

Registration of companies as building practitioner

This fact sheet explains how proposed changes to the *Building Act 1993* (the 'Act') and *Domestic Building Contracts Act 1995* (the 'DBC Act') will permit a 'body corporate' or company to be registered as a building practitioner.

Who should read this fact sheet

The information provided in this fact sheet is relevant to:

- Company directors engaged in major domestic building contracts and other building work; and
- Registered building practitioners who are directors of companies involved in building.

Background

The Building Amendment (Enforcement and Other Measures) Act 2017 introduces changes to the Act and the DBC Act that will allow a company¹ to be registered as a building practitioner by the Victorian Building Authority (VBA).

At present, companies can enter major domestic building contracts provided it has a director who is registered. In future, only registered practitioners will be able to enter major domestic building contracts. A company will therefore need to be registered to enter these contracts.

The proposed changes will also require the person named as the registered builder on a major domestic building contract to be the same as the person named on the certificate of insurance.

A company may also be appointed as the relevant building surveyor if it is registered as a building surveyor.

When the law changes, a company engaged in domestic building work will be deemed to be registered subject to meeting certain criteria (as set out below). A company engaged in non-domestic building work may choose to be deemed registered.

It is anticipated the changes will take effect from 1 July 2018.

Deemed registration of a company carrying out work under a major domestic building contract

Under the amendments, a company will be deemed to hold a company registration in the same class of domestic building work as their 'nominee director', if, immediately before the change:

- at least one director of the company holds a current registration as a building practitioner in a category or class authorising the carrying out of domestic building work;
- the VBA has evidence from the company's insurer that the company holds a certificate of eligibility for the required insurance;
- the company is not in a high-risk insurance category (as reported by its insurer);
- the company has carried out work under a major domestic building contract that was covered by the required insurance in the previous 12 months; and

¹ The Building Amendment (Enforcement and Other Measures) Bill 2016 (Vic) uses the term 'body corporate' but does not provide a definition. However, under the *Corporations Act 2011* (Cth) a 'body corporate' includes a company registered under that Act.

- the VBA is satisfied that the company or **any** director of the company is a fit and proper person for registration; and
- the company had not opted out of being deemed registered.²

A company will be required to advise the VBA if it does not want to be deemed registered.

What happens if a company engaged in major domestic building work is deemed to be registered?

The company will be able to enter major domestic building contracts.

The director or directors holding the registration that the company relied on for deemed registration will be the ‘nominee directors’.³

Nominee directors will be under a duty to ensure that the company complies with the *Building Act 1993* and *Building Regulations 2006*.

The company will be subject to all the duties and obligations of a registered building practitioner and the specific duties and obligations of a practitioner registered to carry out domestic building work.

What happens if a company engaged in major domestic building work is not deemed to be registered?

Only registered building practitioners will be able to enter a major domestic building contract.⁴ Therefore, companies that are not registered will not be able to enter a major domestic building contract.

In addition, the person named as the registered builder on a major domestic building contract will have to be the same as the person named on the certificate of insurance.⁵

However, contracts signed prior to the changes coming into effect may be honoured, provided the company continues to have a director with current registration that authorises the type of work.⁶

What is the status of existing major domestic building contracts if the company opts out of being deemed to be registered?

Companies that choose to opt out of being deemed registered can continue to carry out work under an existing major domestic building contract, only if one of its directors continues to hold a current registration in the relevant class of domestic building work.⁷

Deemed registration for any other company (in a category or class other than domestic building work)

Any other company with at least one director who is a registered building practitioner can advise the VBA that it wishes to be deemed registered.⁸

The company will be deemed registered in the same category as the registered director unless the VBA determines that the company or any of its directors is not a fit and proper person for registration.

² Building Amendment (Enforcement and Other Measures) Bill 2016 (Vic), cl 94, sch 10, part 2, item 3.

³ cl 94, sch 10, part 2, item 3(4)

⁴ cl 102

⁵ cl 23

⁶ cl 94, sch 10, part 2, item 5(2)

⁷ cl 94, sch 10, part 2, item 5(2)

⁸ cl 94, sch 10, part 2, item 6

What happens if any other company is deemed to be registered?

The director or directors holding the registration that the company relied on for deemed registration will be the ‘nominee directors’ of the company.⁹

Nominee directors will be under a duty to ensure that the company complies with the *Building Act 1993* and *Building Regulations 2006*.

The company will be subject to all the duties and obligations of a registered building practitioner and the specific duties and obligations of a practitioner registered in the relevant class of domestic building work.

Deemed registration currency

A deemed corporate registration will be current for the same period as the deemed nominee director’s registration. The company must apply for renewal of registration at the same time the director’s registration is due for renewal. If there is more than one deemed nominee director, the earliest renewal date will apply.¹⁰

New application for a company registration

Once the law changes, a company will be able apply for registration as a building practitioner.

The application process will be like the process for a natural person, however there will be additional requirements for corporate registration. The VBA will need to be satisfied that each director of the company is a fit and proper person for registration having regard to a range of personal and financial probity requirements.¹¹

Nominee directors will be under a duty to ensure that the company complies with the *Building Act 1993* and *Building Regulations 2006* and all other duties and obligations of a registered building practitioner.

What happens next?

The VBA will continue to work with industry associations to prepare for implementation and ensure practitioners are aware of the changes.

The VBA will continue to proactively communicate information about the proposed changes, including timeframes for implementation as they become known.

⁹ cl 94, sch 10, part 2, item 6(5)

¹⁰ cl 94, sch 10, part 2, item 5(3); item 6(4)

¹¹ cl 7, item 171A