
HVAC/refrigeration – restricted (06B)
Non-residential Maintenance (07)
Non-residential Lighting Maintenance & Lighting Retrofit (07A)
Residential Maintenance (07B)
Restricted Non-residential Maintenance (07C)
Appliance Repair (07D)
Equipment Repair (07E)
Telecommunications (Electrical Contractor only) (09)
Door, Gate and Similar Systems (10)

Plumbing Certification:
Journeyman Plumber
Residential Specialty Plumber
Medical Gas Endorsement
Backflow Specialty Plumber
Trainee Plumber
Domestic Pump Specialty, Pump & Irrigation Specialty

*Information taken from the NASCLA Contractor’s State Licensing Information Directory, 2012 Edition*