

Building Commission NSW Consultation Paper

Competency assessments and proposed co-
regulation model

Draft Building Bill 2024

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About this paper

This paper provides an indication of policy positions proposed by Building Commission NSW as part of broader proposed building reforms. Proposed policy positions are being circulated for industry and community stakeholder feedback during consultation on the proposed building reforms. This paper does not reflect final Government positions or decisions.

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Introduction

In November 2023, Building Commission NSW (the **Commission**)¹ circulated a discussion paper on a proposed competency assessment scheme and proposed co-regulation model to targeted industry stakeholders for feedback.

The paper outlined a proposed co-regulation model that could play a critical role in the proposed reforms to the building and construction industry in NSW, including significant changes proposed to the licensing framework under the draft Building Bill.

The paper outlined that co-regulation could:

- support the Regulator and consumers to ensure licence holders are competent to carry out their work by allowing for competency assessments and other shared responsibilities with approved industry bodies and the Regulator,
- provide strong regulatory powers to enable effective regulatory oversight of participating industry bodies to mitigate key risks, and
- leverage opportunities from existing licensing and accreditation processes to support effective implementation and delivery.

This second discussion paper builds upon the first paper and provides further information about the proposed co-regulation model in response to industry feedback. This paper is not intended to resolve all elements of the proposed model; but rather support the ongoing consultation by addressing feedback received to date and clarifying key elements of the model.

The need for change from the current licensing framework

Previous consultation has informed development of the proposed model

The Commission has consulted extensively on the licensing framework proposed under the draft Building Bill, including via targeted industry consultation since 2021, a public consultation in 2022 and further targeted industry consultation throughout 2023 in response to the extensive feedback we received on building licensing in NSW.

¹ The Building Commission NSW was formally established on 1 December 2023. In November 2023 the Building and Construction Policy team which has authored both discussion papers were part of the Better Regulation Division, Department of Customer Service. This paper refers only to the Commission for simplicity.

These previous rounds of consultation provided opportunities for industry and the public to share feedback on risks, benefits, challenges, and implementation considerations relating to the current licensing assessment model, where the regulator alone assesses competency and suitability.

The proposed co-regulation model has been developed in response to the feedback received on the current licensing model during these previous rounds of consultation.

Co-regulation can address key regulatory challenges

Stakeholders have provided feedback that the current licensing model is not fit for purpose, especially in relation to licensing assessment processes and the regulator's ability to oversee a licence holder's competency.

The newly-resourced Commission intends to become a peak regulator – where the Commission has effectively responded to the underlying risks in the sector and over time can concentrate its oversight on an increasingly small cohort of risky players. However, to do this, it must address current and new challenges impacting the effectiveness of its regulatory oversight. The proposed co-regulation model can support this objective.

Currently, the licensing assessment process requires qualifications and experience to be taken at face value. There is limited capacity for comprehensive checks of competency and there is heavy reliance on other sources for data and verification.

The proposed competency assessments would add an additional step in the licensing assessment process, therefore strengthening the Commission's confidence in licensing decisions and improving regulatory oversight of the industry.

Industry feedback supports strengthening licensing assessment processes

Industry feedback has consistently supported the introduction of competency assessments to strengthen the regulator's licensing assessment processes.

While industry supports the concept of competency assessments, some stakeholders disagree about who is best placed to deliver the assessments.

In the Commission's view, an industry led model provides the strongest opportunity to assess a person's competency effectively as it could leverage industry expertise to improve the quality and relevance of licensing assessments in NSW and build long term capacity within the sector to invest in its own competency.

The Commission recognises the inherent risks of a co-regulation model including conflict of interest risks and welcomes further industry feedback on the proposed mitigations outlined in this paper (as well as the first discussion paper).

Key risks, the proposed mitigations within the model, and information about the required regulatory resourcing to successfully implement the model with sufficient regulatory oversight, will be presented to Government to inform a final decision.

Next steps and feedback

This second discussion paper provides more detail about the key elements of the proposed co-regulation model, including in [Appendix B](#) which summarises the proposed customer journey of a licence holder under the model.

The Commission welcomes industry feedback on this paper. A non-exhaustive list of questions to guide industry submissions is collated in [Appendix A](#).

Please provide submissions to the Policy team, Building Commission NSW via hbareview@customerservice.nsw.gov.au.

Industry feedback

The Commission received 26 submissions from industry stakeholders in response to the first discussion paper. Most stakeholders expressed strong support for the proposed co-regulation model, with some stakeholders providing in principle support with some reservations about certain elements of the model.

Of the stakeholders who did not support the proposed model, most supported the concept of co-regulation but had concerns about its application to their specific industry or trade.

Almost all stakeholders supported the Commission's proposal to strengthen licensing assessment processes and regulatory oversight through the introduction of competency assessments under proposed building reforms. A minority of stakeholders expressed concerns about the role of industry in delivering competency assessments, but agreed with the Commission's view that introducing competency assessments would improve licensing in NSW.

Summary of key feedback themes

Feedback theme	Summary of feedback and how this paper addresses it
Clarifying key elements of the proposed model	<p>Roles and responsibilities for the regulator and industry</p> <p>Most stakeholders supported the proposed roles and responsibilities as split between the regulator and industry, with the regulator retaining responsibility for overseeing the licensing framework and accrediting, monitoring, and auditing industry bodies.</p> <p>Some stakeholders requested further clarity on the split of roles and responsibilities. The ‘Role of Accredited Industry Bodies’ section builds upon the first discussion paper to address industry feedback on specific elements of the role of accredited industry bodies such as the eligibility criteria to become accredited and the appeals process.</p> <p>The need for effective regulatory oversight of accredited industry bodies</p> <p>Stakeholders supported the proposed processes for strong regulatory oversight of scheme, and some stakeholders requested more detail to</p>

	consider the strength of these processes. The 'Role of the Commission' section provides further detail about the Commission's proposed compliance and enforcement powers and risk-based regulatory approach to overseeing the accreditation of industry bodies.
Conflict of interest risks	The Commission recognises the inherent conflict of interest risks of any co-regulation model and has provided further detail in the 'Conflicts of interest' section on the proposed risk mitigations, including proposals revised and strengthened based on industry feedback. These proposals have been informed by industry feedback and the Commission's work to manage conflicts of interest in other industry led processes.
Types and formats of assessments	<p>Industry sought more information about the Commission's expectation for the competency assessment itself, including:</p> <ul style="list-style-type: none"> • Assessment formats and methods • Balancing standardisation and flexibility in assessments • Frequency • Accessibility • Skills gap assessment <p>While the Commission intends to continue consultation to refine these details, an indicative summary is provided in the 'Types and formats of assessments' section.</p>
Types of industry bodies who can become accredited	<p>Many stakeholders sought further clarity about the 'tiered approach' outlined in the first discussion paper which envisioned additional roles for Accredited Industry Bodies who also hold a PSS.</p> <p>Further information about the role of a PSS, including the important clarification that a PSS is not intended to be required for participation, is provided in the 'Role of PSS bodies' section.</p> <p>Further, some stakeholders provided feedback on the different types of bodies who may participate in the scheme, such as non-profits,</p>

	<p>RTOs, and membership associations. The ‘Different types of industry bodies’ section explores this feedback further.</p>
Financial viability and other resourcing challenges	<p>Most submissions from industry stakeholders provided feedback on the financial viability of the proposed co-regulation model.</p> <p>Stakeholders sought further information about the proposed fee structure and anticipated volume of assessments to support their decision-making about participation in the scheme.</p> <p>Though the Commission is unable to provide comprehensive information about these elements so early in the development of the proposed model, further details are provided in the ‘Financial viability’ section.</p> <p>This section also responds to industry feedback about other potential resourcing challenges of the proposed model, including information-sharing requirements.</p>
Assessor availability and skills shortages	<p>Some stakeholders expressed concerns about the availability of assessors and potential impacts on existing industry skills shortages. The ‘Assessor availability’ section outlines the proposed mitigations to ensure sufficient availability of suitable assessors.</p>
Co-regulation and the broader regulatory framework	<p>Stakeholders generally supported the Commission’s proposed approach to deliver the model in conjunction with other regulatory levers such as CPD. The ‘Co-regulation and the broader regulatory framework’ section provides further clarity on the role of the proposed co-regulation model in the broader regulatory framework proposed under the draft Building Bill, including the role of compliance and enforcement action against licence holders.</p>
Impacts for apprentices	<p>The Commission sought feedback from Training Services NSW (TSNSW) about the proposed co-regulation model. While TSNSW is supportive of improved regulatory oversight of licence holders via the introduction of competency assessments, concerns have been raised regarding potential impacts of the proposed coregulation model.</p> <p>TSNSW raised that the proposed co-regulation model could create duplicative burdens and have operational and legislative implications</p>

	<p>for the apprenticeship and traineeship system and trade recognition processes which are regulated under the <i>Apprenticeship and Traineeship Act 2001</i>.</p> <p>The Commission has engaged with TSNSW to refine the proposed co-regulation model to mitigate any unintended consequences or duplicative burdens for apprentices. A proposed solution, which has received indicative support from TSNSW, is provided in the 'Risk of duplicative burdens for apprentices' section.</p>
Role of other agencies such as TAFE NSW	<p>Some stakeholders provided feedback that the Commission should explore opportunities to leverage the expertise of other agencies including TAFE NSW and TSNSW.</p> <p>The Commission has consulted closely with these agencies over the previous months to investigate potential opportunities for their involvement in the proposed co-regulation model and will provide advice to Government about these opportunities to inform a final decision.</p>

Table 1

Overall, the Commission received strong interest from industry in participating in the proposed scheme. Most stakeholders who provided a submission expressed an interest in participating in the scheme, if stood up, and sought further participation in subsequent consultation to inform ongoing scheme development.

The Commission welcomes further feedback from industry and will consider any new feedback holistically with the feedback received to date.

Role of the Commission in overseeing co-regulation

This section explores the key elements of the proposed model including the proposed roles and responsibilities of the Commission in providing strong regulatory oversight. This section should be read in conjunction with the [‘Role of Accredited Industry Bodies’](#) section below.

Commission retains responsibility for licensing and accreditation

Industry feedback on the first discussion paper indicated that further clarification was needed on the roles and responsibilities of the Commission and Accredited Industry Bodies.

It is important to clarify that the Commission proposes to retain responsibility for the licensing schemes (except for architects registered by the Architects Registration Board) and the accreditation and oversight of accreditation bodies.

The diagram below provides a summary of these roles and responsibilities.

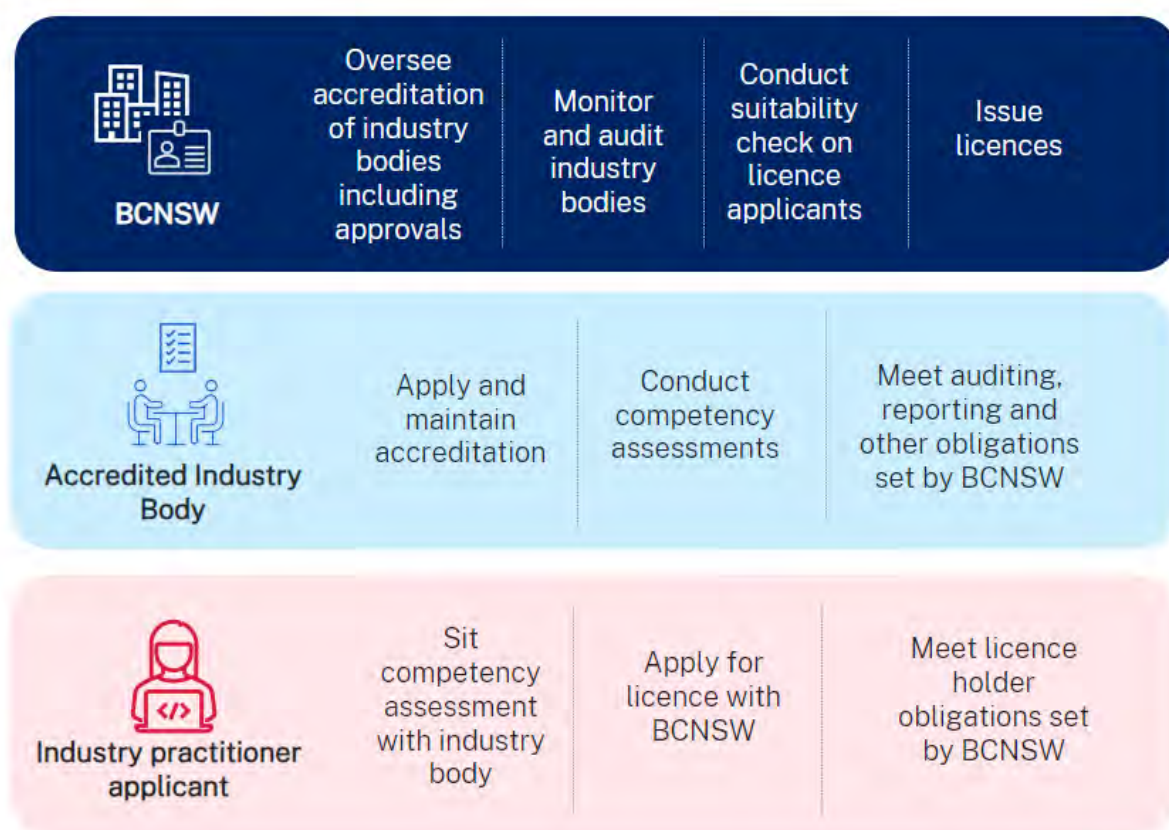


Figure 1

Enabling targeted, risk-based regulatory oversight of the building industry

The volume of licence holders anticipated under the proposed new licensing framework (approximately 240,000 licence holders and escalating to approximately 300,000 over the next few years) prevents the Commission from feasibly undertaking a deep-dive assessment of every industry practitioner. This scale requires the Commission to concentrate its regulatory efforts on the riskier players in the market and the players with the most influence.

The proposed co-regulation model could enable the Commission to strengthen and improve its regulatory oversight of the entire building industry in NSW by strategically targeting regulatory efforts towards risky and influential players.

The diagram below indicates how this risk-based, targeted approach could strengthen the Commission's regulatory oversight of a practitioner's competency and suitability to hold a licence at the point of entry into the industry and as an ongoing obligation.

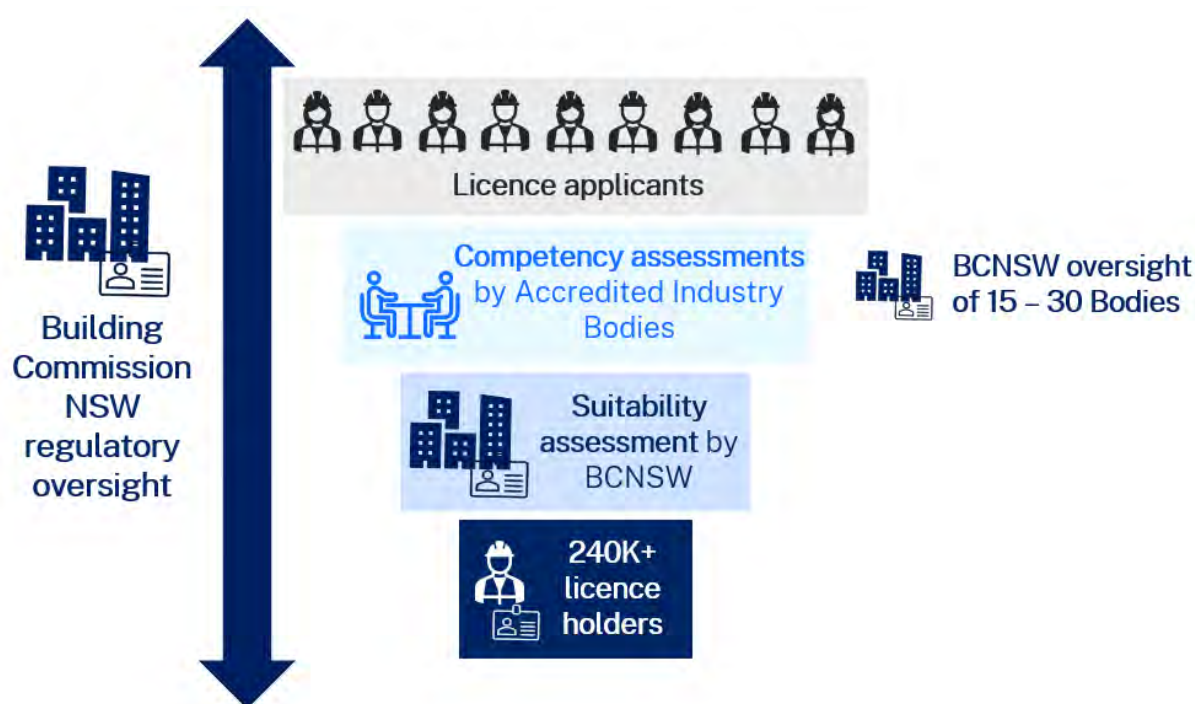


Figure 2

With 15 – 30 Accredited Industry Bodies anticipated to participate in the proposed co-regulation model, the Commission could feasibly deliver strong, effective regulation and oversight of these players. Concentrating regulatory efforts on Accredited Industry Bodies would in turn enable the Commission to deliver effective regulation of the broader industry. While the Commission would retain sole responsibility for

assessing suitability of applicants, the proposed model could allow the Commission to focus its enforcement of competency standards at the point of licensing more effectively.

Compliance and enforcement against Accredited Industry Bodies

The proposed co-regulation model would be supported by strong regulatory powers and effective oversight of industry bodies to ensure accountability and mitigate risks. If the proposed model is adopted, a dedicated compliance function would be established to oversee Accredited Industry Bodies to ensure the scheme is working as intended.

The Commission would have access to a range of compliance and enforcement tools, from warnings and penalty infringement notices to permanent cancellation of an Accredited Industry Body. The compliance pyramid below depicts the proposed compliance approach:



Figure 3

Minor misconduct – supporting Accredited Industry Bodies

The proposed model relies on a partnership between the Commission and Accredited Industry Bodies. It would be the regulator's role to support Accredited Industry Bodies to meet the expected standards and performance criteria required to participate in co-regulation. This includes taking compliance and enforcement action where necessary. However, where appropriate, the regulator's focus would be on education, training and upskilling rather than taking punitive action against Accredited Bodies. The

Commission is committed to working with Accredited Industry Bodies to resolve issues and uplift their capability.

While the Commission would have appropriate compliance and enforcement tools, including being able to suspend or cancel an Accredited Industry Body's accreditation, as demonstrated in the compliance pyramid these actions are reserved for the most serious cases. The Commission acknowledges that Accredited Industry Bodies would play a crucial role in ensuring competence of licence holders and is committed to working with relevant bodies to ensure the success of the proposed scheme.

Serious misconduct – sanctions against Accredited Industry Bodies

However, if serious misconduct or non-compliance is identified these matters would be investigated thoroughly. Examples of serious misconduct may include breaches of probity obligations, assessors accepting bribes and fraudulent competency assessments being issued. Due the serious nature of these examples and the significant risk posed to the integrity of the proposed scheme it is likely such an Accredited Industry Body would have their accreditation cancelled.

Leveraging data and intelligence to inform compliance activity

As outlined above, the Commission's view is that a risk-based, targeted approach to regulation is the most effective approach to regulatory oversight of the building industry.

The Commission is already using data and intelligence to inform its compliance activity across NSW, leveraging practitioner risk profiles to proactively target risky players and ensure efficient use of regulatory resources.

For example, the Commission has recently conducted investigative blitzes and site inspections across the Wollongong region based on data which indicated high levels of risky work. These inspections identified defects on construction sites in the region, and the Commission was able to respond by issuing orders and taking compliance action.

The proposed co-regulation model could enable an uplift in regulatory capability to continue this proactive, data-driven approach to regulation. The Commission intends to leverage the stringent information-sharing requirements for Accredited Industry Bodies into a valuable source of data to inform its compliance activity.

Data trends and insights relating to pass and fail rates, assessor turnover, and appeals and complaints; as well as the Commission's own data on licence holder compliance; would inform the risk-based approach to monitoring and auditing Accredited

Industry Bodies, as well as other regulatory responses proposed by the Commission (including CPD).

For instance, Accredited Industry Bodies who have high rates of appeals and complaints by licence applicants would be flagged by the Commission for closer monitoring and auditing. This would support the Commission to take proactive compliance action if required.

Question for industry feedback:

**1. Do you support the proposed compliance and enforcement tools outlined above?
What other compliance mechanisms should the Commission consider?**

Role of Accredited Industry Bodies

This section outlines the proposed requirements and responsibilities of Accredited Industry Bodies participating in the proposed co-regulation model.

Accredited Industry Body requirements

Requirements during the application process: Eligibility criteria

An industry body which seeks to be accredited under the proposed co-regulation model would be assessed against prescribed criteria and must provide evidence to demonstrate it can satisfy the eligibility criteria.

The Commission would conduct a thorough evaluation of an industry body's application to determine its suitability to deliver competency assessments.

A high-level summary of the proposed eligibility criteria is provided in the figure below.






Criteria	Types of evidence
 Details of Applicant Body's organisation	<ul style="list-style-type: none"> • Name of Organisation • Organisation information; ACN/ABN • Contact information
 Nature of organisation	<ul style="list-style-type: none"> • History/years of operation • Type e.g., for profit, membership based? • Size and structure, governance arrangements • Streams of expertise
 Financial Capacity	<ul style="list-style-type: none"> • Financial history (2 years) • Current financial status
 Operational Capacity	<ul style="list-style-type: none"> • Number of employees, number of assessors • Assessor recruitment process • Proposed processing times and SLAs for competency assessments
 Capability and suitability	<ul style="list-style-type: none"> • Suitability of assessors • Expected volumes of competency assessments • Procedures and processes for competency assessments • Ring fencing, code of conduct and conflict of interest arrangements

Figure 4

The Commission intends to develop clear guidelines in consultation with industry to explain the application process to support potential Accredited Industry Bodies. These guidelines would also clarify the standard required to meet each eligibility requirement.

Ongoing requirements to maintain accreditation

The Commission would set clear expectations for the ongoing requirements that an Accredited Industry Body must meet to maintain their accreditation. An indication of these proposed requirements is outlined in the figure below.

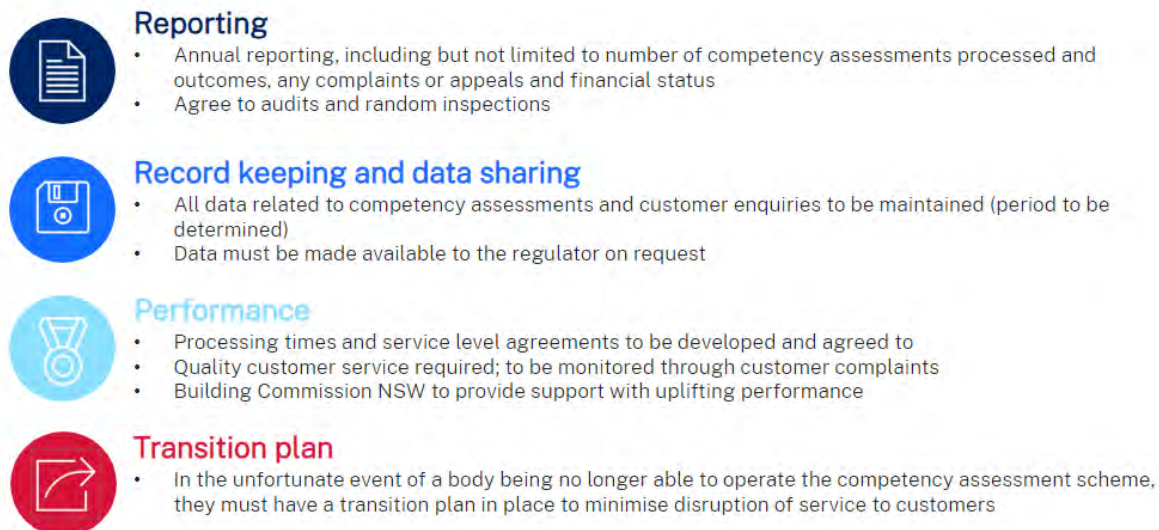


Figure 5

Roles and responsibilities for appeals processes

Some stakeholders sought clarification on the proposed roles and responsibilities between the Commission and Accredited Industry Bodies for managing appeals.

The Commission would be responsible for appeals relating to the conduct of the industry body. Accredited Industry Bodies would be responsible for appeals relating to outcomes of competency assessments.

This approach is summarised in the table and described further below.

Figure: Responsibility of appeals



Scenario	Accredited Industry Body	Building Commission NSW
 Industry practitioner applicant fails a competency assessment with an accredited industry body	The applicant can appeal to the accredited industry body	N/A
 Industry practitioner applicant fails the suitability assessment with the Regulator	N/A	The applicant can appeal to the Regulator

Figure 6

Responsibilities of Accredited Industry Bodies

To obtain accreditation, Accredited Industry Bodies would need to demonstrate established appeal processes and sufficient capability and capacity to conduct appeals.

This would be crucial as Accredited Industry Bodies would be solely responsible for managing appeals relating to the outcomes of competency assessments.

Responsibilities of the Commission

The Commission intends to retain responsibility for dealing with appeals relating to a licence applicant being denied a licence on suitability grounds. The relevant appeals process including internal and external pathways would be prescribed in the proposed Building Bill and accompanying regulations. An Accredited Industry Body would not be involved in this process.

Additionally, the Commission would be responsible for handling appeals relating to an industry body not meeting the requirements to become accredited or obtain renewal of their accreditation. The relevant appeals process including internal and external pathways, such as NCAT, would be prescribed in the proposed Building Bill and accompanying regulations.

Support from the Commission for Accredited Industry Bodies

Co-regulation is seen as a partnership between the Commission and Accredited Industry Bodies, and as such, the Commission is committed to working with Accredited Industry Bodies to ensure the success of the co-regulation framework.

The Commission intends to develop clear guidance material and processes to ensure effective oversight of the co-regulation scheme and support industry bodies. Examples of guidance material which could be developed by the Commission include:

- Application and renewal processes for Accredited Industry Bodies including fees
- Clear matrix of roles and responsibilities between the Commission and Accredited Industry Bodies to clarify expectations and avoid duplication
- Expectations for the standard of processes to be developed by each Body including managing conflicts of interest, complaints, appeals and dispute resolution
- Expectations for the standard of operational processes to be developed by each Body including governance, information-sharing, data storage and privacy. This may include a standardised process to help Bodies stand up these functions.

Question for industry feedback:

2. What further information could the Commission provide to support Accredited Industry Bodies?

Role of PSS bodies in a tiered approach

Proposed policy position: Accredited Industry Bodies would not be required to hold a professional standards scheme (PSS) to participate in the Commission’s proposed co-regulation model. However, Accredited Industry Bodies who hold a PSS would have access to further benefits.

Industry feedback on the first discussion paper indicated the need for further clarity on the tiered model contemplated in the proposed co-regulation model.

It is important to clarify that it is not intended to require a PSS for an industry body to obtain accreditation under the proposed co-regulation model. However, the Commission proposes a ‘tiered approach’ which would provide access to further benefits for Accredited Industry Bodies who hold a PSS. As there is a well-established and stringent process in place to become a PSS, a tiered approach would reflect the stronger regulatory confidence in the capability of those bodies to participate effectively in the proposed co-regulation model.

Accredited Industry Bodies who hold a PSS (**PSS Accredited Industry Bodies**) could capitalise on benefits such as a fast-tracked accreditation process with a reduced application fee and setting additional CPD requirements for its members (adding to the standard CPD requirements which would be set by the Regulator).

Some industry feedback demonstrated that obtaining a PSS was not achievable for many industry bodies. As indicated above, a PSS is not intended to be mandatory to participate in the proposed scheme. Industry bodies who have not obtained a PSS would be able to obtain accreditation and deliver competency assessments (as long as they meet the eligibility requirements). However, these bodies would not have access to other benefits outlined below.

The table below highlights the proposed benefits for PSS Bodies:

	PSS Accredited Industry Body	Other Accredited Industry Body
Conduct competency assessments (for members and non-members)	X	X
Develop CPD courses in partnership with the Commission	X	X
Set additional mandatory CPD requirements for members	X	
Investigate complaints about members	X	
Sanction members	X	
Insurance benefits – including liability caps	X	
Reduced application process and fee	X	
Attract new members by offering a discounted competency assessment fee for members	X	

Table 2

Ensuring access for non-members of the PSS Accredited Industry Body

PSS Accredited Industry Bodies would be required to conduct competency assessments of any applicant regardless of whether the applicant is a member of the body. Applicants would not be required to become a member of the body to sit their competency assessment. This is important to ensure access in cases where only one body (i.e., a PSS Accredited Industry Body) is conducting competency assessments for a particular licence class.

The additional benefits outlined above relating to insurance and CPD would only apply to members of the PSS body (not to non-members who have completed a competency assessment through the body).

Insurance requirements

A key benefit of PSS is that they offer a limit on civil liability of a professional who take part in them. Essentially, this provides a safeguard to members of a PSS by

limiting their personal liability for civil claims. For example, the Australian Institute of Builder Surveyors liability limit is \$2 million for Level 1 buildings.

The insurance benefits of being a member of a PSS are an incentive for industry to participate in the co-regulation framework as a PSS Accredited Industry Body.

CPD requirements

The Commission proposes to introduce mandatory CPD requirements for most licence holders under the draft Building Bill and supporting regulations. Further information is provided in the [‘Other regulatory levers’](#) section.

Under the proposed model, a PSS Accredited Industry Body could prescribe additional CPD requirements for their members. The Commission would partner with these Bodies to develop and provide CPD modules, including allowing PSS Accredited Industry Body modules to be mandated in lieu of Commission mandated modules.

Other industry bodies (including Accredited Industry Bodies without a PSS, and other industry bodies not involved in co-regulation) would still be able to partner with the Commission to develop non-mandatory CPD modules.

Complaints handling and compliance and enforcement processes

The ability for a PSS Accredited Industry Body to sanction or discipline members is not intended to replace the role of the Commission. The Commission intends to retain responsibility for dispute resolution and formal disciplinary action against licence holders. However, it is expected that the Commission may share pertinent information regarding members with the relevant PSS Body where a determination has been made and where appropriate.

Information sharing from the Commission and Accredited Industry Bodies would be key to the success of the proposed co-regulation model. However, to ensure effective regulatory oversight, any consumer complaints against a licence holder would be handled by the Commission. If the Commission takes action against a licence holder, PSS Accredited Industry Bodies may also choose to take action against the individual in their capacity as a member of the Body.

The Commission also envisions a role for PSS Accredited Industry Bodies in handling trader vs trader complaints, which is outside the remit of the Commission. Members may feel more comfortable approaching their industry body rather than the Regulator. All PSSs are required to have effective complaints handling systems and disciplinary

procedures in place. Therefore, PSS Accredited Industry Bodies should uphold the

professional standards of their occupation and take action against individuals, including expelling them from their scheme where appropriate.

As described above, a PSS would not be required to participate in the proposed co-regulation model. However, the tiered approach would provide further benefits to PSS Accredited Industry Bodies that are not available to all Bodies.

Question for industry feedback:

3. Are you supportive of a two-tiered model? Why or why not? If you do not support a two-tiered model, do you propose an alternative approach?

Different types of industry bodies who can become accredited

Industry feedback noted that the proposed co-regulation model must consider the various types of industry bodies who may participate in the scheme, such as:

- Membership-based organisations
- Professional associations
- Non-profits
- RTOs

At this stage, the Commission does not intend to introduce restrictions on the types of industry bodies which would be eligible for accreditation other than requiring them to be a registered organisation. However, as outlined above in the ['Accredited Industry Body requirements'](#) section, bodies would be required to provide information about the nature of their organisation for consideration by the Commission as part of the application process.

Conflicts for membership-based bodies

Some membership-based industry bodies provided feedback that becoming an Accredited Industry Body would create an inherent conflict for their role in member advocacy. These stakeholders suggested that this would create complexities in their dual function of advocating for their membership base and assessing the competency of members.

The Commission recognises the complexity of this relationship but does not expect this to have a significant impact. Many key industry associations already have codes of conduct requiring their members to work in compliance with industry standards and aim to upskill the overall competency of their industry, and these objectives align with

the proposed co-regulation model. There may need to be some changes in organisations to meet the obligations of an Accredited Industry Body, but the Commission intends to provide support on detailing how organisations can meet these requirements.

Role of RTOs

One submission suggested that the Commission could accredit RTOs, similar to an existing SafeWork NSW process by which certain RTOs are approved to deliver training and assessment. More information about this SafeWork NSW scheme is available via:

<https://www.safework.nsw.gov.au/licences-and-registrations/registered-training-organisations/high-risk-work-rtos>

While the Commission will consider opportunities to leverage lessons learned from the SafeWork NSW scheme, there is no intention to consolidate training and assessment processes for building and construction licensing under the proposed co-regulation model. Industry bodies who are also RTOs would be able to become Accredited Industry Bodies and conduct competency assessments (if they meet the eligibility requirements and adhere to the strict ring-fencing requirements outlined in this paper).

However, the Commission's view is that the separation of training and competency assessment delivery is necessary to mitigate conflict of interest risks.

Non-profit organisations

One submission suggested that the Commission should introduce a requirement for Accredited Industry Bodies to be Registered Organisations under the *Fair Work (Registered Organisations) Act 2009 (Cth)*. The submission suggested this would counteract any concerns of profiteering being placed above the priorities of uplifting the skill sets of licenced practitioners operating in the sector.

The Commission recognises the importance of limiting barriers to entry and enabling market-driven competition between Accredited Industry Bodies to ensure viability of the scheme, while also limiting risks and burdens for industry and the public.

The Commission's view is that requiring Accredited Industry Bodies to be Registered Organisations could impose a barrier to entry for small and medium sized industry bodies. This could adversely affect licence classes with smaller cohorts, where industry bodies may be unable to participate in the co-regulation model. However, the Commission considers there is merit in exploring this eligibility requirements and seeks feedback on the proposed requirement.

Prescribing Accredited Industry Bodies

Some stakeholders suggested that the Commission could prescribe Accredited Industry Bodies within legislation to provide certainty to both industry and the public about the role of these trusted Bodies. This would also serve to ensure confidence in the longevity of the co-regulation scheme and provide potential licence applicants with a clear list of which Bodies can conduct competency assessments for each licence class.

However, this approach may create operational challenges, including requiring the list of prescribed Accredited Industry Bodies to be updated via Gazette for variations to their accreditation (e.g., expanding the licence classes for which a Body can offer assessments).

The Commission seeks further feedback on the benefits and risks of this proposal.

Questions for industry feedback:

4. Should the Commission consider any other restrictions or eligibility requirements for certain types of industry bodies? For example, requiring for-profit organisations to demonstrate how they would ensure that their revenue generation objectives would not detract from the overall objectives of the scheme.

5. Should the Commission prescribe Accredited Industry Bodies within legislation (such as via Gazette) to provide certainty to industry and the public?

Addressing conflict of interest risks

To maintain public confidence in the licensing framework, the proposed co-regulation model must prescribe strong auditing and reporting requirements and be supported by effective regulatory oversight to ensure the scheme remains beyond reproach.

The Commission recognises the inherent conflict of interest risks of a co-regulation scheme, with most stakeholders providing feedback supporting the need for strong regulatory oversight to mitigate these risks.

Powers and requirements to mitigate conflict of interest risks

The proposed model would prescribe strong powers for the Commission to oversee and manage conflict of interest risks, including the power to conduct proactive and reactive audits, such as on-site audits, dip sampling and secret shopper activities.

Accredited Industry Bodies would also need to meet strict requirements including:

- Ongoing reporting and disclosure obligations to the Commission

- Information-sharing to ensure transparency of decisions
- Whistleblower policies to ensure accountability within the Body and to provide the appropriate protections for any individual that objectively reports corruption or wrong doings of an accredited authority or authorities.

The Commission also proposes that Accredited Industry Bodies would be considered a ‘public official’ for purposes of the *Independent Commission Against Corruption Act 1988*. This means they would be required to act in the public interest and may be investigated, and/or have findings made against them by the Independent Commission Against Corruption (ICAC) regarding any matters of alleged corrupt conduct.

Ring-fencing for RTOs

As discussed in the first paper, Accredited Industry Bodies that also practice as RTOs would need to meet strong ring-fencing requirements to mitigate conflict of interest risks, including:

- Ensuring the Body’s organisational structure provides sufficient independence between the RTO function and the competency assessment function; and
- Ensuring RTO trainers are not also assessing competency assessment applicants.

Most stakeholders supported these requirements, though some stakeholders sought further clarification on how these would operate in practice.

Case study – ring-fencing in the certification industry

The certification industry provides a case study of how these requirements could operate.

An [NCAT ruling](#) stated the conflict of interest standard ‘requires the separation of the consultancy role and the certification role to sufficiently satisfy a reasonably informed member of the general public that there is no likelihood that the accredited certifier might be influenced by the performance of the consultancy role and might lack the necessary objectivity’.

In recent times since this ruling, and since the adoption of the *Building and Development Certifiers Act 2018*, larger certification firms have restructured to incorporate a ring-fencing approach to ‘certification’ and ‘consultancy’ services offered by their businesses. These changes have ensured delivery of independent regulatory oversight of projects, while allowing firms to continue offering unfettered design services.

Other feedback on ring-fencing

Some industry feedback suggested that bodies who also run RTOs should be prevented from participating in the scheme entirely. However, this feedback was limited, and most stakeholders acknowledged that this would severely limit the pool of available bodies. The Commission's view is that the proposed ring-fencing requirements are a more proportionate mitigation for conflict of interest risks.

Question for industry feedback:

6. Do these proposed powers and requirements mitigate conflict of interest risks? If not, what other powers and requirements should be considered?

Types and formats of assessments



Figure 7

Some stakeholders sought more information on the types and formats of competency assessments that are envisioned under the proposed co-regulation model.

The Commission intends to work with industry over the coming months to define the types of assessments that could be prescribed. If the proposed co-regulation model is stood up, pending Government decision, the Commission would also collaborate with industry to co-design the specific competency assessments for each licence class.

It is important to clarify that developing competency assessments is distinct from setting the eligibility requirements for obtaining a licence, such as qualifications, knowledge, and experience. The Commission would be responsible for setting these eligibility requirements for licence holders. While industry will be invited to consult on these requirements, Accredited Industry Bodies would not be able to set specific eligibility requirements for licence holders.

Likewise, though Accredited Industry Bodies could deliver competency assessments, the Commission would have oversight of the design and development of competency assessments to ensure they reflect the licensing eligibility requirements as prescribed.

Indicative guidance on the types and formats of competency assessments anticipated under the proposed co-regulation model is summarised in the table below and explored further in this section.

Format / method	<p>Different assessment methods for different licence classes.</p> <p>Methods may include:</p> <ul style="list-style-type: none"> • Written tasks • Panel interview • Reviewing documentation e.g., referee statements • Practical, 'on the tools' assessments
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Standardised vs flexible approach	Tailored and bespoke to each licence class One assessment for each licence class to ensure consistency
Assessment criteria	Deterministic, with clear criteria to ensure consistency and transparency of decision-making
Frequency	Not required to be ‘on-demand’ – may be monthly or another recurring period
Accessibility	Must ensure access for regional and remote communities, and culturally and linguistically diverse (CALD) groups

Table 3

Key elements of competency assessments

Assessment formats and methods

- Written tasks involving problem solving of case studies.
- Verbal assessment (e.g., by an interview panel) of an applicant’s experience, such as discussing work history.
- Assessors to review documentation provided demonstrating qualifications and prior work history such as referee statements.
- Practical examinations ‘on the tools’ demonstrating skills.

It is expected that different licence classes would require different assessment methods. Licence classes which require a physical demonstration of competency would attract high associated costs to run each assessment, and therefore, would reasonably incur higher fees. Whereas licences classes that may require a greater application of demonstrated theoretical knowledge (i.e., professional engineers or building certifiers) and may be more conducive to online assessments would likely attract lower fees. The Commission intends to consider this when developing the fee structure for the scheme and continue consulting with industry.

Deterministic criteria for assessments

It is intended that competency assessments would be deterministic in nature.

Deterministic competency assessments would include clear criteria which must be assessed and met to obtain competency. It is essential that applicants are

assessed against clear criteria to maintain consistency and standards across Accredited Industry Bodies.

Frequency

It is anticipated that many competency assessments would not be available via an 'on-demand' approach for enrolments. Rather, assessments may be better scheduled to run on monthly or other recurring basis throughout the year to satisfy market demand resulting from staggered licence renewal dates. This would allow Accredited Industry Bodies to allocate assessors in an efficient manner to streamline operations and resourcing requirements.

Accessibility

To achieve accreditation, it is proposed that industry bodies would need to demonstrate that they can deliver accessible assessments to meet the needs of various stakeholder groups in NSW, including regional and remote communities, and culturally and linguistically diverse (CALD) groups.

This aligns to the Commission's commitment to increase its regional presence and ensure regulatory oversight of the entire building industry in NSW.

The Commission acknowledges that this requirement may create financial impacts such as increased costs for delivering some assessments in regional areas. Accredited Industry Bodies would need to demonstrate that this has been considered in their processes and procedures. For example, Bodies could charge higher fees for all competency assessments to subsidise the cost of delivering regional assessments.

The Commission intends to continue engaging with industry to set clear expectations for ensuring accessibility of assessments, as well as discuss opportunities for the Commission to support bodies to meet these requirements.

Balancing standardisation and flexibility of competency assessments

Proposed policy position: Competency assessments would need to be tailored and bespoke to each licence class. However, it is also important to set clear, minimum standards for consistency. To achieve this, the Commission intends to develop one assessment approach for each licence class to ensure consistency.

As outlined in the first discussion paper, pending final Government decision, the Commission is committed to developing competency assessments in a co-design approach in conjunction with industry. Some stakeholders sought clarification on

whether competency assessments would be designed for each Accredited Industry Body or for each licence class. That is, if three different Bodies were conducting assessments for the carpentry licence, whether three different carpentry competency assessments would be developed.

The Commission intends to develop one competency assessment for each licence class in partnership with industry. This is vital to ensure consistency where multiple Accredited Industry Bodies are conducting assessments for the same licence class. This approach would not prohibit an Accredited Industry Body from going above the minimum standards prescribed and offering a more rigorous competency assessment.

This approach would maintain consistency and certainty for industry bodies, the regulator and licence applicants. It is expected that this approach would reduce resourcing and financial burdens for Accredited Industry Bodies. However, an overly rigid approach could stifle industry innovation.

The Commission has also considered an alternative approach to focus on prescribing minimum standards and competencies that must be tested. This likely would include the way an applicant must be tested e.g., practical or oral assessment. The Accredited Industry Body would have the discretion to deliver the competency assessment in their preferred manner, subject to the Regulator's approval. Under this approach, there would be potential for multiple different competency assessments to be available on the market. However, each available competency assessment would still be subject to approval by the Commission.

This approach is not preferred due the potential to create inconsistency in the market.

Questions for industry feedback:

7. Should the Commission, in conjunction with industry, develop and mandate one competency assessment for each licence class?

Alternatively, should Accredited Industry Bodies be able to develop and implement a bespoke competency assessment? (Noting this would still be subject to approval by the Commission)

Skills gap assessment

Proposed policy position: At this stage, the Commission does not intend to introduce a skills gap assessment with specific training requirements as part of the

proposed co-regulation model. However, Accredited Industry Bodies could be required to provide an outcomes report to failed applicants.

The Commission has considered introducing a skills gap assessment or report as part of the proposed co-regulation model. If an applicant does not pass a competency assessment due to a specific knowledge gap (rather than a broad failure to meet competency requirements), Accredited Industry Bodies could be required to provide a skills gap assessment or report to the applicant to highlight the key areas of improvement required to obtain competency.

A skills gap assessment could provide clear next steps for an applicant to take in a certain time frame, such as requiring an applicant to undertake further training in a specific area, completing additional work under supervision or revising relevant building standards.

Once these steps were completed, the applicant would not be required to resit the entire competency assessment, but rather would be re-assessed for the relevant areas of competency per the skills gap assessment, and then passed.

However, a skills gap assessment would create risks for the proposed model including:

- Creating a monetary incentive to fail applicants who could then be required to complete training;
- Influencing an applicant's decision of where to undertake a competency assessment depending on what further complementary training courses are offered by an Accredited Industry Body; and
- Creating complexity in the design of competency assessments, if applicants could re-sit only relevant parts of the assessment, following skills gap training.

Strong ring-fencing requirements and effective regulatory oversight would support risk mitigation; but on the balance of risks considered, the Commission's view is that skills gap assessments should not outline specific training requirements for applicants.

However, the Commission does expect that failed applicants should be provided with a summary of the marking criteria and outcomes of their assessment. This report could include clear information about competency gaps and would support failed applicants to identify areas for improvement.

This approach is expected to improve the customer experience for applicants and industry alike, without the significant conflict of interest risks of a skills gap

assessment process. This process would also mitigate burdens for Accredited Industry Bodies in handling complaints or appeals as applicants would receive clear guidance about why they failed.

Question for industry feedback:

8. Do you support the proposed approach to require Accredited Industry Bodies to provide an outcomes report to failed applicants? Why / why not?

Risk of duplicative burdens for apprentices

Proposed policy position: Allow a five-year interim exemption from competency assessment requirements for recent apprentices.

The Commission has engaged with interagency stakeholders across government to identify strategic and operational opportunities and risks of the proposed co-regulation model.

Training Services NSW (TSNSW) is responsible for the apprenticeship and traineeship system and trade recognition processes which are regulated under the *Apprenticeship and Traineeship Act 2001*.

TSNSW provided feedback on the proposed regulation model and raised concerns that the proposed co-regulation model could create duplicative burdens for apprentices, who undertake a thorough assessment of their competency as part of the apprenticeship system. TSNSW raised concerns that introducing another competency assessment requirement for apprentices, most of whom apply for a licence directly after completing their apprenticeship, would create undue burdens and would fail to recognise the extensive assessment already completed via the apprenticeship system.

The Commission acknowledges these risks and has consulted with TSNSW to refine the proposed model and address these potential duplicative burdens.

Under the refined model, participants of the apprenticeship and traineeship system who obtain a Certificate of Proficiency (CoP) would be granted an interim exemption from sitting a competency assessment for a period of five years. Participants who wish to rely on the exemption would be required to apply for a licence within 12 months of receiving their CoP.

After the five-year period has expired, the licence holder would be subject to standard competency assessment requirements. This concession for participants of the apprenticeship and traineeship system acknowledges that they have been deemed

competent at a particular point in time whilst also ensuring that licence holders are treated equally and subject to the same conditions.

TSNSW has provided indicative support for this proposed amendment to the model. The Commission will continue to engage with TSNSW to refine the proposed coregulation model and ensure operational impacts for the apprenticeship system are addressed. The Commission also welcomes industry feedback on the refined model proposed for apprentices.

Case studies which have informed development of the model

This section discusses the case studies from various building industry trades and professions which have been investigated by the Commission to inform development of the proposed co-regulation model and the types and formats of competency assessments.

Capstone assessment for electrical work

The Commission has leveraged key learnings from a similar approach operated by the electrical industry to develop the proposed co-regulation model.

The Electrical Trade Union (ETU) and National Electrical Contractors Association (NECA) collaborate to run a ‘capstone’ assessment that all electricians must pass before they can be licensed, regardless of how they obtained their underlying qualification.

The capstone assessment leverages the industry expertise of the ETU and NECA and provides a successful assurance of competency for the electrical industry before applicants enter the industry. The proposed co-regulation model intends to leverage key elements of the capstone assessment including:

- Practical assessment component e.g., demonstration of skills
- Written assessment component to ensure the applicant can demonstrate their understanding of the critical aspects of the relevant electrical work
- Clear, objective criteria for assessing an applicant’s competency

ARCTick and the Australian Refrigeration Council

The Australian Government operates a co-regulatory scheme for overseeing the refrigeration and air-conditioning industry in collaboration with the Australian Refrigeration Council (ARC), a peak industry body.

The ARCTick scheme is administered by the ARC via a service agreement with the federal Department of Climate Change, Energy, the Environment and Water

(DCCEEW), under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).

Under the scheme, the ARC issues licences and authorisations for refrigerant handling and trading as required by this Act and its supporting Regulations.

The ARCTick scheme has been in operation for 19 years. The ARC's [2023 Annual Report](#) provides operational metrics which indicate the effectiveness of the co-regulatory scheme:

- 46,173 applications processed in 2022/23 FY;
- 3 – 5 days' average processing time for licence applications, well ahead of the prescribed 30-day processing requirement; and
- 5,000 audits of business premises conducted to determine compliance.

The scale and success of the ARCTick scheme supports the Commission's view that a co-regulatory scheme could strengthen regulatory oversight of NSW licence holders.

However, there are key differences between the ARCTick scheme and the co-regulation model proposed by the Commission, namely that the Commission's proposed model would not authorise Accredited Industry Bodies to issue licences. Bodies would conduct competency assessments and the Commission would retain the final determination about whether to issue licences.

Victorian Building Authority (VBA) assessment

Under the VBA's licensing assessment process, licence applicants can be required to complete an in-person assessment or sit an online exam.

Certain elements of the VBA's assessment process can be leveraged for the Commission's proposed co-regulation model, including allowing a range of assessment formats (in-person, online etc) to improve accessibility for applicants.

However, the Commission's view is that the proposed co-regulation model outlined in this paper would enable stronger regulatory oversight than the Victorian model.

The VBA's process does not require all licence applicants to undergo an assessment; rather, the VBA may request that an applicant completes an exam following an initial review of the application by an assessor. The Commission's proposed competency assessment requirements would apply to almost all licence applicants, ensuring consistency and transparency of decision-making.

The VBA model also relies on in-house expertise and resourcing to conduct these assessments, with assessors being employed by the Victorian government. This approach fails to leverage industry expertise (as proposed under this co-regulation model) and may limit the regulator's ability to ensure the assessment process is modern and meets current industry standards and expectations.

The Commission intends to engage with the VBA over the coming months to seek more information about their assessment process and consider lessons learned.

Financial viability and other resourcing considerations for industry

Most stakeholders provided feedback addressing the financial viability of participation in the proposed co-regulation model.

Many stakeholders sought further information about key elements of the proposed co-regulation model, including the fee structure and anticipated volume of assessments to support their decision-making about participation in the scheme.

This section provides indicative guidance about these key elements of the model, and addresses industry feedback about other potential resourcing challenges of the model, such as in relation to information-sharing requirements.

The Commission acknowledges that this section will not answer all questions about the financial viability of the proposed co-regulation model and welcomes further feedback from industry to inform final advice to Government.

The Commission intends to also continue investigating opportunities to reduce costs and other resourcing burdens for Accredited Industry Bodies by providing standardised solutions to the common challenges raised in submissions, including utilising digital solutions to reduce costs for Accredited Industry Bodies.

The Commission intends to explore a digital solution that would facilitate integrated, standardised, and streamlined information sharing between accredited industry bodies and the regulator. An ideal platform would be centralised and would minimise the level of manual effort required by both parties and by applicants for competency assessments. Feasibility would be based on investment from Government and industry.

The Commission will continue consulting with industry to develop this proposal.

Financial viability for industry bodies

Some stakeholders raised concerns about the financial viability of the scheme, pointing to:

- The importance of the prescribed fee structure in ensuring the scheme's success;
- The variable costs of competency assessments, including the high cost of practical assessments and higher costs to assess outdated qualifications – also discussed further in the [‘Types and formats of assessments’](#) section; and

- The anticipated volume of assessments over time, with an initial surge in applications expected at the commencement of the scheme.

These considerations are discussed further below.

Variable costs of competency assessments

The level of resourcing required to assess an applicant's competency would vary depending upon the licence class. The Commission therefore expects that some competency assessments may warrant a higher fee than others and would account for this in supporting bodies to stand up competency assessments.

Regulatory power to prescribe a maximum fee

While the financial viability of the proposed co-regulation model would be key to provide long-term operational assurances to the Commission and to licence holders, the scheme must limit undue cost impacts to businesses and individual licence holders.

Therefore, the Commission would have the power to set a maximum fee that may be charged for a competency assessment. This would allow the Commission to intervene in instances where 'price gouging' may occur from market failure in the absence of healthy competition. The Commission would continue consulting with industry to determine a suitable figure for the maximum fee prescribed, which may be different for certain licence classes.

More broadly, the Commission would consider overall cost impacts for licence holders when setting its own fees for a licence application or renewal, to ensure the overarching customer journey and total costs required to obtain a licence are considered.

Application requirement to provide information about proposed fees

Industry bodies would also be required to provide information about their proposed fee structures during the application process. The application would need to demonstrate that a fee has been set in consideration of key factors including:

- Delivery method
- Frequency of assessments
- Projected volume of assessments

Scalability of competency assessments

Licence classes with more licence holders are expected to offer the most viable commercial model due to economies of scale, whereby a greater volume of competency assessments can be performed across a larger cohort of licence holders.

The Commission notes that smaller licence classes may have a higher degree of operational risk or uncertainty for industry bodies, and may be deemed unprofitable for industry to participate in. Accredited Industry Bodies who intend to conduct competency assessments across multiple licence classes could apply efficiencies gained from larger licence classes to offset costs associated with smaller licence classes.

Question for industry feedback:

9. Do you have any further questions relating to the financial viability of the proposed co-regulation model?

Other resourcing considerations for industry

This section outlines other feedback received from stakeholders regarding resourcing burdens of the proposed co-regulation model, and the Commission's response.

5-year renewal requirement for Accredited Industry Bodies

Proposed policy position: Retain the proposed 5-year renewal requirement for Accredited Industry Bodies. The Commission will consider opportunities to reduce any undue burdens of this requirement.

The first discussion paper proposed a 5-year renewal requirement for Accredited Industry Bodies. Some stakeholders suggested that a 5-year renewal is too onerous and would create significant administrative burdens. Other stakeholders agreed that a 5-year renewal would be required to ensure the Commission can maintain appropriate oversight of the scheme.

While the Commission is eager to partner with trusted industry bodies to create a more efficient outcomes for licensing, it is also acutely aware of the need for public and regulatory confidence in any co-regulation scheme. For this reason, the Commission considers that a 5-year renewal is an appropriate approach to maintain public confidence. This, coupled with ongoing annual reporting requirements, auditing

practices, and the ability to condition, suspend, or cancel accreditation of Accredited Industry Bodies would work in unison to maintain the integrity of the scheme.

However, if the proposed model is stood up, the Commission could consider revisiting this position to assess whether it remains suitable as the scheme evolves in maturity and public trust is instilled in the success of the proposed co-regulation model.

Some additional benefits for Accredited Industry Bodies could be considered to help reduce any administrative burdens of a 5-year renewal period. This could include:

- Reduced renewal fees which are proportionate of the work required to assess a renewal application (as opposed to an initial application for accreditation); and
- A fast-tracked renewal application process for established Accredited Industry Bodies with a good track record of compliance with the regulator.

Information-sharing requirements

The first discussion paper outlined the key reporting and information-sharing requirements for Accredited Industry Bodies. Some stakeholders suggested these requirements could create undue resourcing burdens. The table below summarises the Commission's revised proposals for these requirements and proposed mitigations for resourcing challenges.

Figure: Information-sharing




Scenario	Required 	Not required 
 Notify Commission of changes to documentation and processes	Substantive changes which will impact an approved process	Minor change e.g. amending an employee's title or fixing a typo
 Share assessment outcomes with Commission	Keep records of all assessments Share with Commission on regular basis e.g. monthly / quarterly	Provide assessment outcomes in real time

Figure 8

Type of information requiring reporting

Some stakeholders sought feedback on the type of information which would require notification to the Commission.

An Accredited Industry Body would need to notify the Commission of any substantive changes to any documentation which would impact an approved process.

Accredited Industry Bodies would not need to report a minor change such as amending an employee's title or fixing a typo. The Commission intends to apply a commonsense approach here but is also open to developing clear guidance material in consultation with industry to ensure clarity of expectations.

Importantly, as part of the annual reporting requirements an Accredited Industry Body would need to provide an updated version of all process documentation or declare that no changes have been made to the relevant documentation.

Additionally, the Commission would have the ability to request and confirm the current version of any documentation in use by an Accredited Industry Body at any time. Process documentation would also be checked during scheduled and impromptu audits to ensure the Commission maintains adequate oversight.

Frequency of information sharing

Accredited Industry Bodies would be required to keep records of all assessment outcomes but would not be required to notify the Commission of each outcome in real time.

Under the proposed record keeping and information sharing requirements, Accredited Industry Bodies would be required to keep a record of all individuals who apply and sit a competency assessment, including the outcomes of assessments, and share this information with the Commission via the proposed digital solution.

These records would be regularly audited by the Commission. It is not proposed that an Accredited Industry Body would be required to provide this information in real time, but rather in regular reporting timeframes such as monthly or quarterly. This approach is expected to mitigate industry concerns about resourcing burdens while ensuring the Commission retains oversight of assessments.

The Commission would leverage this data to monitor and audit the effectiveness and conduct of Accredited Industry Bodies. For example, if applicants are regularly obtaining competency from a particular Accredited Industry Body after failing elsewhere, the Commission could conduct targeted, data-driven investigations to identify any misconduct.

Questions for industry feedback:

10. Do you support Accredited Industry Bodies being required to notify the Commission of all assessment outcomes, including individuals who fail?

11. Should individual applicants be required to disclose to an Accredited Industry Body if they have recently failed a competency assessment?

Assessor availability and skills shortages

Industry expressed concerns about the availability of assessors and potential impacts on existing industry skills shortages. Some stakeholders suggested that the success of the proposed model could be hindered by limited availability of skilled assessors.

Further, some stakeholders expressed concerns that co-regulation could impact the availability of skilled trades completing work. Stakeholders suggested that highly skilled tradespeople could be incentivised to conduct assessments (rather than conduct the work); or even that skilled educators and trainers could be incentivised to leave RTOs and become assessors, again creating industry shortfalls.

The Commission is acutely aware of the existing industry skills shortages and acknowledges the potential impacts on the viability of the proposed co-regulation model. Key elements of the proposed model aim to mitigate these risks. For example, as considered in the '[Types of Assessment](#)' section of this paper, many competency assessments are not intended to be run via an 'on-demand' delivery method for enrolments. This would ensure skilled tradespeople and educators could become assessors as secondary roles, with limited time spent away from their primary role, therefore mitigating risks of skills shortages.

Further, Accredited Industry Bodies could access a different pool of skilled workers to conduct assessments, such as retired or medically retired tradespeople.

Data from the Australian Bureau of Statistics (ABS) on [Retirement or Retirement Intentions 2020/2021](#) indicated that for the construction industry the average age persons intended to retire was 66.1 years of age. However, a [Retirement Income Review Final Report](#) indicates these kinds of workers are subject to higher rates of 'involuntary job-related retirement'. The construction industry makes up 30% of Australia's labour market, while accounting for 60% of WorkCover injury claims. The proposed model could offer an additional career pathway for ageing or medically retired tradespeople and ensure their valuable industry knowledge is retained, without impacting on existing skills shortages in the industry.

The Commission intends to continue engaging with industry to understand the anticipated impacts of industry skills shortages and ensure the feasibility of the proposed co-regulation model, including availability of assessors.

Question for industry feedback:

12. Do you agree that these processes could mitigate risks relating to assessor availability and skills shortages?

Requirements for assessors

Proposed policy position: The Commission would prescribe eligibility requirements for assessors and monitor compliance but would not register or accredit individual assessors.

While Accredited Industry Bodies would need to hold accreditation with the Commission, the Commission does not intend to register or accredit individual assessors undertaking competency assessments on behalf of these bodies.

Rather, to maintain an appropriate level of scrutiny and public confidence in Accredited Industry Bodies and their assessors, Bodies would need to develop processes to ensure that their assessors meet expected minimum eligibility requirements. The Commission would prescribe and monitor compliance with these requirements.

As a minimum, assessors would need to demonstrate the following skills and qualifications to conduct competency assessments on behalf of a Body:

- Currently hold, or held in the past two years, a contractor licence or qualified supervisor certificate in the related field of assessment; or
- Demonstrated 10 years of industry experience in the related field of assessment; and
- Not be disqualified from holding a relevant licence with the Commission.

These requirements would be a key consideration of whether an industry body has demonstrated it has the capability and suitability of its staff to conduct competency assessments, as outlined in the eligibility requirements of this paper.

The requirement to hold a relevant licence may cause challenges for assessor availability. Industry practitioners who have retired from the industry and are therefore more likely to be available to conduct assessments are also less likely to hold a current licence. Therefore, the Commission sees that requiring industry experience may instead suffice.

The Commission received feedback from some industry stakeholders that assessors should be required to hold a Certificate IV in Training and Assessment to ensure they have the expertise to objectively assess a person's demonstrated knowledge and skills. However, the Commission's view is that this could create an undue resourcing burden for assessors and therefore contribute to risks about limited availability of assessors. Therefore, the Commission does not propose to require formal qualifications for assessors but is open to receiving feedback about other ways to ensure assessors have the necessary skills required for assessment work, including mandatory micro-credentials appropriate to running competency assessments.

Co-regulation and the broader regulatory framework

The Commission received feedback from industry that the success of a proposed co-regulation model relies on strong regulatory oversight of the industry and effective compliance and investigation activities. The Commission supports this view and reaffirms that the proposed co-regulation model is only one aspect of the broader regulatory framework proposed under the draft Building Bill which aims to ensure competent licence holders produce compliant work.

The draft Building Bill includes other proposed regulatory levers such as mandatory CPD and strong enforcement powers which would complement co-regulation by ensuring licence holders are competent when they enter the industry and maintain this competency and deliver quality work throughout their career.

The proposed regulatory levers discussed below would be key to improving competency in the industry.



Figure 9

Other proposed regulatory levers – Continuing Professional Development

The Commission proposes to introduce mandatory CPD requirements for most licence holders, expanding the current requirements which only apply to some licence holders, and ensuring CPD is tailored, modern and relevant for industry.

CPD could foster ongoing skill development, ensure that licence holders remain up to date with relevant technical and legislative changes and maintain the required level of competency throughout their career.

While the Commission intends to consult with industry to finalise the CPD strategy as part of later consultation on the supporting Regulations to the draft Building Bill, key elements of the model proposed to date are:

Requirements for more licence holders	Most licence holders would need to complete certain hours of CPD each year
Mandating specific courses	Specific courses on the Construct NSW Digital Learning Platform would be mandated, focusing on essential knowledge areas, soft skills and technical skills Bespoke mandatory courses for different licence classes e.g., registered certifiers may be required to complete a course on the certifier code of conduct
Partnering with industry	Industry would have the opportunity to partner with the Commission to develop CPD courses and potentially share in the revenue derived from CPD that they co-develop with the Commission
Addressing capability gaps	CPD requirements would be set by the Commission in response to industry capability gaps identified in compliance and investigation activities, and in consultation with industry
Compliance and enforcement	The Commission would audit and enforce CPD requirements. Failure to meet CPD requirements could result in suspension of a licence or conditions being placed on a licence.

Table 6

Distinction between co-regulation and CPD

Some industry feedback highlighted the commonalities between the proposed co-regulation model and the proposed CPD strategy. Both strategies would work in

conjunction to enable the Commission to determine and monitor a licence holder's competency. However, the format, timing and function of these strategies are distinct.

The proposed co-regulation model is intended to strengthen the licensing assessment process to ensure only competent people can obtain a licence. A competency assessment would be required before a licence is granted and again after a 10-year period. A competency assessment is an extensive assessment of a person's overall competency, aligned to qualification and experience requirements to obtain a licence.

In contrast, CPD targets specific areas to uplift the capability and competency of individuals who hold a licence currently. Complying with CPD requirements would be an annual obligation licence holders would need to meet to maintain a licence. CPD is often conducted via short courses and digital modules and focuses on one specific topic areas e.g., supervision or working from heights. Further, while CPD courses would include an assessment of the knowledge obtained during the training (which is vital to ensure ongoing competency is achieved through the CPD strategy), the assessments would only cover the content of that course. There is immense value in targeting specific competencies over the course of a licence period, however the Commission's view is this must be complemented by a more holistic assessment of competence, which could be achieved by the proposed competency assessment.

The proposed co-regulation model would essentially be an additional step an individual would have to meet before obtaining a licence. CPD would be an ongoing continual obligation that must be met for a licence holder to maintain their licence.

Other proposed regulatory levers focused on practitioner capability – Enforcement Action

The Commission intends to be a modern and fit for purpose regulator, which will require continued work to expand the Commission's enforcement footprint. The Commission has recently expanded its 'anywhere anytime' inspections powers to class 1 buildings, in addition to class 2, 3 and 9c buildings. This enables the Commission to proactively inspect and audit dwellings under construction without the need for a compliant to be received. This enables a consistent approach across all classes of building currently regulated in NSW and builds upon the successes demonstrated in the class 2, 3 and 9c space.

Under the proposed Building and Compliance Enforcement Bill, the Commission would have a suite of available compliance and enforcement tools to target poor industry

behaviour and address non-compliant work which is often due to a lack of competency. The Commission's proactive audit regime has highlighted the need to improve the knowledge and competency of practitioners to address the defect rates and ensure the quality of work across NSW.

The Commission recognises that legislation alone will not restore the community's confidence in the construction sector and will continue to look for opportunities to strengthen enforcement of building laws across NSW.

Education Notices

The proposed introduction of education notices could play a key role in improving competency of practitioners. The proposed Building and Compliance Enforcement Bill proposes new powers for the Commission to issue an education notice, rather than a penalty notice, to a licence holder. The education notice would require the licence holder to undertake specified relevant education or training to address the competency gap which contributed to the offence. Rather than issuing a penalty infringement notice or taking punitive action, it may be more appropriate in some instances to require a licence holder to undertake further education and training to improve their knowledge, skills, and practices.

These new powers follow a pilot program trialled by the Commission on class 1 and 2 sites to issue 'red and yellow cards' to practitioners. The Commission intends for this enforcement mechanism to address the cause of offending behaviour and result in positive outcomes for the broader industry by improving licence holders' knowledge, capability, and competency.

These modules would be in addition to any mandatory CPD requirements and may apply to individual practitioners or entire companies where there is a lack of understanding on what is required to produce compliant work.

Other proposed regulatory levers – Disciplinary Action

Under the draft Building and Compliance Enforcement Bill, the Commission would have a range of available disciplinary actions that can be taken against a licence holder. The most serious breaches could result in a licence holder or former licence holder being permanently disqualified from holding a licence. Disciplinary action could also be targeted at improving licence holders' competency while allowing them to remain in the industry.

Training as a disciplinary action

The Commission may impose a condition on a licence holder requiring them to undertake specified education or training. This disciplinary action could be taken by itself or in addition to other disciplinary action available to the Secretary including cautions, monetary penalties, or suspensions.

Imposing a condition of this nature is again aimed at addressing the root cause behind poor behaviours and improving licence holder's competency to perform the functions they are licenced to undertake. It is hoped that training could improve the licence holder's conduct, knowledge, and behaviour resulting in better outcomes for consumers and the broader industry. There are intended to be consequences for failing to comply.

Imposing a condition to test competency as a disciplinary action

If a licence holder commits misconduct or non-compliance, the Commission could also impose a condition their licence requiring them to complete a competency assessment in part or in full.

As disciplinary action is intended to be a protective measure, requiring a licence holder to demonstrate their competency would ensure that that only competent practitioners remain in the industry. This action could be taken in addition to other disciplinary actions such as a suspension. Failure to sit a competency assessment would result in the licence being suspended or cancelled. Noting the financial impost on a licence holder, if taken, this action would have to be proportionate to the severity of the misconduct.

Question for industry feedback:

13. Do you have any questions about how the co-regulation model would be integrated into the broader regulatory framework proposed under the draft Building Bill?

Next steps

The Commission seeks further feedback from industry on this second discussion paper. Industry submissions will inform the Commission's advice to Government ahead of a final decision being made by Government.

Other considerations to be explored

The Commission acknowledges that this second discussion paper will not address all points of feedback received or all questions from industry. Other considerations to be explored include:

- Evaluation and ongoing monitoring of the effectiveness of a proposed co-regulation scheme, including whether to prescribe statutory review requirements
- Lessons learned from other jurisdictions or other schemes
- Impacts for the operation of Mutual Recognition and Automatic Mutual Recognition (AMR)
- Impact on costs for licence holders
- Impacts of duplicative obligations for Accredited Industry Bodies who also participate in other schemes, and opportunities to mitigate burdens where appropriate
- Further consideration of requirements for Accredited Industry Bodies, including process mapping, eligibility criteria and ongoing reporting requirements
- Transitional arrangements to ensure effective implementation.

Appendix A: Questions for industry feedback

1. Do you support the proposed compliance and enforcement tools outlined above?
What other compliance mechanisms should the Commission consider?
2. What further information could the Commission provide to support Accredited Industry Bodies?
3. Are you supportive of a two-tiered model? Why or why not? If you do not support a two-tiered model, do you propose an alternative approach?
4. Should the Commission consider any other restrictions or eligibility requirements for certain types of industry bodies? For example, requiring for-profit organisations to demonstrate how they would ensure that their revenue generation objectives would not detract from the overall objectives of the scheme.
5. Should the Commission prescribe Accredited Industry Bodies within legislation (such as via Gazette) to provide certainty to industry and the public?
6. Do these proposed powers and requirements mitigate conflict of interest risks? If not, what other powers and requirements should be considered?
7. Should the Commission, in conjunction with industry, develop and mandate one competency assessment for each licence class? Alternatively, should Accredited Industry Bodies be able to develop and implement a bespoke competency assessment? (Noting this would still be subject to approval by the Commission)
8. Do you support the proposed approach to require Accredited Industry Bodies to provide an outcomes report to failed applicants? Why / why not?
9. Do you have any further questions relating to the financial viability of the proposed co-regulation model?
10. Do you support Accredited Industry Bodies being required to notify the Commission of all assessment outcomes, including individuals who fail?
11. Should individual applicants be required to disclose to an Accredited Industry Body if they have recently failed a competency assessment?
12. Do you agree that these processes could mitigate risks relating to assessor availability and skills shortages?
13. Do you have any questions about how the co-regulation model would be integrated into the broader regulatory framework proposed under the draft Building Bill?

Appendix B: Customer journey map

