



Australian Capital Territory

# Professional Engineers Act 2023

A2023-8

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Australian Capital Territory

# Professional Engineers Act 2023

**A2023-8**

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An Act to regulate the practice of professional engineering, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Professional Engineers Act 2023*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

### 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 in this Act.

For example, the signpost definition ‘*internal review notice*, for part 11 (Notification and review of decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).’ means that the term ‘internal review notice’ 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.



## 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 Objects and important concepts

### 6 Objects of Act

- (1) The objects of this Act are to—
  - (a) protect the public by ensuring professional engineering services are carried out by, or under the direction and oversight of, professional engineers; and
  - (b) maintain public confidence in the standard of services provided by professional engineers in the ACT; and
  - (c) uphold standards of practice for professional engineers in the ACT.
- (2) The objects are to be achieved by—
  - (a) establishing a registration scheme for professional engineers; and
  - (b) providing for the monitoring and enforcement of compliance with this Act; and
  - (c) imposing obligations on people about the practice of engineering.

### 7 Meaning of *professional engineer*

For this Act, *professional engineer* means an individual registered under this Act to carry out professional engineering services in 1 or more areas of engineering.

## 8 Meaning of *professional engineering service*

- (1) For this Act, *professional engineering service*—
- (a) means an engineering service in an area of engineering that requires, or is based on, the application of engineering principles and data—
    - (i) to a design; or
    - (ii) to a construction, production, operation or maintenance activity, relating to engineering; but
  - (b) does not include an engineering service that is provided only in accordance with a prescriptive standard.

- (2) In this section:

*prescriptive standard* means a document that states procedures or criteria—

- (a) for carrying out a design, or a construction, production, operation or maintenance activity, relating to engineering; and
- (b) the application of which, to the carrying out of the design, or the construction, production, operation or maintenance activity, does not require advanced scientifically based calculations.

## 9 Meaning of *area of engineering*

- (1) For this Act, *area of engineering*—
- (a) means any of the following:
    - (i) civil engineering;
    - (ii) electrical engineering;
    - (iii) fire safety engineering;
    - (iv) mechanical engineering;
    - (v) structural engineering;

- (vi) any other area of engineering prescribed by regulation; but
  - (b) does not include a professional engineering service prescribed by regulation as an exempt area of engineering.
- (2) The Minister may make guidelines describing the scope of an area of engineering mentioned in subsection (1) (a).
- (3) A guideline is a notifiable instrument.

## Part 3 Registrar and deputy registrars

### 10 Appointment of Australian Capital Territory Professional Engineers Registrar

- (1) The director-general must appoint a public servant as the Australian Capital Territory Professional Engineers Registrar.

*Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

- (2) A person must be appointed for a term not longer than 5 years.
- (3) An appointment is a notifiable instrument.

### 11 Delegation by registrar

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

*Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

### 12 Appointment of deputy registrars

- (1) The registrar may appoint a public servant as a deputy registrar.
- (2) A person must be appointed for a term not longer than 5 years.
- (3) An appointment is a notifiable instrument.

### 13 Functions of deputy registrars

- (1) A deputy registrar may exercise the functions of the registrar (other than the power to delegate a function).
- (2) However, the registrar may—
  - (a) in writing, limit the functions the deputy registrar may exercise; and
  - (b) give the deputy registrar written directions about the exercise of a function.

- (3) 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.

## **Part 4**                      **Registration of professional engineers**

### **Division 4.1**              **Requirement to be registered**

#### **14**              **Requirement to be registered**

- (1) An individual must not carry out a professional engineering service unless the individual is registered to carry out the service.
- (2) However, an individual carrying out a professional engineering service under the direction and oversight of a professional engineer who is responsible for the service is not required to be registered.

### **Division 4.2**              **Registration**

#### **15**              **Meaning of *suitability information*—pt 4**

For this part, *suitability information*, about an individual, means the following information about the individual:

- (a) any conviction or finding of guilt for an offence—
  - (i) that is an indictable offence under a law of the ACT or the Commonwealth; or
  - (ii) for an offence committed outside the ACT—that would be an indictable offence against a law of the ACT if committed in the ACT; or
  - (iii) under a relevant law;

*Note*      A conviction does not include a spent conviction or an extinguished conviction (see *Spent Convictions Act 2000*, s 16 (c) (i) and s 19H (1) (c) (i)).

- (b) any civil proceeding against the individual in a court or tribunal of the ACT, the Commonwealth, a State or the Northern Territory that relates to—
  - (i) the individual's carrying out of a professional engineering service; or
  - (ii) the individual's undertaking of an activity related to a professional engineering service; or
  - (iii) a registration under this Act or a relevant law;
- (c) any noncompliance with this Act;
- (d) any noncompliance with an order made by a court or tribunal under a relevant law;
- (e) any refusal of an application for registration (however described) under this Act or a relevant law;
- (f) any regulatory action (however described) taken, or proposed to be taken, under this Act or a relevant law;
- (g) if the individual's registration under this Act or a relevant law has been suspended or cancelled as a result of regulatory action (however described)—the reason for the suspension or cancellation;
- (h) any noncompliance with a requirement imposed on the individual as a result of regulatory action (however described) under this Act or a relevant law;
- (i) whether the individual is or has been bankrupt or personally insolvent;
- (j) whether a corporation has been placed into administration, receivership or liquidation when the individual was an executive officer of the corporation;
- (k) anything else prescribed by regulation.



## **16 Applications for registration**

- (1) An individual may apply to the registrar for registration as a professional engineer for 1 or more areas of engineering (an *application for registration*).
- (2) An application for registration must—
  - (a) be in writing; and
  - (b) state the applicant's name; and
  - (c) include the applicant's contact details; and
  - (d) state the area of engineering for which the applicant is applying to be registered; and
  - (e) include a report from an assessment entity that assesses the person's qualifications, experience and competencies for the area of engineering; and
  - (f) include the results of a criminal history check for the applicant; and
  - (g) include the suitability information about the applicant; and
  - (h) include any information prescribed by regulation.
- (3) The registrar may refuse to consider an application for registration that does not comply with subsection (2).

## **17 Eligibility for registration**

An individual is eligible to be registered as a professional engineer for an area of engineering if—

- (a) the applicant has the required qualifications, experience and competencies; and
- (b) the registrar is satisfied that the individual is suitable to be registered as a professional engineer taking into account the individual's suitability information; and

- (c) the individual is not disqualified (however described) from applying for registration under this Act or a relevant law; and
- (d) the individual's registration (however described) under this Act or a relevant law has not been cancelled in the previous 5 years; and
- (e) the individual meets any other eligibility requirements prescribed by regulation.

## **18 Applications for renewal**

- (1) A professional engineer may apply to the registrar for renewal of the engineer's registration (an *application for renewal*).
- (2) An application for renewal must be made not earlier than 3 months before the end of the professional engineer's registration and not later than 6 months after the end of the engineer's registration.
- (3) An application for renewal must—
  - (a) be in writing; and
  - (b) state the applicant's name; and
  - (c) include the applicant's contact details; and
  - (d) state the applicant's registration number; and
  - (e) state the area of engineering for which the applicant is applying for renewal; and
  - (f) include details of the continuing professional development undertaken by the applicant during the term of the applicant's registration; and
  - (g) if any suitability information about the applicant has changed since the applicant last made an application for registration or an application for renewal—include details of the changes; and
  - (h) include any information prescribed by regulation.

- (4) The registrar may refuse to consider an application that does not comply with subsection (2) or (3).

## **19 Eligibility for registration renewal**

A professional engineer is eligible to have their registration for an area of engineering renewed if—

- (a) the engineer has undertaken continuing professional development in accordance with any determination made under section 84 (Continuing professional development for professional engineers); and
- (b) the registrar is satisfied that the engineer is suitable to be registered as a professional engineer taking into account the engineer's suitability information; and
- (c) the engineer meets any other eligibility requirements prescribed by regulation.

## **20 Registrar may request more information**

- (1) The registrar may, in writing, require an applicant under section 16 or section 18 to give the registrar information that the registrar reasonably needs to decide the application.
- (2) If the applicant does not comply with a requirement under subsection (1), the registrar may refuse to consider the application further.

## **21 Change of information must be provided**

If the information in an application for registration or an application for renewal changes before the application is decided, the applicant must give the registrar written notice of the details of the change.

## **22 Deciding applications**

- (1) If an individual makes an application for registration for an area of engineering, the registrar must—
  - (a) if the individual is eligible for registration as a professional engineer for the area of engineering—register the individual; or
  - (b) if the individual is not eligible for registration as a professional engineer for the area of engineering—refuse to register the individual.
- (2) If a professional engineer makes an application for renewal for an area of engineering, the registrar must—
  - (a) if the engineer is eligible for registration renewal for the area of engineering—renew the engineer’s registration; or
  - (b) if the engineer is not eligible for registration renewal for the area of engineering—refuse to renew the engineer’s registration.
- (3) A registration may authorise the professional engineer to carry out a professional engineering service in more than 1 area of engineering.
- (4) If the registrar renews the registration of a professional engineer, the renewed registration begins on the day after the registration being renewed ends.
- (5) The registrar may renew a registration that has been suspended, but the renewed registration is suspended until the suspension ends.

## **23 Continuation of registration until application for renewal decided**

- (1) If a professional engineer makes an application for renewal, the engineer’s existing registration continues in force until the application is decided.
- (2) Subsection (1) applies even if it causes the existing registration to be in force for longer than the maximum registration term stated in section 25 (b) (i).

## **24 Registration conditions**

- (1) A professional engineer's registration is subject to the following conditions:
  - (a) any condition the registrar considers appropriate;
  - (b) any condition prescribed by regulation.
- (2) However, before imposing a condition under subsection (1) (a), the registrar must—
  - (a) give the engineer a written notice that—
    - (i) states the condition the registrar proposes to impose; and
    - (ii) states the reason the registrar proposes to impose the condition; and
    - (iii) tells the engineer that the engineer may give a written response to the registrar about the matters stated in the notice not later than 28 days after the engineer receives the notice; and
  - (b) consider any response given to the registrar in accordance with paragraph (a) (iii).

## **25 Registration term**

The registration of a professional engineer—

- (a) begins on the day stated in the registration certificate; and
- (b) ends on the earliest of the following:
  - (i) 3 years after the registration begins;
  - (ii) if a shorter period is prescribed by regulation—the end of that period;

- (iii) if the registration is cancelled under division 6.1 (Disciplinary action), division 6.2 (Immediate suspension or cancellation of registration) or section 44 (Voluntary cancellation of registration)—the day the cancellation takes effect.

## 26 Registration certificates

- (1) This section applies if the registrar—
  - (a) registers an individual as a professional engineer for an area of engineering; or
  - (b) renews the registration of a professional engineer for an area of engineering; or
  - (c) varies the registration of a professional engineer under section 28 (Variation of registration) or division 6.1 (Disciplinary action).
- (2) The registrar must give the professional engineer a certificate (*a registration certificate*) that states—
  - (a) the name of the engineer; and
  - (b) each area of engineering for which the engineer is registered; and
  - (c) a unique identifying number (*the registration number*) for the engineer; and
  - (d) the term of the engineer’s registration; and
  - (e) any conditions of the engineer’s registration; and
  - (f) any other information prescribed by regulation.
- (3) A registration certificate may include any other information the registrar considers relevant.

## **Division 4.3                    Obligations of professional engineers**

### **27                    Obligations**

A professional engineer must—

- (a) comply with any conditions of the engineer’s registration; and
- (b) comply with this Act, including any approved code of practice; and
- (c) undertake continuing professional development in accordance with any determination made under section 84 (Continuing professional development for professional engineers); and
- (d) comply with other territory laws when carrying out a professional engineering service; and
- (e) when carrying out a professional engineering service—
  - (i) meet the standard reasonably expected of a professional engineer; and
  - (ii) demonstrate a level of competence reasonably expected of a professional engineer; and
  - (iii) not engage in improper or unethical conduct; and
- (f) comply with any other obligation prescribed by regulation.

## **Division 4.4                    Variation of registration and changes to circumstances and details**

### **28                    Variation of registration**

- (1) The registrar may vary the registration of a professional engineer on written application by the engineer if the registrar—
  - (a) has considered any reasons provided by the engineer in their application to vary the registration; and
  - (b) is satisfied that it is appropriate to vary the registration.

- (2) The registrar may vary the registration of a professional engineer on the registrar's own initiative if the registrar—
- (a) has given the professional engineer a written notice that—
    - (i) states how the registrar proposes to vary the registration; and
    - (ii) states the reason the registrar proposes to vary the registration; and
    - (iii) tells the engineer that the engineer may give a written response to the registrar about the matters stated in the notice not later than 28 days after the engineer receives the notice; and
  - (b) has considered any response given in accordance with paragraph (a) (iii); and
  - (c) is satisfied that it is appropriate to vary the registration.
- (3) If the registrar varies the registration of a professional engineer under this section, the registrar must give the engineer a written notice (a *notice of variation*) that states—
- (a) how the registration has been varied; and
  - (b) the day on which the variation takes effect.
- (4) A variation of a registration takes effect on the day stated in the notice of variation.
- (5) In this section:
- registration** includes a suspended registration.
- vary**, in relation to a registration—
- (a) includes—
    - (i) varying the term of the registration; and



- (ii) adding, amending or removing a condition of the registration; but
- (b) does not include amending the registration to authorise the professional engineer to carry out professional engineering services in an additional area of engineering.

*Note* To be granted registration for an additional area of engineering, a professional engineer must make an application for registration in accordance with s 16.

## **29 Notifying registrar about change of information**

- (1) A professional engineer must notify the registrar, in writing, about any change to the engineer's name or contact details within 14 days after the professional engineer becomes aware of the change.
- (2) A professional engineer must notify the registrar, in writing, about any—
  - (a) change to the engineer's suitability information; and
  - (b) other event or circumstance prescribed by regulation.
- (3) A professional engineer commits an offence if the engineer fails to give notice in accordance with subsection (2) within 14 days after the engineer becomes aware of the change.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

## **Division 4.5 Register of professional engineers**

### **30 Registrar must keep professional engineers register**

- (1) The registrar must keep a register of professional engineers (the *engineers register*).

- (2) The registrar must keep the following details about a professional engineer in the engineers register:
  - (a) the engineer's name;
  - (b) the area of engineering for which the engineer is registered;
  - (c) the engineer's registration number;
  - (d) the term of the engineer's registration;
  - (e) any conditions of the engineer's registration;
  - (f) the engineer's address for service;
  - (g) the details of any regulatory action (however described) taken against the engineer under this Act or a relevant law;
  - (h) the status of the engineer's registration;
  - (i) any other details prescribed by regulation.
- (3) The registrar must, for a former professional engineer, keep the details mentioned in subsection (2) in the register for 10 years after the day the former professional engineer's registration ends.
- (4) The engineers register may also contain any other details the registrar considers appropriate.
- (5) The registrar may correct any mistake, error or omission in the engineers register.

### **31 Publication of certain information in engineers register**

- (1) The registrar must make the following details about a professional engineer in the engineers register available to the public:
  - (a) the engineer's name;
  - (b) the area of engineering for which the engineer is registered;
  - (c) the engineer's registration number;
  - (d) the term of the engineer's registration;

- (e) any conditions of the engineer's registration;
  - (f) the status of the engineer's registration.
- (2) The registrar may make the details mentioned in subsection (1) about a former professional engineer available to the public.
- (3) However, the registrar must not make details about a professional engineer or a former professional engineer available to the public if—
- (a) the engineer or former engineer applies, in writing, for the information not to be made available to the public; and
  - (b) the registrar is satisfied that the publication of the information would, or could reasonably be expected to—
    - (i) endanger the life or physical safety of any person; or
    - (ii) jeopardise national security.

## Part 5 Assessment entities

### 32 Approval for assessment entity to conduct assessment scheme

- (1) The director-general may approve an entity to conduct a scheme for an area of engineering (an *assessment scheme*) if—
  - (a) the entity is an eligible entity; and
  - (b) the assessment scheme is an eligible assessment scheme.
- (2) An approval under subsection (1)—
  - (a) must be for a term not longer than 5 years; and
  - (b) is subject to—
    - (i) any condition the director-general considers appropriate; and
    - (ii) any condition prescribed by regulation.
- (3) An approval is a notifiable instrument.
- (4) For subsection (1), an entity is an *eligible entity* if—
  - (a) either—
    - (i) the entity holds an approval (however described) under a relevant law authorising it to conduct an assessment scheme that is the same, or similar, to the proposed assessment scheme; or
    - (ii) the director-general is satisfied that the entity—
      - (A) employs competent people to undertake assessments of a person's required qualifications, experience and competencies; and

- (B) has proven procedures for training and accrediting its employees to undertake assessments of a person's required qualifications, experience and competencies; and
  - (C) has the financial capacity and facilities to conduct assessments of a person's required qualifications, experience and competencies; and
  - (D) has a proven capacity to undertake independent and authoritative assessments of a person's required qualifications, experience and competencies in a timely manner; and
  - (E) imposes fees that are reasonable taking into account the scope of the services being offered; and
  - (F) is able to adequately assess a person's required qualifications, experience and competencies for the area of engineering; and
- (b) the entity meets any other eligibility requirements prescribed by regulation.
- (5) For subsection (1), an assessment scheme is an *eligible assessment scheme* if—
- (a) the proposed scheme will be conducted by an eligible entity; and
  - (b) the director-general is satisfied that the proposed scheme—
    - (i) is not inconsistent with national and international standards for the recognition of professional engineers; and
    - (ii) includes procedures for the assessment of a person's required qualifications, experience and competencies in an independent and professional manner; and
    - (iii) has adequate procedures for monitoring and improving the assessment processes of the scheme, including appropriate complaint handling procedures; and

- (iv) includes an effective audit program for ensuring that continuing registration requirements are met by professional engineers; and
- (c) the proposed scheme meets any other eligibility requirements prescribed by regulation.

### **33 Variation of approval**

- (1) On written application by an assessment entity, the director-general may vary the approval of the entity if the director-general—
  - (a) has considered any reasons provided by the entity in its application to vary the approval; and
  - (b) is satisfied that it is appropriate to vary the approval.
- (2) The director-general may vary the approval of an assessment entity on the director-general's own initiative if the director-general—
  - (a) has given the entity a written notice that—
    - (i) states how the director-general proposes to vary the approval; and
    - (ii) states the reason the director-general proposes to vary the approval; and
    - (iii) tells the entity that it may give a written response to the director-general about the matters stated in the notice not later than 28 days after the entity receives the notice; and
  - (b) has considered any response given in accordance with paragraph (a) (iii); and
  - (c) is satisfied that it is appropriate to vary the approval.
- (3) A variation of an approval takes effect on the day stated in the variation.
- (4) A variation of an approval is a notifiable instrument.

- (5) In this section:
- vary*, in relation to an approval—
- (a) includes—
- (i) varying the term of the approval; and
  - (ii) adding, amending or removing a condition of the approval; but
- (b) does not include amending the approval to authorise the assessment entity to conduct an assessment scheme for an additional area of engineering.

### **34 Revocation of approval**

- (1) On written application by an assessment entity, the director-general must revoke the approval of the entity if the director-general is satisfied that it is appropriate to revoke the approval.
- (2) The director-general may revoke the approval of an assessment entity on the director-general's own initiative if the director-general—
- (a) is satisfied that 1 or more of the following applies:
- (i) the entity has failed to comply with the conditions of its approval;
  - (ii) the entity knowingly or recklessly used false or misleading information to become an assessment entity;
  - (iii) the entity has stopped being eligible to hold an approval;
  - (iv) the entity has contravened this Act;
  - (v) the entity has failed to comply with the conditions of an approval granted under a relevant law for the entity to conduct an assessment scheme (however described) in that jurisdiction;

- (vi) the entity has contravened a relevant law when conducting an assessment scheme (however described) in that jurisdiction; and
  - (b) has given the entity a written notice that—
    - (i) states that the director-general proposes to revoke the approval; and
    - (ii) states the reason the director-general proposes to revoke the approval; and
    - (iii) tells the entity that it may give a written response to the director-general about the matters stated in the notice not later than 28 days after the entity receives the notice; and
  - (c) has considered any response given in accordance with paragraph (b) (iii); and
  - (d) is satisfied that it is appropriate to revoke the approval.
- (3) Revocation of an approval takes effect—
- (a) for a revocation under subsection (1)—
    - (i) 90 days after the day the revocation is notified; or
    - (ii) if a later date is stated in the revocation—on that date; or
  - (b) for a revocation under subsection (2)—on the day stated in the revocation.
- (4) A revocation is a notifiable instrument.



## **Part 6**                      **Regulatory action—professional engineers**

### **Division 6.1**              **Disciplinary action**

#### **35**              **Definitions—div 6.1**

In this division:

*disciplinary action*, against a professional engineer, means any of the following:

- (a) reprimanding the engineer;
- (b) directing the engineer to undergo an assessment of the engineer's required qualifications, experience and competencies;
- (c) directing the engineer to undertake stated training;
- (d) imposing, or amending, a condition of the engineer's registration;
- (e) suspending the engineer's registration for either a fixed period or until a particular event happens;
- (f) cancelling the engineer's registration.

*ground for disciplinary action*—see section 36 (1).

*professional engineer* includes a former professional engineer.

*proposed disciplinary action*—see section 37 (1).

*show cause notice*—see section 37 (2).

### 36 Grounds for disciplinary action

Each of the following is a *ground for disciplinary action* against a professional engineer:

- (a) the engineer knowingly or recklessly used false or misleading information to become a professional engineer;
- (b) the engineer has failed to comply with an obligation imposed under section 27 (Obligations);
- (c) the engineer knowingly or recklessly gave someone information about a professional engineering service carried out, or to be carried out, by the engineer that was false or misleading in a material particular;
- (d) the engineer stops being eligible to be registered;
- (e) the engineer has had their registration immediately suspended or cancelled under section 41;
- (f) the engineer has been convicted or found guilty of an offence—
  - (i) that is an indictable offence under a law of the ACT or the Commonwealth; or
  - (ii) for an offence committed outside the ACT—that would be an indictable offence against a law of the ACT if committed in the ACT; or
  - (iii) under this Act; or
  - (iv) under a relevant law;
- (g) the engineer has carried out, or is carrying out, a professional engineering service that the engineer is not registered to carry out;
- (h) the engineer has contravened this Act or a relevant law;

- (i) the engineer's registration (however described) under a relevant law has been suspended or cancelled as a result of regulatory action (however described) being taken against the engineer in that jurisdiction;
- (j) the engineer has failed to comply with a requirement of any regulatory action taken against the engineer under this part;
- (k) any other ground prescribed by regulation.

### **37 Notice of proposed disciplinary action**

- (1) The registrar may propose to take disciplinary action (the *proposed disciplinary action*) against a professional engineer if the registrar is satisfied that a ground for disciplinary action exists in relation to the engineer.
- (2) If the registrar proposes to take disciplinary action against a professional engineer, the registrar must give the engineer a written notice (a *show cause notice*) that states—
  - (a) the grounds on which the registrar considers disciplinary action may be taken against the engineer; and
  - (b) details of the proposed disciplinary action; and
  - (c) that the engineer may give the registrar a written submission about the proposed disciplinary action not later than 28 days after the day the engineer is given the notice.

### **38 Taking disciplinary action**

- (1) The registrar may take the proposed disciplinary action against a professional engineer if the registrar—
  - (a) has given the engineer a show cause notice in accordance with section 37; and
  - (b) has considered any submission given in accordance with section 37 (2) (c); and

- (c) is satisfied that it is appropriate to take the proposed disciplinary action against the engineer.
- (2) If the registrar decides to take the proposed disciplinary action, the registrar must give the professional engineer a written notice (a *notice of disciplinary action*) that states—
  - (a) that the proposed disciplinary action will be taken; and
  - (b) the day on which the disciplinary action will take effect.
- (3) Disciplinary action takes effect—
  - (a) if the disciplinary action is suspension or cancellation of the professional engineer’s registration—
    - (i) 14 days after the notice of disciplinary action is given to the engineer; or
    - (ii) if a later date is stated in the notice—that date; or
  - (b) in any other case—on the day stated in the notice of disciplinary action.

### **39 Not taking disciplinary action**

- (1) This section applies if the registrar—
  - (a) has given a professional engineer a show cause notice in accordance with section 37; and
  - (b) has considered any submission given in accordance with section 37 (2) (c); and
  - (c) is satisfied that disciplinary action against the professional engineer—
    - (i) may not be taken; or
    - (ii) may be taken, but that, in all the circumstances, it is not appropriate to take the action.

- (2) The registrar must give the professional engineer a written notice that tells the engineer that disciplinary action will not be taken against the engineer in relation to the matters stated in the show cause notice.

#### **40 Effect of suspension**

If the registration of a professional engineer is suspended under this division, the individual is taken not to be a professional engineer during the period of suspension.

### **Division 6.2 Immediate suspension or cancellation of registration**

#### **41 Immediate suspension or cancellation**

- (1) This section applies if the registrar is satisfied that—
- (a) a ground for disciplinary action exists in relation to a professional engineer (other than a failure to comply with a requirement of any disciplinary action taken under division 6.1); and
  - (b) it is in the public interest to immediately suspend or cancel the professional engineer’s registration.
- (2) The registrar may—
- (a) immediately suspend the professional engineer’s registration for a stated period or until a stated event happens; or
  - (b) immediately cancel the professional engineer’s registration.
- (3) If the registrar immediately suspends or cancels a registration under subsection (2), the registrar must give the professional engineer written notice (an *immediate action notice*) that includes the following information:
- (a) a statement that the suspension or cancellation takes effect as soon as the notice is given to the engineer;

- (b) if the registration is suspended—the period of the suspension;
  - (c) the reason for the suspension or cancellation;
  - (d) that the engineer may make an application to the registrar under section 43 (Revoking immediate suspension or cancellation).
- (4) However, the registrar may give a professional engineer an immediate action notice orally if the registrar believes there is an immediate risk to the safety of any person.
- (5) If the registrar gives the immediate action notice orally, the registrar must also give the professional engineer a written notice that includes the information mentioned in subsection (3) as soon as practicable, but not later than 7 days after the notice was given orally.
- (6) Suspension or cancellation under this section takes effect when—
- (a) for an immediate action notice given orally and in writing—the oral notice is given to the professional engineer; or
  - (b) for an immediate action notice given only in writing—the written notice is given to the professional engineer.
- (7) A suspension under this section ends—
- (a) if the registrar suspends the registration for a fixed period—on the day stated in the immediate action notice; or
  - (b) if the registrar suspends the registration until a particular event happens—when the event happens; or
  - (c) if disciplinary action is taken against the professional engineer—when the disciplinary action takes effect; or
  - (d) if disciplinary action is not taken against the professional engineer—on the earliest of the following:
    - (i) when the registrar gives the engineer written notice that the registrar will not take disciplinary action against the engineer;

- (ii) 90 days after the immediate suspension notice is given to the engineer; or
- (e) if the registrar revokes the suspension or cancellation under section 43—the day stated in the written notice given to the person under section 43 (4).

#### **42 Effect of immediate suspension**

If the registration of a professional engineer is immediately suspended under section 41, the individual is taken not to be a professional engineer during the period of suspension.

#### **43 Revoking immediate suspension or cancellation**

- (1) The registrar may revoke an immediate suspension or cancellation—
  - (a) on written application by the person whose registration is suspended or cancelled; or
  - (b) on the registrar’s own initiative.
- (2) An application by a person under subsection (1) (a) must be made not later than 14 days after the day the person is given the immediate action notice.
- (3) The registrar may revoke the immediate suspension or cancellation under subsection (1) if—
  - (a) for an application made under subsection (1) (a)—
    - (i) the application was made in accordance with subsection (2); and
    - (ii) the registrar has considered any reasons given by the person requesting the revocation; and
  - (b) the registrar has considered any matter prescribed by regulation.

- (4) If the registrar revokes the immediate suspension or cancellation, the registrar must give the person a written notice that states—
- (a) that the suspension or cancellation has been revoked; and
  - (b) the day on which the revocation takes effect.

### **Division 6.3                      Other regulatory action**

#### **44                      Voluntary cancellation of registration**

The registrar must cancel the registration of a professional engineer if—

- (a) the engineer asks, in writing, for the cancellation; and
- (b) the registrar is satisfied that it is appropriate to cancel the registration.

#### **45                      Application to disqualify person from applying for registration**

- (1) This section applies if the registrar suspends or cancels the registration of a professional engineer under division 6.1 (Disciplinary action).
- (2) On application by the registrar, the ACAT may make the following orders:
  - (a) if the registrar has suspended the professional engineer's registration—
    - (i) an order cancelling the person's registration; and
    - (ii) an order disqualifying the person from applying for registration as a professional engineer—
      - (A) for a stated period of not more than 5 years; or
      - (B) until a stated event happens;



- (b) if the registrar has cancelled the professional engineer's registration—an order disqualifying the person from applying for registration as a professional engineer—
    - (i) for a stated period of not more than 5 years; or
    - (ii) until a stated event happens;
  - (c) an order requiring the person to pay the Territory a stated amount of not more than \$20 000;
  - (d) any other order the ACAT considers appropriate.
- (3) Before making an order under subsection (2), the ACAT must consider any matter prescribed by regulation.
- (4) If the ACAT makes an order under subsection (2) (c), the amount may be recovered as a debt payable to the Territory.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## **Division 6.4                      Miscellaneous**

### **46                      Registrar may consult people before exercising functions**

- (1) In exercising functions under this part, the registrar may consult any person the registrar considers appropriate.
- (2) For subsection (1), the registrar is authorised to disclose information that relates to the exercise of the function.

## Part 7 Enforcement

### Division 7.1 Preliminary

#### 47 Definitions—pt 7

In this part:

*at premises* includes in or on the premises.

*occupier*, of premises, includes—

- (a) a person an authorised person believes on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*premises* includes land.

### Division 7.2 Authorised people generally

#### 48 Appointment of authorised people

The registrar may appoint a public servant as an authorised person for this Act.

*Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

#### 49 Identity cards

- (1) The registrar must give each authorised person an identity card that states the person's name and appointment as an authorised person, and shows—
  - (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry of the card; and
  - (d) anything else prescribed by regulation.

- (2) A person commits an offence if the person—
- (a) stops being an authorised person; and
  - (b) does not return the person’s identity card to the registrar as soon as practicable (but within 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (3) Subsection (2) does not apply to a person if the person’s identity card is—
- (a) lost or stolen; or
  - (b) destroyed by someone else.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

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

## **50 Authorised person must show identity card on exercising power of entry**

Before exercising a power under this Act (other than a power under section 55), the authorised person must show their identity card to—

- (a) if the exercise of the power affects an individual—the individual; or
- (b) if the exercise of the power affects a person other than an individual—an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

## Division 7.3 Powers of authorised people

### 51 Power to enter premises

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent.
- (2) However subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes.
- (3) If an authorised person wants to ask for consent to enter a building or other structure on premises, the person may, without the occupier's consent, enter any land that forms part of the premises to ask for the consent.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) The authorised person may enter the premises with necessary assistance.
- (6) In this section:  
*necessary assistance*, for an authorised person entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out their function.

### 52 Production of identity card

An authorised person and any other person (other than a police officer) who is accompanying the authorised person may not remain at premises entered under this part if the authorised person does not produce their identity card when asked by the occupier.

## **53 Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under section 51 (1) (b), an authorised person must—
  - (a) produce their identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
    - (iii) that anything found under this part may be used in evidence in court; and
    - (iv) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
    - (iii) that anything found under this part may be used in evidence in court; and
    - (iv) that consent may be refused; and
  - (b) that the occupier consents to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

- (4) A court must find that the occupier did not consent to entry to the premises by an authorised person under this part if—
  - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
  - (b) an acknowledgment of consent for the entry is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

#### **54 General powers on entry to premises**

- (1) If an authorised person enters premises under this division, the authorised person may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) examine anything;
  - (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;
  - (c) take photographs, films, or audio, video or other recordings;
  - (d) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably necessary to exercise a function under this Act;
  - (e) require the occupier, or anyone else at the premises, to give the authorised person copies of documents produced under paragraph (d) that are reasonably necessary to exercise a function under this Act;
  - (f) require the occupier, or anyone else at the premises, to give the authorised person reasonable help to exercise a power under this division.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (d), (e) or (f).

Maximum penalty: 50 penalty units.

## **55 Power to obtain, inspect and copy documents**

- (1) An authorised person may, in writing, require any of the following people to give the authorised person information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person for this Act:

- (a) a professional engineer;
- (b) an employer or former employer of a professional engineer;
- (c) an employee or former employee of a professional engineer.

- (2) A person must take reasonable steps to comply with a requirement made of the person under this section.

Maximum penalty: 50 penalty units.

*Note 1* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

*Note 2* The [Legislation Act](#), s 171 deals with the application of client legal privilege.

## **56 Abrogation of privilege against self-incrimination**

- (1) A person is not excused from answering a question or providing information or a document under this division on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

- (2) However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

### **57 Warning to be given**

- (1) Before requiring a person to comply with a requirement under section 54 (1) (d) or (e) or section 55, an authorised person must warn the person—
- (a) that failure to comply constitutes an offence; and
  - (b) about the effect of section 56.
- (2) It is not an offence for an individual to refuse to answer a question put by an authorised person or provide information or a document to an authorised person under section 54 (1) (d) or (e) or section 55 on the ground that the question, information or document might tend to incriminate the individual, unless the individual was first given the warning in subsection (1) (b).
- (3) Nothing in this section prevents an authorised person from obtaining and using evidence given to the authorised person voluntarily by any person.



## Part 8                      Offences

### 58                      **Providing professional engineering service without registration**

- (1) A person commits an offence if the person—
- (a) carries out a professional engineering service other than under the direction and oversight of a professional engineer who is responsible for the service; and
  - (b) is not registered to carry out the professional engineering service; and
  - (c) is reckless about whether the person is registered to carry out the professional engineering service.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if the person—
- (a) carries out a professional engineering service other than under the direction and oversight of a professional engineer who is responsible for the service; and
  - (b) is not registered to carry out the professional engineering service.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

### 59                      **False or misleading representation about registration**

- (1) A person commits an offence if the person—
- (a) makes a false or misleading representation that the person is registered to carry out a professional engineering service; and
  - (b) the representation is false or misleading in a material particular; and

- (c) the person is reckless about whether the representation is false or misleading.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person—
  - (a) makes a false or misleading representation that the person is registered to carry out a professional engineering service; and
  - (b) the representation is false or misleading in a material particular.

Maximum penalty: 30 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

## **60 Failure to comply with condition of registration**

- (1) A professional engineer commits an offence if—
  - (a) the engineer's registration is subject to a condition; and
  - (b) the engineer fails to comply with the condition.

Maximum penalty: 30 penalty units.

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

## **61 Failure to comply with approved code of practice**

- (1) A professional engineer commits an offence if—
  - (a) an approved code of practice applies to the engineer; and
  - (b) the engineer fails to comply with a requirement of the approved code of practice; and
  - (c) the engineer is reckless about whether the conduct complies with the approved code of practice.

Maximum penalty: 50 penalty units.

- (2) A professional engineer commits an offence if—
- (a) an approved code of practice applies to the engineer; and
  - (b) the engineer fails to comply with a requirement of the approved code of practice.

Maximum penalty: 30 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

**62 Allowing unregistered people to provide professional engineering service**

- (1) A person commits an offence if—
- (a) the person engages or allows another person, including an employee, (the *worker*) to carry out a professional engineering service; and
  - (b) the worker is not registered to carry out the professional engineering service; and
  - (c) the person is reckless about whether the worker is registered to carry out the professional engineering service.

Maximum penalty: 50 penalty units.

- (2) Each member of a partnership commits an offence if—
- (a) a partner engages or allows a worker to carry out a professional engineering service; and
  - (b) the worker is not registered to carry out the professional engineering service; and
  - (c) the partner is reckless about whether the worker is registered to carry out the professional engineering 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 the partner—
- (a) did not know about the contravention of the subsection involved in the offence; and
  - (b) either—
    - (i) took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
    - (ii) was not in a position to influence the partnership in relation to the conduct involved in the contravention.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

## **Part 9**                      **Complaints about professional engineers**

### **Division 9.1**              **Preliminary**

#### **63**              **Definitions—pt 9**

In this part:

*aggrieved person* means a person who may make a complaint about a professional engineer.

*complainant*—see section 66 (1) (b).

*professional engineer* includes a former professional engineer.

*respondent*—see section 66 (1) (d).

### **Division 9.2**              **Making complaints**

#### **64**              **When may someone complain about a professional engineer?**

A person may complain to the registrar about a professional engineer if the person believes on reasonable grounds the engineer—

- (a) has contravened this Act; or
- (b) when carrying out a professional engineering service, the engineer has—
  - (i) failed to meet the standard reasonably expected of a professional engineer; or
  - (ii) not demonstrated a level of competence reasonably expected of a professional engineer; or
  - (iii) engaged in improper or unethical conduct; or
- (c) has engaged in any other conduct prescribed by regulation.

## 65 Making a complaint on behalf of another person

The following people may make a complaint under section 64 on behalf of an aggrieved person:

- (a) a person who is the agent of the aggrieved person;
- (b) a person who has guardianship or control of the affairs of the aggrieved person under another law or an order of a court or tribunal.

## 66 Form and contents of complaint

- (1) A complaint must—
  - (a) be in writing; and
  - (b) include the name and contact details of the aggrieved person (the *complainant*); and
  - (c) for a complaint made by an agent or representative of an aggrieved person—include the name and contact details of the agent or representative; and
  - (d) include the name of the professional engineer the complaint is about (the *respondent*); and
  - (e) include particulars of the complaint about the respondent.
- (2) However, the registrar may accept a complaint for consideration even if it does not comply with subsection (1).
- (3) If the registrar accepts a complaint for consideration and the complaint 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.

**67 Withdrawal of complaint**

- (1) A complainant may withdraw a complaint at any time by giving written notice to the registrar.
- (2) If the complainant withdraws the complaint, the registrar—
  - (a) is not required to continue to act on the complaint; and
  - (b) may continue to act on the complaint if the registrar considers it appropriate to do so; and
  - (c) is not required to give the complainant notice about the outcome of the complaint under section 72.

**Division 9.3 Dealing with complaints**

**68 Notifying professional engineer about complaint**

As soon as practicable after accepting a complaint for consideration, the registrar must give the respondent written notice that—

- (a) states that a complaint has been made about the respondent; and
- (b) includes details about the complaint.

**69 Consideration of complaint**

- (1) The registrar must take reasonable steps to consider each complaint accepted for consideration.
- (2) The registrar's consideration of a complaint may be conducted in any way the registrar decides, unless otherwise expressly provided by this Act.

**Example—s (2)**

the registrar may decide to split a complaint and consider the parts separately

## 70 Registrar may request information or statement

- (1) The registrar may, at any time, ask a complainant or respondent to give the registrar information or a statement about the complaint.

*Note 1* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

*Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A request under subsection (1) must—
- (a) be in writing; and
  - (b) state the information or statement that the registrar requires; and
  - (c) state a reasonable period for the person to comply with the request; and
  - (d) state that the person may seek an extension of the period mentioned in paragraph (c) before or after the period ends.
- (3) The registrar may extend the period for the complainant or respondent to comply with a request under subsection (1) before or after the period ends.
- (4) If the complainant does not comply with a request under subsection (1), the registrar may, but is not required to, take further action on the complaint.

## Division 9.4 Finalising complaints

### 71 No further action

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

- (a) lacks substance or credibility; or
- (b) is frivolous, vexatious, or was made other than in good faith; or



(c) has been adequately dealt with.

## **72 Notice of outcome of complaint consideration**

- (1) The registrar must, after finalising a complaint under this part, give the complainant and the respondent a written notice that includes information about the outcome of the complaint.
- (2) If, after finalising a complaint under this part, the registrar is satisfied that a ground for disciplinary action exists, the registrar must consider taking disciplinary action against the professional engineer under division 6.1 (Disciplinary action).

## **Division 9.5 Miscellaneous**

### **73 Immunity from liability**

If a person makes a complaint—

- (a) the making of the complaint is not—
  - (i) a breach of confidence; or
  - (ii) a breach of professional etiquette or ethics; or
  - (iii) a breach of a rule of professional conduct; and
- (b) the complainant does not incur civil or criminal liability only because of the making of the complaint.

## Part 10 Information sharing

### Division 10.1 Information sharing—public safety information

#### 74 Definitions—div 10.1

(1) In this division:

*law of another jurisdiction* means a law of the Commonwealth, a State or the Northern Territory.

*non-territory agency* means an agency of the Commonwealth, a State or the Northern Territory that exercises functions substantively corresponding to those exercised by a public safety agency.

*public safety agency* means any of the following:

- (a) the registrar;
- (b) the director-general responsible for this Act or an operational Act;
- (c) an inspector appointed under an operational Act;
- (d) the director-general responsible for the *Emergencies Act 2004*;
- (e) the commissioner and chief officers appointed under the *Emergencies Act 2004*;
- (f) an inspector appointed under the *Emergencies Act 2004*;
- (g) the director-general responsible for the *Work Health and Safety Act 2011*;
- (h) the commissioner appointed under the *Work Health and Safety Act 2011*;
- (i) an inspector appointed under the *Work Health and Safety Act 2011*;
- (j) an agency prescribed by regulation.

***public safety information*** means information in relation to a situation that presents, or is likely to present, a risk of death or injury to a person, significant harm to the environment or significant damage to property, that is disclosed to, or obtained by, a public safety agency because the agency is, or has been, a public safety agency.

(2) In this section:

***operational Act*** means any of the following:

- (a) *Building Act 2004*;
- (b) *Construction Occupations (Licensing) Act 2004*;
- (c) *Dangerous Substances Act 2004*;
- (d) *Electricity Safety Act 1971*;
- (e) *Gas Safety Act 2000*;
- (f) *Planning and Development Act 2007*;
- (g) *Unit Titles Act 2001*;
- (h) *Utilities Act 2000*;
- (i) *Water and Sewerage Act 2000*.

## **75 Sharing public safety information—territory agencies**

- (1) A public safety agency may—
  - (a) give public safety information to another public safety agency (the ***receiving agency***); and
  - (b) impose conditions on how the receiving agency uses, stores or shares the information.
- (2) A public safety agency (the ***requesting agency***) may request public safety information from another public safety agency.

- (3) If a public safety agency receives a request under subsection (2), the agency may comply with the request if it is satisfied that the requesting agency will use the information only to exercise a function given to the requesting agency under a territory law.

## **76 Sharing public safety information—non-territory agencies**

- (1) A public safety agency may give public safety information to a non-territory agency if the public safety agency is satisfied that—
- (a) the information relates to a function of the non-territory agency; and
  - (b) the information relates to compliance with a law of the Commonwealth, a State or the Northern Territory that provides for public safety; and
  - (c) the non-territory agency that receives the information (the *receiving agency*) will use the information only to exercise a function the receiving agency has under a law mentioned in subsection (1) (b); and
  - (d) giving the information will not unreasonably compromise the exercise of a function under a territory law.
- (2) A public safety agency may impose conditions on how the non-territory agency uses, stores or shares the public safety information.

## **Division 10.2 Information sharing—protected information**

### **77 Offences—use or divulge protected information**

- (1) A person commits an offence if—
- (a) the person uses information; and
  - (b) the information is protected information about someone else; and

- (c) the person is reckless about whether the information is protected information about someone else.

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

- (2) A person commits an offence if—
  - (a) the person does something that divulges information; and
  - (b) the information is protected information about someone else; and
  - (c) the person is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

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

- (3) Subsections (1) and (2) do not apply—
  - (a) if the information is used or divulged—
    - (i) under this Act, another territory law, or another law in force in the Territory; or
    - (ii) in relation to the exercise of a function by a public official under this Act or another territory law; or
    - (iii) in a court proceeding; or
  - (b) to the using or divulging of protected information about a person with the person's consent.
- (4) A public official need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law in force in the Territory.

(5) In this section:

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*divulge* includes—

- (a) communicate; or
- (b) publish.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by a public official because of the exercise, or the purported exercise, of a function under this Act by the public official or someone else.

*use*, in relation to information, includes make a record of the information.

## Part 11 Notification and review of decisions

### 78 Definitions—pt 11

In this part:

*ACAT reviewable decision* means a decision mentioned in schedule 1, part 1.2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

*affected person* means a person mentioned in schedule 1, column 4 in relation to a decision.

*decision-maker* means the decision-maker for a reconsideration application.

*internally reviewable decision* means a decision mentioned in schedule 1, part 1.1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

*internal review notice*—see the [ACT Civil and Administrative Tribunal Act 2008](#), section 67B (1).

*reconsideration application*—see section 79 (1).

### 79 Applications for reconsideration

- (1) An affected person may make an application for reconsideration of an internally reviewable decision (a *reconsideration application*).
- (2) A reconsideration application must—
  - (a) be in writing; and
  - (b) set out the grounds on which reconsideration is sought; and
  - (c) be made not later than—
    - (i) 28 days after the internal review notice is given to the affected person; or

(ii) any longer period allowed by the registrar.

- (3) The making of a reconsideration application does not stay the internally reviewable decision or otherwise prevent action being taken as a result of the decision.

## **80 Reconsideration of internally reviewable decisions**

- (1) Within 30 days after receiving a reconsideration application, the decision-maker must—
- (a) reconsider the internally reviewable decision; and
  - (b) confirm, vary or set aside the decision.
- (2) The decision-maker must be a different person to the person who made the internally reviewable decision.
- (3) If the decision-maker does not confirm, vary or set aside the internally reviewable decision within 30 days after receiving the reconsideration application, the decision-maker is taken to have confirmed the decision.

## **81 Reviewable decision notice**

If the decision-maker makes an ACAT reviewable decision, the decision-maker must give a reviewable decision notice to the registrar and each affected person.

*Note* The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

## **82 Applications for review of ACAT reviewable decisions**

An affected person may apply to the ACAT for a review of an ACAT reviewable decision.



## Part 12 Miscellaneous

### 83 Qualifications, experience and competencies for professional engineers

- (1) The Minister must determine the qualifications, experience and competencies that an individual must have to be eligible to be a professional engineer.

**Examples—qualifications, experience and competencies**

- 1 a formal academic qualification
- 2 a stated period of experience

- (2) A determination is a disallowable instrument.

### 84 Continuing professional development for professional engineers

- (1) The Minister may determine continuing professional development for professional engineers.
- (2) A determination is a disallowable instrument.

### 85 Codes of practice

- (1) The Minister may approve a code of practice for—
  - (a) professional engineers; or
  - (b) an area of engineering; or
  - (c) a professional engineering service.
- (2) An approved code of practice is a disallowable instrument.

**86 Protection of public officials from liability**

- (1) A public official is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act or another territory law; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another territory law.
- (2) Any liability that would, apart from this section, attach to the public official attaches instead to the Territory.

**87 Incorporating, applying or adopting documents in regulations and certain instruments**

- (1) This section applies to the following:
  - (a) a regulation made under this Act;
  - (b) an instrument made under section 84 (Continuing professional development for professional engineers) or section 85 (Codes of practice).
- (2) A regulation or instrument may incorporate, apply or adopt (with or without change or modification)—
  - (a) a law or an Australian Standard as in force from time to time; or
  - (b) another instrument as in force from time to time.
- (3) The [Legislation Act](#), section 47 (5) and (6) do not apply to a document incorporated, applied or adopted under subsection (2).
- (4) The director-general must ensure that an instrument that is incorporated, applied or adopted under subsection (2) (b) is—
  - (a) on the ACT legislation register; or
  - (b) available for inspection by anyone without charge during ordinary business hours at an ACT government office; or

- (c) accessible on an ACT government website, or by a link on an ACT government website.
- (5) An instrument that is incorporated, applied or adopted under subsection (2) (b) is not enforceable by or against the Territory or anyone else unless it is made accessible in accordance with subsection (4).
- (6) In this section:  
*ACT legislation register*—see the [Legislation Act](#), section 18 (1).

#### **88 Determination of fees**

- (1) The Minister may determine fees for this Act.
- (2) A determination is a disallowable instrument.

#### **89 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

## Part 13 Consequential amendments

### 90 Consequential amendments

This Act amends the legislation mentioned in schedule 2.

## **Schedule 1      Reviewable decisions**

(see pt 11)

### **Part 1.1                      Internally reviewable decisions**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 affected person</b>
1	16 (3)	refuse to consider application for registration	applicant for registration
2	18 (4)	refuse to consider application for renewal	applicant for registration renewal
3	20 (2)	refuse to consider application further	applicant for registration or registration renewal
4	22 (1) (b)	refuse to register individual as professional engineer	applicant for registration
5	22 (2) (b)	refuse to renew registration of professional engineer	applicant for registration renewal
6	24 (1) (a)	impose condition on registration	professional engineer
7	28	vary, or refuse to vary, registration	professional engineer
8	44	refuse to cancel registration of professional engineer	professional engineer

## Part 1.2 ACAT reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 affected person
1	32 (2) (b) (i)	impose condition on approval	assessment entity
2	33	vary, or refuse to vary, approval	assessment entity
3	34 (1)	refuse to revoke approval	assessment entity
4	34 (2)	revoke approval	assessment entity
5	38 (1)	take disciplinary action against professional engineer	professional engineer
6	41	immediately suspend or cancel registration of professional engineer	professional engineer
7	43	refuse to revoke immediate suspension or cancellation	professional engineer
8	80	confirm, vary or set aside internally reviewable decision	person applying for reconsideration

## **Schedule 2      Consequential amendments**

(see pt 13)

### **Part 2.1              Building Act 2004**

#### **[2.1]      Section 47 (1)**

*omit*

professional

#### **[2.2]      Section 47 (2)**

*substitute*

- (2) For subsection (1), the engineer must be—
- (a) an engineer in the field for which the engineer is giving the certificate; and
  - (b) if the engineer is required to be registered as a professional engineer under the *Professional Engineers Act 2023*— a professional engineer.

**Examples—par (a)**

- 1 An engineer giving a certificate about a matter mentioned in s 47 (1) (a) must be a structural engineer.
- 2 An engineer giving a certificate about a matter mentioned in s 47 (1) (b) that relates to fire protection and safety must be a fire engineer.

#### **[2.3]      New section 47 (5)**

*insert*

- (5) In this section:
- professional engineer*—see the *Professional Engineers Act 2023*, section 7.

## Part 2.2 Construction Occupations (Licensing) Act 2004

**[2.4] Section 123AA, definition of *public safety agency*, new paragraph (fa)**

*insert*

(fa) the registrar under the *Professional Engineers Act 2023*;



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## Dictionary

(see s 3)

*Note* The [Legislation Act](#) contains definitions relevant to this Act. For example:

- ACAT
- ACT
- appoint
- bankrupt or personally insolvent
- corporation
- indictable offence (see s 190)
- individual
- proceeding.

***ACAT reviewable decision***, for part 11 (Notification and review of decisions)—see section 78.

***affected person***, for part 11 (Notification and review of decisions)—see section 78.

***aggrieved person***, for part 9 (Complaints about professional engineers)—see section 63.

***application for registration***—see section 16 (1).

***application for renewal***—see section 18 (1).

***approved code of practice*** means a code of practice approved under section 85.

***area of engineering***—see section 9 (1).

***assessment entity*** means an entity approved under section 32 to conduct an assessment scheme.

***assessment scheme***, for part 5 (Assessment entities)—see section 32 (1).

**authorised person** means—

- (a) the registrar; and
- (b) a deputy registrar; and
- (c) a person appointed as an authorised person under section 48.

**carry out**, a professional engineering service, includes being responsible for the carrying out of a professional engineering service.

**complainant**, for part 9 (Complaints about professional engineers)—see section 66 (1) (b).

**conduct** means an act or an omission to do an act.

**decision-maker**, for part 11 (Notification and review of decisions)—see section 78.

**deputy registrar** means a person appointed as a deputy registrar under section 12.

**disciplinary action**, against a professional engineer, for division 6.1 (Disciplinary action)—see section 35.

**engineers register**—see section 30 (1).

**former professional engineer** means an individual who has been a professional engineer.

**ground for disciplinary action**, for division 6.1 (Disciplinary action)—see section 36 (1).

**immediate action notice**—see section 41 (3).

**internally reviewable decision**, for part 11 (Notification and review of decisions)—see section 78.

**internal review notice**, for part 11 (Notification and review of decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

**law of another jurisdiction**, for division 10.1 (Information sharing—public safety information)—see section 74.

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***non-territory agency***, for division 10.1 (Information sharing—public safety information)—see section 74.

***professional engineer***—

- (a) for this Act generally—see section 7; and
- (b) for division 6.1 (Disciplinary action)—see section 35; and
- (c) for part 9 (Complaints about professional engineers)—see section 63.

***professional engineering service***—see section 8 (1).

***proposed disciplinary action***, for division 6.1 (Disciplinary action)—see section 37 (1).

***public official*** means a person who is, or has been, any of the following:

- (a) the director-general;
- (b) the registrar;
- (c) the deputy registrar;
- (d) an authorised person;
- (e) a person exercising a function under this Act.

***public safety agency***, for division 10.1 (Information sharing—public safety information)—see section 74.

***public safety information***, for division 10.1 (Information sharing—public safety information)—see section 74.

***reconsideration application***, for part 11 (Notification and review of decisions)—see section 79 (1).

***registered*** means registered as a professional engineer under this Act.

***registrar*** means the person appointed as the Australian Capital Territory Professional Engineers Registrar under section 10.

**registration** means registration as a registered engineer under this Act.

**registration certificate**—see section 26 (2).

**registration number**—see section 26 (2) (c).

**relevant law** means a law of the ACT, the Commonwealth, a State or the Northern Territory relating to—

- (a) the carrying out of an engineering service (however described);  
or
- (b) a registration authorising an individual to carry out an engineering service (however described).

**required qualifications, experience and competencies** means the qualifications, experience and competencies determined by the Minister under section 83.

**respondent**, for part 9 (Complaints about professional engineers)—see section 66 (1) (d).

**show cause notice**, for division 6.1 (Disciplinary action)—see section 37 (2).

**suitability information**, about an individual, for part 4 (Registration of professional engineers)—see section 15 (1).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 1 December 2022.

**2 Notification**

Notified under the [Legislation Act](#) on 11 April 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Professional Engineers Bill 2023, which originated in the Legislative Assembly as the Professional Engineers Bill 2022 and was passed by the Assembly on 23 March 2023.

Clerk of the Legislative Assembly

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