

NORTHERN TERRITORY BUILDING PRACTITIONERS BOARD

POLICY TITLE:	REGISTRATION POLICY FOR BUILDING CONTRACTORS
POLICY NO.:	BPB-010
EFFECTIVE DATE:	9 April 2014
REVIEW DATE:	20 May 2020

Purpose of Policy:

To outline the registration process as per the *Building Act 1993* (the Act) and the Building Practitioners Board role as the statutory authority responsible for ensuring applicants meet the required criteria prior to obtaining registration as a building contractor.

Adopted by the Building Practitioners Board.



Paul Nowland
Chairperson

20 May 2020

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APPENDIX A
DETERMINATION RELATING TO BUILDING PRACTITIONERS
Dated 23 September 2019, Gazetted 2 October 2019

1. INTRODUCTION

Section 24A of the *Building Act* (“the Act”) establishes the registration scheme for a building practitioner in the category of building contractor residential.

Section 12 of the Act establishes the Building Practitioners Board (“the Board”) as the statutory authority responsible for the registration scheme.

The purpose of this document is to articulate the Board on various issues that may arise in relation to the interpretation of the provisions of section 24A of the Act and various other relevant provisions.

1.1 Purpose of Registration Scheme

The registration scheme provided under section 24A of the Act allows for registration of natural persons. Section 25(1) is intended to control the conduct of a corporation by creating offences that may be committed by the corporation unless at least one director or a nominee of the corporation is registered under section 24A(2).

The registration scheme provided under section 24A (together with the relevant regulations and the Minister’s Determination) requires a registered building contractor to:

- be a fit and proper person to be registered;
- have certain relevant qualifications and experience; and
- hold certification from a registered accountant that the registered building contractor has net tangible assets of at least \$50,000.

Therefore, the purpose of the registration scheme is to impose, minimum standards for the qualifications and experience of building contractors in two particular sub-categories within the residential market. This in turn, is intended to assist in maintaining building quality standards, reducing the incidence of poor quality work, increasing standards of work safety and amenity, prohibiting misleading conduct and providing a scheme for the protection of consumers of services provided by building contractors in the residential market.

Section 22(1)(a) of the Act limits the use of certain titles to only registered building practitioners and prohibits persons (or corporations) who are not registered as building practitioners from holding themselves out as being registered or qualified to practise. Section 22(1)(b) and (c) prohibit a person from performing a function or exercising a power of, or working as a building practitioner of a particular category of building practitioner unless he or she is appropriately registered. These provisions are clearly intended as protection for the consumer.

Section 25 of the Act makes it clear that corporations must have a nominated person within the corporation (such as a director or a nominee who is employed by the corporation) who is registered as a building practitioner in the appropriate category. By these provisions, Government has indicated its intention that a corporation must have a nominated person responsible for the provision of services of a building practitioner, that person must be registered in the appropriate category and therefore subject to the jurisdiction of the Board.

This in turn provides protection for the consumer where corporations operate as building practitioners.

On the basis of the above, the clear underlying object or purpose of the scheme of registration for building contractors residential and the relevant provisions of the Act are:

- Consumer protection in relation to natural persons and corporations practising as building contractors residential;
- Maintenance of minimum standards for building contractors residential; and
- Protection of public safety and amenity.

The Board considers that the above matters generally reflect the purpose of the registration scheme and, in particular, must be taken into account in considering an application for registration as a building contractor residential.

2. Making an application

Section 24A of the Act provides that a person or a corporation may, in the approved form accompanied by the prescribed fee, apply to the Board to be registered as a building practitioner in the category of building contractor residential.

Section 24B of the Act sets out the matters of which the Board is to be satisfied before it registers a person as a building contractor residential. That section provides that:

Where the Board is satisfied that the applicant

- (a) is a fit and proper person to be registered;
- (b) has the relevant qualifications and experience determined by the Minister in relation to the category of building contractor; and
- (c) currently holds, and during the period of registration will continue to hold, the net financial assets prescribed by regulation of that category; and
- (d) has complied with the prescribed conditions, if any

it must grant the registration of the person as a building practitioner in the category of building contractor residential.

The use of the word 'must' in this provision means that if a person is able to satisfy the Board that it complies with the requirements set out in section 24B the Board has no choice but to register that person in the category of registration applied for, that is, the Board cannot refuse registration if all these requirements are met.

Where, however, an applicant for registration is unable to satisfy any of these requirements, the Board must refuse registration.

3. Determining an Application

When determining an application for registration as a building practitioner in the category of building contractor residential, pursuant to section 24B, the Board needs to be satisfied that the person who made the application meets the following criteria –

3.1 Fit and proper person to be registered

Section 24B(1)(a) requires the Board to be satisfied that a person is “fit and proper” when considering an application for registration.

Policy:

That in determining whether a person is a fit and proper person the Board have regard to the propositions set out in this Part of the Policy.

The term ‘fit and proper’ is not defined in the Act, nor does the Act specify the matters that are to be taken into account in determining whether a person is a fit and proper person. Generally, it can be said that a person who is ‘fit and proper’ is of such good character as is appropriate for registration as a building contractor. A relationship does exist between the ‘fit and proper’ and competency requirements; however honesty and integrity are crucial concepts to the question of ‘fit and proper’.

The Board will generally be guided by the following propositions when considering whether an applicant for registration is fit and proper:

- Any misconduct should be viewed in the context of its relevance to an applicant’s fitness to practice as a building practitioner. It is not the Board’s function to punish any applicant for previous actions. Its function is to protect the public in the context of the Act. The Board may look at personal misconduct as opposed to professional misconduct, but some personal misconduct may have little or no bearing on whether or not the applicant for registration as a building practitioner is fit and proper;
- An applicant’s general conduct is an important factor in determining whether a person is fit and proper. A criminal conviction is not to be looked at in isolation and must be considered in light of its facts and circumstances, relevance or otherwise to the Act, and in conjunction with the person’s general conduct;
- Ordinary community standards should be applied in being satisfied of the ‘fit and proper’ requirement;
- The purpose or object of the Act to provide consumer protection must be kept in mind;
- The question of ‘fit and proper’ may be assisted by having regard to a person’s reputation, and any specific acts of the applicant;
- Issues such as bankruptcy or insolvency do not automatically impact on the character of a person. However, if the bankruptcy or insolvency came about as the result of a person’s dishonest dealings, those dealings will be relevant to the question of fit and proper;
- The nature of the misconduct, the subsequent attitude of the person towards it, the behaviour of the person since the misconduct, and the passage of time itself, are all factors which will be relevant in determining whether the Board should be satisfied that a person is fit and proper.

3.2 Has the relevant qualifications and experience determined by the Minister in relation to the category of building contractor (see Appendix A)

Section 24B(1)(b) requires that the Board must be satisfied before it is required to register an applicant that he or she holds relevant qualifications and experience.

Under the Minister's Determination dated 23 September 2019 which came into effect as per Gazette No.40 dated 2 October 2019 ("the Minister's Determination"), there are various ways in which an applicant for registration may satisfy the Board that he or she holds the necessary qualifications.

Clauses 1(a) and 2(1)(a) of the Determination state that an applicant must show evidence of one of the following –

(a) one of the following:

(i) successful completion of the following units for a Certificate IV in Building:

ABC001	Construction 1
ABC002	Construction 2
ABC005	Materials 1
ABC061	Builders Working Drawings 1
ABC064	Building Computer Applications
ABC069	Cost Control and Planning 1
ABC076	Building Quantities and Estimating 1
ABC077	Building Quantities and Estimating 2
ABC082	Building Site Supervision
ABC083	Building Site Surveying and Set Out 1
ABC086	Structures 1
ABC091	Business Management for Building 1A
ABC092	Business Management for Building 1B
ABC102	Residential Site Safety
ABC105	Timber Framing Code;

(ii) successful completion of the following units for a CPC40110 Certificate IV in Building and Construction (Building):

BSBSMB406A	Manage small business finances
CPCCB4001A	Apply building codes and standards to the construction process for low-rise building projects
CPCCB4002A	Manage occupational health and safety in the building and construction workplace
CPCCB4003A	Select and prepare a construction contract

CPCCCBC4004A	Identify and produce estimated costs for building and construction projects
CPCCCBC4005A	Produce labour and material schedules for ordering
CPCCCBC4006B	Select, procure and store construction materials for low-rise projects
CPCCCBC4007A	Plan building or construction work
CPCCCBC4008B	Conduct on-site supervision of building and construction projects
CPCCCBC4009B	Apply legal requirements to building and construction projects
CPCCCBC4010B	Apply structural principles to residential low-rise constructions
CPCCCBC4011B	Apply structural principles to commercial low-rise constructions
CPCCCBC4012B	Read and interpret plans and specifications
CPCCCBC4013A	Prepare and evaluate tender documentation
CPCCCBC4015A	Prepare specifications for all construction work
CPCCCBC4020A	Build thermally efficient and sustainable structures;

- (iii) successful completion of a course, or units of a course, that in the opinion of the Building Practitioners Board is at least equivalent to the satisfaction of the requirements in subparagraph (i) or (ii);
- (iv) a statement of attainment of competency equivalent to the satisfaction of the requirements in subparagraph (i) or (ii) issued by a registered training organisation as defined in the *Training and Skills Development Act 2016*; and
- (b) one of the following:
 - (i) at least 3 years practical experience in carrying out building work for which a building contractor residential (restricted) is a prescribed building contractor under regulation 41B(1) of the *Building Regulations 1993*;
 - (ii) practical experience that, in the opinion of the Building Practitioners Board, is equivalent to the experience referred to in subparagraph (i).

(2) The applicant must:

- (a) provide at least 3 written references from building practitioners currently registered in the categories of builder contractor, building certifier and certifying engineer (structural) who can verify the individual's role, responsibilities and substantial personal involvement in prescribed building works listed in the application; or
- (b) demonstrate practical experience that, in the opinion of the Building Practitioners Board, is equivalent to the prescribed building works mentioned in paragraph (i).

3.3 Matters for consideration in evaluating experience

In developing these Guidelines the Board has taken into account a number of matters which have emerged from an examination of the legislation, regulations, determinations, the content of numerous applications and the Board's collective experience in the building industry.

For the Board's purposes "carrying out building work", may be defined as:

- Causing the construction of the building work by engagement of subcontractors and through overall management and delivery of the building project. Where a person simply engages a builder to build, the person so engaging the builder is not relevantly causing the building to be constructed;
- Holding a relevant level of technical competency as determined by the Board and practical experience which can include doing the building work or responsibility for carrying out building work in the broad sense of supervising the work as distinct from hands-on practical experience.

In the Board's view relevant indicators are whether the applicant is currently or has recently been active in the residential building industry and whether the applicant relies on some income from construction of residences as a portion of their personal livelihood rather than an investment activity.

Regulation 41A of the Building Regulations provides that "prescribed building work" consists of one or more of the following -

- Class 1a - a single dwelling being a detached house not located above or below another dwelling or another Class of building other than a private garage or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, townhouse or villa unit not located above or below another dwelling or another Class of building other than a private garage;
- Class 2 - a building containing 2 or more sole-occupancy units each being a separate dwelling (to any height for Unrestricted and to two storeys for Restricted);
- Class 10 - a non-habitable building being a private garage, carport, shed or the like attached to a Class 1a or Class 2 building if it is constructed at the same time as the Class 1a or Class 2 building is constructed.

The Board's view is that an applicant must demonstrate that they have experience in coordinating, supervising and managing the onsite activities of a complete residential building project and have, as either the principal of the contracted entity or as an employee thereof, accepted full or substantial responsibility for delivering the project on time, within an approved budget or contract price and to an acceptable industry standard.

When an applicant is claiming experience for projects for which an Occupancy Permit under the Act was not required e.g. outside prescribed building control areas, the Board will require independent verification by a senior representative of the client or project manager of the applicant's experience and that the work has been carried out to a standard equivalent to that required by an Occupancy Permit.

Where an applicant has applied for unrestricted registration without substantive evidence of work in this category as defined above, the Board may, at its sole discretion, invite the applicant to amend his/her application to a restricted registration where the evidence submitted clearly supports this approach.

The Board is prepared to recognise experience gained interstate but requires an appropriate amount of local experience supported by Northern Territory registered referees in order that it can be satisfied that the interests of consumers in the Northern Territory will be adequately safeguarded.

3.4 Equivalency of qualifications

Under Clauses 1(a)(iii) and 1(a)(iv) of the Minister's Determination, the Board has discretion to deem that a course or units of a course are at least equivalent to the requirements set out in Clause 1(a)(i) or 1(a)(ii). This will be assessed on a case by case basis.

3.5 Existing registration upgrade requirements

A person wishing to apply for an upgrade of their current registration from building contractor residential (restricted) to building contractor residential (unrestricted), must satisfy the requirements below as stated in clause 2 of the Minister's Determination which are:

- The applicant must demonstrate that, under the supervision of a registered building contractor residential (unrestricted), the applicant has had substantial personal involvement in, and responsibility for, the design and construction of at least one unrestricted building project:
 - (a) which involved carrying out relevant (unrestricted) building work; and
 - (b) for which an Occupancy Permit has been granted.

The applicant's level of involvement and responsibility must be confirmed in writing by the registered building contractor residential (unrestricted) who supervised the building work.

The applicant must provide at least three (3) independent references in relation to the applicant's knowledge and understanding of multi storey construction, including as a minimum references from the project architect/designer, structural engineer and building certifier who were directly involved with the construction phase of the project.

The applicant must demonstrate to the satisfaction of the Board that the applicant has a comprehensive working knowledge and understanding of the regulatory and technical issues associated with the construction of buildings of more than two storeys, including the relevant requirements of the National Construction Code as defined in regulation 2(1) of the Building Regulations.

A reference as mentioned above to substantial personal involvement in, and responsibility for, the design and construction of a building is a reference to a level of involvement that precludes two (2) persons being able to demonstrate that level of involvement and responsibility for the same building.

3.6 Net financial assets

Also in addition to the above, section 24B(1)(c) requires that an applicant provide evidence of holding the Net Financial Assets prescribed by regulation. Regulation 39B(1) of the Building Regulations specifies Net Financial Assets of at least \$50,000, as certified by an “accountant”, which regulation 39C defines as one of the following:

- a member of the Institute of Chartered Accountants in Australia who holds a current Certificate of Public Practice issued by the Institute;
- a member of the CPA Australia who holds a current Public Practice Certificate in accordance with the by-laws of CPA Australia;
- a person who holds a current Public Practising Certificate issued by the Association of Taxation and Management Accountants;
- a registered tax agent;
- a person registered as an auditor under the Corporations Act 2001.

The purpose of this requirement is to ensure that an applicant has the financial capacity to build at least one small residential project at any one time.

3.7 Compliance with the prescribed conditions, if any

At present there are no prescribed conditions for registration in the category of building contractor residential.

4. Proof of identity of an applicant

The Board is required to establish the identity of an applicant and requests a copy of their birth certificate or certified extract (or any other proof of identity considered sufficient by the Board) with their application form.

Board policy BPB-003 - Identity of an Applicant outlines documents which the Board considers sufficient as proof of identity other than a birth certificate or certified extract.

5. Corporation registration

If an individual is part of a corporation structure, where the corporation offers services or functions as a building practitioner in any category, that corporation must also be registered in the relevant category.

Once a corporation is registered:

- a) all contracts or engagements entered into by the corporation shall identify it as the practitioner;
- b) all work undertaken by the corporation shall be under the corporation’s registration number and appropriate insurance and not under the registration number of an individual employee;
- c) all work shall be carried out by or at the direction of, and certified by, a natural person who is registered in the appropriate practitioner category (s.25 (1)(a)(b) of the Act); and
- d) all advertisements relating to the function carried out by the company shall include that person’s name (s.25(1)(c) of the Act.)

For further information refer to the Board's Policy No: BPB-013 Requirement to Register a Company as a Building Practitioner.

MINISTERS DETERMINATIONS RELATING TO BUILDING PRACTITIONERS

Dated 23 September 2019.

APPENDIX A