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REVIEW OF LICENSING IN THE NEW SOUTH WALES HOME BUILDING INDUSTRY

**Submission by the Construction,
Forestry, Mining and Energy Union -
Construction & General Division - NSW
Branch**

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Introduction

The Construction, Forestry, Mining and Energy Union (CFMEU) represents 120,000 members nationally. Seventy thousand of these members are employed in the construction industry and form the Construction & General Division of the union. Around 25,000 members of the Construction and General Division of the union reside in New South Wales (NSW).

The CFMEU, through its national membership, has a significant role in the lives of Australian families, being responsible for the maintenance and improvement of employment conditions. The CFMEU is a socially responsible organisation that freely contributes to a range of activities across Australia that provides benefits to the Australian community. The CFMEU firmly believes in the right of the community through government to regulate the providers of goods and services, to ensure that the best interests of the community are upheld and enhanced

The CFMEU strongly supports the continued licensing of building contractors, building trade contractors and specialist trade contractors and the full implementation of the *Continuing Professional Development* (CPD) program for all licence holders, to ensure that the best interests of the people of NSW continue to be maintained and improved.

The licensing of contractors serves a primary need to those who undertake home building work. However, licensing also plays an important role in the underpinning of apprentice and industry training, compliance with occupational health and safety (OHS) legislation, and the maintenance of industrial awards for workers in the industry.

The compulsory CPD program is one of the most important initiatives undertaken by any state government in support of the construction industry. The program has the potential to cause major cultural change within the NSW construction industry that will provide long term advantages to the NSW community generally and the NSW construction industry, including employer organisations.

The CFMEU is concerned that the decision to defer full implementation of the CPD program may indicate a lack of commitment in the face of minority attempts to bring the program to an end. An early indication from the state government that the CPD program will be fully implemented once the review is completed is highly recommended. This does not mean that any necessary changes to the program resulting from the review can not be implemented, but does mean that those organisations that have committed resources and their support for a very worthwhile government initiative are left in no doubt that they made the right decision.

The CFMEU supports the NSW State Government's initiative to conduct a comprehensive review of licensing in the home building industry and will encourage implementation of final recommendations. Many recommendations from previous inquiries have been ignored. Difficulties in the Office of Fair Trading that has been discussed with the Public Service Association, where dedicated workers are now overwhelmed by workload, never ending complaints and a backlog of licence applications, is the result of failure to act on all previous recommendations.

The NSW construction industry contributes around one third of all construction activity in Australia. The industry, as a part of the NSW community and an important contributor to the economic success of NSW, deserves far better consideration than is currently provided.

This submission by the CFMEU will provide comment and recommendations for each of the seven areas for consideration under the terms of reference.

Summary

Research undertaken by the CFMEU to prepare this submission has uncovered an outdated licensing and regulatory system in crisis. There is a need to make radical change to ensure that the NSW community continues to benefit from a well regulated construction industry that can move forward through the challenging years ahead.

The coverage of licensing needs to be extended but at the same the licensing system must be simplified. There is a need to rationalise the number of categories of licences and authority and the variations in fees. Licences must also be aligned to national qualifications, and in the case of builder licences, to categories of buildings as well.

It is very clear that the training and education–licensing nexus has been weakened by the development of an alternative qualification and assessment structure that has undermined attempts to introduce a national system of training supporting national competition policy and mutual recognition. At a time when the construction industry faces severe skills shortages we have a licensing system that supports a dead end instead of a career pathway. As a young individual entering the workforce or as an existing worker, you cannot build a career in an industry that does not place value on learning and training. The days of the semi-skilled construction worker and inexperienced owner builders have gone.

There is a need to introduce a more strongly regulated licensing system, but at the same time to involve all stakeholders in the decisions that must be made. The present system is strongly focussed on the needs of the consumer, and to some extent, has disregarded the needs of some of its major stakeholders. Improved regulation must also bring improved balance of needs between all stakeholders.

The implementation of the compulsory continuing professional development (CPD) program for licence holders has proven to be very difficult for all concerned. The deferment of CPD for the specialist trades was an understandable decision but not necessarily correct. This is an important initiative and must be implemented across all categories of licensing, having the potential to be a valuable performance management tool and to facilitate long term cultural change.

National competition policy and mutual recognition together with good working conditions and good wages will result in a healthy and efficient industry.

Considering these issues, there is an opportunity for the NSW State Government to initiate the development of a skills card system in NSW linked to a simplified licensing system. It could be implemented for the use of all construction workers, including those who are licensed under the Home Building Act. Such a system has been in place in the United Kingdom for ten years, with over 700,000 current participants and would remove the need to create new licence categories as industry needs changed.

The construction industry represents around 7% of the nation's Gross Domestic Product. NSW has about a third of the nation's construction industry, with around 50% of the NSW construction industry being home building work. The licensing fees from this sector of the industry must provide close to \$30 million for state revenue.

Recommendations

1. Licensing for the home building industry to be extended across the whole construction industry
2. Licences categories to be rationalised, to become three individual licence categories only, and a single licence fee of \$300:
 - i. Builder -Building Degree for all construction work – plus additional licence fee based on project value;
 - ii. Builder – AQF5 home building work Class 1 and 10 (for projects under a specified value and/or scale and pre-purchase inspections);
 - iii. Specialist Trade Contractor - AQF III trade specific plus AQFIV (to be determined);
 - iv. Trade Contractor - AQF III trade specific plus AQFIV (to be determined);
 - v. National qualifications only to be recognised for licensing with delivery and assessment by registered training organisations under the Australian Quality Training Framework
3. Threshold value of \$1,000.00 to be removed. All so-called minor building work to be performed by a licensed builder, specialist trade contractor or trade contractor only up to a value of \$5,000.00. The definition of minor building work needs to be clearly determined.
4. Additional legislative requirements to include:
 - i. Records of contractors' details to be available on site;
 - ii. Right of access on site to contractors' details by employee and employer representatives to check compliance with Licencing legislation;
 - iii. Fair Trading compliance officers to have right to stop work where there is a breach of nominated building related legislation (to be determined);
 - iv. Builders and sub-contractors to be penalised for breaches of the Home Building Act.
5. Owner builders should be required to engage a licensed building contractor to oversee building work carried out by licensed contractors only.
6. Colour-coded Skills Card System to be implemented that includes photo ID and other relevant information:
 - i. Compulsory for all new licence applicants;
 - ii. Voluntary for existing licence holders. Existing licence holders have option of joining new Skills Card System or remaining with old card system and CPD becomes voluntary;
 - iii. Will incorporate compulsory CPD. All holders of the Skills Card must participate in a compulsory CPD program.
 - iv. Skills Card System will identify the qualification held by the cardholder, that they have completed WorkCover compulsory OHS induction training and their licence category if they are a licensed contractor.
 - v. Open to all construction workers. Will identify their qualification and that they have completed WorkCover compulsory OHS induction training. Would be a different colour to the card held by licence holders;
 - vi. System to be seed-funded through increased licence fees and thereafter by a combination of a percentage of licence fee revenue and a levy on all construction work, or by a levy only;

- vii. System to be administered by an independent body that reports to a board comprising community, industry and government representatives.

Skills Card System

The proposed Skills Card System is not a new concept. Queensland has such a system and in the United Kingdom (UK) over 700,000 construction workers participate in a single Skills Card System. The technology and the successful working models exist.

<http://www.citb.org.uk/cardschemes/>

The major difference with this system is the linkage to licensing of contractors. Otherwise the proposed system has all the benefits and features of similar systems that have been proposed previously for NSW or that currently exist in Queensland and the UK. The levy on construction projects currently exists in every state except NSW. The funds raised by other states in this way are used to support construction industry training and assessment.

In the UK, the card system - combined with the funding generated by the industry levy - has enabled the UK construction industry to aim for the achievement of an industry workforce that is fully qualified. Part of the levy covers the cost of on-job training and assessment for existing workers who have no formal qualifications.

The CFMEU proposal has many benefits for the NSW State Government. Overall revenue from the licensing system will increase immediately and continue to grow through the increased licensing fee and the extension of licensing across the whole industry. The issue of a compulsory CPD will disappear, because all new licence holders will be fully aware of the responsibility they take on and existing licence holders will have the option of staying with the old licence card system that doesn't require a commitment to CPD.

They can still join the new Skills Card System that has compulsory CPD and a range of advantages for licence holders that the old licence card system does not provide. One of these will be the fact that they are identified as a qualified licensed contractor who actively participates in CPD.

Consumer education regarding the new system will result in the consumer being very aware of the difference between the two systems. Over time, the old licence card system would gradually be replaced by the new. It would be quite reasonable to suggest that this would not be a comparatively lengthy period of time because of the benefits gained by those who participate.

Of greater importance is the proposal that this scheme would be open to all construction workers, and that a stream of funding would become available to upgrade the skills of the whole construction industry and to support the strengthening of apprenticeship and the entry of new entrants.

A further advantage to the NSW State Government would be the reduction of administration required on the part of the public sector, and that the Office of Fair Trading would no longer be required to determine the qualifications of licence holders or to be involved in the assessment of competency of licence applicants. This would be undertaken by Registered Training Organisations (RTOs), and funded by a combination of the levy fund and the applicant's contribution. As new national qualifications are developed or changed, there would be no need to update the licence categories.

The result would be complete separation of the awarding or assessment of qualifications and the licensing regulatory function, and this would no longer require the Office of Fair Trading's participation. The Office of Fair Trading's participation in the development of qualifications should be as a stakeholder, and as advisors to other stakeholders on the qualifications of the regulatory system. This would end the de facto arrangement presently in place that undermines national qualifications and national competition policy.

The Office of Fair Trading should also work more closely with the NSW Vocational Education and Training Accreditation Board (VETAB) in an advisory capacity regarding RTO compliance with the Australian Quality Training Framework AQTF).

The NSW State Government would still have control of the system's function and operation through its membership of the management board and revised legislation.

There are many finer details to be addressed, but the CFMEU believes that our recommendations for a completely new approach to licensing offers many advantages to all stakeholders, and demonstrates the NSW Government's commitment to long term goals that benefit the NSW community.

1. Coverage of Licensing

At present there are around forty categories of licences identified in various Office of Fair Trading (OFT) documents available in the public domain. This does not include the many conditions imposed on individual licences or the different combinations of licences in the specialist trade areas, including tradesperson certificates. Licences are also identified as being either an individual licence, qualified supervisor certificate, company licence or partnership licence.

There is a need for the actual number of categories of licences to be rationalised and made simpler for all concerned. At the same time there may be a need to include other suppliers or providers currently covered.

One of the major issues for review that is linked to the coverage of licensing are the qualifications and experience required for a particular licence. If there is any rationalisation of licence categories, present arrangements regarding the determination of appropriate qualifications for a licence category will also need to be changed. Appropriate qualifications should, in all cases, be based on national qualifications and national competency standards and/or nationally accredited courses.

1.1 Range of licensing covered by the Act

At present there are at least 39 categories of licence described in two OFT documents - *Licence Categories A-K* and *Licence Categories L-Z*. Categories of licence for the specialist trades include electrical, plumbing, gasfitting, air-conditioning and refrigeration work. In the plumbing and gasfitting area alone there are 10 different categories of licence, plus a tradesperson certificate. All of these licence categories can then be further defined as an individual licence, qualified supervisor certificate, partnership licence or company licence. This very complex range of licensing is then aligned to a confusing range of dated qualifications.

There is absolutely no way that the average consumer could possibly understand what any of this concoction could mean. There must be change to a simpler system.

1.2 Monetary Threshold

The present threshold work value of \$1,000 (whereafter the provider must be licensed) means that in many cases, residential building work will be carried out by an unlicensed contractor. Should work less than this value be faulty it may still represent a significant financial loss for those who can least afford it. It is common knowledge that unscrupulous, unlicensed contractors use this loophole to commit fraud.

A good example is the advertising of “cleaning and painting” of roofs for \$960.00, where aged pensioners with homes requiring maintenance are targeted.

There will be many individual business operators in the residential building sector who will demand that this threshold amount be increased. All that this would mean is that the financial loss will be even greater.

In Queensland trade contractors are allowed to perform incidental work of another class of licence up to an aggregate value of \$1,100. It would be reasonable to accept that a painter could undertake minor framing work and plasterboard fixing as part of a small painting and decorating project.

By broadening this concept it would be in the public interest if minor work were at least carried out by a licensed contractor even though it normally came under another class of licence. Qualified licensed trade contractors are more likely to have skills in other work classifications than unlicensed contractors.

For example a bricklayer will most likely be able to perform minor finished concreting work such as a pathway. If they were to undertake work they could not perform, at least the customer has some redress because the person is licensed, as compared to not being licensed at all.

In the past it has been reasonable to argue that there are certain health and safety risks related to specialist trade work that are not encountered in other trade categories - and that all specialist trade work must therefore be carried out by licensed specialist trade contractors or registered tradespersons - regardless of the monetary value of the work. This is the case regardless of any other authority's role, such as WorkCover or Sydney Water.

Other licence categories supposedly do not have a similar level of risk in terms of health and safety. This is no longer a valid argument in today's modern world of work and modern communities. There are many situations where the provider of building work has OHS responsibilities not only for those they employ, but also for those affected by the work they undertake. Although responsibility for compliance may rest with another government authority, it is the OFT that issues licences that allow individuals to undertake various categories of building work.

Surely it is logical to reinforce and support OHS compliance under another jurisdiction by requiring all building work to be conducted by licensed contractors, regardless of the value of that work.

1.3 Individual, Partnership and Company Licenses

Under the Home Building Act, there must be a contract where the value of the work is over \$1,000.00 and it must be signed by the licensed contractor making the contract. Where the contract is made by a company or partnership, the partnership or company must be licensed.

There is no doubt that this requirement is used by individuals to reduce the risk of liability for faulty building work. While many small independent builders operate as sole traders and reduce their risk of liability for faulty building work by ensuring that the work is carried out correctly in the first place, there are others who use the protection of incorporation to limit their liability. In other circumstances where a reputable licensed company uses a qualified supervisor, they often find they become responsible for the incompetent supervision of their employee. In neither case is the responsible party brought to account.

1.4 Alignment of Licensing Categories to the Building Code of Australia

The Building Code of Australia (BCA) comprises two volumes:

- Volume One - covers Class 2 to 9 buildings (commercial buildings), and
- Volume Two - Housing provisions of the BCA - covers Class 1 & Class 10 Buildings.

The licensing system in Queensland has aligned 3 categories of builders licence to building classifications under the BCA and to building qualifications under the Australian Qualifications Framework (AQF). In NSW this is often discussed as an approach that should be adopted by NSW for builder licensing, but the concept has not been analysed.

The perception seems to be that the construction of Class 1 buildings – single dwellings - is not as complex or as difficult to manage as the construction of Class 2 buildings, such as 3 storey flats and high-rise apartment buildings, and that with increasing complexity and difficulty of management the licence category will require higher level building qualifications.

Although there is merit in the view that increasing complexity and management difficulty requires a higher level of qualification, the fact remains that some Class 1 buildings – single dwellings – have comparatively high levels of complexity and management difficulty. The real issue is deciding the minimum qualification that is required where building work varies from quite simple residential

structures that may be of a comparatively large scale through to highly complex residential building work that may involve renovation and extension of an existing dwelling.

To simply align a range of qualifications from AQF 4-6 to categories of buildings based on the BCA and the size of buildings, as is the case with the Queensland model, does not anticipate the fact that a builder with a Certificate IV building qualification may be hopelessly under-equipped for what appears to be a simple single storey project.

This review of licensing must decide what is the minimum qualification required for building work that may potentially be undertaken by a licence holder

1.5 Licensing of Persons Not Contracting With Homeowners

Specialist trade contractors must be licensed for any work they undertake, regardless of the value of that work or if the work is for a homeowner or a commercial entity. There is a need to extend this concept into all licence categories, as ultimately there is a benefit for the community as a whole that goes beyond a simple guarantee of the ability of the licence holder.

An extension of licensing should also support apprentice training, improve compliance with OHS legislation, with industrial awards for construction workers and other statutory requirements.

1.6 Licensing Across the Construction Industry

The extension of licensing for all categories of construction work beyond residential building work must be considered as a logical step if there is to be effective regulation. Besides the previously stated advantages for licence regulation, apprentice training, OHS and compliance with industrial awards and statutory requirements, licensing also provides a source of funding to be utilised by government for the community.

While some would again argue that licensing is a constraint on trade and simply a tax on the business sector, the fact is that the business of construction would not exist without the infrastructure developed by government for the community. Although the business sector demands the advantage that licensing brings to its trade, it fails to see the extent and true cost of the infrastructure that supports such a system.

In their costing of the services and products they provide, overhead and profit are on-costs those businesses legitimately claim, but any impost claimed by government for costs on behalf of the community is considered unfair by a small number of contractors.

That a significant part of the construction sector is not obliged to come under the same system of regulation and licensing does not appear to be logical or in the best interests of the community in which it prospers. An example of this is the construction of accommodation for retirees, where the dwellings are owned by a company and the retirees are shareholders. Why shouldn't they enjoy the protection and benefits provided by the licensing system under the Home Building Act?

2. Adequacy of Licensing Entry Requirements

The CFMEU considers the current arrangements for licensing entry to be inadequate.

This view is strongly supported by the outcomes of two separate Independent Commission Against Corruption (ICAC) investigations and inquiries.

The first investigation, “Operation Squirrel” in 2003, concerned applications to Department of Fair Trading for building and trades licences that contained forged TAFE qualifications. The second investigation, “Operation Ambrosia” in 2004, is yet to be reported - but came about a year later, and uncovered similar issues - but on a far larger scale.

Overall these two investigations have painted a picture of a dated system that can be easily corrupted.

In fact the report from “Squirrel”, submitted by ICAC Commissioner Irene Moss, made a recommendation that forecast the future issues uncovered in “Operation Ambrosia” a year later.

“DFT should consider implementing a system of spot-checking qualifications cited as part of licence applications. This would also help to ensure that applications were genuine. Given the advances in consumer technology (which make it relatively easy to forge official documents) and recent publicity about the rise in detected plagiarism and forgery of qualifications, it may be timely to consider such a system. This could act as an interim measure until the technological innovations foreshadowed previously are available.”

The report also expressed the importance of the integrity of the licensing system and the importance placed on the licensing system by the NSW community.

“The Department of Fair Trading sets and maintains the competency standards for builders and other tradespersons in the NSW home building industry. The licences issued by DFT certify to the community that the holders of those licences are competent. While the number of problems revealed by this investigation is small relative to the total number of individual contractor and qualified supervisor licence applications that are processed, nonetheless there are risks to the community if unqualified people are able to obtain such licences.”

The recent hearings from “Operation Ambrosia” have clearly shown the value of licensing and the value that the community places on the licensing system. Unfortunately the safeguards (required by such a valuable system) have not been maintained. Government must accept responsibility for this failure.

2.1 Training and Education

It has been over thirty years since the home building contractor licensing system was introduced in NSW. In the early days of licensing, individuals were given licences although they had no formal qualifications.

Nothing has changed!

Government over a period of time has developed a de facto qualification system to the detriment of formal vocational education and training. A licence is not a qualification and yet it has been represented as equivalent to true vocational qualifications.

Unqualified individuals are still being awarded licences based on a phoney licence testing and accreditation scheme that doesn't meet any of the requirements that registered training organisations are required to meet under the Australian Quality Training Framework (AQTF)

2.1.1 Trade Contractor Qualifications

Australia is recognised internationally for the high standard of its vocational education and training (VET). We have national qualifications for the construction industry that have been in place since 1998 and that are based on nationally developed and endorsed competency standards. The first General Construction Training Package, BCG98, was endorsed in 1998 and implemented the following year by all state training authorities, including the NSW Department of Education and Training (DET). The second General Construction Training Package, BCG03 was endorsed in 2003 and implemented in NSW by 2004. All construction apprenticeships nationally utilise these national qualifications and all construction trade training delivered by any registered training organisation (RTO) in Australia delivers and assesses education and training that achieves these national qualifications.

The NSW Office of Fair Trading has not formally recognised these same national qualifications for the purpose of licensing trade contractors and continues to demonstrate a complete lack of understanding of competency based training and assessment.

They are not listed on the document identified as “L20 Residential Building and Building Trade Work Qualifications Contractor Licence (Q) Qualified Supervisor Certificate”

In this document only obsolete TAFE NSW trade qualifications seem to be recognised for licensing.

A range of non-accredited and out-of-date or obsolete courses are also recognised for the purpose of licensing under the heading “Some of the special industry training programs recognised by the Department” are as follows:

- Concrete workers training program - conducted by NSW Building and Construction Industry Training Council Ltd.;
- Steel fixers training program - conducted by the NSW Building and Construction Industry Training Council Ltd.;
- Brick laying training program - conducted by the Clay Brick and Paver Institute;
- Segmental paving course/module - conducted through the NSW TAFE Commission;
- Roof tiling training program - conducted by Monier Ltd.;
- Basic swimming pool repairs & maintenance training program - conducted by the NSW Swimming Pool and Spa Association;
- Concrete resurfacing training - conducted by Concrete Technology Industries;
- Concrete resurfacing training - conducted by Crown Concreting;
- Jim's Fencing Guide - conducted by Jim's Fencing;
- Boral Interior lining Enterprise Training Package (National code ZBE02) at Certificate III or IV level recognized as satisfying qualification criteria for category of Dry Plasterer.

When reviewing these training programs, we observe:

1. The NSW Building and Construction Industry Training Council is long gone.
2. The Clay Brick and Paver Institute ran a private pyramid sub-contract training scheme that was discredited and then abandoned. Is this the same program approved by the OFT?
3. TAFE NSW no longer delivers a Segmental Paving course that is accredited or that is considered as being a national qualification but they do offer BCGBL3001B Lay paving which addresses a national competency standard.
4. Monier no longer provide a roof tiling program. A national qualification in roof tiling became available in 1998.
5. Basic Swimming Pool Repairs & Maintenance is an accredited training program conducted by the NSW Swimming Pool and Spa (SPAS) Association. The course is

privately owned by the NSW SPAS Association. An accredited course can only be delivered by an RTO but according to the National Information Training Service (NTIS) no registered training organisations are related to it.

6. Information on the Crown Concreting resurfacing course is not available on the NTIS.
7. Jim's Fencing Guide is a non-accredited privately owned course but still offered to individuals who purchase a franchise business from Jim's Fencing. In fact Jim Penman is quoted by James Anthony as saying

"that in New South Wales there were only two ways to officially learn how to put up fences. TAFE Colleges or Jim's Fencing. The cost of getting into a franchise with Jim varies depending upon your area, state and the size of the established client base. For mowing it could be between \$12,000 and \$20,000 with up to \$6000 extra for equipment."

http://www.webwombat.com.au/careers_ed/careers/be-your-own-boss.htm

The minimum entry requirement for a fencing licence is stated in the OFT document L20 as 2 years relevant experience plus completion of a skills assessment at the TAFE NSW Building Industry Skills Centre or completion of a TAFE NSW fencing course. Assuming that the Jim's Fencing Course is equivalent to the TAFE course it would appear that purchasing a franchise from Jim's also includes an exemption from the two years of relevant experience, otherwise purchase of the franchise wouldn't be viable.

8. The Boral Interior Lining Enterprise Training Package is a privately owned course that duplicates existing national training package qualifications.

While it is understood that these qualifications may have been current or approved some time ago and in those terms valid for the purpose of licensing, it does not make sense to list them but not list current national training package qualifications. The arrangements where privately owned courses are promoted but national qualifications are not should be investigated.

2.1.2 Certificate IV Trade Contractor Qualifications

The majority of the trade qualifications listed are courses related to apprentice training, and while they may have been suitable for licensing when they were current, it is questionable that a Certificate III trade qualification is suitable for today's construction industry as a requirement for licensing.

Modern trade qualifications are based on the Australian Qualifications Framework (AQF) and are generally developed at AQFIII. Under the AQF hierarchy an AQFIII qualification is designed for an individual who can work unsupervised and provide limited supervision of others, while an AQFIV qualification provides:

"You will acquire a breadth, depth and complexity of knowledge and competencies that cover a broad range of varied activities, in a variety of contexts that are usually complex and non-routine. You are expected to be able to demonstrate leadership and guidance of yourself and others, as well as contributing to technical solutions of a non-routine or contingency nature.

You will have to demonstrate performance in a broad range of skilled applications including evaluating and analysing current practices, develop new criteria and procedures for performing current practices. In addition to showing leadership and guiding others, you are expected to accept responsibility for others and demonstrate limited organisational skills."

<http://studyinaustralia.gov.au/Sia/en/WhyAustralia/AQF.htm>

The CFMEU takes the position that a Certificate III qualification is no longer suitable on its own as a trade licensing qualification. An appropriate Certificate IV qualification combined with or that articulates with a relevant Certificate III trade qualification is now the minimum benchmark required in the construction industry for trade contractor licensing or trade supervision.

2.1.3 Builder Qualifications

Qualification requirements for a builders' licence are no better. Again a range of obsolete TAFE and university courses are identified together with accredited courses and other outdated requirements. One of the few courses on the list that has any currency is the TAFE NSW Course 1261 - Certificate IV in Building – Residential Studies.

This course is based on the national program developed in the early 1990's that is still nationally accredited and available in the public domain. The Housing Industry Association (HIA), the Master Builders Association (MBA) and every national TAFE (except for TAFE NSW) have this nationally accredited course registered under their scope - and yet it is not identified in the OFT list of recognised building qualifications.

The Queensland Building Services Authority recognises this course as Certificate IV in Building CNBUI012, and lists the course and specific modules as the minimum technical requirement for builder licensing.

<http://www.bsa.qld.gov.au/Home/BuildersContractors/FAQs/LicensingSystem/Classes/BLR.htm>

The OFT list also identifies the Certificate IV in Contractors Management, through Back to Basics Business Training Pty. Ltd., as a recognised course for the licensing of builders. This privately owned course is registered under the scope of the MBA South Australia, and is also offered by the MBA Australian Capital Territory (ACT) branch.

“The MBA's Contractors Management Program Certificate IV is nationally accredited and is designed to fulfil the builders licensing requirements of the NSW Department of Fair Trading and ACT Building, Electrical and Plumbing Control (BEPCON). The course is designed specifically for the construction industry and contains 11 core modules, each Module is self-contained. There is no reliance of any one module or part thereof to complete the other.

Even more concerning is the following statement by the MBA ACT.

“The Department of Fair Trading (DFT) will give recognition for licensing purposes to those that have completed Modules 9 and 10 of the ("Contractors Management Program Certificate IV") as being equivalent to the DFT's Written Technical Examination. The DFT's requirements for demonstrated practical experience will still apply to such licence applicants”.

http://www.mba.org.au/training/c_courses.asp

It is very clear from the confusing array of information available that the qualification requirements for builder licensing are hopelessly flawed and must be reviewed as a matter of urgency. An applicant for a builders licence needs to be fully informed before applying for a builder's licence. The information that is presented is out of date and is not aligned to either national qualifications, nationally endorsed competency standards or to nationally accredited courses that are in the public domain.

Instead of one solid national qualification recognised by all states and territories, NSW has two completely different certificate IV courses, or achievement of two modules only from one of these programs and a recognition process through the TAFE NSW Building Industry Skills Centre as pathways to builder licensing.

The CFMEU position is that as a minimum any future qualification requirement for builder licensing must be at a level of AQFV Diploma or higher. In section 1.4 of this submission, the issue of categories of licensing was discussed and the position taken was that “this review of licensing must decide what is the minimum qualification required for building work that may potentially be undertaken by a licence holder”.

Home building work is becoming more complex in terms of technical requirements, in management terms and in terms of the legislative requirements that builders must now manage and comply with. Of particular concern to the CFMEU are the OHS aspects of building work and the ability of the builder to manage wage and sub-contractor payments, workplace relations, and other statutory requirements. A Certificate IV qualification no longer meets these needs and those currently recognised for licensing probably never have.

”Diploma study involves breadth, depth and complexity covering planning and initiation of alternative approaches to skills or knowledge applications across a broad range of technical and/or management requirements, evaluation and co-ordination. Diploma holders will be capable of self-directed application of knowledge and skills, with substantial depth in some areas where judgement is required in planning and selecting appropriate equipment, services and techniques. A diploma student will participate in the development of strategic initiatives and take personal responsibility and autonomy in performing complex technical operations or organising others. Participation in teams both in routine work and undertaking planning and evaluation tasks is expected. Group or team coordination may be involved.”

<http://studyinaustralia.gov.au/Sia/en/WhyAustralia/AQF.htm>

The description above although not mentioning the word builder, describes broad concepts that apply to the job of a builder.

2.1.4 Specialist Trade Qualifications

The qualification requirement for specialist trade contractor licensing is also very confusing, particularly in Plumbing and Gasfitting. Not only are there 10 categories of licence but there are multiple combinations of qualifications and subjects from obsolete TAFE NSW courses. All of these qualifications have since been replaced by national qualifications available through the Plumbing & Services Training Package BCP03 and yet they are not listed in the OFT document *Form L22, Qualifications Plumbing, Draining and Gasfitting*.

A further issue in this area is the confusion that has been created by the recent implementation of the Plumbing and Services Training Package BCP03. The NSW implementation of Certificate III in Plumbing BCP30103 does not reflect the minimum packaging requirements of the qualification. According to statements in the Commissioner for Vocational Training Information Bulletin 251, the NSW OFT required specific units of competence to be achieved for apprentices to achieve the qualification and meet OFT registration requirements. The units required through the vocational training order (VTO) are all identified as core units. This is not the actual requirement of the qualification.

<http://apprenticeship.det.nsw.edu.au/html/cibs/251b.htm>

These requirements exceed the minimum requirements of the endorsed national qualification, at the request of the OFT. Yet under reciprocity agreements with other states, NSW is bound to accept the national qualification achieved by interstate graduates although the completion requirements may be quite different. The majority of apprentices in this industry are employed by small independent contractors and due to the inflexibility of the qualification demanded by the OFT, they will find it very difficult to provide work experience for their apprentices that will support the achievement of units of competency required to complete the qualification.

http://apprenticeship.det.nsw.edu.au/docs/BCP30103_Licens_Pathway.pdf

This is a case that indicates the general failure of the OFT to recognise national qualifications and to understand how and why they have been developed and the importance of their acceptance by state regulators. The CFMEU understands why the OFT has taken this approach (as an attempt to raise the level of apprentice training to meet future licensing needs) but the impact on apprentice training and the employers of apprentices in the industry sector has not been adequately considered.

It would have been far better for the OFT to simply identify specific units of competency as necessary for licensing and to allow the achievement of the qualification to remain as originally intended in the national qualification. On completion of the qualification and their training, apprentices would then be able to decide if they wanted to achieve the remaining units required for licensing and then undertake any necessary training as a tradesperson.

Unfortunately the result of this decision will not be known for at least three years.

Another issue to be considered with this matter is the difficulty that RTOs will have in implementing such a heavily modified qualification. The Vocational Education and Training Accreditation Board (VETAB) will need to be convinced that such modifications are in the best interests of those undertaking the training considering the fact that there does not appear to be an alternative exit point for apprentices who cannot achieve all units of competency under this modified national qualification.

The qualification requirements for the licensing of electricians, "L21 Electrical Work", are also flawed in that they do not recognise national training package qualifications and consistently refer to TAFE NSW courses. At a national level there is also the requirement for a capstone assessment and this is not identified either.

The qualification requirements for the licensing of airconditioning and refrigeration contractors, "airctqwp.ifd Airconditioning and Refrigeration Work", do suggest "Australian" qualifications, but again there is a reference to specific TAFE qualifications only.

A further issue is the ability of community members to be able to identify if in fact the person they have contracted to undertake certain specialist work, is actually licensed for that work. The complexity of the qualification requirements, the various combinations of licence categories together with a very generic appearance for the actual licence would make it very difficult for anyone to confirm that the person they have contracted has a valid licence.

In fact a solution that addressed part of this issue was stated in the report for "Operation Squirrel" where it was suggested that system changes had been made:

*"As well as improving DFT's capacity to undertake on-line checks of applicant's qualifications, other key areas of impact from the project that are relevant to this investigation include the introduction of on-line licence applications and payments, and the issuing of photo licences. These major changes to the way licences are applied for, issued, renewed and controlled by DFT are **beginning to be piloted, with implementation some way down the track.** Progressive rollouts across the state will continue from 2003 to 2005. Once available, these advances in technology will provide new and enhanced opportunities for DFT to minimise fraud, forgery and other risks associated with the issuing of licences".*

The CFMEU is of the opinion that the minimum qualification for licensing purposes in all specialist trades must be at least a Certificate IV qualification. This is already in place for plumbing and gasfitting and there is no justification for the electrical, airconditioning or refrigeration qualification requirements to be any less.

2.2 Competency Standards

At this time very few if any of the qualifications identified by the OFT as being suitable for the purpose of licensing are national training package qualifications or nationally accredited qualifications.

All qualification requirements for licensing under the Home Building Act should be related to national training package qualifications or nationally accredited courses where national training packages are not available. Where there are no existing suitable training package qualifications or nationally accredited courses these should be developed by NSW OFT using existing nationally endorsed competency standards or by developing and accrediting a suitable course. In all cases there should only be one qualification recognised for each licence and that must be in the public domain.

A major area of concern also, is the fact that the OFT has also recognised individual subjects from accredited courses as the minimum requirement for licensing. This is particularly noticeable with the Plumbing and Gasfitting areas where specific combinations of subjects are recognised as the minimum requirement for various categories of licence in the OFT document titled “*Subjects required for the issue of an individual contractor licence (Q) or qualified supervisor certificate*”.

This view of qualifications, that they can be dismantled and then rebuilt without certain modules or competency standards and then be presented as the absolute minimum required for licensing, displays a complete lack of understanding of VET concepts.

This same approach has been used with the Back to Basics Certificate IV in Contractors Management where two modules have been determined as “being equivalent to the DFT's Written Technical Examination” http://www.mba.org.au/training/c_courses.asp

In the assessment of applicants for trade contractor licences at the TAFE NSW Building Industry Skills Centre it is also a fact that applicants with partially completed trade qualifications have been exempted from undertaking the skills assessment or the assessment required has been substantially reduced on the basis of TAFE NSW trade modules completed.

This approach by TAFE NSW has never been understood by the CFMEU. Our representatives have participated in course development with TAFE NSW over many years. Since the 1990s TAFE NSW appears to have been determined to undermine their core business of apprentice training by indulging in a so called recognition process fostered by the OFT. This practice still goes on today as a commercial activity conducted by TAFE NSW on behalf of the OFT. Individuals are put through a one day assessment and come out of with a trade contractor licence.

In other TAFE NSW colleges, apprentices and adult students undertake a three year part time course that as an outcome is accepted by the OFT for the purpose of licensing. There is no logic or honesty in these double standards.

The CFMEU will not support the “cherry picking” of competency standards from national qualifications simply to suit the demands of organisations and individuals who want to short cut and undermine national qualifications that have been developed through lengthy consultation processes.

When the OFT does finally adopt national training package qualifications or nationally accredited qualifications for the purpose of licensing, the integrity of those qualifications must be supported by the licensing system. The practice of the OFT to accept parts of qualifications for the purpose of licensing must come to an end.

2.3 The Role of Licence Testing and Accreditation

The process of assessment at the TAFE NSW Building Industry Skills Centre (BISC) has in recent times come to the attention of the ICAC. An outcome of the investigation has been that a more rigorous assessment regime has been introduced for builder licensing that requires a portfolio assessed against locally developed competency standards, in the absence of suitable national competency standards. Prior to this the assessment process does not appear to have been conducted with any recognised or valid system at all.

The acceptance of qualifications coming from the Vocational Training Tribunal (VTT) for the purpose of licensing needs to come to an end. These so called qualifications are totally outside the AQF and the quality requirements of the AQTF. They are not issued by an RTO and the process that results in these qualifications is questionable to say the least.

<http://apprenticeship.det.nsw.edu.au/html/tradeskills.htm>

The current assessment process for trade contractor licensing at the BISC needs to be radically changed. Under the Home Building Act, licensed builders are required to employ licensed trade contractors only and yet the assessment process for trade contractor licensing conducted at the BISC allows an individual to be assessed over one day and if successful to be able to apply for a trade contractor licence. This is absurd.

The actual assessment documents used are based on material developed by TAFE NSW in the early 1990's before the implementation of national training package qualifications. It was believed that an individual could demonstrate their ability in a trade area by undertaking a single, comparatively abstract project, designed to allow the person being assessed to demonstrate their ability to perform a range of tasks. It wasn't necessary to complete the tasks, only to demonstrate an ability to complete them before progressing to the next.

The process was intended to be objective but in reality relied heavily on the experience and objectivity of the assessor, which varied. The exercise was developed by TAFE trade teachers using the same assessment method as for apprentice training in a curriculum based system of training and assessment not aligned to national competency standards.

This system of assessment for the licensing of trade contractors needs to be changed as soon as possible and must be based on national training package qualifications. It is also imperative that the acceptable result be the achievement of a national qualification, not just specific units of competency taken from a qualification. Unless this level of rigour is implemented, trade training will continue to be undermined and downgraded as is the case now.

3. Legislative Conditions Placed On Licences and Authorities and Compliance

Improved compliance is of critical importance for the successful operation of the Home Building Act. The CFMEU believes there is scope for increased legislative conditions to be placed on all licence holders.

If the major objective of the Home Building Act is to improve the quality of the industry's product and services, and by extension, improve consumer protection, then compliance enforcement combined with licensing across the whole construction industry, must be the most important issue.

The CFMEU contends that knowledge of the Act and its requirements is very limited amongst the sole traders within the construction industry. While there is a percentage of sole traders who possess a contractor's licence, most do not, and will not unless there are greater compliance requirements.

To address these issues we suggest the following proposals be implemented considered for implementation in the home building industry and in the future across the whole construction industry.

3.1 Site Records

The principal builder must maintain a file on the project/site during working hours containing the following details relating to all licensed contractors who carry out construction work on that site:

- Name
- ABN
- Business address
- Contact person
- Contact telephone number
- Photocopy of contractor's licence
- Copy of home warranty insurance if applicable

Should a further sub-contract be let by the person or entity who received the original contract from the principal builder, then the same information should be required to be given to the principal builder and be maintained in the same manner as outlined above.

Such a system would greatly assist the inspectors from the Office of Fair Trading (OFT) in the performance of their duties.

3.2 Access to Site Records

An authorised officer of an industrially registered association of employers and or employees should have the right to enter such workplaces and access the above mentioned file/s as well as being able to photocopy same should a breach of the Act be reasonably suspected

3.3 Ability to Prohibit Work Proceeding

The Home Building Act should provide for the ability of OFT Compliance Inspectors to prohibit work proceeding where there is a breach of any legislation related to construction work including the Home Building Act, OHS legislation and environmental legislation.

Currently, there is no incentive for a builder to instruct a sub-contractor to cease work should that sub-contractor not meet the requirements of construction work related legislation such as the Home Building Act, OHS legislation and environmental legislation. The builder just wants the job finished ahead of time at the lowest cost. The only deterrent to an offending sub-contractor is the possibility of a fine. However the contractual penalties imposed by a principal builder upon a sub-contractor for delays to the project are such that it often outweighs any penalty imposed under present legislation.

The Home Building Act should be changed so that there is an effective deterrent to contractors performing construction work that contravenes construction work related legislation.

It is only through adopting such an approach that we will improve the industry's product and services, protect the consumer, increase skills levels, improve safety and benefit from the outcomes of improved training and reduced insurance costs.

3.4 Sub Contractor Penalties for Breaches of the Act

Under present arrangements the licensed builder appears to take all responsibility for breaches of the Home Building Act. Where a trade contractor is employed under a sub-contract basis and carries out sub-standard work it is the builder who is penalised under the legislation. Where a trade contractor contracts directly with an owner builder, these same circumstances result in the trade contractor being penalised under the legislation.

There is no logic in this approach at all, especially considering that the builder is required by law to employ licensed sub-contractors and yet there is no real advantage for the builder to do so.

3.5 Suspension/Review of Licences

The CFMEU seeks that the Government adopts an 'whole of government' approach to licensing. It is crucial that contractors who do not comply with awards and statutory requirements (i.e. taxation, workers compensation, superannuation, occupational health and safety, and environmental requirements) be subject to sanction. When there is substantial non-compliance with statutory requirements, serial offenders who continue to flout their statutory obligations should have their licences cancelled.

4. Differential Fee Structure

At present there is a range of different fees depending on the type of licence or authority. In the same way that there is a need to rationalise the number of licence categories, the licence fee structure must also be simplified.

However if there is an extension of the licensing system across the whole construction industry, the licence fee structure would need to take into consideration the overall scale of commercial, industrial and civil construction projects. The concept of licence fees for individual licence holders engaged in this type of work could not be the same as those for domestic construction. In these cases a licensing fee may need to be levied against the project as well as the licence holder.

This would be a logical approach considering the potential resources required to monitor compliance of large scale projects including high rise apartment buildings

5. Performance Management of Licence Holders

One approach to the performance management of licence holders is the model in Queensland where demerit points and industry bans have been introduced to encourage compliance. NSW, Victoria and Tasmania have introduced continuing professional development (CPD) programs that will facilitate improved performance of licence holders. The NSW CPD program is compulsory, requiring the achievement of a minimum number of points over a three year period. In South Australia a system of on the spot fines or “expiation” as an alternative to court hearings is used to maintain compliance.

The NSW Continuing Professional Development (CPD) program has the potential to become a very valuable performance management system by providing penalties for non-compliance and reward for good work through the ten CPD points granted for excellence where an individual has not be formally disciplined for breaches of the Home Building Act. This amounts to a 30% discount for simply doing the job properly.

The CFMEU strongly supports the continued implementation of the OFT CPD program across all licence categories as a way of ensuring that licensed contractors maintain and update their skills and knowledge. The continued implementation of this very simple performance management system will also contribute to a culture of learning, encourage the employment of trade apprentices and trade training as licensed contractors experience the advantages of CPD and improve compliance with OHS legislation. Better overall business performance as the ultimate outcome will facilitate improved incomes for employers and employees.

6. Owner Builder Licensing

The licensing of owner builders only benefits a small proportion of the NSW community at the expense of the rest. The concept that all members of our society have the right to construct their own dwelling and yet not be required to have the same level of expertise as a qualified licensed builder or the same responsibilities as licensed builders have in terms of home warranty insurance is flawed. Although home warranty insurance is limited to six years the concept of statutory warranty is basically worthless where a building is owner built.

There is an option for owner builders to recruit a licensed contractor to oversee the quality of building work carried out for an owner builder by licensed trade contractors. However many owner builders will attempt to make financial savings at the risk of incurring greater financial costs through poorly constructed homes. This is a false saving and provides no long term benefit at all to the NSW community when the resale of defective buildings is considered.

Owner builders are also more likely to not comply with OHS requirements to the detriment of the construction workers they employ and to participate in the cash economy as a way to save on goods and services tax.

If owner builder licensing is to be maintained, it must become more regulated. Ideally it should be abolished.

7. National Competition Policy and Mutual Recognition

To demonstrate a commitment to mutual recognition and the removal of constraint on trade between states, NSW must at least recognise and implement national construction qualifications for the purpose of licensing.

The current arrangement where there is a mixture of subjects, competencies, accredited and non-accredited courses, some national qualifications and various types of trade tests that are recognised for the licensing of contractors, must come to end as soon as possible.

NSW represents one third of all national construction activity and must take more responsibility than it has in encouraging other state regulators to adopt a common currency when determining the qualifications required for licensing. A consistent approach in qualifications requirements between state regulators for the purpose of contractor licensing will ultimately make the process of mutual recognition of contractor licences between states far simpler and assist in the removal of barriers to interstate trade.

A list of approved licensing qualifications that are only available in NSW must be considered a failure of the NSW State Government to facilitate national competition and mutual recognition.