

New liabilities for people in a partnership

This fact sheet explains changes to the *Building Act 1993 (the Act)* and *Domestic Building Contracts Act 1995 (the DBC Act)*.

THE CHANGE

From 24 May 2017, the responsibilities and liabilities of people in a partnership engaged in 'building work' according to the Act and the DBC Act will change in certain circumstances.

DEFINITIONS

A 'partnership' is legally defined under the *Partnership Act 1958*.

This Act states that a partnership is formed usually when two or more people go into business together.

WHAT THE CHANGE MEANS

When these amendments come into effect, the responsibilities and liabilities of people in a partnership engaged in building work will change in a number of ways.

Offences by people in a partnership

From 24 May 2017, a new section 242A of the Act will provide that if an offence under this Act is committed by a builder in a partnership, each member of the partnership can be prosecuted for the offence.

On 1 July 2018, a new section 241A(3) of the Act will provide that if a court finds one or more members of a partnership guilty of the offence of:

- carrying out domestic building work in contravention of the Act, or
- entering into a major domestic building contract in contravention of section 29 of the DBC Act,

a court may, in addition to any penalty for the above offences, direct that each person in the

partnership is ineligible to apply for registration under Part 11 of the Act for not more than three years.

Additional requirements for registration

On 1 July 2018, a new section 171C of the Act prescribes additional requirements for a person in a partnership who applies for registration as a building practitioner.

The VBA will need to be satisfied that *each person* in the partnership is a fit and proper person for registration, having regard to a range of personal and financial probity requirements, and that the person is not an excluded person under the Act and meets other prescribed registration requirements.

Major domestic building contracts

If a registered building practitioner enters into a major domestic building contract on behalf of a partnership, an amended section 31(1) of the DBC Act, after it is proclaimed, will require that the contract must state the:

- names and addresses of each other member of the partnership; and
- VBA registration number of each other member of the partnership who is a registered building practitioner.

Furthermore, a person must not enter into a major domestic building contract on behalf of a partnership to carry out domestic building work for another person unless that person:

- is a member of the partnership; and
- is a registered building practitioner; and
- has a registration which authorises the person to carry out the building work.

Advertisements and written statements

On 1 July 2018, a new section 169I of the Act will require that a registered building practitioner, who is in partnership with a person who is not a registered building practitioner, must in each advertisement or written statement relating to the business include the following:

- the name under which the building practitioner is registered; and
- the VBA registration number of the registered building practitioner; and
- otherwise comply with the requirements of the regulations.

Unregistered person in a partnership

Generally, a person must not carry out building work under a major domestic building contract unless the person is a registered building practitioner.

On 1 July 2018, a new section 169F(2) of the Act will allow an unregistered person to carry out building work under a major domestic building contract if they do so in partnership:

- with a registered builder; or
- as an employee of a registered builder in the course of their employment; or
- as a subcontractor of a registered builder in accordance with a contract with the registered builder.

New section 169F(3) of the Act states that if a registered builder in a partnership with an unregistered person, as listed above, dies or becomes insolvent prior to completion of building work under the contract, the unregistered person may arrange for another

registered building practitioner to carry out the unfinished work under the major domestic building contract.

If an unregistered person makes an arrangement with another registered building practitioner (who is authorised to carry out that work under the contract) to complete the unfinished work, the unregistered person does not commit an offence under section 169F(1) of the Act by continuing to carry out work under the contract in accordance with that arrangement¹.

Want to know more?

Please **submit an enquiry** or call us on 1300 815 127.

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vba.vic.gov.au

¹ New section 169F(4) of the Act.