



Australian Capital Territory

Construction Occupations (Licensing) Act 2004

A2004-12

Republication No 2

Effective: 2 September 2004 – 8 September 2004

Republication date: 2 September 2004

Act not amended

(republiation for commenced expiry)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Construction Occupations (Licensing) Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 September 2004. It also includes any amendment, repeal or expiry affecting the republished law.

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 does not include 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.



Australian Capital Territory

Construction Occupations (Licensing) Act 2004

Contents

	Page	
Part 1	Preliminary	
1	Name of Act	2
3	Dictionary	2
4	Notes	2
5	Offences against Act—application of Criminal Code etc	2
Part 2	Important concepts	
6	What is a <i>construction practitioner</i> ?	4
7	What is a <i>construction occupation</i> ?	4
8	What is a <i>builder</i> ?	5
9	What is a <i>building surveyor</i> ?	5
10	What is a <i>drainer</i> ?	5

R2
02/09/04

Construction Occupations (Licensing) Act 2004
Effective: 02/09/04-08/09/04

contents 1

Contents

	Page
11	6
12	6
13	6
14	7
15	7
16	7
Part 3	Construction practitioners licences
Division 3.1	General
17	8
18	9
19	9
20	10
21	10
22	11
23	11
24	11
25	12
26	12
Division 3.2	Nominees
27	13
28	13
29	14
30	15
31	15
32	16
Part 4	Rectification orders and other obligations on licensees
33	17
34	17
35	18
36	19
37	20

	Page
38	21
39	22
40	23
41	24
42	25
43	25
44	25
45	26
46	26
47	27
Part 5	Automatic licence suspension and disciplinary action
Division 5.1	Automatic licence suspension
48	29
49	29
50	30
51	30
52	30
53	31
Division 5.2	Disciplinary action by registrar
54	31
55	33
56	33
57	34
58	35
59	35
60	35
61	36
62	37
63	38
64	39
65	39

	Page
Division 5.3 Disciplinary inquiries	
66 Notice of inquiry	40
67 Inquiry procedure	40
68 Evidence at inquiry	41
69 Legal representation at inquiry	41
70 Advisory board assistance at inquiry	41
71 Registrar may require appearance, information or documents	41
72 Witness expenses	42
Division 5.4 Miscellaneous	
73 Multiple occupation or class licences	43
74 Requirement to return surrendered licence	43
Part 6 Enforcement	
75 Meaning of <i>compliance auditor</i> for pt 6	44
76 Compliance auditors	44
77 Role of compliance auditor	44
78 Identity cards	45
79 Functions not to be exercised before identity card shown	45
80 Functions of compliance auditors	45
Part 7 Offences	
81 Pretending to be licensed	48
82 No nominee	48
83 Advertising without details	49
84 Certain entities not to provide construction services	50
85 Allowing unlicensed people to provide construction service	50
86 Surrender of licences	51
87 Breach of licence conditions or codes	52
88 Notification of cancellation of insurance	53
Part 8 Demerit points system	
89 Definitions for pt 8	54
90 Meaning of <i>previous 3 years</i> for pt 8	55
91 Recording demerit points	55

	Page
92	When demerit points are <i>incurred</i> 56
93	Deleting demerit points 56
94	Warning notices 56
95	Consequences of incurring demerit points—licensees 57
96	Consequences of incurring demerit points—applicant for issue or renewal of licence 58
97	Licence suspension 58
98	Licence disqualification 59
99	Demerit points incurred but not taken into account for notice of licence suspension etc 60
100	Issue of licence suspension notice etc 61
101	Keeping demerit points register 61
102	Security and disclosure of information in demerit points register 61
 Part 9 Administration	
103	Construction occupations registrar 63
104	Registrar's functions 63
105	Delegation by registrar 64
106	Deputy registrars 64
107	The register 65
108	Recording rectification orders 65
109	Recording contravention of rectification orders 66
110	Recording interim licence suspension 66
111	Removal of information from register 67
112	Annual report by registrar 67
113	Evidentiary certificates 67
 Part 10 Advisory boards	
114	Establishment of advisory boards 69
115	Constitution of advisory board 69
116	Advisory board functions 70
 Part 11 Complaints	
117	Who may complain? 71
118	Form of complaint 71

Contents

	Page
119	71
120	72
121	72
122	72
123	73
Part 12	Miscellaneous
124	74
125	74
126	75
127	75
128	75
129	75
Part 13	Repeals and transitional provisions
130	77
131	77
133	77
134	78
135	78
136	82
137	82
138	82
139	82
140	83
141	83
142	83
143	84
144	84
145	85
146	85
147	86
148	86

		Page
149	Contraventions before commencement day	87
150	Meaning of <i>demerit disciplinary ground</i> for pt 8	87
152	Transitional regulations	87
153	Expiry of pt 13	88

Dictionary 89

Endnotes

1	About the endnotes	92
2	Abbreviation key	92
3	Legislation history	93
4	Amendment history	93
5	Earlier republications	95



Australian Capital Territory

Construction Occupations (Licensing) Act 2004

An Act to regulate construction occupations, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Construction Occupations (Licensing) Act 2004*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*building work*—see the *Building Act 2004*, section 6.’ means that the term ‘building work’ is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important concepts

6 What is a *construction practitioner*?

- (1) A *construction practitioner* is an entity that provides, has provided or proposes to provide a construction service.
- (2) A *construction service* is the doing or supervision of work in a construction occupation.

Note *Supervise*—see dict.

- (3) For this Act, the regulations may—
 - (a) prescribe work as work in a construction occupation; and
 - (b) exclude work from a construction occupation.

7 What is a *construction occupation*?

Each of the following is a *construction occupation*:

- (a) builder;
- (b) building surveyor;
- (c) drainer;
- (d) electrician;
- (e) gasfitter;
- (f) plumber;
- (g) plumbing plan certifier.

8 What is a *builder*?

- (1) A *builder* is an entity that provides, has provided or proposes to provide a building service.
- (2) A *building service* is the doing or supervision of building work.

Note *Building work*—see dict.

9 What is a *building surveyor*?

- (1) A *building surveyor* is an entity that provides, has provided or proposes to provide a building certification service.
- (2) A *building certification service* is the doing of building certification work.
- (3) In this section:

building certification work means anything a building certifier may or must do under the *Building Act 2004*.

Note The *Building Act 2004* requires a building surveyor to be appointed as a certifier before doing building certification work. It also restricts the building certification work certain building surveyors may do depending on their occupation class.

10 What is a *drainer*?

- (1) A *drainer* is an entity that provides, has provided or proposes to provide a sanitary drainage service.
- (2) A *sanitary drainage service* is the doing or supervision of sanitary drainage work.
- (3) In this section:

sanitary drainage work—see *Water and Sewerage Act 2000*, dictionary.

11 What is an *electrician*?

- (1) An *electrician* is an entity that provides, has provided or proposes to provide electrical wiring services.
- (2) An *electrical wiring service* is the doing or supervision of electrical wiring work.
- (3) In this section:
electrical wiring work—see the *Electricity Safety Act 1971*, dictionary.

12 What is a *gasfitter*?

- (1) A *gasfitter* is an entity that provides, has provided or proposes to provide a gasfitting service.
- (2) A *gasfitting service* is the doing or supervision of gasfitting work.
- (3) In this section:
gasfitting work—see the *Gas Safety Act 2000*, dictionary.

13 What is a *plumber*?

- (1) A *plumber* is an entity that provides, has provided or proposes to provide a plumbing service.
- (2) A *plumbing service* is the doing or supervision of—
 - (a) sanitary plumbing work; or
 - (b) water supply plumbing work.
- (3) In this section:
sanitary plumbing work—see *Water and Sewerage Act 2000*, dictionary.
water supply plumbing work—see *Water and Sewerage Act 2000*, dictionary.

14 What is a *plumbing plan certifier*?

- (1) A *plumbing plan certifier* is an entity that provides a plumbing plan certification service.
- (2) A *plumbing plan certification service* is the doing of plumbing plan certification work.
- (3) In this section:

plumbing plan certification work means anything a certifier appointed under the *Water and Sewerage Act 2000* may or must do under that Act.

15 Classes of construction occupations

The regulations may divide a construction occupation into classes.

16 What is an *operational Act*?

Each of the following is an *operational Act*:

- *Building Act 2004*
- *Electricity Safety Act 1971*
- *Gas Safety Act 2000*
- *Utilities Act 2000*
- *Water and Sewerage Act 2000*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Part 3 Construction practitioners licences

Note about application of the Mutual Recognition Act 1992 (Cwlth) and the Trans-Tasman Mutual Recognition Act 1997 (Cwlth)

These Commonwealth Acts allow people licensed in certain occupations in a local jurisdiction to carry on the occupations in another local jurisdiction and provide an alternate way of applying for licences in the ACT or another local jurisdiction. Because of the Self-Government Act, s 28, the requirements for licences under this Act cannot validly require anything of people being licensed under the Commonwealth Acts that would be inconsistent with those Acts. Accordingly, provisions of this Act, such as the requirements for applications, do not apply to the licensing of people under the Commonwealth Acts. Also, the Commonwealth Acts set out when conditions may be placed on people licensed under those Acts. For more information, see the Commonwealth Acts.

Division 3.1 General

17 Licence applications

- (1) An individual, corporation or partnership may apply to the registrar to be licensed in a construction occupation or, for a construction occupation that is divided into classes, in an occupation class.

Note 1 If a form is approved under s 128 for an application, the form must be used.

Note 2 A fee may be determined under s 127 for this section.

Note 3 A person's entitlement to apply for a licence may be affected by a disqualification (see s 98 (3)).

- (2) However, a corporation or partnership may apply under subsection (1) in relation to a construction occupation or occupation class only if the regulations allow a corporation or partnership to be licensed in the occupation or class.
- (3) The regulations may prescribe the requirements for applications.

- (4) If this Act or the regulations prescribe requirements for applications, the registrar need not consider an application that does not comply with the requirements.

18 Eligibility for licence

- (1) The regulations may prescribe when an entity is eligible, or not eligible, to be licensed in a construction occupation or occupation class, including the qualifications the entity must have to be eligible to be licensed in the occupation or class.
- (2) The regulations may prescribe how an applicant may, or must, demonstrate that the applicant satisfies a requirement in relation to an application.

Examples

- 1 by requiring the applicant to hold a qualification
- 2 by requiring the applicant to pass a practical or written test

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 Decision on licence application

- (1) If an entity applies for a licence for a construction occupation or occupation class, the registrar must issue, or refuse to issue, the licence.
- (2) However, the registrar may issue a licence other than the licence applied for if—
- (a) the applicant is not eligible for the licence applied for; and
 - (b) the applicant is eligible for the other licence; and
 - (c) the licence issued is in the same construction occupation as, but a different occupation class from, the licence applied for; and
 - (d) the applicant agrees to the issue of the licence.

- (3) The registrar must refuse to issue a licence for a construction occupation or occupation class to an applicant if—
 - (a) the registrar is not satisfied that the applicant is eligible to be licensed in the occupation or class; or
 - (b) the applicant is disqualified from holding a licence under section 98 (Licence disqualification).
- (4) If disciplinary action against an applicant or a nominee of an applicant is being taken under this Act, the registrar need not decide whether to licence the applicant until the disciplinary action, and any appeal or review arising from the disciplinary action, is finished.

20 Multiple occupations, classes and authorisation

- (1) A licence may authorise the licensee to provide construction services in 1 or more construction occupations and 1 or more occupation classes.
- (2) A licence authorises the licensee to provide construction services in each construction occupation or occupation class to which it relates, subject to any condition, and in accordance with any endorsement, on the licence.

21 Licence conditions

- (1) The regulations may prescribe—
 - (a) conditions on licences; and
 - (b) when conditions on licences (whether imposed under the regulations or by the registrar) take effect.
- (2) The registrar may amend a licence by putting a condition on the licence, or by amending or cancelling a condition the registrar has put on the licence, at any time by written notice given to the licensee, unless the regulations provide otherwise.

- (3) The registrar may amend a licence by putting a condition on the licence, or amending the licence, only if satisfied that it is necessary or desirable to protect the public.

22 Endorsements on licences

- (1) The registrar may, in accordance with the regulations, endorse a licence.
- (2) An endorsement authorises the licensee to provide a stated kind of construction service that the licensee would not otherwise be allowed to provide under the licence.

23 Form of licence

- (1) A licence must be signed by the registrar and contain the following details in relation to the licensee:
- (a) the licensee's full name;
 - (b) each construction occupation, and occupation class (if any), in which the licensee is licensed;
 - (c) a unique identifying number (the *licence number*) for each construction occupation and occupation class in which the licensee is licensed.

Note A licence may be endorsed under s 22.

- (2) The regulations may require or allow other information to be included on a licence.

24 Term of licence

The regulations may prescribe the maximum period for which a licence is issued or renewed.

25 Licence renewal

- (1) A licensee may apply to the registrar for renewal of the licence before the licence term ends.
- (2) The registrar must renew a licence on application if satisfied that the applicant would be eligible to be licensed if the application were for a new licence of the same kind.
- (3) The renewal of a licence begins on the day after the licence being renewed ends.
- (4) A suspended licence may be renewed, but the renewed licence is suspended until the suspension ends.

26 Voluntary licence cancellation

The registrar must cancel a licensee's licence if—

- (a) the licensee asks, in writing, for the cancellation; and
- (b) the licensee gives the licence to the registrar or satisfies the registrar that the licence has been lost, stolen or destroyed; and
- (c) the registrar is satisfied that—
 - (i) the licensee cannot exercise his or her functions because of mental or physical incapacity; or
 - (ii) another licensee is to take over the licensee's functions in relation to construction services that have not been completely provided; or
 - (iii) it is otherwise appropriate to approve the cancellation.

Division 3.2 Nominees

27 Meaning of *mandatory requirement* for div 3.2

In this division:

mandatory requirement of the nominee means a written requirement by the nominee that the corporation or partnership do something, or not do something, in compliance with, or to achieve compliance with, this Act or an operational Act.

28 Nominees of corporations and partnerships

- (1) A corporation or partnership is eligible to be licensed only if it complies with subsection (2) or (3).
- (2) The corporation or partnership complies with this subsection if—
 - (a) it has a single nominee appointed by it; and
 - (b) the nominee is responsible for the supervision of the construction services provided by it.
- (3) The corporation or partnership complies with this subsection if—
 - (a) it has 2 or more nominees appointed by it; and
 - (b) each nominee is responsible for the supervision of different construction services (whether in a different construction occupation or occupation class or otherwise) provided by it; and
 - (c) between them, the nominees are responsible for the adequate supervision of all the construction services to be provided by the corporation or partnership.
- (4) A corporation or partnership may, in writing, appoint an eligible individual to be a nominee.

- (5) If the nominee is to be responsible for the adequate supervision of only some of the construction services to be provided by the corporation or partnership, the appointment must state the services for which the nominee is responsible.
- (6) For subsection (4), an individual is an *eligible individual* if the individual—
 - (a) is eligible under the regulations to be appointed as a nominee; and
 - (b) is licensed in the construction occupation and occupation class (if any) appropriate for each of the construction services for which the individual is to be responsible; and
 - (c) agrees in writing to the appointment.
- (7) A nominee of a corporation or partnership automatically stops being a nominee if the nominee—
 - (a) ceases to be eligible under the regulations to be appointed as a nominee; or
 - (b) ceases to be licensed in a construction or occupation class (if any) appropriate for any of the construction services for which the nominee is responsible.

29 Resignation of nominee

- (1) A nominee of a corporation or partnership may resign his or her appointment only with the registrar's approval.
- (2) The registrar may approve the resignation of the nominee only if satisfied that—
 - (a) the corporation or partnership has refused to comply with a mandatory requirement of the nominee; or
 - (b) the nominee cannot exercise his or her functions because of mental or physical incapacity; or

- (c) the nominee, or entity that appointed the nominee, has arranged for another nominee to take over the nominee's functions; or
- (d) it is otherwise appropriate to approve the resignation.

30 Revocation of nominee's appointment

- (1) A corporation or partnership may revoke a nominee's appointment only with the registrar's approval.
- (2) The registrar may approve the revocation of the nominee's appointment only if satisfied that—
 - (a) the nominee cannot exercise his or her functions because of mental or physical incapacity; or
 - (b) the nominee, or entity that appointed the nominee, has arranged for another nominee to take over the nominee's functions; or
 - (c) it is otherwise appropriate to approve the resignation.

31 Role of nominees

- (1) A nominee of a licensed corporation or partnership has the following functions:
 - (a) to supervise the construction services of the corporation or partnership for which the nominee is responsible (the *relevant construction service*);
 - (b) to ensure that the relevant construction services comply with this Act and the operational Acts.
- (2) The nominee commits an offence if the nominee fails to—
 - (a) adequately supervise the relevant construction services; or

- (b) ensure that the relevant construction services comply with this Act and the operational Acts.

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply to a failure of a nominee of a corporation or partnership (the *nominee's firm*) if—
 - (a) the nominee had given the nominee's firm a mandatory requirement in relation to the matter that made up the failure; and
 - (b) the nominee had given the registrar a copy of the mandatory requirement; and
 - (c) the failure would not have happened if the mandatory requirement had been complied with.
- (4) The licensed corporation or partnership commits an offence if the nominee fails to—
 - (a) adequately supervise the relevant construction services; or
 - (b) ensure that the relevant construction services comply with this Act and the operational Acts.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.

32 Legislation Act and nominee appointments

The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a nominee of a corporation or partnership.

Part 4 Rectification orders and other obligations on licensees

33 **Meaning of *authorised action* and *authorised licensee* in pt 4**

In this part:

authorised action, for an authorised licensee, means what the licensee is authorised to do under section 41 (Failure to comply with order) or section 42 (Action on emergency rectification order).

authorised licensee means a licensee authorised under section 41 or section 42.

34 **Intention to make rectification order**

- (1) This section applies if the registrar believes on reasonable grounds that—
- (a) a licensee or former licensee (the *entity*) has provided a construction service otherwise than in accordance with this Act or an operational Act; and
 - (b) it may be appropriate to make a rectification order.

Examples of licensee or former licensee

- 1 a licensed builder does building work
- 2 a drainer who was licensed, does sanitary drainage work while unlicensed
- 3 a licensed gasfitter does gasfitting work and then becomes unlicensed

Note 1 If deciding under this section whether it may be appropriate to make a rectification order, the registrar must consider the considerations mentioned in s 36.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The registrar may give the entity, and the land owner in relation to whose land the construction service was provided, a written notice that—
- (a) gives details of the rectification order that may be made; and
 - (b) explains why the registrar intends to make the order; and
 - (c) invites submissions about the making of the order within the time stated in the notice that is not less than 5 working days after the day the entity or land owner receives the notice.

35 When rectification order may be made

- (1) This section applies if—
- (a) the registrar has given an entity (other than the land owner) notice under section 34; and
 - (b) after considering any submissions made within the time mentioned in the notice, the registrar is satisfied—
 - (i) the entity is contravening, or has contravened, this Act or an operational Act; and
 - (ii) it is appropriate to make a rectification order in relation to the entity.

Note 1 If deciding under this section whether it is appropriate to make a rectification order, the registrar must consider the considerations mentioned in s 36.

Note 2 See s 149 for the extended meaning in this section of a *contravention* of this Act.

- (2) The registrar may make an order under section 38 (Rectification orders) in relation to the entity.

- (3) However, the registrar may not make an order under section 38 in relation to the entity if a submission is made that satisfies the registrar that the act that caused the contravention happened, or ended, more than 10 years before the day the registrar proposes to make the order.

Example of contravention

A builder built a house without a building approval. The registrar is satisfied that the building of the house started 12 years ago and finished 9 years ago. The registrar may make a rectification order in relation to the construction service of building the house.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

36 Considerations for deciding under s 34 and s 35

- (1) In deciding whether it is, or may be, appropriate to make a rectification order in relation to an entity that is contravening, or has or may have contravened, this Act, the registrar must consider the following:
- (a) any injury, loss or damage caused, or that could have been caused, by the contravention;
 - (b) if a rectification order is proposed—how the proposed order may affect people affected by the contravention.

Examples of effect of contravention, including injury, loss and damage

- 1 reduction in safety, reliability, durability, soundness, functionality, accessibility, serviceability, service life, usability, usefulness, amenity, aesthetic quality, value or efficiency of thing affected by contravention
- 2 adverse affect on health of user of thing affected by contravention

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The registrar may consider anything else that is relevant.

37 Rectification order inappropriate

- (1) This section applies if the registrar—
- (a) has given an entity (other than the land owner) notice under section 34 (Intention to make rectification order); and
 - (b) after considering any submissions made within the time mentioned in the notice, is satisfied that the entity is contravening or has contravened this Act or an operational Act; and
 - (c) is not satisfied that—
 - (i) it is appropriate to make a rectification order in relation to the entity, because of the relationship between the entity and the land owner; and
 - (ii) the act that caused the contravention happened, or ended, more than 10 years before the day the Territory proposes to authorise someone under this section.

Note See s 149 for the extended meaning in this section of a *contravention* of this Act.

- (2) The Territory may, in writing, authorise a licensee to enter the land where the work to which the notice under section 34 related was to be done and—
- (a) take the action stated in the notice; or
 - (b) start or finish the work stated in the notice.
- (3) The authorised licensee must—
- (a) give the owner of the land written notice that the licensee intends to enter the land at least 24 hours before the licensee enters the land; and
 - (b) give a copy of the notice to the entity before entering the land.

- (4) However, the Territory must not authorise someone until—
- (a) if the entity applied for review of the decision to authorise a licensee under this section within the period for review (the *review period*) of the decision allowed under the *Administrative Appeals Tribunal Act 1989*—the review is finally disposed of; or
 - (b) the review period has ended.
- (5) The entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

38 Rectification orders

- (1) The registrar may make an order (a *rectification order*) in relation to an entity requiring the entity—
- (a) to take stated action to rectify work done as part of a construction service; or
 - (b) to demolish a building or part of a building where a construction service has been provided and provide the construction service under this Act or an operational Act; or
 - (c) to start or finish stated work in relation to which a construction service has been, is being or was proposed to be provided.
- (2) If the entity is not licensed to do something required to be done under the order, the entity must arrange, and pay for, the thing to be done.
- (3) The rectification order must state a period within which what is required to be done must be done.

- (4) The stated period for a rectification order other than an emergency rectification order must not be less than 1 month after the day the rectification order is given to the entity.

Note Details of the rectification order must be included in the register (see s 108).

- (5) A copy of the rectification order must be given to the land owner.

39 Emergency rectification order

- (1) The registrar may make a rectification order (an *emergency rectification order*) under section 38 in relation to a licensee or former licensee (the *entity*), without giving the entity notice under section 34, if the registrar is satisfied that—

- (a) the entity has provided a construction service other than in accordance with this Act or an operational Act; and
- (b) it is appropriate to make a rectification order; and
- (c) it is not appropriate to give notice under section 34 of the registrar's intention to make a rectification order because the need to act promptly to protect the health or safety of people, public or private property or the environment, outweighs the importance of giving the notice before making an order.

- (2) A rectification order that is an emergency rectification order must also include the following:

- (a) a statement explaining that the order is an emergency rectification order;
- (b) a statement explaining that, if the thing ordered to be done is not done within the period (the *completion period*) stated in the order—
 - (i) the Territory may authorise a licensee to enter the land where the thing is to be done to do the thing ordered; and

- (ii) neither the Territory nor the authorised licensee need give the land owner or entity against whom the order is made further notice of the authorised licensee doing the thing on the land; and
 - (iii) the entity against which the order has been made will be liable for the reasonable cost incurred in doing the thing ordered.
- (3) The completion period must not be less than 24 hours.

40 Rectification order offence

- (1) A person commits an offence if the person intentionally fails to comply with a rectification order given to the person.

Maximum penalty: 200 penalty units.

- (2) Each partner commits an offence if—
- (a) the partnership is given a rectification order; and
 - (b) the partners, or some of them, intentionally fail to comply with the rectification order.

Maximum penalty: 200 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—
- (a) that—
 - (i) the partner did not know about the failure to comply; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or
 - (b) that the partner was not in a position to influence the other partners in relation to the failure to comply.

41 Failure to comply with order

- (1) This section applies if an entity (the *ordered entity*) in relation to whom a rectification order is made contravenes the rectification order.
- (2) The Territory may, in writing, authorise a licensee to enter the land where the work to which the rectification order relates is to be done and—
 - (a) take the action stated in the rectification order; or
 - (b) start or finish the work stated in the rectification order.
- (3) The authorised licensee must—
 - (a) give the owner of the land written notice that the licensee intends to enter the land at least 24 hours before the licensee enters the land; and
 - (b) give a copy of the notice to the ordered entity before entering the land.
- (4) However, the Territory must not authorise someone until—
 - (a) if the ordered entity applied for review of the decision within the period for review (the *review period*) of the decision to make the rectification order allowed under the *Administrative Appeals Tribunal Act 1989*—the review is finally disposed of; or
 - (b) the review period has ended.
- (5) The ordered entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

42 Action on emergency rectification order

- (1) This section applies if—
 - (a) the registrar has made an emergency rectification order; and
 - (b) the emergency rectification order includes the information mentioned in section 39 (2); and
 - (c) the ordered entity has contravened the order.
- (2) The Territory may, in writing, authorise a licensee to enter the land where the work to which the rectification order is to be done and—
 - (a) take the action stated in the rectification order; or
 - (b) start or finish the work stated in the rectification order.
- (3) The ordered entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

43 Hindering or obstructing authorised licensee

- (1) An entity commits an offence if—
 - (a) the entity knows someone is an authorised licensee; and
 - (b) the entity hinders or obstructs the authorised licensee in the exercise of an authorised action.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1) (b).

44 Damage etc by authorised licensee to be minimised

- (1) In the exercise of an authorised action, an authorised licensee must take reasonable steps to ensure that the licensee, and anyone helping the licensee, causes as little inconvenience, detriment and damage as is practicable.

- (2) If an authorised licensee, or a person assisting an authorised licensee, damages anything in the exercise or purported exercise of a function under this part, the authorised licensee must give written notice of the particulars of the damage to the person whom the authorised licensee believes on reasonable grounds is the owner of the thing.
- (3) If the damage occurs on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

45 Compensation

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised licensee or person assisting an authorised licensee.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

46 Protection of authorised licensees from liability

- (1) An authorised licensee does not incur civil liability for an authorised action done honestly for this Act.
- (2) A civil liability that would, apart from this section, attach to the authorised licensee attaches instead to the Territory.

- (3) This section does not prevent disciplinary action being taken against an authorised licensee in relation to an authorised action done by the licensee.

47 Licensee to give evidence of insurance

- (1) Before providing a construction service to a person (the *client*), a licensee must give the client evidence of what insurance the licensee holds in relation to the service the licensee is to provide.
- (2) The licensee may ask the client to sign an acknowledgment that the client has been told about the licensee's insurance.
- (3) The acknowledgment must state the time and date it was given.

Note If a form is approved under s 128 for an acknowledgment, the form must be used.

- (4) If the client signs the acknowledgment, the licensee must immediately give the client a copy of it.
- (5) The registrar may assume that the client was not told about the insurance the licensee holds if—
- (a) a question arises whether the client was told about the licensee's insurance; and
 - (b) an acknowledgment under this section is not produced; and
 - (c) it is not proved that the licensee told the client about the insurance.
- (6) The licensee is taken to have given evidence of what insurance the licensee holds before providing a construction service to a person if the licensee advertised the insurance held at the time of providing the services in a way likely to come to the attention of the client.

Example of advertising insurance held

- 1 Including details of insurance in the telephone directory, if the details are correct at the time the service is provided.

Part 4 Rectification orders and other obligations on licensees

Section 47

- 2 Having details of insurance on the vehicle used to provide the service or transport to the location to provide the service, if the details are correct at the time the service is provided.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (7) In this section:

evidence of insurance includes a fidelity certificate.

fidelity certificate—see the *Building Act 2004*, section 84.

Part 5 **Automatic licence suspension and disciplinary action**

Division 5.1 **Automatic licence suspension**

48 **Automatic suspension of individual licence**

- (1) This section applies to an individual who is licensed.
- (2) The individual's licence is automatically suspended if the individual—
 - (a) provides, or proposes to provide, a construction service for a fee; and
 - (b) becomes bankrupt or applies to take the benefit of any law for the relief of insolvent debtors.
- (3) However, if the individual is a nominee or employee of a licensed entity the licence is not suspended.

Note The regulations impose a condition on the individual's licence.

49 **Automatic suspension of corporate licence**

- (1) This section applies to a corporation that is licensed.
- (2) The corporation's licence is automatically suspended if the licensee—
 - (a) enters into a winding-up; or
 - (b) is found guilty, whether in the ACT or anywhere else, of an offence that—
 - (i) involves fraud, dishonesty or violence; and
 - (ii) is punishable by imprisonment for at least 1 year.

50 Automatic suspension of partnership licence

- (1) This section applies to a partnership that is licensed in a construction occupation or occupation class.
- (2) The partnership's licence in the construction occupation or occupation class is automatically suspended if—
 - (a) a partner's licence in the same occupation or class is suspended or cancelled; or
 - (b) a partner who is not a licensee is found guilty, whether in the ACT or anywhere else, of an offence that—
 - (i) involves fraud, dishonesty or violence; and
 - (ii) is punishable by imprisonment for at least 1 year.

51 Automatic suspension of building surveyors licence

- (1) This section applies if a person who is a licensed building surveyor stops being eligible to be a building surveyor because the person is not insured in accordance with the regulations.
- (2) The person's building surveyors licence is automatically suspended when the insurance cover stops.

52 Automatic suspension of plumbing plan certifiers licence

- (1) This section applies if a person who is a licensed plumbing plan certifier stops being eligible to be a plumbing plan certifier because the person is not insured in accordance with the regulations.
- (2) The person's plumbing plan certifiers licence is automatically suspended when the insurance cover stops.

53 End of automatic licence suspension

- (1) This section applies if the licence of a construction practitioner has been automatically suspended under 1 or more of the following sections:
 - section 48 (Automatic suspension of individual licence);
 - section 49 (Automatic suspension of corporate licence);
 - section 50 (Automatic suspension of partnership licence);
 - section 51 (Automatic suspension of building surveyors licence);
 - section 52 (Automatic suspension of plumbing plan certifiers licence).
- (2) The registrar must revoke the suspension if satisfied that the cause of the suspension no longer exists.
- (3) The registrar may revoke the suspension if satisfied that the circumstance that caused the suspension will not put consumers of the construction practitioner's construction services at a greater risk from using the services than if the thing had not happened.
- (4) A revocation must be in writing given to the licensee.
- (5) The suspension ends 3 months after the day it begins, unless otherwise revoked.

Note The suspension on a licence may be held over to a new licence if the suspended licence expires without being renewed (see s 65).

Division 5.2 Disciplinary action by registrar

54 Disciplinary grounds

- (1) Each of the following is a *disciplinary ground* in relation to a licensee:
 - (a) the licensee, or a nominee or employee of the licensee, contravened, or is contravening, this Act or an operational Act (including a direction given to the licensee under an operational Act);

- (b) the licensee, knowingly or recklessly, gave someone information in relation to a construction service provided, or to be provided, by the licensee that was false or misleading in a material particular;
- (c) the licensee or a director, partner or nominee of the licensee, has been found guilty, whether in the Territory or anywhere else, of an offence that—
 - (i) involves fraud, dishonesty or violence; and
 - (ii) is punishable by imprisonment for at least 1 year;
- (d) if the licensee is an individual—the licensee has compounded with creditors or made an assignment of remuneration for their benefit;
- (e) if the licensee is a corporation—
 - (i) the licensee enters into a scheme of arrangement; or
 - (ii) a receiver, manager, receiver and manager or administrator is appointed over the licensee or any of its assets;
- (f) if the licensee is a corporation or partnership—the licensee has, or had, no nominee;
- (g) the licensee's licence has been automatically suspended under division 5.1 (Automatic licence suspension) and the cause of the suspension still exists.

Note See s 149 for the extended meaning in this section of a *contravention* of this Act.

- (2) In subsection (1) (a), a reference to a contravention of this Act or an operational Act includes a reference to the following:
- (a) a contravention of the Criminal Code, part 2.4 (Extensions of criminal responsibility) in relation to an offence against this Act or an operational Act or otherwise in relation to this Act or an operational Act;
 - (b) a contravention of the Criminal Code in relation to a document given, or required to be given, under this Act or an operational Act;
 - (c) a contravention of the Criminal Code in relation to anything done, or not done, under this Act or an operational Act.
- (3) A disciplinary ground applies to a former licensee if the disciplinary ground applied to the former licensee while licensed.

55 When disciplinary notice may be given

If the registrar is satisfied that a disciplinary ground exists, or may exist, in relation to a licensee or former licensee, the registrar may give the licensee or former licensee a disciplinary notice.

56 Disciplinary notices

- (1) A notice (a *disciplinary notice*) given to a licensee or former licensee must—
- (a) state each disciplinary ground which caused the notice to be given; and
 - (b) if the disciplinary ground is that the licensee, or a nominee or employee of the licensee, contravened, or is contravening, this Act or an operational Act (including a direction given to the licensee under an operational Act)—describe the contravention or, if a short description is prescribed under the regulations for the contravention, give the short description; and

- (c) if the disciplinary ground is not the ground mentioned in paragraph (b)—state details of each ground that the registrar is satisfied would allow a reasonable person to identify the circumstances that give rise to the ground; and
 - (d) tell the licensee or former licensee that he or she may, within 12 business days after the day the licensee is given the notice, give a written response to the registrar about the matters in the notice.
- (2) If a notice mentions a ground based on a construction service provided or not provided, or alleged to have been provided or not provided, the registrar may, and must if asked, give a copy of the notice to—
- (a) the owner of any premises to which the service relates; and
 - (b) to any certifier appointed under the *Building Act 2004*, section 19 (Appointment of certifiers) in relation to the service.

57 Interim licence suspension

- (1) This section applies if the registrar has given, or proposes to give, a disciplinary notice to a licensee.
- (2) The registrar may suspend (an *interim suspension*) the licensee's licence by written notice given to the licensee.

Note For how documents may be served, see Legislation Act, pt 19.5. Under that part, a person's business address is the last address shown in the administering authority's records for the person (see Legislation Act, s 246, def *business address*).

- (3) However, the registrar may only suspend the licence under subsection (2) if—
 - (a) the registrar has taken into account the circumstances leading to the decision to send the disciplinary notice and the grounds stated, or to be stated, in the notice; and

- (b) the registrar believes, on reasonable grounds, that it is in the public interest to suspend the licence before making a decision under section 60.
- (4) An interim suspension may be for a period of 2 weeks or shorter, but may be extended once for 1 week if the registrar is satisfied that it is in the public interest to extend the suspension.

Note An interim suspension must be recorded on the register (see s 110).

58 Effect of interim suspension

- (1) This section applies if the registrar suspends a licence under section 57.
- (2) The licence is suspended as soon as the licensee receives the notice.
- (3) The suspension ends when the earlier of the following happens:
 - (a) the licensee receives a notice of revocation under section 59;
 - (b) the registrar makes a decision under section 60 in relation to the licensee.

59 Revocation of interim suspension

- (1) This section applies if the registrar suspends a licence under section 57 (Interim licence suspension).
- (2) The registrar may, at any time before making a decision under section 60, revoke the suspension by written notice given to the licensee.
- (3) If the registrar revokes the suspension of a licensee licensed as a builder, the registrar must notify in writing each person notified of the suspension under section 63.

60 Decision about disciplinary action

- (1) This section applies if the registrar has given a licensee or former licensee a disciplinary notice.

- (2) The registrar may take disciplinary action in relation to the licensee or former licensee if satisfied on reasonable grounds that a disciplinary ground is established in relation to the licensee or former licensee.

Note The registrar may also take action under s 95 (2) (c).

- (3) In making a decision about whether to take disciplinary action in relation to the licensee or former licensee, the registrar—
- (a) must take into account—
 - (i) any response given to the registrar in accordance with the disciplinary notice; and
 - (ii) the considerations under section 62.
 - (b) may hold an inquiry under division 5.3 (Disciplinary inquiries).
- (4) If the registrar takes disciplinary action against a licensee or former licensee—
- (a) the registrar must notify the licensee or former licensee in writing about the registrar's decision; and
 - (b) the action takes effect when the notice is given to the licensee or former licensee or on the later date stated in the notice.

61 Disciplinary action

- (1) If the registrar may take disciplinary action in relation to a licensee or former licensee, the registrar may do 1 or more of the following:
- (a) reprimand the licensee or former licensee;
 - (b) require the licensee, or, if the licensee is a corporation or partnership, a nominee of the licensee, to complete a stated course of training to the satisfaction of the registrar or another stated person;
 - (c) impose a condition on the licence, or amend an existing condition;

- (d) order the licensee to pay to the Territory a financial penalty of not more than \$1 000;
- (e) suspend the licence for a stated period (whether longer than the remaining period of the licence or otherwise) or until a stated thing happens;
- (f) cancel the licence;
- (g) cancel the licence and disqualify the licensee from applying for a licence for a stated period or until a stated thing happens;
- (h) disqualify the former licensee from applying for a licence for a stated period, until the former licensee completes a stated course to the satisfaction of the registrar or another stated person or until a stated thing happens.

Note If deciding what disciplinary action to take under this section, the registrar must consider the considerations mentioned in s 62.

- (2) If the registrar orders a licensee to pay a financial penalty under subsection (1) (d), the licensee owes the amount of the financial penalty to the Territory.

Note Legislation Act, s 177 provides for recovery of amounts owing under laws.

62 Considerations for deciding what disciplinary action to take

- (1) In deciding what disciplinary action to take in relation to the person under section 61, the registrar must consider the following:
 - (a) the degree of responsibility of the person for the act or omission that made up the disciplinary ground;
 - (b) any injury, loss or damage caused, or that could have been caused, by the act or omission that made up the disciplinary ground;

- (c) the number of people detrimentally affected by the doing of something, or not doing something, that made up the disciplinary ground;
 - (d) how any proposed disciplinary action will affect people detrimentally affected by something that made up the disciplinary ground;
 - (e) the extent to which it is necessary to discourage the person and others from doing something, or not doing something, that made up the disciplinary ground;
 - (f) whether, and the extent to which, it is necessary to protect the public from the person;
 - (g) the desirability of making the person responsible for the consequences of the person's actions or omissions;
 - (h) the desirability of maintaining public confidence in the regulatory system set up by this Act;
 - (i) the person's regard, or disregard, for public safety and protection of the environment when doing something, or not doing something, that made up the disciplinary ground.
- (2) The registrar may consider anything else that is relevant.

63 Builders licence affected by disciplinary or other action

- (1) This section applies if a licensee has a builders licence and—
- (a) the registrar becomes aware that the licence has been automatically suspended under division 5.1; or
 - (b) the registrar suspends the licence under section 57 (Interim licence suspension); or
 - (c) disciplinary action is taken against the licensee under section 61 (1) (c), (e), (f) or (g) in relation to the licence.

- (2) The registrar must notify each building certifier, in writing, about the disciplinary action or other action taken in relation to the licence as soon as practicable.
- (3) The registrar must notify each building certifier, in writing, if—
 - (a) the registrar notified the building certifiers about the taking of disciplinary action or other action; and
 - (b) the decision to take the action is reversed or the action is reversed, stayed, varied or set aside.

64 Public notice of decision

- (1) If the registrar decides to take disciplinary action against a licensee or former licensee, the registrar may notify the public of the matters prescribed under the regulations by publishing details of those matters in relation to the decision in a daily ACT newspaper and in any other way the registrar considers appropriate.
- (2) However, the decision may be publicly notified only if—
 - (a) the time for any review of the decision has ended and no application for appeal or review has been made; or
 - (b) an application for review has been made, the decision has been confirmed on review and the time for further appeal has ended.
- (3) If the decision has been reversed or vacated, the decision must not be publicly notified.
- (4) If the decision has been changed (for example, by substitution), this section applies in relation to the decision as changed.

65 Effect of non-renewal on suspended licence

- (1) This section applies if—
 - (a) a licence (the *original licence*) for a construction occupation or occupation class has been suspended for a period; and

- (b) the original licence expires before the end of the suspension period without being renewed; and
 - (c) the entity that was the licensee is issued with a licence (the *new licence*) in the same construction occupation or occupation class within 3 years after the day the original licence expired.
- (2) The new licence is suspended for the remainder of the suspension period.

Division 5.3 Disciplinary inquiries

66 Notice of inquiry

- (1) If the registrar decides to hold an inquiry in relation to a licensee or former licensee under section 60 (3), the registrar must give the licensee or former licensee at least 2 weeks written notice of the inquiry.
- (2) A notice under subsection (1) must—
- (a) be accompanied by a copy of the disciplinary notice given to the licensee or former licensee; and
 - (b) state whether the registrar considers that any disciplinary ground no longer applies, or has changed, because of any written response made by the licensee or former licensee and, if a ground has changed, how the ground has changed; and
 - (c) explain that the inquiry may result in the taking of disciplinary action against the licensee or former licensee; and
 - (d) tell the licensee or former licensee where and when the inquiry will be held.

Note If a form is approved under s 128 for a notice, the form must be used.

67 Inquiry procedure

- (1) The registrar may decide any procedure for an inquiry that is not prescribed under this Act.

- (2) The registrar may adjourn an inquiry.

68 Evidence at inquiry

- (1) At an inquiry, the registrar—
- (a) may take evidence on oath or affirmation; and
 - (b) is not bound by rules of evidence but may inform himself or herself in the way the registrar considers appropriate.
- (2) At an inquiry, a licensee or former licensee whose actions are being inquired into may call witnesses.

69 Legal representation at inquiry

- (1) A licensee or former licensee may be represented at an inquiry by a lawyer who may examine witnesses and address the registrar on behalf of the licensee or former licensee.
- (2) The registrar may appoint a lawyer to examine witnesses in an inquiry and advise the registrar on any matter relating to the inquiry.

70 Advisory board assistance at inquiry

- (1) This section applies if the registrar is satisfied that a matter to be considered at an inquiry in relation to a licensee or former licensee is complex or technical.
- (2) The registrar may require the advisory board responsible for the construction occupation in which the licensee is, or former licensee was, licensed to advise the registrar in relation to the complex or technical issues.

71 Registrar may require appearance, information or documents

- (1) For an inquiry, the registrar may require, in writing, a person to appear before the inquiry on a stated date—
- (a) to give evidence; or

- (b) to give evidence and produce any document or thing in the possession, custody or control of the person; or
- (c) to produce any document or thing in the possession, custody or control of the person.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) The registrar may give a party to the inquiry leave, subject to any stated condition, to—
 - (a) inspect a document or thing produced under this section; and
 - (b) make copies of a produced document for the inquiry.
- (3) A person is taken to have complied with a requirement under subsection (1) (c) if the person delivers the document or thing to the registrar before the date stated in the requirement.
- (4) The registrar may set aside a requirement under subsection (1).
- (5) A person commits an offence if the person fails to comply with a requirement made of the person under section 71 (Registrar may require appearance, information or documents).

Maximum penalty: 50 penalty units.

- (6) An offence against this section is a strict liability offence.

72 Witness expenses

- (1) A requirement under section 71 (1) (a) or (b) must be accompanied by—
 - (a) an undertaking to appear to be signed by the person and returned to the registrar by the stated date; and
 - (b) a form to be completed by the person to claim the reasonable costs and expenses of attendance at the inquiry.
- (2) A person is not entitled to refuse to comply with the requirement because the requirement was not accompanied by the form.

Division 5.4 Miscellaneous

73 Multiple occupation or class licences

If a licensee is licensed in more than 1 construction occupation or more than 1 occupation class, the licence may be suspended or cancelled, or a condition varied or imposed, under this part in relation to a single occupation or occupation class, or each occupation or class, as the registrar considers appropriate.

Note A licence may authorise the licensee to work in 1 or more construction occupations and 1 or more occupation classes (see s 20).

74 Requirement to return surrendered licence

- (1) This section applies if an entity surrendered the entity's licence because the licence was suspended.
- (2) The registrar must return the licence to the licensee no later than the last day of the suspension.
- (3) If the licence is varied during the suspension, the licence as varied must be returned.
- (4) However, the registrar need not return the licence if the licence expires, or is cancelled, during the suspension.

Part 6 Enforcement

75 Meaning of *compliance auditor* for pt 6

In this part:

compliance auditor means a compliance auditor appointed under section 76.

76 Compliance auditors

- (1) The registrar may appoint a public servant to be a compliance auditor for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) An appointment must not be for longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

77 Role of compliance auditor

- (1) A compliance auditor is responsible for auditing the forms and other paperwork required to be provided by licensees for this Act and the operational Acts.
- (2) A compliance auditor has any other function given to the compliance auditor by the registrar.

78 Identity cards

- (1) The registrar must issue a compliance auditor with an identity card that states the person is a compliance auditor for this Act, or stated provisions of this Act, and shows—
 - (a) a recent photograph of the person; and
 - (b) the name of the person or the particulars that are prescribed under the *Magistrates Court Act 1930* as the identifying particulars for the person (or both); and
 - (c) the date of issue of the card; and
 - (d) a date of expiry for the card; and
 - (e) anything else prescribed under the regulations.
- (2) A person commits an offence if—
 - (a) the person ceases to be a compliance auditor; and
 - (b) the person does not return the person's identity card to the registrar as soon as practicable (but within 7 days) after the day the person ceases to be a compliance auditor.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.

79 Functions not to be exercised before identity card shown

A compliance auditor may exercise a function under this Act in relation to a person only if the compliance auditor first shows the person his or her identity card.

80 Functions of compliance auditors

- (1) A compliance auditor may, during ordinary business hours and with any assistance that is necessary and reasonable, enter premises (other than residential premises) used by a licensed construction practitioner.

- (2) The compliance auditor 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) The compliance auditor may do 1 or more of the following in relation to the premises:
 - (a) inspect any document on the premises that relates to the licensee's activities;
 - (b) take an extract from or make a copy of any document that relates to the licensee's activities;
 - (c) require anyone on the premises to give the compliance auditor information about a document that relates to the licensee's activities;
 - (d) require a person apparently in charge of the premises—
 - (i) to produce a document that relates to the licensee's activities; or
 - (ii) to give the compliance auditor access to a computer on the premises in which information relevant to the licensee's activities is stored; or
 - (iii) to print information mentioned in subparagraph (ii).

Examples of documents

plan, map, book, drawing

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The occupier or person in charge of the premises must give the compliance auditor all reasonable facilities and assistance the compliance auditor needs for the effective exercise of his or her functions under this section.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Part 7 Offences

81 Pretending to be licensed

- (1) A person commits an offence if the person—
 - (a) is not licensed in a construction occupation or occupation class; and
 - (b) pretends to be licensed in the occupation or class.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

82 No nominee

- (1) A corporation commits an offence if the corporation—
 - (a) advertises or otherwise offers to provide a service in a construction occupation or occupation class; and
 - (b) does not have a nominee who has a licence that authorises the nominee to provide the service.Maximum penalty: 50 penalty units.
- (2) Each partner in a partnership commits an offence if the partnership—
 - (a) advertises or otherwise offers to provide a service in a construction occupation; and

- (b) does not have a nominee who has a licence that authorises the nominee to provide the service.

Maximum penalty: 50 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
 - (a) the partner did not know about the advertising or other offer; and
 - (b) either—
 - (i) reasonable precautions were taken and appropriate diligence was exercised to avoid the advertising or other offer; or
 - (ii) the partner was not in a position to influence the partnership in relation to the advertising or offers made by the partnership to provide the construction service.
- (4) An offence against this section is a strict liability offence.

83 Advertising without details

- (1) A person commits an offence if the person—
 - (a) advertises that the person provides, or will provide, a service in a construction occupation or occupation class; and
 - (b) does not include the following in the advertisement:
 - (i) the person's name as recorded on the person's licence;
 - (ii) the person's licence number;
 - (iii) if the person is a corporation—the person's ACN.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

84 Certain entities not to provide construction services

- (1) A person commits an offence if the person—
- (a) provides a service (whether as an employee or otherwise) in a construction occupation or occupation class; and
 - (b) either—
 - (i) is not licensed in the occupation or class; or
 - (ii) there is no endorsement on the licence that authorises the person to provide the service provided.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if—
- (a) an individual provides the service; and
 - (b) the individual is working under the supervision of a licensee whose licence authorises the provision of the service; and
 - (c) the licensee is not required by a condition or endorsement on the licence to provide the service as an employee or under supervision; and
 - (d) the regulations allow the service to be provided by an individual without a licence if provided under the supervision of a licensee.
- (3) An offence against this section is a strict liability offence.

85 Allowing unlicensed people to provide construction service

- (1) A person commits an offence if—
- (a) the person engages someone else (the *worker*), or allows an employee (the *worker*), to provide a construction service for the person; and
 - (b) the worker is not licensed to provide the service; and

- (c) the person is reckless about whether the worker is licensed to provide the service.

Maximum penalty: 50 penalty units.

- (2) This section does not apply to an individual who provides a service if—
 - (a) the service is provided under the supervision of a licensee; and
 - (b) the licensee is not required by a condition or endorsement on the licence to provide the service as an employee or under supervision; and
 - (c) the regulations allow the service to be provided by an individual without a licence if provided under the supervision of a licensee.

86 Surrender of licences

- (1) A person commits an offence if—
 - (a) the person's licence has been suspended or cancelled; and
 - (b) the person does not surrender the licence to the registrar within 2 weeks after the day of suspension or cancellation.

Maximum penalty: 5 penalty units.

- (2) Each partner commits an offence if—
 - (a) the partnership's licence has been suspended or cancelled; and
 - (b) the licence is not surrendered to the registrar within 2 weeks after the day of suspension or cancellation.

Maximum penalty: 5 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that the licence has been destroyed, lost or stolen.

- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—
- (a) that—
 - (i) the partner did not know about the failure to surrender the licence; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure; or
 - (b) that the partner was not in a position to influence the other partners in relation to the failure to surrender the licence.

87 Breach of licence conditions or codes

- (1) A licensee commits an offence if the licensee contravenes a condition of the licence.
Maximum penalty: 50 penalty units.
- (2) Each partner in a partnership commits an offence if—
- (a) the partnership is a licensee; and
 - (b) the licensee contravenes a condition of the licence.
- (3) A person who is a licensee commits an offence if the person contravenes a code of practice applicable to the person.
Maximum penalty: 50 penalty units.
- (4) Each partner in a partnership commits an offence if the partnership—
- (a) is a licensee; and

(b) contravenes a code of practice applicable to the licensee.

Maximum penalty: 50 penalty units.

- (5) It is a defence to a prosecution for an offence against subsection (2) or (4) if the partner proves—
- (a) that—
 - (i) the partner did not know about the contravention; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or
 - (b) the partner was not in a position to influence the other partners in relation to the contravention.
- (6) An offence against this section is a strict liability offence.

88 Notification of cancellation of insurance

- (1) An insurer commits an offence if—
- (a) the insurer provides a policy of insurance to a person who is, or is applying to be, a licensed building surveyor or plumbing plan certifier; and
 - (b) the insurance is required under the regulations for the person to be eligible for the licence; and
 - (c) the insurer cancels the policy of insurance; and
 - (d) fails to give the registrar written notice of the cancellation within 3 days after the day of cancellation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

Part 8 Demerit points system

Note In this part, *licensee* has an extended meaning (see s 89, def *licensee*).

89 Definitions for pt 8

In this part:

demerit disciplinary ground, in relation to a licensee—

- (a) means a disciplinary ground in relation to the licensee for which the registrar may take disciplinary action under section 60 (Decision about disciplinary action); but
- (b) does not include a disciplinary ground if—
 - (i) the disciplinary ground is a contravention of this Act or an operational Act; and
 - (ii) an infringement notice may be issued in relation to the contravention.

demerit points register means the register under section 91.

disciplinary incident, for a demerit disciplinary ground, means the circumstances that gave rise to the disciplinary ground.

infringement notice—see the *Magistrates Court Act 1930*, section 117.

licensee, in relation to a demerit disciplinary ground, includes a person who was licensed when the disciplinary incident for the demerit disciplinary ground happened.

90 Meaning of *previous 3 years* for pt 8

- (1) In this part:

previous 3 years, in relation to a licensee with demerit points, means the 3 year period ending on the day the licensee last incurred a demerit point.

- (2) For this section, *3 year period* does not include a period of less than 3 years during which a licensee is unlicensed.
- (3) Also, if a licensee incurs demerit points while unlicensed and becomes licensed within 3 years after incurring them, for the purpose of working out the *3 year period* in relation to the licensee the demerit points are taken to have been incurred when the licensee next becomes licensed.

91 Recording demerit points

- (1) If a demerit disciplinary ground exists in relation to a licensee, the registrar must record, in the demerit points register, against the licensee or former licensee, and for the relevant construction occupation, the number of demerit points prescribed under the regulations for the demerit disciplinary ground.
- (2) The demerit points must be recorded in the demerit points register for the day when they are incurred.
- (3) In this section:

relevant construction occupation, for a demerit disciplinary ground, means—

- (a) the construction occupation in relation to the disciplinary incident happened; or
- (b) if the disciplinary incident did not happen in relation to a construction occupation—the main construction occupation in which the licensee was providing construction services when the disciplinary incident happened.

92 When demerit points are *incurred*

- (1) This section applies to demerit points to be recorded against a licensee for a construction occupation in the demerit points register for a demerit disciplinary ground.
- (2) A demerit point is taken to have been *incurred* by the licensee for the demerit disciplinary ground on the day when the registrar first becomes aware of the disciplinary incident.

93 Deleting demerit points

- (1) This section applies to demerit points incurred by a licensee for a construction occupation, recorded in the register and taken into account for—
 - (a) a notice of licence suspension under section 97 or
 - (b) a notice of licence disqualification under section 98; or
 - (c) other disciplinary action allowed to be taken under section 95 (2) (c).
- (2) The demerit points are deleted from the register at the beginning of the period of suspension or disqualification, or on the imposition of the disciplinary action, relating to the licence for the construction occupation.
- (3) Subsection (2) does not prevent the registrar keeping a record of deleted demerit points.

94 Warning notices

- (1) This section applies if—
 - (a) the registrar records a demerit point against a licensee for a construction occupation; and
 - (b) in the previous 3 years, the licensee has incurred at least 10 other demerit points for the construction occupation; and

- (c) the registrar has not sent the licensee a notice under this section within the 3 month period ending on the day the demerit point is incurred.
- (2) The registrar must tell the licensee in writing how many points the licensee has and the effect of this part.

Note For how documents may be served, see Legislation Act, pt 19.5.
- (3) Failure to comply with subsection (2) does not affect the validity of anything done by the registrar or a court.

95 Consequences of incurring demerit points—licensees

- (1) This section applies to a licensee if the licensee—
 - (a) has a licence; and
 - (b) incurred 15 or more demerit points for a construction occupation within the previous 3 years.
- (2) The registrar must consider the disciplinary incidents for which the licensee incurred the demerit points and—
 - (a) serve a notice of licence suspension under section 97 on the licensee in relation to the licensee’s licence in the construction occupation; or
 - (b) serve a notice of licence disqualification under section 98 on the licensee in relation to the licensee’s licence in the construction occupation; or
 - (c) take any other disciplinary action against the licensee that the registrar considers appropriate.
- (3) In considering what action to take under subsection (2), the registrar must take into account the following considerations:
 - (a) the need to protect public safety;
 - (b) the desirability of not allowing people to undertake work which they are financially unable to complete;

- (c) the regularity of the disciplinary incidents to which the demerit points relate;
 - (d) the seriousness of the disciplinary incidents to which the demerit points relate;
 - (e) the likelihood of further disciplinary incidents relating to the licensee.
- (4) The registrar may take into account any other relevant consideration.

96 Consequences of incurring demerit points—applicant for issue or renewal of licence

- (1) This section applies to a licensee if—
- (a) the licensee applies to the registrar for a licence (including the renewal of a licence) for a construction occupation; and
 - (b) the licensee has incurred 15 or more demerit points for the construction occupation within the previous 3 years.
- (2) The registrar may refuse the licensee’s application and serve a notice of licence disqualification on the licensee under section 98.
- (3) The registrar may only take action under subsection (2) if satisfied that the public would be at risk if the licensee were allowed to provide the construction services authorised by the licence.

97 Licence suspension

- (1) A notice of licence suspension served on a licensee by the registrar under this section—
- (a) must state the date of the notice; and
 - (b) must state each construction occupation or occupation class to which the notice relates; and

- (c) must state the date, at least 21 days after the day the notice is served on the licensee, when the suspension of the licensee's licence is to begin; and
- (d) must state the period of licence suspension; and
- (e) must include any other information required under the regulations; and
- (f) may include any additional information the registrar considers appropriate.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) The licensee's licence is suspended for the period of licence suspension.
- (3) To remove any doubt, a licence may be suspended in relation to all construction occupations or occupation classes it relates to.

98 Licence disqualification

- (1) A notice of licence disqualification served on a licensee by the registrar under this section—
 - (a) must state the date of the notice; and
 - (b) must state each construction occupation or occupation class to which the notice relates; and
 - (c) must state the date, at least 21 days after the day the notice is served on the licensee, when the disqualification of the licensee to obtain a licence is to begin (*the date of effect*); and
 - (d) if the licensee has a licence—must state that the licence is cancelled on the date of effect; and
 - (e) must state the period of licence disqualification; and
 - (f) must include any other information required under the regulations; and

- (g) may include any additional information the registrar considers appropriate.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) If the licensee has a licence, the licence is cancelled in relation to each construction occupation or occupation class mentioned in the notice on the date of effect.
- (3) The licensee is disqualified from holding a licence in each construction occupation or occupation class during the period of licence disqualification and is not entitled to apply for, or be issued with, a licence in the construction occupation or occupation class during the period.
- (4) To remove any doubt, a licence may be cancelled in relation to all construction occupations or occupation classes it relates to.

99 Demerit points incurred but not taken into account for notice of licence suspension etc

- (1) This section applies to—
- (a) demerit points incurred by a licensee on or before the date of a notice of licence suspension or licence disqualification served on the licensee under this part that were not taken into account for the notice; and
- (b) demerit points incurred by the licensee after the date of the notice and before the period of licence suspension or licence disqualification applying under the notice begins.
- (2) The demerit points are only taken into account in relation to the licensee from the end of the period of licence suspension or licence disqualification applying under the notice.

100 Issue of licence suspension notice etc

The registrar may give a notice of licence suspension or licence disqualification to a licensee under this part without giving the licensee an opportunity to make representations why the notice should not be given.

101 Keeping demerit points register

- (1) The demerit points register may include information given to the registrar under this Act and any other information the registrar considers appropriate.
- (2) The demerit points register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the registrar considers appropriate.
- (3) The registrar must correct a mistake, error or omission in the demerit points register subject to the requirements (if any) of the regulations.
- (4) This section does not limit the functions of the registrar in relation to the demerit points register.

102 Security and disclosure of information in demerit points register

- (1) The registrar must ensure that information in the demerit points register is kept securely and may be disclosed only in accordance with this Act or another law in force in the ACT.

Note 1 The Information Privacy Principles apply to the registrar. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed by an agency (see *Privacy Act 1988* (Cwlth), s 14).

Note 2 Access to the register may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

Part 8 Demerit points system

Section 102

- (2) The registrar must give information about a licensee's demerit points to the licensee on application.

Part 9 Administration

103 Construction occupations registrar

- (1) The chief executive may appoint a public servant as the Australian Capital Territory Construction Occupations Registrar (the *registrar*).

Note For the making of appointments, see Legislation Act, div 19.3.1 (Appointments—other than acting appointments).

- (2) However, the chief executive must not appoint a person under subsection (1) unless satisfied that the person has relevant experience or a relevant qualification in 1 or more of the following areas:
- (a) building;
 - (b) building surveying;
 - (c) draining;
 - (d) electrical;
 - (e) engineering;
 - (f) gasfitting;
 - (g) plumbing;
 - (h) administration of building or construction industry regulatory schemes.
- (3) The appointment must not be for longer than 3 years.

104 Registrar's functions

- (1) The registrar has the following functions:
- (a) to keep the registers under this Act;
 - (b) to administer operational legislation;

- (c) to decide applications in relation to licences;
- (d) to maintain the standard of construction occupations by—
 - (i) acting on complaints made about construction practitioners, including by disciplining construction practitioners if appropriate; and
 - (ii) developing and maintaining codes of practice; and
 - (iii) providing construction practitioners with information about developments in the construction industry.
- (2) The registrar has any other function given to the registrar under this Act or another Territory law.

105 Delegation by registrar

The registrar may delegate the registrar's functions under this Act or another Territory law to a public servant.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

106 Deputy registrars

- (1) The registrar may appoint a public servant as deputy registrar for each construction occupation.
- (2) The appointment must not be for longer than 2 years.
- (3) A deputy registrar may exercise the functions of the registrar (other than the power to delegate a function) in relation to the construction occupation for which the deputy is appointed.
- (4) However, the registrar may—
 - (a) limit the functions the deputy registrar may exercise, either in the instrument of appointment or in writing later; and
 - (b) give the deputy registrar written directions about the exercise of the functions.

- (5) If the registrar gives the deputy registrar written directions about the exercise of a function, the deputy registrar may only exercise the function in accordance with the directions.

107 The register

- (1) The registrar must keep a register of licensees.

Note Particulars about licensees are prescribed under the regulations. This part includes a requirement to record other information in the register.

- (2) The register may be kept in any form, including electronic form, that the registrar decides.
- (3) The register may be divided into parts.
- (4) The registrar must make the register available to the public.

108 Recording rectification orders

- (1) If the registrar makes a rectification order, the registrar must include the following in the register in relation to the order:
- (a) the date the order was made;
 - (b) what the rectification order required.
- (2) However, the registrar may only include information under subsection (1) if the licensee to whom the rectification order relates—
- (a) has not applied for review of the decision to make the order within the period allowed under the *Administrative Appeals Tribunal Act 1989*; or
 - (b) has applied for review of the decision but the AAT has not set aside the rectification order.

109 Recording contravention of rectification orders

- (1) This section applies if—
 - (a) the registrar is satisfied that a person has contravened a rectification order; and
 - (b) the registrar proposes to include the details of the contravention in the register.
- (2) The registrar must tell the person in writing that—
 - (a) the registrar proposes to include the details of the contravention in the register; and
 - (b) the person may make a submission to the registrar about the inclusion of the details within the time (the *stated time*) stated in the notice that is not less than 2 weeks.
- (3) The registrar may include details of the contravention in the register if, after considering any submission made within the stated time, the registrar is satisfied that—
 - (a) the person contravened the rectification order; and
 - (b) it is appropriate to include the details in the register.

110 Recording interim licence suspension

- (1) If the registrar suspends a licence under section 57 (Interim licence suspension), the registrar must immediately include the following in the register in relation to the suspension:
 - (a) the date of suspension;
 - (b) the length of the suspension;
 - (c) whether the suspension has been extended.

111 Removal of information from register

- (1) This section applies to information included in the register under the following sections:
 - (a) section 108 (Recording rectification orders);
 - (b) section 109 (Recording contravention of rectification orders);
 - (c) section 110 (Recording interim licence suspension).
- (2) A person may apply for the removal of the information from the register if the information relates to something the person did or did not do.
- (3) On receiving an application from a person, the registrar may remove the information from the register if satisfied that—
 - (a) no further information to which this section applies has been recorded in relation to the person; and
 - (b) it is 5 years or longer since the day, or last day, that the event to which the information relates happened.
- (4) Subsection (3) does not prevent the registrar keeping a record of information removed from the register.

112 Annual report by registrar

- (1) The registrar is a public authority for the *Annual Reports (Government Agencies) Act 2004*.
- (2) A report prepared by the registrar under the *Annual Report (Government Agencies) Act 2004* for a financial year must include the details prescribed under the regulations.

113 Evidentiary certificates

- (1) The registrar may issue a certificate, signed by the registrar, stating that on a date or during a period stated that—
 - (a) an entity named in the certificate was or was not licensed; and

- (b) if the entity was licensed—
 - (i) the entity was licensed in the construction occupation, and occupation class (if any), in which the entity was licensed; and
 - (ii) the licence was, or was not, suspended.
- (2) A licence or certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a licence or certificate under this section is taken to be such a document.

Part 10 Advisory boards

114 Establishment of advisory boards

- (1) The registrar must establish an advisory board for a construction occupation.
- (2) An advisory board may, but need not, relate to more than 1 construction occupation.
- (3) Each construction occupation must have an advisory board, whether with another construction occupation or otherwise, by the end of the period of 6 months after the day this section commences.
- (4) Subsection (3) and this subsection expire 1 year after the day this section commences.

115 Constitution of advisory board

- (1) An advisory board must have at least 7, but not more than 9 members.
- (2) At least 4 of the advisory board members must be licensed in the construction occupation, or 1 of the construction occupations, for which the advisory board is established.
- (3) Of the 4 advisory board members mentioned in subsection (2), not more than 2 of them may represent a body established to represent the interests of people working in the construction occupation or 1 of the construction occupations.
- (4) At least 1, but not more than 3, of the advisory board members must represent an educational institution, or industry training body, relevant to the construction occupation.
- (5) At least 1 of the advisory board members must be a lawyer.

- (6) At least 1 of the advisory board members must be a community representative who is not licensed.

116 Advisory board functions

An advisory board for a construction occupation has the following functions:

- (a) to advise the registrar about qualifications for the construction occupation;
- (b) to help with investigations and disciplinary hearings for the construction occupation if asked by the registrar;
- (c) to help develop and maintain codes of practice for the construction occupation if asked by the registrar.

Part 11 Complaints

117 Who may complain?

Anyone who believes a licensee is contravening, or a licensee or former licensee has contravened, this Act, or an operational Act, may complain to the registrar.

118 Form of complaint

- (1) A complaint must be—
 - (a) in writing; and
 - (b) signed by the person making the complaint (the *complainant*); and
 - (c) include the complainant's name and address.
- (2) However, the registrar may accept a complaint for consideration even if it does not comply with subsection (1).
- (3) If the registrar accepts for consideration a complaint that is not in writing, the registrar must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

119 Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the registrar.
- (2) If the complainant withdraws the complaint, the registrar—
 - (a) need take no further action on the complaint; and
 - (b) may continue to act on the complaint if the registrar considers it appropriate to do so; and

- (c) need not report to the complainant under section 123 (Action after investigating complaint) on the results of any action on the complaint.

120 Further information about complaint etc

- (1) The registrar may, at any time, require a complainant—
 - (a) to give the registrar further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the registrar must give the complainant a reasonable period of time within which the requirement is to be satisfied and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement made of the complainant under subsection (1), the registrar may, but need not, take further action in relation to the complaint.

121 Investigation of complaint

The registrar must take reasonable steps to investigate each complaint the registrar accepts for consideration.

Note A complaint must be in writing, but the registrar may accept a complaint that is not in writing (see s 118).

122 No further action

The registrar must not take further action on a complaint if satisfied that—

- (a) the complaint lacks substance; or
- (b) the complaint is frivolous, vexatious or was not made in good faith; or

(c) the complaint has been adequately dealt with.

Note The registrar may also take no further action on a complaint if the complainant has not complied with a requirement made under s 120 (1) (see s 120 (3)).

123 Action after investigating complaint

- (1) After investigating a complaint against a licensee or former licensee, the registrar must—
- (a) if the registrar is satisfied that a disciplinary ground exists in relation to the complaint—
 - (i) give the licensee or former licensee a disciplinary notice; and
 - (ii) tell the complainant in writing that the notice has been given; or
 - (b) if the registrar is not satisfied that a disciplinary ground exists in relation to the complaint—
 - (i) tell the complainant in writing that the registrar will take no further action on the complaint; and
 - (ii) take no further action on the complaint.
- (2) Subsection (1) (b) (ii) does not prevent the registrar from taking further action in relation to a complaint if the registrar becomes satisfied that a disciplinary ground exists in relation to the complaint.

Note The registrar need not notify the complainant under subsection (1) if the complainant has withdrawn the complaint (see s 119).

Part 12 Miscellaneous

124 Review of decisions

- (1) Application may be made to the AAT for review of an reviewable decision.
- (2) The regulations may prescribe which decisions are *reviewable decisions*.
- (3) If the registrar makes a reviewable decision, the registrar must give a written notice of the decision to each person affected by the decision.
- (4) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

125 Protection of registrar, advisory boards etc

- (1) This section applies to a person who is, or has been—
 - (a) the registrar or a deputy registrar; or
 - (b) an advisory board member; or
 - (c) acting under the direction or authority of the registrar at an inquiry; or
 - (d) a public servant providing administrative assistance at an inquiry.
- (2) A civil proceeding does not lie against a person to whom this section applies in relation to loss, damage or injury of any kind to someone else because of an act done, or omitted to be done honestly in the exercise (or purported exercise) of a function under this Act.

126 AS 3500 and Legislation Act, s 47

The Legislation Act, section 47 (6) does not apply to AS 3500 under this Act.

127 Determination of fees

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

Note The Legislation Act 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.

128 Approved forms

- (1) The registrar may approve forms for this Act.

- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

Note The Legislation Act contains provisions about forms (see s 255).

- (3) An approved form is a notifiable instrument.

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

129 Regulation-making power

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

- (2) The regulations may make provision in relation to—

(a) licences; and

(b) the keeping of the register, including the particulars that must or may be entered in the register; and

(c) the supervision of licensees' activities; and

- (d) rectification orders; and
 - (e) codes of practice.
- (3) The regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 10 penalty units for offences against the regulations.
- (4) The regulations may adopt an Australian Standard as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (5) The Legislation Act, section 47 (6) does not apply to an Australian Standard mentioned in subsection (4).

Part 13 Repeals and transitional provisions

130 Definitions for pt 13

In this part:

Building Act means the *Building Act 1972* as in force immediately before commencement day.

commencement day means the day this Act, section 6 (What is a *construction practitioner*?) commences.

repealed Act means the *Construction Practitioners Registration Act 1998*, as in force immediately before the commencement of this part.

131 Review of Act

The Minister must review the 1st 2 years of operation of this Act and present a report of the review to the Legislative Assembly not later than 3 years after commencement day.

133 End of licences or registration of people taken to be licensed or registered

- (1) If a person is taken to be licensed under this part because the person held a licence or was registered under another Act, the licence under this Act expires at the time when the person's licence or registration would have expired under the other Act.
- (2) Subsection (1) does not apply if the person's licence is cancelled under this Act before it expires.

134 Building surveyors

- (1) A person who, immediately before commencement day, was registered as a building surveyor in the class building surveyor under the repealed Act is taken to be licensed as a building surveyor in the class general building surveyor under this Act.
- (2) A person who, immediately before commencement day, was registered as a building surveyor in the class principal building is taken to be a building surveyor in the class principal building surveyor.

135 Electricians

A person who, immediately before commencement day, held a licence or permit under the *Electricity Safety Act 1971* mentioned in the table, item 2 is taken to be licensed under this Act in the occupation class mentioned in the table, item 3, subject to any condition mentioned in column 4.

column 1 item	column 2 previous licence or permit	column 3 occupation class	column 4 condition
1	electrical contractor's licence	electrical contractor	
2	electrician's licence grade A	unrestricted	

column 1 item	column 2 previous licence or permit	column 3 occupation class	column 4 condition
3	electrician's licence grade B	unrestricted	licence only authorises doing of electrical work in the circumstances that the licensee was authorised to do electrical work under the <i>Electricity Safety Act 1971</i> , as in force immediately before commencement day
4	electrician's permit, grade A	electrotechnology systems	
5	restricted electrical licence authorising systems assembly and servicing electrical fitting	restricted— electrotechnology systems assembly and servicing electrical fitting	
6	restricted electrical licence authorising systems mechanical fitting	restricted— electrotechnology systems mechanical fitting	
7	restricted electrical licence authorising systems plumbing and gas fitting	restricted— electrotechnology systems plumbing and gas fitting	

Part 13 Repeals and transitional provisions

Section 135

column 1 item	column 2 previous licence or permit	column 3 occupation class	column 4 condition
8	restricted electrical licence authorising systems refrigeration and air conditioning work	restricted—electrotechnology systems refrigeration and air conditioning	
9	restricted electrical licence authorising systems type B appliance work	restricted—electrotechnology systems type B gas appliances	
10	restricted electrical permit authorising systems assembly and servicing electrical fitting	electrotechnology systems restricted	licence only authorises work under supervision of licensee licensed in occupation class restricted—electrotechnology systems assembly and servicing electrical fitting
11	restricted electrical permit authorising systems mechanical fitting	electrotechnology systems restricted	licence only authorises work under supervision of licensee licensed in occupation class restricted—electrotechnology systems mechanical fitting

column 1 item	column 2 previous licence or permit	column 3 occupation class	column 4 condition
12	restricted electrical permit authorising systems plumbing and gas fitting	electrotechnology systems restricted	licence only authorises work under supervision of licensee licensed in occupation class restricted— electrotechnology systems plumbing and gas fitting
13	restricted electrical permit authorising systems refrigeration and air conditioning work	electrotechnology systems restricted	licence only authorises work under supervision of licensee licensed in occupation class restricted— electrotechnology systems refrigeration and air conditioning
14	restricted electrical permit authorising systems type B appliance work	electrotechnology systems restricted	licence only authorises work under supervision of licensee licensed in occupation class restricted— electrotechnology systems type B gas appliances

136 Plumbers, drainers and gasfitters

- (1) A person who, immediately before commencement day, was licensed under the *Plumbers, Drainers and Gasfitters Board Act 1982* as a plumber, drainer or gasfitter, is taken to be licensed under this Act in the same occupation.
- (2) If, immediately before commencement day, a person mentioned in subsection (1) held a certificate of competency, the person is taken to be licensed in the occupation class that is equivalent to the certificate.

137 Fire sprinkler's licence

- (1) This section applies if, immediately before commencement day, a person held a sprinkler fitter's licence under the *Plumbers, Drainers and Gasfitters Board Act 1982* (repealed).
- (2) The person is taken to hold a plumbers licence in the occupation class water supply plumber, with a condition that the licence only authorises fire sprinkler work.

138 Plumbing plan certifiers

A person registered as a plumbing plan certifier under the repealed Act immediately before commencement day is taken to be licensed as a plumbing plan certifier under this Act.

139 Suspensions under repealed Act

- (1) This section applies if, immediately before commencement day, a person's registration under the repealed Act was suspended.
- (2) This part, apart from this section, applies to the registration as if the registration were not suspended.
- (3) If the person is taken to be licensed under this part, the licence is taken to be suspended until the time when the suspension would have ended under the repealed Act.

- (4) A right to appeal against the suspension that existed immediately before commencement day is taken to be a right to appeal under this Act.

140 Suspended electricians

- (1) This section applies if, immediately before commencement day, a person's licence or permit under the *Electricity Safety Act 1971* was suspended.
- (2) This part, apart from this section, applies to the licence or permit as if it were not suspended.
- (3) If the person is taken to be licensed under this part, the licence is taken to be suspended until the time when the suspension would have ended under the *Electricity Safety Act 1971* as in force immediately before commencement day.
- (4) A right to appeal against the suspension that existed immediately before commencement day is taken to be a right to appeal under this Act.

141 Application of rectification orders

For section 34 (Intention to make rectification order)—

- (a) a reference to a licensee or former licensee includes a reference to a person who was registered under the repealed Act; and
- (b) a construction service includes a construction service provided before the commencement of this part.

142 Applications for registration under repealed Act

- (1) This section applies if, immediately before commencement day, a person had applied under the repealed Act for registration, but the application had not been decided.
- (2) The application is taken to be an application for a licence under this Act.

- (3) If, because the application was made under the repealed Act, the application does not include something that is required for an application under this Act, the registrar may ask the applicant for the further information.
- (4) If the application is for registration in a category or class, that does not exist, the registrar may grant the applicant a licence that corresponds to the registration applied for, if satisfied that it is appropriate to do so.

143 Former licensee in s 54 (3)

- (1) In section 54 (3):
former licensee includes a person who was registered or licensed, or who held a permit, under—
 - (a) the repealed Act; or
 - (b) an operational Act, as in force at any time before the commencement of this Act; or
 - (c) the *Building Act 1972*, as in force at anytime before the commencement of this Act; or
 - (d) the *Plumbers, Drainers and Gasfitters Board Act 1982*, as in force at anytime before the commencement of this Act.
- (2) Also, for section 54 (3), a reference to *while licensed*, in relation to a former licensee who was registered or held a permit, is taken to be a reference to when the licensee was registered or held the permit.

144 Applications for builders' licences under Building Act

- (1) This section applies if, immediately before commencement day, a person had applied under the Building Act, section 15 for a builder's licence, but the application had not been decided.
- (2) The application is taken to be an application for a builders licence made under this Act.

- (3) If, because the application was made under the Building Act, the application does not include something that is required for an application under this Act, the registrar may ask the applicant for the further information.
- (4) If the application is for a licence, or a class of licence, that does not exist, the registrar may grant the applicant a licence that corresponds to the licence applied for, if satisfied that it is appropriate to do so.

145 Eligible applicants for builders' licences without qualifications

- (1) This section applies if—
 - (a) immediately before commencement day, a person had applied under the Building Act, section 15 for a builder's licence; and
 - (b) the application was not decided before the repeal of that Act; and
 - (c) the person would have been eligible for the licence under the Building Act had that Act not been repealed; and
 - (d) the person is not eligible for a builders licence under this Act only because the person does not have a qualification (including experience) required under this Act.
- (2) The registrar may issue the person a builders licence under this Act, even though the person does not have the qualification.

146 Current builder's licence

- (1) This section applies if, immediately before commencement day—
 - (a) a person had been granted a builder's licence under the Building Act; and
 - (b) the licence was in force.

- (2) The licence is taken to have been issued under this Act and authorises the person to do anything that the person was authorised to do under the Building Act.
- (3) However, the licence cannot be renewed.

147 Applications for licence or permit under Electricity Safety Act

- (1) This section applies if, immediately before commencement day, a person had applied under the *Electricity Safety Act 1971* for a licence or permit, but the application had not been decided.
- (2) The application is taken to be an application for a licence under this Act of the kind worked out under section 135.
- (3) If, because the application was made under the *Electricity Safety Act 1971*, the application does not include something that is required for an application under this Act, the registrar may ask the applicant for the further information.

148 Applications for licence or certificate of competency under Plumbers, Drainers and Gasfitters Board Act

- (1) This section applies if, immediately before commencement day, a person had applied under the *Plumbers, Drainers and Gasfitters Board Act 1982* for a licence or certificate of competency, but the application had not been decided.
- (2) The application is taken to be an application for a plumbers, drainers or gasfitters licence under this Act.
- (3) If, because the application was made under the *Plumbers, Drainers and Gasfitters Board Act 1982* (repealed), the application does not include something that is required for an application under this Act, the registrar may ask the applicant for the further information.

- (4) If the application is for a licence, or a class of licence, that does not exist, the registrar may grant the applicant a licence that corresponds to the licence applied for, if satisfied that it is appropriate to do so.

149 Contraventions before commencement day

A reference in section 35 (When rectification order may be made), section 37 (Rectification order inappropriate) or section 54 (Disciplinary grounds) to a contravention of this Act includes a reference to a contravention, before commencement day, of—

- (a) the repealed Act; or
- (b) an operational Act; or
- (c) the Building Act; or
- (d) the *Plumbers, Drainers and Gasfitters Board Act 1982* (repealed).

150 Meaning of *demerit disciplinary ground* for pt 8

- (1) In part 8 (Demerit points system):

demerit disciplinary ground does not include a disciplinary ground if the disciplinary incident for the demerit disciplinary ground happened more than 3 years before the day this section commenced.

- (2) In this section:

disciplinary incident—see section 89 (Definitions for pt 8).

152 Transitional regulations

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation Amendment Act 2004* or this Act.
- (2) The regulations may modify the operation of this Act to make provision with respect to any matter that is not, or not adequately,

Part 13 Repeals and transitional provisions

Section 153

dealt with in this Act or the *Construction Occupations Legislation Amendment Act 2004*.

153 Expiry of pt 13

- (1) This part, other than section 131, expires 1 year after commencement day.
- (2) Section 131 expires 3 years and 6 months after commencement day.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- entity
- Legislation Act
- under
- working day.

AS 3500—

(a) means Australian Standard 3500 (National Plumbing and Draining Code), as in force from time to time; and

(b) includes AS/NZS 3500.1.2:1998 and AS/NZS 3500.4.2:1997.

authorised action, for part 4 (Rectification orders and other obligations on licensees)—see section 33.

authorised licensee, for part 4 (Rectification orders and other obligations on licensees)—see section 33.

builder—see section 8.

building certifier—see the *Building Act 2004*, dictionary, definition of **certifier**.

building surveyor—see section 9.

building work—see the *Building Act 2004*, section 6.

class, of a construction occupation, means a class into which the occupation is divided under the regulations (see section 15).

compliance auditor, for part 6 (Enforcement)—see section 76.

construction occupation—see section 7.

construction practitioner—see section 6.

daily ACT newspaper means a daily newspaper published and circulating in the ACT.

demerit disciplinary ground, for part 8 (Demerit points system)—see section 89.

demerit points register, for part 8 (Demerit points system)—see section 89.

disciplinary action means action the registrar may take under section 61 (1).

disciplinary ground—see section 54.

disciplinary incident, for part 8 (Demerit points system)—see section 89.

disciplinary notice—see section 56.

drainer—see section 10.

electrician—see section 11.

emergency rectification order—see section 39.

endorsement means an endorsement under section 22.

former licensee means a person who has been a licensee.

gasfitter—see section 12.

infringement notice—see *Magistrates Court Act 1930*, section 117.

inquiry means an inquiry under division 5.3 (Disciplinary inquiries).

licence means a licence under this Act.

licensee, for part 8 (Demerit points system)—see section 89.

licence number, for a licence—see section 23 (1) (c).

mandatory requirements, for division 3.2 (Nominees)—see section 27.

nominee, of a corporation or partnership, means a person who is appointed as a nominee of the corporation or partnership under section 28 (Nominees of corporations and partnerships).

occupation class means a class into which a construction occupation is divided under section 15.

operational Act—see section 16.

plumber—see section 13.

plumbing plan certifier—see section 14.

previous 3 years, for part 8 (Demerit points system)—see section 90.

rectification order—see section 38 (1).

register means the register kept under section 107.

registrar—see section 103.

reviewable decisions means a decision prescribed under the regulations for section 124.

storey—see the *Building Act 2004*, dictionary.

supervise includes direct.

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.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	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 Occupations (Licensing) Act 2004 A2004-12

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

remainder commenced 1 September 2004 (s 2 and CN2004-8)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Establishment of advisory boards

s 114 (3), (4) exp 1 September 2005 (s 114 (4))

Repeals and transitional provisions

pt 13 hdg exp 1 September 2005 (s 153 (1))

Definitions for pt 13

s 130 exp 1 September 2005 (s 153 (1))

Review of Act

s 131 exp 1 March 2008 (s 153 (2))

Legislation repealed

s 132 om LA s 89 (3)

End of licences or registration of people taken to be licensed or registered

s 133 exp 1 September 2005 (s 153 (1))

Building surveyors

s 134 exp 1 September 2005 (s 153 (1))

Electricians

s 135 exp 1 September 2005 (s 153 (1))

Plumbers, drainers and gasfitters

s 136 exp 1 September 2005 (s 153 (1))

Fire sprinkler's licence

s 137 exp 1 September 2005 (s 153 (1))

Plumbing plan certifiers

s 138 exp 1 September 2005 (s 153 (1))

Suspensions under repealed Act

s 139 exp 1 September 2005 (s 153 (1))

Suspended electricians

s 140 exp 1 September 2005 (s 153 (1))

Endnotes

4 Amendment history

Application of rectification orders

s 141 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Applications for registration under repealed Act

s 142 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Former licensee in s 54 (3)

s 143 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Applications for builders' licences under Building Act

s 144 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Eligible applicants for builders' licences without qualifications

s 145 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Current builder's licence

s 146 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Applications for licence or permit under Electricity Safety Act

s 147 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Applications for licence or certificate of competency under Plumbers, Drainers and Gasfitters Board Act

s 148 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Contraventions before commencement day

s 149 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Meaning of *demerit disciplinary ground* for pt 8

s 150 [exp 1 September 2005 \(s 153 \(1\)\)](#)

New regulations

s 151 [exp 1 September 2004 \(s 151 \(5\)\)](#)

Transitional regulations

s 152 [exp 1 September 2005 \(s 153 \(1\)\)](#)

Expiry of pt 13

s 153 [exp 1 September 2005 \(s 153 \(1\)\)](#)

New regulations

sch 1 om R1 LA

5 Earlier replications

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised replication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised replication are identical.

Replication No and date	Effective	Last amendment made by	Replication for
R1 1 Sept 2004	1 Sept 2004– 1 Sept 2004	not amended	new regulations

© Australian Capital Territory 2004