



Australian Capital Territory

Construction Practitioners Registration Act 1998 No 53

Republication No 1

Republication date: 11 April 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Construction Practitioners Registration Act 1998* as in force on 11 April 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Construction Practitioners Registration Act 1998

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Amendments incorporated to
12 September 2001



Australian Capital Territory

Construction Practitioners Registration Act 1998

An Act to provide for the registration of construction practitioners, and for
a related purpose

Part 1 Preliminary

1 Short title

This Act may be cited as the *Construction Practitioners Registration Act 1998*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

certifier means a person who performs services as a certifier under the *Building Act 1972* or a prescribed law.

code means the code of ethics under section 12.

Note A reference to a disallowable instrument (including the code) includes a reference to the instrument as originally made and as amended (see *Legislation Act 2001*, s 102).

construction work means—

- (a) work that is building work under the *Building Act 1972*; or
- (b) work that is prescribed, being work in relation to which a prescribed law applies.

prescribed law means a prescribed Act or prescribed regulations providing for the appointment of a registered construction practitioner as certifier in relation to construction work.

qualifications includes training and experience.

registered construction practitioner means a person registered under this Act.

3A When a person is covered by insurance

For this Act, a person is covered by insurance if the person holds insurance in accordance with the regulations.

Part 2 Administration

Division 2.1 Registration

4 Categories of registration

There shall be categories of registration set out or described in the regulations.

5 Application

- (1) Application may be made to the chief executive for registration under this Act.
- (2) An application—
 - (a) may only be made by an individual; and
 - (b) shall be in writing and signed by the applicant; and
 - (c) shall state each category of registration that is sought; and
 - (d) shall be in accordance with the regulations; and
 - (e) must contain the information prescribed under the regulations; and
 - (f) must be accompanied by the documents prescribed under the regulations.

Note A fee may be determined under s 30 (Determination of fees) for this section.

- (3) The chief executive may exempt an applicant who has previously been a registered construction practitioner from any requirements of regulations made for subsection (2) (e) or (f) that the chief executive considers appropriate.

6 Qualifications

The qualifications required in respect of each category of registration are as prescribed.

7 Determination of applications

- (1) The chief executive shall, if satisfied that—
 - (a) an application complies with section 5; and
 - (b) the applicant has the qualifications prescribed in relation to a category of registration that is applied for; and
 - (c) if the application is granted, the applicant will be covered by insurance for the period that commences on the grant of the application and expires on the anniversary of that grant;

register the applicant in each category that has been applied for and in respect of which the applicant is qualified.

- (2) If, after making enquiries that are reasonable in the circumstances, the chief executive is not satisfied in accordance with subsection (1) in relation to 1 or more categories of registration applied for, he or she shall refuse the application in relation to each category in respect of which the chief executive is not so satisfied.
- (3) The chief executive may ask the applicant to provide further information or documents reasonably required to determine the application and may refuse the application if the request is not complied with within a reasonable time.

8 Entitlement to act as certifier

- (1) A registered construction practitioner is not entitled to perform services as a certifier in relation to construction work if he or she has an interest in the work.
- (2) For this section, a registered construction practitioner has an interest in construction work if he or she, or a person related to the practitioner—

- (a) has a legal or equitable interest in the land where the construction work is, or is to be, carried out; or
 - (b) has prepared, or intends to prepare, drawings intended to be used in relation to the construction of the construction work; or
 - (c) has carried out, or intends to carry out, any of the construction work; or
 - (d) has a financial interest in the construction or completion of the construction work.
- (3) For this section, a person is related to a registered construction practitioner if he or she is—
- (a) a person with whom the practitioner has a personal, professional, commercial or financial relationship; or
 - (b) an employer or employee of the practitioner; or
 - (c) a company of which the practitioner is a director or in which he or she holds a share.

9 Term of registration

- (1) Registration under this Act is not in effect while it is suspended.
- (2) A person ceases to be registered under this Act when his or her registration is surrendered or cancelled.
- (3) The registration of a person who becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors, is cancelled under this subsection.

10 Annual fee and statement

- (1) On or before the anniversary of his or her registration under this Act (the *renewal date*), a registered construction practitioner shall give to the chief executive—
 - (a) a statement setting out the prescribed particulars; and

- (b) the annual fee determined under section 30 (Determination of fees); and
 - (c) the evidence the chief executive reasonably requires to show that the registered construction practitioner will be covered by insurance for the period that commences on the renewal date and ends not earlier than the next renewal date.
- (2) Where subsection (1) is not complied with, the registration is cancelled under this subsection.
 - (3) In this section, a reference to a registered construction practitioner includes a reference to a registered construction practitioner whose registration is under suspension.

11 Register

- (1) The chief executive shall establish and maintain a register of construction practitioners (the *register*).
- (2) The register—
 - (a) shall contain—
 - (i) particulars of each registration under this Act that are prescribed; and
 - (ii) other information that the chief executive considers appropriate; and
 - (b) may be kept in the form that the chief executive considers appropriate.
- (3) The chief executive shall determine a place where the register is to be kept.
- (4) A person is entitled to have access to the register and to make copies of any entry at the place determined under subsection (3) during ordinary office hours.
- (5) The chief executive may satisfy a request for access under subsection (4) by making available a copy of the register, or a copy

of the relevant part of the register, certified by the chief executive, or a person designated by the chief executive for this purpose, to be a true copy of the register.

Division 2.2 Code of ethics

12 Code of ethics

- (1) The chief executive may, in writing, make a code of ethics to be observed by registered construction practitioners.

Note Power given under an Act to make an instrument (including the code) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) The code is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Note 2 An amendment or repeal of the code is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

13 Evidence of Code

- (1) In any proceedings, evidence of the code as in force on a specified date or during a specified period may be given by the production of a copy of the code certified by the chief executive, in writing, to be a true copy of the code as at that date or during that period.
- (2) For subsection (1), a certificate that purports to have been signed by the chief executive shall be taken to have been so signed unless the contrary is proved.

Division 2.3 Enforcement

14 Meaning of *compliance auditor*

In this division:

compliance auditor means a compliance auditor under section 15 (3).

15 Compliance auditors

- (1) There shall be 1 or more compliance auditors for this Act.
- (2) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include exercising the functions of a compliance auditor.
- (3) A compliance auditor is any public servant for the time being exercising the duties of a public service office referred to in subsection (2).
- (4) A compliance auditor shall exercise the functions that the chief executive directs for this Act.

16 Identity cards

- (1) The chief executive shall issue to a compliance auditor an identity card that specifies the auditor's name and office, and on which appears a recent photograph of the auditor.
- (2) On ceasing to be a compliance auditor, a person shall not fail, without reasonable excuse, to return his or her identity card to the chief executive.

Maximum penalty: 1 penalty unit.

17 Powers of compliance auditors

- (1) For the purpose of exercising his or her functions, a compliance auditor may, during ordinary business hours and with any assistance that is necessary and reasonable, enter any premises (other than residential premises) used by a registered construction practitioner.
- (2) A compliance auditor who enters premises under subsection (1) is not authorised to remain on the premises if, on request by or on behalf of the occupier or person apparently in charge of the premises, the compliance auditor does not produce his or her identity card.

- (3) Where a compliance auditor enters premises in accordance with subsection (1), he or she may—
- (a) inspect any books, documents, plans, drawings or records relating to the activities of the registered construction practitioner as a certifier; and
 - (b) make copies of, or take extracts from, any books, documents or records referred to in paragraph (a); and
 - (c) require any person on the premises to furnish information relating to any books, documents or records referred to in paragraph (a); and
 - (d) require a person apparently in charge of the premises—
 - (i) to produce any book, document or record referred to in paragraph (a); or
 - (ii) to give to the compliance auditor access to any computer in which any information relevant to the activities of the registered construction practitioner as a certifier is stored; or
 - (iii) to print any information referred to in subparagraph (ii).
- (4) The occupier or person in charge of premises that a compliance auditor has entered under subsection (1) shall provide the compliance auditor with all reasonable facilities and assistance for the effective exercise of his or her powers under this section.

18 Obstruction of compliance auditors

A person shall not, without reasonable excuse—

- (a) obstruct or hinder a compliance auditor in the exercise of his or her functions under this Act; or

- (b) fail to comply with a requirement of a compliance auditor under section 17 (3).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Part 3 Disciplinary provisions

19 Meaning of *disciplinary notice*

In this part:

disciplinary notice means a notice under section 20.

20 Notice of intended disciplinary action

The chief executive may cause a written notice to be served on a registered construction practitioner requiring him or her to show cause why disciplinary action should not be taken in relation to him or her on any of the following grounds:

- (a) that the registration had been effected in error or in consequence of a false statement or misleading information furnished by or on behalf of the registered person;
- (b) that the registered construction practitioner has contravened a condition imposed on his or her registration under section 22 (6) (a) (v);
- (c) that the registered construction practitioner has contravened a provision of, or a requirement made under, this Act, the *Building Act 1972* or a prescribed law, being a provision or requirement relating to the practitioner in his or her capacity as a certifier;
- (d) that the registered person has failed to exercise due skill, care or diligence in the exercise of a function as certifier under the *Building Act 1972* or a prescribed law;
- (e) that the registered construction practitioner has failed to comply with a provision of the code.

21 Preliminary suspension of registration

- (1) If the chief executive considers it necessary in the public interest to do so, having regard to the circumstances leading to the decision to serve a disciplinary notice and the ground or grounds specified in the notice, he or she may suspend the registration of the person on whom the notice is to be or has been served.
- (2) The chief executive—
 - (a) is not required to give notice of his or her intention to suspend a registration under subsection (1) to any person; and
 - (b) may suspend a registration under subsection (1) at the time of the service of a disciplinary notice or at any later time until the day referred to in section 22 (9).
- (3) A suspension under subsection (1)—
 - (a) takes effect when written notice of the suspension is given to the registered construction practitioner; and
 - (b) expires on the day referred to in section 22 (9).

22 Procedure

- (1) A disciplinary notice—
 - (a) shall contain full particulars of the facts or circumstances on the basis of which the chief executive has formed the opinion that the ground or grounds specified in the notice exists or exist; and
 - (b) shall specify—
 - (i) where the registration has been suspended under section 21—a period commencing not less than 7 days and ending not more than 14 days after the date of service of the notice; or

- (ii) in any other case—a period commencing not less than 14 days and ending not more than 28 days after the date of service of the notice;

within which the registered construction practitioner may show cause to the chief executive why his or her registration should not be suspended or cancelled.

- (2) A person on whom a disciplinary notice has been served may apply in writing for an extension of the period within which he or she is required to show cause under subsection (1) (b).
- (3) On receiving an application under subsection (2), the chief executive may extend the period by not more than 28 days or refuse to extend the period.
- (4) The chief executive may extend a period under subsection (3) even though the application is made after its expiry.
- (5) After the expiry of the period of time specified in a disciplinary notice or any extension of that period, the chief executive may fix a time and place for an inquiry into the proposed suspension or cancellation of registration and shall give written notice of the time and place of that inquiry to the registered construction practitioner and any other person who has made representations in relation to that suspension or cancellation.
- (6) At the completion of an inquiry the chief executive shall—
 - (a) if satisfied that a ground specified in the disciplinary notice exists—
 - (i) cancel the registration; or
 - (ii) cancel the registration in relation to a specified category of registration; or
 - (iii) suspend the registration for a specified period; or
 - (iv) suspend the registration for a specified period in relation to a specified category of registration; or

- (v) impose or vary a condition on the registration; or
 - (vi) require the registered construction practitioner to undertake a specified course of training and provide evidence of its satisfactory completion; or
 - (vii) require the registered construction practitioner to provide to the chief executive information the chief executive may require in relation to activities undertaken by the practitioner as a certifier, being activities that are specified in the notice; or
 - (viii) reprimand the registered construction practitioner; or
- (b) if not so satisfied—decide to take no further action in relation to the notice.
- (7) For subsection (6), where no cause to the contrary has been shown and no representation has been made, the chief executive may be satisfied in accordance with subsection (6) (a).
- (8) Subject to section 28, the chief executive shall cause—
- (a) the registered construction practitioner in relation to whom an inquiry has been held; and
 - (b) any person who has made representations in relation to the inquiry;
- to be notified in writing of the chief executive's decision.
- (9) A decision under subsection (6) (a) takes effect on the day when the notification under subsection (8) (a) occurs.

23 Notification of decision

- (1) The chief executive shall notify the specified particulars of a decision that affects a registration in a daily newspaper printed, published and circulated in the ACT.
- (2) For subsection (1), the specified particulars are—

- (a) the name of the person whose registration has been affected; and
 - (b) any other name known to the chief executive under which the person is carrying on business or has, during the period of his or her registration, carried on business; and
 - (c) the address or addresses where the person is carrying on business or has, during the period of his or her registration, carried on business; and
 - (d) the nature of the decision; and
 - (e) the date when the suspension or cancellation took effect and, for a suspension, the period of suspension; and
 - (f) the ground or grounds on which the decision was based.
- (3) A notice shall not be published under subsection (1) unless—
- (a) the period or any extension of the period within which an application for review of, or appeal from, the chief executive's decision may be made has expired; or
 - (b) where an application for review or appeal has been made—
 - (i) the period of time within which any appeal or further appeal may be instituted has expired; or
 - (ii) an appeal or further appeal has been instituted and has been withdrawn or dismissed, and no further appeal is possible.

24 Removal of condition

- (1) A registered construction practitioner on whose registration a condition has been imposed under section 22 (6) (a) (v) may apply to the chief executive in writing for removal of the condition.
- (2) The chief executive may, if satisfied that it is appropriate to do so, remove the condition.

Part 4 Limitation of liability

25 Definitions for pt 4

In this part:

building action means an action (including a counterclaim) for damages for loss or damage arising out of, or concerning—

- (a) defective building work; or
- (b) defective construction work other than building work; or
- (c) the negligent performance by a registered construction practitioner of a function as a certifier under the *Building Act 1972* or a prescribed law, or the negligent failure to perform such a function;

other than an action for damages for death or personal injury.

building approval—see the *Building Act 1972*.

building work means building work under the *Building Act 1972* in respect of which a building approval has been issued after 18 December 1998.

26 Limit of liability of persons jointly or severally liable

- (1) A court that determines an award of damages in a building action shall give judgment against each defendant to the action who is found to be jointly or severally liable for the damage for the proportion of the total amount of the damages that the court considers to be just, having regard to the extent of that defendant's responsibility for the loss or damage.
- (2) Notwithstanding any other Act or any rule of law, the liability for damages of a person found to be jointly or severally liable for damages in a building action is limited to the amount for which judgment is given against that person.

- (3) A person found to be liable for a proportionate part of damages in accordance with subsection (1) in a building action is not liable to contribute to the damages apportioned to any other person in the action or to indemnify any other such person in respect of those damages.

27 Limitation of liability for building actions

- (1) A building action may not be brought more than 10 years after—
- (a) if a certificate of completion of the relevant building work has been given under the *Building Act 1972*, section 40 (1) (g)—the giving of the certificate; or
 - (b) if paragraph (a) does not apply, but the certifier has, in the course or on completion of the building work, inspected it—the day when the last inspection took place; or
 - (c) if neither paragraph (a) nor paragraph (b) applies—the day when the relevant building was first occupied or used.
- (2) If a certifier has given, in relation to the building work, a notice under the *Building Act 1972*, section 32 that his or her appointment as certifier has ceased or been revoked or relinquished, a building action in relation to the relevant building work may not be brought against the certifier more than 10 years after the giving of the notice.
- (3) Subsections (1) and (2) do not apply to a building action for which another limitation period is prescribed by a Territory law that is less than the limitation period applying to the action under those subsections.
- (4) In this section:
- building**, in relation to building work that consists of, or includes, the alteration of a building, means the building as altered.

Part 5 Miscellaneous

28 Review of decisions

- (1) Application may be made to the administrative appeals tribunal for review of a decision of the chief executive—
 - (a) refusing an application for registration in relation to a category of registration under section 7 (2); or
 - (b) suspending the registration of a registered construction practitioner under section 21 (1); or
 - (c) refusing to extend a period under section 22 (3); or
 - (d) cancelling the registration of a registered construction practitioner under section 22 (6) (a) (i); or
 - (e) cancelling the registration of a registered construction practitioner in relation to a category of registration under section 22 (6) (a) (ii); or
 - (f) suspending the registration of a registered construction practitioner under section 22 (6) (a) (iii); or
 - (g) suspending the registration of a registered construction practitioner in relation to a category of registration under section 22 (6) (a) (iv); or
 - (h) imposing a condition on a registration under section 22 (6) (a) (v); or
 - (i) varying a condition on a registration under section 22 (6) (a) (v).
- (2) Where a decision referred to in subsection (1) is made, the chief executive shall give written notice of the decision to the person affected by the decision.

- (3) A notice under subsection (2) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

29 Cancellation of insurance

An insurer who cancels a policy of insurance under which a registered construction practitioner is covered by insurance for this Act shall notify the chief executive of the cancellation within 3 days of its occurrence.

30 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

31 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

32 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe—
- (a) in relation to a category of registration—

- (i) the insurers with whom a construction practitioner who is registered in that category may take out insurance; or
 - (ii) the amount, or minimum amount, of insurance cover to be held by a registered construction practitioner, either in total or in relation to each category in which the practitioner is registered; or
 - (iii) the amount, or maximum amount, of any excess applying to the insurance cover of a registered construction practitioner, including the amount or maximum amount applying to each category of registration and the circumstances in which the amount or maximum amount may be changed; or
 - (iv) the terms of any policy of insurance for this Act; or
- (b) the information to be provided from time to time to the chief executive by a registered construction practitioner.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Construction Practitioners Registration Act 1998 No 53

notified 16 November 1998 (Gaz 1998 No S205)
 s 1, s 2 commenced 16 November 1998 (s 2 (1))
 remainder commenced 18 December 1998 (s 2 (2) and Gaz 1998 No S213)

as amended by

Construction Practitioners Registration Amendment Act 2000 No 83

notified 21 December 2000 (Gaz 2000 No S69)
 s 1, s 2 commenced 21 December 2000 (IA s 10B)
 remainder commenced 15 February 2001 (s 2 and Gaz 2001 No 7)

Legislation (Consequential Amendments) Act 2001 No 44 pt 73

notified 26 July 2001 (Gaz 2001 No 30)
 s 1, s 2 commenced 26 July 2001 (IA s 10B)
 pt 73 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.791

Definitions for Act

s 3 hdg sub 2000 No 83 s 4
 s 3 am 2000 No 83 s 4
 def **code** sub 2001 No 44 amdt 1.792
 def **determined fee** om 2001 No 44 amdt 1.793

When a person is covered by insurance

s 3A ins 2000 No 83 s 5

Registration

div 2.1 hdg (prev pt 2 div 1 hdg) renum R1 LA

Application

s 5 am 2001 No 44 amdt 1.794

Annual fee and statement

s 10 am 2001 No 44 amdt 1.795

Code of ethics

div 2.2 hdg (prev pt 2 div 2 hdg) renum R1 LA

Code of ethics

s 12 sub 2001 No 44 amdt 1.796

Endnotes

4 Amendment history

Enforcement

div 2.3 hdg (prev pt 2 div 3 hdg) renum R1 LA

Limitation of liability for building actions

s 27 sub 2000 No 83 s 6

Determination of fees

s 30 sub 2001 No 44 amdt 1.797

Approved forms

s 31 sub 2001 No 44 amdt 1.797

Regulation-making power

s 32 sub 2001 No 44 amdt 1.797

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