



Department of
Building and Housing
Te Tari Kaupapa Whare

Proposal for a definition of restricted building work

August 2008



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Introduction

The Building Act 2004 (the Act) made significant changes to New Zealand's building regulatory system to address systemic failures identified following 'leaky homes' issues.

These reforms aim to lift the performance of the building and construction sector, while promoting and improving skills and rebuilding consumer confidence.

THE LICENSED BUILDING PRACTITIONER SCHEME

One of these significant changes was the launch in November 2007 of the Licensed Building Practitioner Scheme. Since that time, practitioners in the building industry have been able to apply to be licensed in a particular licensing class depending on the type of work they do.

In total, there are 13 licensing classes, covering areas like carpentry, site supervision, design and some specialist trades, like roofing and plastering.

To become licensed, practitioners have to show they have the skills, knowledge and experience to carry out their work competently. There is a formal assessment of their skills and, once licensed, they have to continue to keep learning and training in their particular field(s).

RESTRICTED BUILDING WORK

From November 2010, it is intended that certain design and construction work on homes and buildings will only be able to be carried out or supervised by licensed building practitioners. This is known as 'restricted building work'.

People undertaking restricted building work will still have to comply with the requirements of the Building Code and obtain a building consent, as they do now.

Restricted building work is a subset of all the building work that is done in designing and constructing a building. It is building work that by its nature is important to the building, is complex to do and should therefore only be undertaken by a recognised competent person.

A lot of building work will not be restricted building work and will be able to be done by any person whether they are an owner builder, licensed or unlicensed builder or otherwise.

The Act contains a broad definition of restricted building work. However, the Act requires the detail of restricted building work to be declared by an Order in Council.

An Order in Council is made by the Governor-General and is a form (or type) of regulation. Section 404 of the Act states that this Order in Council cannot come into force before 30 November 2010.

THIS DISCUSSION DOCUMENT

This discussion document proposes what the government considers should be defined as restricted building work in the Order in Council.

This document also proposes that certain work, while critical, should not be restricted building work. This is because the cost of requiring licensed building practitioners to do the work outweighs the benefits of requiring the work be done by recognised competent people.

Because the definition of restricted building work will be technically detailed, significant progress on developing it must be made before the end of 2008. This will allow enough time for the Order in Council to be drafted and made well before November 2010. This time is needed to ensure there are enough licensed building practitioners to carry out or supervise the restricted building work.

The government wants to hear your views on the proposals. This is especially important to determine whether the proposals get the balance right between protecting consumers, and allowing practitioners to get on with their business without unreasonable compliance costs.

The proposals have been developed with input from the building sector and are covered in the following pages.

At the end of this document there is a series of questions, as well as room for you to add your own comments. Your feedback on the proposals in this document will help the government decide what to declare as restricted building work.

The consultation will run until Thursday 11 September.

Background to restricted building work

WHAT THE BUILDING ACT SAYS

According to the Building Act 2004, all 'restricted building work' must be carried out (or supervised) by a licensed building practitioner.

Under section 7 of the Building Act, 'restricted building work' is work that:

- is critical to the integrity of a building (for example, its envelope and structure)
- is declared by an Order in Council to be restricted building work
- may relate, without limitation, to:
 - types or categories of buildings
 - parts of buildings
- may include design work relating to building work
- does not include any building work for which a building consent is not required.

METHODOLOGY USED

It is clear that restricted building work can only be building work that is 'critical to the integrity of a building'.

No well-established methodology for determining what building work is 'critical' exists.

Therefore the approach that has been used is the evidence-based approach used by building inspectors. This has helped determine a starting point for what work is critical. The evidence-based

approach has been built over many years of experience by inspectors. It identifies critical areas of building work (including design) that need to be done right to ensure the integrity of the building and its performance and the safety of occupants.

Therefore, restricted building work is a subset of the work covered by territorial authority inspections. It is a subset because these inspections have a broader focus on compliance than just 'critical' work.

The typical inspection points are:

- foundations
- pre-pour (concrete)
- exterior tanking (elements that prevent penetration of moisture from outside)
- framing/pre-cladding
- pre-lining
- building wrap/paper
- post-lining
- exterior joinery
- cladding and tanking (internal 'wet' areas, like showers).

This list of inspection points has been refined to elements where performance, quality, complexity or risk is significant. Therefore it is reasonable to list those elements as restricted building work.

The government has used a very simple risk-based assessment of building work to refine the inspection points as illustrated in the following table.

| | | CONSEQUENCE OF FAILURE | | |
|--|--------|------------------------|---------------|----------------|
| | | Serious | Moderate | Insignificant |
| Probability of work not complying with Code* | High | High risk | Moderate risk | Low risk |
| | Medium | Moderate risk | Low risk | Very low risk |
| | Low | Low risk | Very low risk | Extra low risk |

* If work not carried out by a competent person, ie, a licensed building practitioner.

Building work that falls into the shaded areas in the table should be considered critical and therefore could potentially be restricted building work. Considerations of the cost, benefit and practicality then need to be applied to determine whether the critical work should be declared as restricted building work.

The proposals for restricted building work have been developed with simplicity in mind. The number of exceptions and limitations has been kept to a minimum to ensure consumers, building practitioners and building consent authorities can easily determine whether or not an item of building work is restricted building work.

The government believes this approach is appropriate. While it may mean that a small amount of work considered to be less than 'critical' is captured, the cost of this is outweighed by the benefit of ease of interpretation.

At the end of this document there is space for you to comment on whether you feel this approach is the correct one, as well as your thoughts on the costs, benefits and other impacts of restricted building work.

WHAT WILL NOT BE RESTRICTED BUILDING WORK

There are certain areas of building work that either will not, or cannot, be restricted building work.

As noted on page 3, section 7 of the Building Act states that restricted building work 'does not include any building work for which a building consent is not required'.

Accordingly, the building work listed in Schedule 1 to the Building Act is not, and cannot be, restricted building work. This includes:

- minor renovation and maintenance work
- walls (including retaining walls) up to a certain height
- decks, platforms and bridges up to a certain height
- small buildings not used for sleeping accommodation (eg, sheds)
- tents and marquees to a certain size.

Note: The government has recently agreed to further additions to Schedule 1¹.

None of the work on these structures must be carried out (or supervised) by a licensed building practitioner.

Restricted building work also does not include the design or off-site assembly of proprietary systems, (eg, a fire alarm system). The specification of the alarm system type, location of detectors, callpoints and sounders is proposed to be restricted building work (design only). But the manufacture of the components of the alarm system, before it is delivered to the building site, is not restricted building work.

As well as excluding all building work that doesn't require a consent, the government thinks there are other buildings and structures that should not be required to be designed, constructed or altered by licensed building practitioners.

¹ More details on these can be read in *Codewords* Issue 29, or online at www.dbh.govt.nz/codewords-index

The criteria used by the government to identify these are:

- the building is not occupied as a residence, workplace or for public admission, and is therefore unlikely to endanger people
- the work is covered by an existing mandatory occupational licensing regime, for example, plumbers or electricians
- the construction uses specialist skills that are generally different to those covered by the Licensed Building Practitioner Scheme and with other procurement characteristics likely to ensure competent design and construction
- existing building consent and site inspection processes offer a high level of assurance that the work will fully comply with Building Code requirements
- licensing overheads/costs are likely to be disproportionate to the potential consequential damages or risk of non-compliance
- in addition to the above, there is the risk that not exempting the work would increase incentives for consumers to avoid the building controls regime altogether.

On this basis, the government proposes to exempt the following buildings from being covered by the restricted building work regime.

- Outbuildings²
- Ancillary buildings³
- Tents and marquees that require a building consent
- Conservatories⁴

² Definition from Clause A1 of the Building Code (Building Regulations 1992).

Outbuildings: buildings or uses which may be included within each classified use but are not intended for human habitation, and are accessory to the principal use of associated buildings. Examples are: a carport, farm building, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.

³ Definition from Clause A1 of the Building Code (Building Regulations 1992):

Ancillary buildings: buildings or uses not for human habitation and which may be exempted from some amenity provisions, but which are required to comply with structural and safety-related aspects of the Building Code. Examples are: a bridge, derrick, fence, free standing outdoor fireplace, jetty, mast, path, platform, pylon, retaining wall, tank, tunnel or dam.

⁴ This work is proposed to be exempted only if it does not involve alteration to the weather-resistant surface of the existing building.

⁵ The government's proposals for an owner builder exemption were recently the subject of public consultation. The time for commenting on the proposals ended on 1 August 2008. However, you can still access a copy of the discussion document at www.dbh.govt.nz/owner-builder-exemption

None of the work on these structures will be required to be carried out (or supervised) by a licensed building practitioner.

The government also proposes to specifically exempt certain building work from being covered by the restricted building work regime, namely:

- prescribed electrical work under the Electricity Act 1992
- plumbing, gasfitting and drainlaying work required to be carried out by a person registered under the Plumbers, Gasfitters and Drainlayers Act 1976.

None of this electrical, plumbing, gasfitting and drainlaying work will be restricted building work under the Building Act, but it will still have to be done by a registered/licensed person under the other legislation.

HOW THESE PROPOSALS DIFFER FROM EARLIER PROPOSALS

These proposals for exemptions are different from earlier decisions (in April 2006) made by the government (which you may have heard about) around what work should not be restricted building work. Those earlier decisions were based on an intention to minimise the costs to owner builders.

However, in April 2008 the government decided to exempt owner builders from the restricted building work regime entirely.⁵ This means there is no longer any need to exempt the work traditionally done by owner builders. Where this work is done by an owner builder under the exemption it will not need to be carried out (or supervised) by a licensed building practitioner.

In line with this the government no longer proposes to exempt:

- building re-location
- alteration work that does not increase the floor area of a building.

This means that some aspects of this work may now be restricted building work if the work falls into the descriptions of restricted building work proposed later in this document.

Please note that minor alteration work does not require a building consent and therefore cannot be restricted building work.

It was also previously proposed to exempt non-residential buildings with a specified life of less than two years. However, on further reflection, and based on the criteria set out above, the government has not been able to determine a sound basis for exempting those buildings. If building work is critical, it is critical regardless of the specified life of a building.

The government has also not been able to identify any buildings that would be covered by that exemption. The Building Act already exempts buildings constructed in emergency situations from needing a building consent, so those buildings cannot be restricted building work.

If you have a view on whether there are any non-residential buildings of a temporary nature that should be exempt from restricted building work, then please use the form at the end of this document to tell us your views.

Please also give us your views on whether you think these proposed exemptions are appropriate. Feel free to suggest other exemptions you think may be needed.

Restricted building work defined

BUILDING WORK THAT IS PROPOSED AS RESTRICTED BUILDING WORK

The following types of building work are proposed to be restricted building work regardless of:

- the type of building the work is being done on (except those proposed to be exempted in the previous section of this document)
- whether it is new construction or alteration of an existing building (including change of use, subdivision and extension of life).

PROPOSED RESTRICTED BUILDING WORK – STRUCTURE

The design and construction of the *primary structure* of a building and any structure that supports other elements of restricted building work.

Primary structure means the principal structural system consisting of essential components that, together, contribute to the building's ability to withstand vertical and horizontal loads, and includes:

- foundations (eg, raft/slab, pad, strip/ring, pile)
- floor and supporting structure (eg, bearers, joists, beams, trusses, strip and sheet flooring, diaphragm)
- walls (eg, studs, beams, columns, pillars, lintels, trusses)
- roof framing (eg, rafters, beam, purlins, trusses)
- posts and columns
- structural systems (eg, braced frames, moment resisting frames, shear walls, portals)
- bracing (eg, shear, tension, tension and compression bracing).

PROPOSED RESTRICTED BUILDING WORK – EXTERNAL MOISTURE

The design and construction of *external moisture management systems*.

External moisture management system means a system consisting of one or more elements that provides resistance to penetration by, and the accumulation of, moisture from the outside.

This includes:

- ground elements (eg, damp-proof course (DPC), damp-proof membrane, field drain behind a basement wall)
- wall cladding elements (eg, wall wrap/underlay, sub-structure, cavity battens, cladding material, structural cladding, exterior joinery, flashings, finishing applications)
- roofing elements (eg, wrap/underlay, cladding, flashings)
- decking membrane.

PROPOSED RESTRICTED BUILDING WORK – FIRE PROTECTION

The design of *fire safety systems or features*, including the design work required to integrate a fire safety system with any other building system or feature.

Fire safety systems or features means a system or feature required for the purposes of the Building Code to warn people of an emergency, provide for safe evacuation, facilitate fire rescue operations and restrict the spread of fire. For example:

- automatic systems for fire suppression
- automatic or manual emergency warning systems
- electromagnetic or automatic doors or windows
- lighting systems
- mechanical or ventilation systems (pressurisation systems, smoke control systems, dampers)
- riser mains
- ventilation dampers
- fire rated walls, floors, ceilings, windows, doors, linings, finishes
- seals (fire collars, intumescent seals).

What happens next?

Please send us your response to the questions on the following pages and any other comments by 5pm Thursday 11 September. You can send your comments by post to:

Restricted building work consultation
Department of Building and Housing
PO Box 10-729
Wellington 6143

Or you can hand deliver them to:

Restricted building work consultation
Department of Building and Housing
Level 6
86 Customhouse Quay
Wellington 6011

Or you can email them to
info@dbh.govt.nz

Please put 'restricted building work consultation' in the subject line of your email.

The Department will consider all comments received and a summary of the comments will be published on the Department's website:
www.dbh.govt.nz

The Department will then make a final recommendation to the government on the detail of restricted building work.

Please note that all correspondence and comments on this matter may be the subject of a request under the Official Information Act 1982. If there is any part of your correspondence that you consider could properly be withheld under the Act, please include comment to that effect and give reasons why you would want it withheld.

QUESTIONS FOR COMMENT ABOUT RESTRICTED BUILDING WORK IN GENERAL (CONTINUED)

Q3. Do you think there are other areas of building work that are 'critical' and not covered by proposals and should be restricted building work?

Q4. What are your views on the benefits of this proposal compared to the costs that will be involved?

QUESTIONS FOR COMMENT – STRUCTURE

Q5. Do you agree that design and construction of 'primary structure' is critical to the integrity of a building?

Q6. Do you think the definition of 'primary structure' captures all the critical elements?



QUESTIONS FOR COMMENT – STRUCTURE (CONTINUED)

Q7. Can you provide any information on any likely additional costs that may be incurred if this work is required to be carried out or supervised by a licensed building practitioner?

Q8. The design restricted building work will be required to be carried out by a person licensed in the Design 1, Design 2 or Design 3 class⁶ (depending on the category of building the work relates to). Do you agree these licensing classes are the correct ones for the work?

Note: details of the areas of work covered by each licensing class and the competencies required to be licensed in each class are set out in the *Licensed Building Practitioners Rules* and can be read online at www.dbh.govt.nz/pub-licensing-standards

Q9. The construction restricted building work will be required to be carried out by a person licensed in the Carpentry class. Do you agree this licensing class is the correct one for the work?

⁶ Registered Architects or Chartered Professional Engineers are treated as if they are licensed in the Design 3 class.



QUESTIONS FOR COMMENT – STRUCTURE (CONTINUED)

Q10. Where the material used for construction is concrete or steel, there are other licensing classes relating to the coordination and oversight (ie, not the actual 'doing') of that work. Do you think people licensed in those classes should be required to coordinate and oversee the construction work?

QUESTIONS FOR COMMENT – EXTERNAL MOISTURE

Q11. Do you agree that design and construction of an 'external moisture management system' is critical to the integrity of a building?

Q12. Do you think the definition of 'external moisture management system' captures all the critical elements?

QUESTIONS FOR COMMENT – EXTERNAL MOISTURE (CONTINUED)

Q13. Can you provide any information on any likely additional costs that may be incurred if this work is required to be carried out or supervised by a licensed building practitioner?

Q14. The design of restricted building work will be required to be carried out by a person licensed in the Design 1, Design 2 or Design 3 class (depending on the category of building the work relates to). Do you agree these licensing classes are the correct ones for the work?

Q15. The construction of restricted building work will be required to be carried out by a person licensed as follows:

- for ground elements – in the Carpentry class
- for cladding elements – in the External Plastering, Brick & Blocklaying or Carpentry class as appropriate to the type of cladding being used
- for roofing elements – in the Roofing class

Do you agree these licensing classes are the correct ones for the work?

Note: details of the areas of work covered by each licensing class and the competencies required to be licensed in each class are set out in the *Licensed Building Practitioners Rules* and can be read online at www.dbh.govt.nz/pub-licensing-standards



QUESTIONS FOR COMMENT – FIRE PROTECTION

Q16. Do you agree that design of 'fire safety systems or features' is critical to the integrity of a building?

Q17. Do you think the definition of 'fire safety systems or features' captures all the critical elements?

Q18. Can you provide any information on any likely additional costs that may be incurred if this work is required to be carried out or supervised by a licensed building practitioner?



QUESTIONS FOR COMMENT – FIRE PROTECTION (CONTINUED)

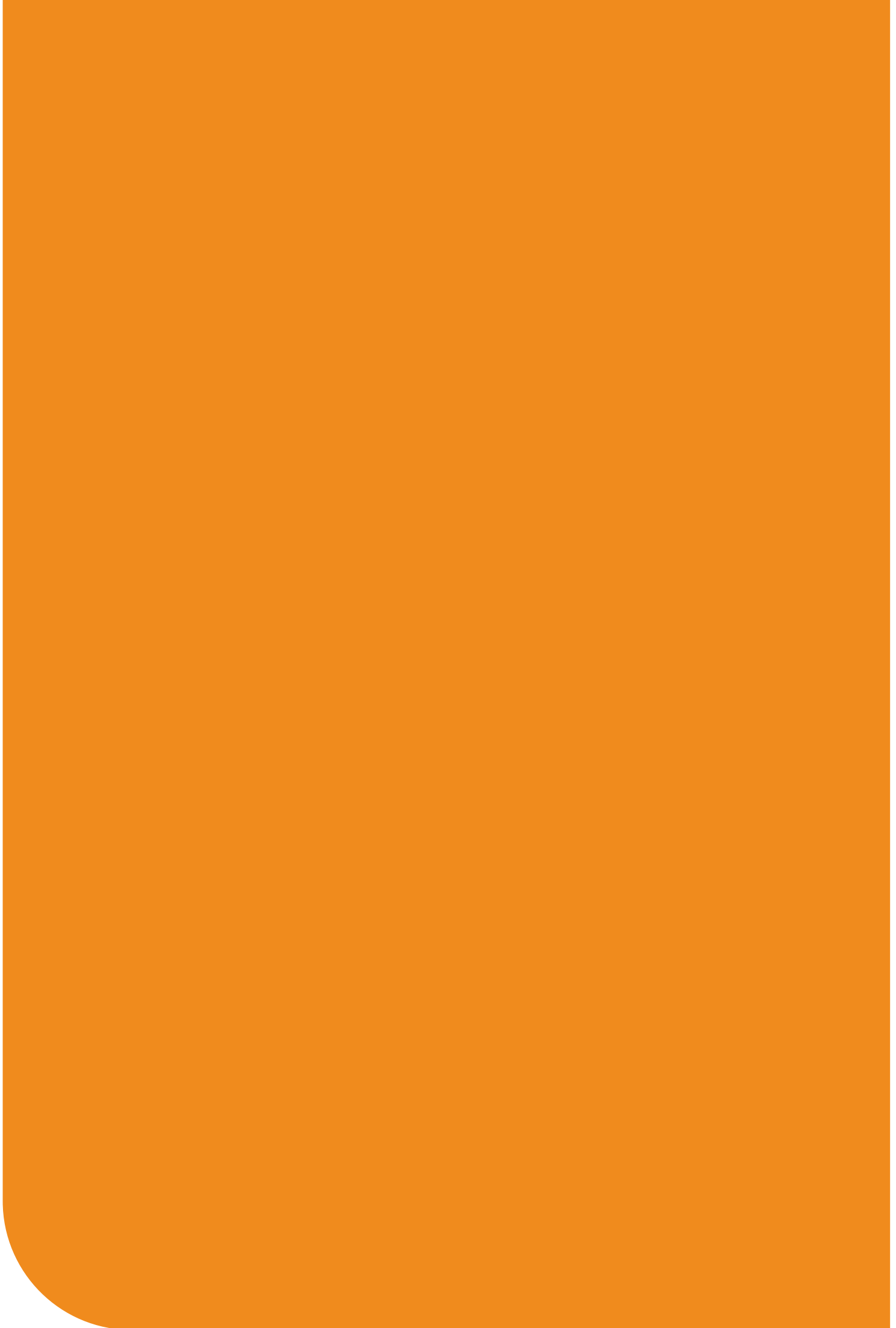
Q19. The design of restricted building work will be required to be carried out by a person licensed in the Design 1, Design 2 or Design 3 class (depending on the category of building the work relates to). Do you agree these licensing classes are the correct ones for the work?

Q20. Do you think construction of any fire safety systems or features should be restricted building work? If so, why? And please also describe the competencies you think would be required to do the work and what existing occupational groupings there are who could be licensed to do the work.

FURTHER COMMENT

Q21. Do you have any other comments you wish to make on these proposals?





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