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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CONSTRUCTION AND ENERGY EFFICIENCY LEGISLATION AMENDMENT  
BILL 2014**

**REVISED  
EXPLANATORY STATEMENT**

**Presented by  
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# CONSTRUCTION OCCUPATIONS AND ENERGY EFFICIENCY LEGISLATION AMENDMENT BILL 2014

## Overview of the Bill

The Construction and Energy Efficiency Legislation Amendment Bill 2014 (the Bill) amends a number of laws administered by the Environment and Sustainable Development Directorate.

The Bill is intended to refine the operation of a range of regulations applying to construction and related work in the Territory, and the Energy Efficiency Improvement Scheme. The Bill will also implement provisions that complement a review of the Building Act and other relevant legislation.

The Construction and Energy Efficiency Legislation Amendment Bill 2014 amends the following laws:

- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*
- *Electricity Safety Act 1971*
- *Energy Efficiency (Cost of Living) Improvement Act 2012*

## Construction Occupations (Licensing) Act 2004 and Construction Occupations (Licensing) Regulation 2004

The proposed amendments to the *Construction Occupations (Licensing) Act 2004* (COLA) and the *Construction Occupations (Licensing) Regulation 2004* (COLR) are to:

- create a new inspection power under the Act to allow for inspection of work for certain occupations that have limited inspection powers under operational Acts (works assessors), or for which there is no operational Act (building assessors); and
- allow for processes to apply for, obtain and execute a search warrant to enter premises if required; and
- revise provisions relating to the public provision of information held in registers kept by the Construction Occupations Registrar and provide for a 'public register' containing a subset of information on licensees.

### New role of inspector for certain occupations

The roles of compliance auditors appointed under COLA and the inspectors appointed under its operational Acts are intended to provide for the spectrum of activity involved in compliance work. Inspectors audit for compliance with requirements for work carried out by licensees, which are prescribed in operational Acts. Compliance auditors audit the paperwork and other forms licensees must provide for the Act and operational Acts.

In a practical sense, documentation for the purposes of the role of a compliance auditor may be non-technical documentation and not necessarily require particular expertise to determine compliance with legislated obligations. For example, a compliance auditor with no technical background could determine whether a licensee's paperwork was provided within statutory timeframes. However, it is not expected that any person appointed as a compliance auditor would be able to audit technical documents, such as approved building plans for compliance with technical standards for building, electrical, gasfitting and plumbing. To address this most inspectors are appointed under operational Acts and as compliance auditors.

The provisions in part 6 of the COLA are necessarily broad to incorporate a number of diverse occupations. The provisions were established when all of the occupations included in COLA had existing Acts covering how the licensable work must be carried out. These became "operational Acts" of COLA.

Since 2010, two new occupations have been included in the COLA – building assessors and works assessors.

Building assessors provide energy efficiency assessments for compliance with:

- disclosure requirements for the *Civil Law (Sale of Residential Property) Act 2003* and the *Residential Tenancies Act 1997*; and
- certain energy efficiency performance standards under the *Building Act 2004*.

Building assessment can be undertaken on premises, for example conducting an onsite audit and assessment of an existing house, or in relation to a premises such as in the case of providing an energy efficiency assessment on a proposed dwelling. At present, only residential dwellings are subject to building assessment services.

Although some assessments under the Building Act may be audited and inspected under the powers in that Act, there is effectively no operational Act for energy efficiency assessments for sale or lease of property. The requirements for preparing an energy efficiency rating are contained entirely in COLA and in instruments made under it, including codes of practice.

As some building assessment services include an on-site assessment of an existing building, auditing of paperwork only is not sufficient to determine compliance with the operational requirements of the work. Therefore, although an audit of an energy efficiency rating on an existing property would inherently require an inspection of the building to which the rating

applies, there are no specific powers that clarify determining compliance would include inspecting buildings that have been subject to a building assessment service for sale or lease of premises other than those in COLA for a compliance auditor.

Works assessors provide assessments under the *Planning and Development Act 2007* and the *Unit Titles Act 2001*. These are both operational Acts under which inspectors and other authorised people may be appointed. However, similar to the framework for building assessors, the operations and standards for works assessment are prescribed in codes of practice under COLA. A works assessment can include a physical onsite assessment of structures and landscaping for compliance with unit titling requirements.

In the current regulatory system there is an inequality as all other licensed work under COLA is subject to specific physical inspection powers as intended by the original legislation. To address this regulatory gap, this Bill introduces a new system for inspections for building assessment work and works assessment work in Part 6 (Enforcement) of COLA.

As for operational Acts, an inspector is responsible for inspecting the work undertaken by licensees for compliance with the COLA, including its codes of practice. Inspection powers allow for entry to premises only within certain parameters and require consent for entry to residential parts of premises. Privacy implications are discussed in the *Human Rights Implications* section below.

For consistency across construction legislation, this system is based on existing inspection powers in the Electricity Safety Act (Part 7), Gas Safety Act (Part 6) and Water and Sewerage Act (Part 4), which are all operational Acts under COLA. Consistent with provisions for compliance auditors and other inspection powers, the Bill introduces an offence with a maximum penalty of 50 penalty points for not taking reasonable steps to comply with a requirement of the inspector to help with exercising the inspector's functions. Further information is in the section on offences.

Depending on the expertise of the officer, an inspector's appointment may be limited to a single occupation or only certain inspection functions as deemed appropriate by the Registrar.

### Search warrants

There are a range of powers under the Act that can be exercised by the Registrar, Deputy Registrars, delegates and compliance auditors. However, in relation to premises there are limitations to the exercise of these powers, particularly for residential premises. Although protections for occupants are appropriate, in some cases they may be used to restrict access to information or objects at premises critical to the enforcement of the Act.

To complement existing enforcement powers under the COLA, this Bill inserts standard provisions for search warrants. This would apply to both compliance auditors and the newly-created inspectors under the Act.

A search warrant cannot be issued for any breach of legislation. A warrant may only be issued if there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity connected with an offence against the Act;  
and
- (b) the thing or activity is, or is being engaged in, at the premises, or may be, or may be engaged in, at the premises within the next 14 days.

The exercise of powers under the warrant must be in accordance with the warrant, meaning that officers cannot remove things that are not mentioned in the warrant or enter premises outside hours indicated in the warrant. Officers must also announce entry and provide details of the warrant to occupiers.

Privacy implications are discussed in the *Human Rights Implications* section below.

#### Public information about construction licensees

The Construction Occupations Registrar (the Registrar) is required to keep a register of licensee details and other information including for rectification orders, occupational discipline, suspensions and cancellations. It is important for people who engage construction practitioners to have access to information to make an informed decision on whom to engage and whether that person holds an appropriate licence. As such, section 107 (4) requires the Registrar to make the register available to the public. It does not prescribe how the information in the register must be made public.

Some information held in the register is not suitable for publication on a website or for disclosure, for example personal details such as personal phone numbers, residential addresses and potentially information of a confidential and personal nature that may be disclosed to the Registrar in relation to compliance and enforcement. In addition, disclosure of some information could be considered unfair, such as publishing information on a previous disciplinary action that was not upheld on review. A subset of information that would be reasonable to disclose for community protection has not been defined in the Act.

To avoid privacy and other issues at present, only names, licence classes, license expiry dates and conditions and endorsements are published weekly at [http://www.actpla.act.gov.au/topics/hiring\\_licensing/find\\_professional/list](http://www.actpla.act.gov.au/topics/hiring_licensing/find_professional/list). All other information in the register is available only on request.

As part of the Government's ongoing work to improve the quality of building work in the Territory, considerable feedback has been provided by members of the public and industry about the lack of available information on licensees, particularly compliance history, licence conditions and whether a licensee has been subject to a rectification order. This means that although ACT legislation requires people to use licensed people, very little information is

freely available to people wishing to engage a licensed person on the licensee they may wish to hire.

To improve the availability of information while protecting personal or unfairly prejudicial information that may also be included in the Registrar's register, this Bill amends section 107 of the Act to effectively create a "public register" that contains a limited subset of information on ACT construction licensees and is published on a regular basis.

Information that is not published would still be available to members of the public on request. However, before providing the information the Registrar would need to consider:

- (a) the reason the person requires the information, including whether it is related to the provision of a construction service; and
- (b) whether the information includes personal or other information the Registrar believes would be inappropriate or illegal to disclose; and
- (c) whether the provision of the information would compromise the exercise of a function under this Act or an operational Act.

The considerations are intended to prevent disclosure to a person simply looking for personal details or information on a licensee for reasons unrelated to the exercise of a construction service, and protect undue trespass on a licensee's privacy. A decision to provide or not to provide information would be reviewable by the person that requested the information.

The new provisions do not override any order from a court or tribunal for the provision or suppression of information, freedom of information or privacy legislation.

The Registrar would be required to publish the register weekly but would need to update relevant information about suspension, cancellations and disqualifications by the end of the next working day after an automatic suspension, interim suspension, or ACAT-ordered suspension or cancellation is imposed or lifted. Other suspensions and cancellations would need to be updated after any review period or ACAT review is complete.

In addition to the information already published by the Registrar, the names of nominees and certain information about automatic and interim suspensions, occupational discipline orders made by ACAT, suspension, disqualification or other actions taken as the result of an accumulation of demerit points will be included in the public register. The register would also contain information about former licensees that held a licence within the last ten years if available.

Information proposed for inclusion has been selected mindful of the differing internal and external review processes associated with different types of actions that may be taken under the COLA. This is balanced with the need for expedient dissemination of information to the public. Therefore in the case of a number of actions that are subject to review, information would not be able to be published until the period of review is complete and if a review is requested, that a decision on the review has not been made or the action overturned.

## **Electricity Safety Act 1971**

The proposed amendments to the *Electricity Safety Act 1971* are to:

- insert new provisions to complement the current powers to set energy efficiency standards for electrical appliances, which allow for regulations to be made for energy efficiency, energy conservation or environmental safety;
- revise product approval process to remove an unused product approval mechanism for the ACT and rely on the existing corresponding law provisions and cooperative national arrangements to recognise approved products; and
- replace all references to the planning and land authority with references to the construction occupations registrar to reflect the administrative responsibilities under the Construction Occupations (Licensing) Act.

### Expansion of energy efficiency powers

Other than section 27 as it relates to appliances and other equipment, the Electricity Safety Act has a traditional focus on the safety of products and installations. The energy efficiency section only covers the sale of products and not the efficiency of an installation or installed equipment or appliances.

With the increasing focus on the efficient use of energy and the need for environmental conservation, there may be instances where an installation standard for these reasons applying to certain installations, or installed equipment and appliances is desirable. As an example, there may be a requirement for all electric water heaters in schools to meet a minimum efficiency standard, or that electrical installations are configured in a way that reduces the greenhouse gas emissions resulting from the operation of the installation.

Standards for electrical installations already exist in the building code declared under the *Building Act 2004*. These standards include the efficiency levels of installed equipment and limitations on the amount of energy for lighting systems. However, these standards apply only when the electrical work is part of building work that triggers requirements to meet the building code. There is no complementary power under the Electricity Safety Act for electrical installations that are not part of approved building work.

This Bill inserts provisions that allow regulations to be made to promote the efficient use or conservation of power and energy or to limit harm to the environment.

The new provisions are intended for standards to promote an environmental or efficiency aim rather than purely a safety outcome i.e. reduce energy consumption and the environmental impact of the use of electricity in electrical equipment and electrical installations. Where there is a clear safety outcome required, a standard existing regulation-making power will be used, but the new power will also be able to make incidental standards such as where an environmental impact may arise from the use of a particular appliance or disposal of certain materials.

The proposed amendments would allow specific standards for electrical installations and appliances to be made without requiring corresponding building or other work to be undertaken. Regulatory impact analysis would apply to each regulation made under the head of power.

This amendment is consistent with the Commonwealth *Greenhouse and Energy Minimum Standards Act 2012* as that Act regulates for the supply of products rather than installation standards.

#### Electrical equipment registration processes

The Electricity Safety Act provides for registration of prescribed articles of electrical equipment. These provisions have been in place for many years but to date the ACT has not registered a single product. This is because states and territories use a system of corresponding laws to recognise each other's product approval legislation and the ACT does not contain a major port (for imported products) or a manufacturing base (the current law only allows for registration of products manufactured in the ACT). There is no demand for product registration in the ACT. This means that approval processes must be maintained although it is unlikely they will ever be used.

This Bill removes the existing registration process under the Act and allows for registration requirements in a corresponding law or prescribed in a safety standard set under regulation if required. A number of provisions already permit the use of corresponding laws that are substantially the same as Part 3 (Prescribed articles of electrical equipment) and to date the ACT has used these provisions to reference external legislation without separately regulating the same products. This includes the safety standards that generally require registration of prescribed articles of equipment. The Registrar would retain the power to prevent the sale of an unsafe item, refuse to recognise a registration and to require testing of the product but the Act would no longer include a registration process. Registrations would be managed by other jurisdictions and recognised in the ACT as per the current national arrangements.

In considering whether the provisions, which may delegate relevant powers of the Legislative Assembly, are appropriate, it is useful to consider the context in which these provisions are proposed. To date there have been no electrical equipment registrations given under Territory law. Therefore, the Act already operates as though the ACT had no registration requirements.

Although the Assembly may not have direct control over the contents of external laws, in general all corresponding legislation relies on Australian Standards and other nationally agreed safety standards and processes developed by electrical regulatory authorities. The Territory is generally involved in setting of standards for electrical work and electrical appliances at a national level.



The ability to manage product approvals under corresponding law is a long-standing provision in the Act. A declaration of a corresponding law must be made by the Minister and is a notifiable instrument. The Minister remains responsible for the currency and appropriateness of the declaration, including the ongoing use of external legislation and its continuing relevance.

If a standard is made under regulation the Executive is able to exercise discretion on whether to disallow the regulation. The control of the Assembly does not end once the regulation has been made. If a member of the Assembly is concerned about a new version of an instrument, the member may present their own regulation for consideration by the Assembly.

In consideration of the above, the delegation of legislative power is appropriate in this case.

#### Roles of the Construction Occupations Registrar and the Planning and Land Authority

The Construction Occupations Registrar (Registrar) has a number of functions under section 104 of the *Construction Occupations (Licensing) Act 2004* (COLA), including administering operational Acts. The *Electricity Safety Act 1971* (ESA) is an operational Act under the COLA.

The majority of the decisions and administrative functions under the ESA were transferred to the Registrar on the creation of the COLA. However, although it is the Registrar that holds the statutory office for construction regulation and the responsibility for regulating electricians and the safety of electrical installations (including electrical equipment) certain powers still remain in law with the statutory office of the planning and land authority. For example, the planning and land authority is responsible for prescribing and setting relevant safety standards for articles of electrical equipment but the Registrar is responsible for approving the sale of prescribed equipment against those standards. Similarly, the Registrar is responsible for examining and testing articles of equipment but only the planning and land authority can approve a testing laboratory for the Act.

This not only creates an unwieldy division of responsibilities but is incongruous with the role of the Registrar under COLA. In practice, the Registrar predominantly exercises the relevant functions under the Act either under the Registrar's own power or under authority delegated by the planning and land authority. Safety notices and prohibition of articles of electrical equipment are likely to be prepared on recommendation from the Registrar given that the electrical inspectorate is managed by the Registrar. This is because although the functions were administered by the former agency called the ACT Planning and Land Authority (now incorporated into the Environment and Sustainable Development Directorate), regulation of individual appliances and other electrical regulatory matters is largely unrelated to the planning functions held by the statutory office of the planning and land authority appointed under the *Planning and Development Act 2007*.

To reflect the administrative responsibilities under the COLA and the intent of the 2004 construction licensing reforms, this Bill transfers all residual powers of the planning and land authority in the ESA to the construction occupations registrar.

### **Energy Efficiency (Cost of Living) Improvement Act 2012**

The proposed amendments to the *Energy Efficiency (Cost of Living) Improvement Act 2012* are to augment the existing regulatory framework to:

- allow for the exclusion of activities for a retailers energy savings result that were undertaken before the mandatory lodgement of compliance plans, or that were not undertaken in accordance with a code of practice (reviewable decision);
- provide for the sharing of information between relevant regulatory entities that administer requirements related to the operation of electricity retailers under the Act, and improve general information gathering powers;
- allow for powers to require rectification of things that pose a risk to people, property of the environment, enforcement of codes of practice, and restriction of the operation of retailer's and their agents on grounds of public safety;
- clarify that an assessment of compliance for a particular year can be revised up to 5 years after the end of the compliance period to which it relates if information on which the assessment is based is incorrect or activities counted towards the acquittal are found to be non-compliant after the completion of the assessment; and
- remove the unused definition of "auditor" in the Act and insert an ability for the Administrator to making code of practice about auditing of compliance period reporting and appointment of auditors.

#### Undertaking activities before lodging a compliance plan

Section 17 (1) of the Act requires electricity retailers with an authorisation issued by the Australian Energy Regulator to sell electricity in the ACT (NERL retailers) to give a compliance plan to the Administrator before undertaking eligible activities in a compliance period. The compliance plan has predominantly an administrative purpose and is intended to assist the Administrator to identify any potential compliance issues before a retailer starts its activities for the compliance period. Section 31 of the *Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice 2012 (No 1)* (Reporting code of practice), DI2012-268 provides for the use of the compliance plan by the Administrator. S 31 (1) of code provides that on receipt of a complete compliance plan, the Administrator may, based on the information available at the time, assess—

- (a) the accuracy of calculations for energy savings obligations and priority household obligations, including allowances for any expected carried forward shortfall or surplus from a previous compliance period; and

- (b) the extent to which the type and volume of eligible activities reported in the compliance plan are likely to contribute to the achievement of the retailer's estimated obligations for the relevant compliance period; and
- (c) if the systems and processes as described in the compliance plan satisfy, or are likely to satisfy, the retailer's obligations under the Act.

The Administrator does not approve or endorse compliance plans but does make an assessment of the completeness of the document. The Administrator may request a new compliance plan if a retailer miscalculates its obligations and the miscalculation is likely to affect the retailer's planning for, or compliance with, its energy savings obligations.

It is expected that the retailer will provide accurate information to the Administrator to allow an assessment of likely compliance with relevant obligations. However, the information in the compliance plan is not intended to bind a retailer to offering particular eligible activities or prevent a retailer from revising processes and systems for management of its obligations under the Act during a compliance period.

Section 17 (3) provides for an offence for undertaking activities in a compliance period before giving the Administrator a compliance plan for the period. The offence is a strict liability offence with a maximum penalty of 10 penalty units. This is the only sanction for failing to comply with the provision.

Section 19 (e) contemplates that only abatement factors for eligible activities that comply with a code of practice will be able to be reported and counted towards a retailer's energy savings target. However, section 17 and section 19 are not directly linked: although section 17 requires a plan to be given before activities are undertaken, the eligibility of the activity under section 19 is only based on the activity being undertaken in accordance with a code of practice, not that it is also undertaken after the lodgement of a plan. Therefore, the legislation does not specifically give the Administrator power to exclude activities undertaken before the lodgement of a compliance plan from being eligible even though doing so is an offence. This means that a retailer could operate without having given a compliance plan and still claim abatement for activities during that period. The power to exclude activities aligns with the legislative intent of requiring a compliance plan.

This Bill provides that an activity is taken not to have been undertaken in accordance with a code of practice if it is commenced before a compliance plan for the compliance period in which the activity is commenced is given under section 17.

Activities are not considered complete until all relevant parts of the activity, including disposal or removed appliances and equipment, is complete. As such, there could be any number of activities that start in one compliance period and end in another. It is also possible in future that long-term activities intended to span more than one compliance period and lead to abatement in more than one compliance period (e.g. staged projects) could be approved.

The provisions are not intended to prevent completion of an individual activity commenced under a previous compliance period for which a plan was given. The completion of an eligible activity commenced legitimately in a previous compliance period under a correctly lodged compliance plan could extend to the next compliance period. Therefore, activities started legitimately under the first compliance plan should be able to count towards the next year's target.

#### Activities not undertaken in accordance with a code of practice

Section 19 (e) of the Act requires that retailers report abatement factors acquired by the retailer that comply with a relevant approved code of practice. It is intended that only abatement factors for eligible activities that comply with a code of practice will be able to reported and counted towards a retailer's energy savings target.

However, the 'acquisition' is self-determined by the retailer. The Administrator does not verify and approve each activity and related abatement factor prior to lodgement of the report. In addition, given the expected number of activities undertaken to acquit energy savings obligations will number in the thousands each year, it is not possible for the Administrator to verify compliance with all aspects of every activity.

The Administrator may be in possession of information about whether an activity was completed in accordance with a code of practice. Therefore, the abatement factors reported by the retailer may differ from the abatement factors determined by the Administrator as acquired in accordance with all relevant codes of practice.

Sections 20 and 21 of the Act provide that a calculation of an energy savings result must include the total abatement factors for eligible activities undertaken or acquired in the compliance period. It is expected that the Administrator will exclude abatement factors that have been reported if he or she is not satisfied that the eligible activity to which they relate has not been undertaken in accordance with all relevant codes of practice. In addition, it is expected that the Administrator may use a different abatement factor than that reported if the abatement factor for the activity has been incorrectly calculated – for example the retailer has used a coefficient for a "high efficiency" product when the installed product is "medium efficiency" and has a lower coefficient.

This Bill clarifies that the Administrator is able to exclude an abatement factor from a retailer's energy savings result if the Administrator is not satisfied that the activity complies with a relevant approved code of practice. The Administrator may also substitute data that the he or she believes on reasonable a ground is correct. In the above example, this would mean the Administrator could substitute an abatement factor based on the correct "medium efficiency" coefficient in the retailer's energy savings result.

The decision on an energy savings result is reviewable. This includes a decision on an energy savings result that was the product of substituted data.

### Revisions of energy savings results

Due to the nature and volume of the activities undertaken under the Act, verifying compliance of each of the activities a retailer has undertaken is not possible. In addition, non-compliance of an activity may not be discovered until after the finalisation of the energy savings result for the compliance period.

Final sales as reported to the Australian Energy Regulator (AER) may also be revised during the AER acquittal and reporting process, which differs in timing from the reporting requirements under the Act.

As such, the Administrator may need to revise the calculation of the energy savings result if a retailer's final sales figures are revised or compliance issues or miscalculations were found for activities reported in previous compliance periods.

This Bill allows the Administrator to re-calculate an energy savings result and issue revised energy savings contributions or penalties up to 5 years from the end of the compliance period to which the energy savings result relates. A period of 5 years aligns with recordkeeping requirements under section 26 of the Act, which requires NERL retailers to keep the records that are necessary for the Administrator to determine whether the retailer's energy savings obligations have been complied with for at least 5 years after the end of the compliance year to which the record relates.

The decision to re-calculate an energy savings result is a reviewable decision.

### Audit of information in compliance report

Section 19 (2) provides for some or all of the information provided by a retailer as part of an annual compliance report to be audited. This may include audits of records, reported sales and obligations, as well as other financial information such as for the cost of compliance with the Act.

The term *auditor* in the Act is defined solely in relation to financial auditing, which may not be the focus of the audit requested or appropriate for the type of information that may be audited. Auditors are not referred to in the Act other than in the dictionary definition.

At present all of the requirements for auditing and provision of audit reports are contained in the *Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of*

*Practice 2013 (No 1)* DI2013–265 at <http://www.legislation.act.gov.au/di/2013-265/current/pdf/2013-265.pdf> . The code is made under section 25 of the Act, which provides that the Administrator may make codes of practice for reporting amongst other things.

This Bill removes the definition of auditor for the Act and clarifies that the Administrator’s powers to make codes of practice includes requirements for auditing as it applies to the reporting of information under section 19.

Codes of practice are subject to disallowance by the Assembly.

#### Information sharing and referral of information to other agencies

Section 25 of the Act provides that the Administrator may approve a code of practice for:

- (a) consumer protection obligations;
- (b) quality, health, safety and environmental requirements applying to eligible activities;
- (c) record keeping requirements; and
- (d) reporting requirements.

Many of the activities that can be undertaken for the Act have aspects that are regulated under other legislation such as the Construction Occupations (Licensing) Act, the Work Health and Safety Act, and the Australian Consumer Law. It is intended that for an activity to count towards the energy savings result for a retailer, all applicable legislation in the ACT and other relevant jurisdictions is complied with. This is reflected in the requirements for the activities determined by the Minister *in the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2013 (No 1)* (NI2013-300). The codes of practice made by the Administrator also refer to compliance with other relevant laws. This is so that abatement for an activity is not awarded independently or at the expense of the activity complying with those other relevant laws.

There are three types of entities that relate to the current codes of practice:

- other Territory agencies;
- agencies of another state, especially NSW where some parts of activities such as recycling or disposal of products may occur; and
- Commonwealth agencies, particularly for compliance with the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

To determine compliance with requirements for the activity the Administrator may need to obtain information from, or provide information about the undertaking of eligible activities to, other regulatory authorities. In addition, in accordance with the principle of a single Government entity, it would be expected that should the Administrator or a delegate of the Administrator obtain information that relates to the compliance of an entity with another Territory law, that the person would inform the relevant agency.

Forms provided for the completion activities already include an alert that information may be shared with other regulatory agencies for the purposes of determining compliance. However, to avoid potential privacy issues about referral of relevant information to other regulators to determine compliance, this Bill includes information-sharing provisions in the Act.

For Territory bodies this would be information sharing of relevant information with relevant entities insofar as:

- the entity that receives the information will use the information to exercise a function the recipient has under a territory law; and
- giving or receiving the information will not compromise the exercise of a function under a territory law.

The giving agency can place restrictions on the use, storage and provision to other parties of information given under these provisions.

Information sharing would be restricted to entities prescribed in the Act. This would initially include the construction occupations registrar, the planning and land authority, the environment protection authority, the commissioner appointed under the *Fair Trading (Australian Consumer Law) Act 1992*; the director-general responsible for the *Fair Trading (Australian Consumer Law) Act 1992*; the director-general responsible for the *Work Health and Safety Act 2011*; the commissioner appointed under the *Work Health and Safety Act 2011*; the Independent Competition and Regulatory Commission and the Chief Executive Officer appointed under the *Independent Competition and Regulatory Commission Act 1997*.

In relation to regulatory agencies of the Commonwealth or another state or territory, the Bill provides that the Administrator may provide information to a non-Territory agency if the Administrator believes on reasonable grounds that—

- the information relates to the undertaking of eligible activities; and
- the information relates to compliance with a law of another jurisdiction that is applied, adopted or incorporated under a determination made under section 10 (Eligible activities) or a code of practice;
- the Administrator is satisfied that—
  - the entity that receives the information will use the information to exercise a function the recipient has under a relevant law; and
  - giving the information will not compromise the exercise of a function under a territory law.

The Administrator would be able to place restrictions on the use, storage and provision to other parties of information given under this section. Provision of information from these entities to the Administrator would be bound by the relevant laws in their respective jurisdictions.

Privacy implications of these provisions are discussed in the *Human Rights Implications* section below.

### Information gathering provisions for the Administrator

The Administrator is responsible for determining compliance with the Act. Carrying out eligible activities may involve many parties, including practitioners that are not directly under the Act, who may hold critical information required to determine compliance with the Act.

This may include obtaining access to information that is held by retailers, other parties contracted to undertake eligible activities as well as suppliers and recipients of activities. At present, there are no powers in the Act that allow the Administrator to request relevant information from these entities.

The existing powers for authorised officers to gather information under s 35 would allow inspection and photographing etc anything on premises. However, the Administrator should be able to request retailers to produce information related to their compliance with the Act and reasonably required for carrying out his/her functions in administering the Act without requiring entry to premises. There is a need to decouple the requirement to enter a person's premises from the ability to obtain documents.

This Bill includes information gathering powers similar to powers of the Construction Occupations Registrar and the planning and land authority.

If the Administrator believes on reasonable grounds that a person has information reasonably required by the Administrator for the administration or enforcement of the Act or has possession or control of a document containing the information the Administrator may give the person a notice requiring the person to give the information, or produce the document, to the Administrator.

Section 170 and 171 of the Legislation Act protect against self-incrimination and preserve client legal privilege. In addition, the provisions provide that a person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the Administrator in accordance with an information requirement.

Privacy implications of these provisions are discussed in the *Human Rights Implications* section below.

### Compliance with codes of practice

Although the primary objective of the Act is to reduce greenhouse gas emissions and energy/power consumption, this is not expected to be at the expense of public health, safety, other environmental issues and protection of consumers and property. This is evidenced by the ability of the Administrator to make codes of practice for consumer protection obligations and quality, health, safety and environmental requirements applying to eligible activities.



The Act includes provision for determining the energy savings retailers must achieve but leaves the decision about what activities are to occur or how the target will be met to the individual retailers.

There are no sanctions, offences or penalties in the Bill for non-compliance with a code of practice other than failing to keep records in accordance with a code of practice. Rather, the original intent of the legislation was to refer to existing statutes that require safe installation practices, such as in relation to electrical safety.

At present the strongest mechanism in the Act is to remove an activity that is not compliant with a code of practice from the energy savings result calculation with stronger penalties and remedial actions only able to be enforced by other relevant statutory authorities where they provide some coverage of an activity.

This Bill introduces new powers for contraventions of codes that will address potential gaps where existing safety legislation may not provide adequate coverage of an activity implemented under the scheme. These new powers allow the Administrator to:

- require the retailer or agent to complete a stated course of training to the satisfaction of the Administrator;
- restrict or place a condition on the performance of an activity by the retailer or agent;
- require the retailer to rectify the contravention within a stated time;
- authorise someone else to rectify the contravention, and require the NERL retailer to pay for the work if the Administrator is satisfied that it would not be appropriate to require the retailer to rectify the contravention because of the relationship between the retailer and the land owner;
- require the retailer to pay a financial penalty of not more than \$1 000 in relation to each contravention.

For fairness, before the Administrator can take an action they must give the retailer a notice providing details of the action that may be taken; an explanation of why the Administrator intends to take the action; and that the retailer may make submissions about the proposed action during a period stated in the notice that is not less than 5 working days after the day the person receives the notice. The Administrator must consider any submissions received before making a decision. The decision to take an action under this section is a reviewable decision.

#### *Rectification orders*

Rectification order powers in the Bill are intended to complement existing powers in other Territory legislation that relates to carrying out eligible activities or other obligations under the Act. The Administrator may make a rectification order if satisfied that it is appropriate to do so, that is that there has been injury or damage caused by a contravention, particularly a threat to the health and safety of people, or damage to property or the environment.

If there is another Territory law that could address the matters the rectification order would cover, the Administrator must first refer the matter to the agency responsible for administering the law, and be satisfied that risks to health, safety and environment have not been addressed under the Territory law.

If the action would involve work to be completed on land or premises not owned or occupied by the retailer, such as order rectification of an installation made as part of an eligible activity, the land owner would also need to be notified. This is important as the Administrator could determine it is inappropriate to make an order for the retailer or their agent to return to premises because of the relationship between the landowner and the retailer.

If the Administrator does not make a rectification order another person may be authorised to do the things stated in the notice, and the retailer will have to pay for the things to be done. The decision to authorise another person to complete work is a reviewable decision.

If a person contravenes a rectification order the Administrator may also authorise a person to complete the work, however work may only commence:

- (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 *ACT Civil and Administrative Tribunal Act 2008*—the review is finally disposed of; or
- (b) the review period has ended.

The new provisions also outline the role of people authorised to undertake rectification work and notification they must provide to land owners before work is undertaken.

The Administrator is not prevented from issuing the order only because report has been accepted, an energy savings result has been calculated, or penalty notice has been issued that may relate to the activity or other action that contravenes a code of practice. For example, if a retailer's energy savings result for a year includes activities that were later found to have caused or be likely to cause injury to a person the Administrator would not be prevented from determining the activity non-compliant and could issue an order in relation to the activity.

### Restrictions on public safety grounds

In addition to rectification orders, where the Administrator believes on reasonable grounds that a person engages in conduct, or demonstrates a lack of skill and knowledge when carrying out an eligible activity, that the Administrator decides, on reasonable grounds, 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, the Administrator can place a restriction on a retailer or their agent. Restrictions could include one or more of the following:

- (a) preventing a person from undertaking an eligible activity for the purposes of creating abatement factors under the Act;
- (b) preventing a person from undertaking certain prescribed activity requirements for the purposes of creating abatement factors under the Act;
- (c) preventing a person from undertaking eligible activities or certain prescribed activity requirements without supervision for the purposes of creating abatement factors under the Act; or
- (d) requiring a person to undertake specific training, assessment or other remedial activity before undertaking an eligible activity or certain prescribed activity requirements for the purposes of creating abatement factors under the Act.

The provisions would also work with rectification provisions and powers in section 47 of the Act and other territory law that may apply to the breaches of legislation and safety standards that trigger the need for a restriction on a person.

The Administrator would be able to restrict a retailer or a person from undertaking an eligible activity for the purposes of achieving abatement factors under the Act. For example, an eligible activity may involve work to install sealing to exhaust fans. Installations for which abatement is being claimed have caused a number of safety problems. The Administrator would not have the capacity to prevent the retailer or installer continuing to provide the service to the market but could restrict the retailer from offering the activity as an eligible activity for the purposes of the Act until installers underwent remedial training. Therefore, abatement factors for the activity could not be created.

The restriction would take effect on notification by the Administrator.

These provisions are analogous to automatic suspension on public safety grounds under section 52A on the Construction Occupations (Licensing) Act. Placing a restriction on a person under the provisions is not reviewable as it acts to protect against immediate situations that are likely a risk of death or injury to a person, significant harm to the environment or significant damage to property. However, at any time the person subject to the restriction can apply for the restriction to be lifted. Refusing to lift a restriction is a reviewable decision. The Administrator must also review a restriction after 3 months and may revoke a restriction at any time.

## **Regulatory Impact Analysis**

Section 34 of the Legislation Act requires that if a proposed subordinate law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a regulatory impact statement (RIS) to be prepared for the proposed law.

This Bill amends the *Construction Occupations (Licensing) Regulation 2004*.

Section 36 of the Legislation Act provides for when the preparation of a RIS is unnecessary. A RIS for amendments to subordinate law proposed in this Bill is unnecessary because the amendment to the *Construction Occupations (Licensing) Regulation 2004* (the Regulation) is a consequential amendment made as a result of revising section 107 in the Act to provide for publication of certain information about licensees and an application process for applying for information from the register that is not published but kept by the Construction Occupations Registrar. The amendment in the regulation is to the schedule of reviewable decisions and creates a new reviewable decision for refusing to provide information from the register based on the provisions in the Act. This does not operate to the disadvantage of anyone by adversely affecting a person's rights or imposing liabilities on a person.

### *General impact of the Bill and amendments to primary legislation*

The proposed amendments to the *Construction Occupations (Licensing) Act 2004* (COLA) to create a new inspection power to allow for inspection of work of works assessors and building assessors are not expected to impose an appreciable cost on a sector of society. Licensees operate under an existing framework that includes inspections of work and there is both an industry and community expectation that inspections will be undertaken. Inspection costs will be managed within existing resources.

New provisions to revise existing requirements relating to the public provision of information held in registers kept by the Construction Occupations Registrar and provide for a 'public register' containing a subset of information on licensees respond to an information failure in the market for people that are engaging construction practitioners and practical difficulties with the release of information in accordance with the COLA. This will benefit the community by providing better information about the conduct of licensees and any restrictions on their practice and provide clear parameters for the publication of information and protection of private information about licensees that must otherwise be made public under existing laws. Maintaining and publishing registers will not impose a financial cost on the community.

The proposed amendments to the *Electricity Safety Act 1971* create a head of power that allows standards to be set for energy efficiency, energy conservation or environmental safety relating to electrical wiring work, electrical installations and disposal of electrical equipment.

No regulations are proposed under the new powers as part of this Bill. Any new regulation will require regulatory impact analysis.

Amendments to revise product approval process to remove an unused product approval mechanism for the ACT and rely on the existing corresponding law provisions and cooperative national arrangements to recognise approved products will have no material effect on the manufacturing or supply of equipment as there are no current ACT registrations.

Transferring all remaining responsibilities for electrical equipment and standards from the planning and land authority to the construction occupations registrar to reflect the administrative responsibilities under the Construction Occupations (Licensing) Act reflects current administrative practice.

The proposed amendments to the *Energy Efficiency (Cost of Living) Improvement Act 2012* are to augment the existing regulatory framework give the Administrator reasonable powers to prevent or respond to breaches under the Act. Therefore many of the new provisions apply only to retailers that have breached their obligations. As a number of risks may be created by or inherent to complying with obligations under the Act the effect of the provisions is to establish a system for all obligated parties in line with the expectations of electricity retailers and community members. The amendments give the Administrator greater capacity to ensure that the targets under the Act are met, and that they are achieved without compromising the health and safety of people, property and the environment.

There are no significant costs associated with the Bill and a number of provisions will provide a benefit as they streamline existing law, particularly for electrical equipment safety standards.

The Government's Triple Bottom Line Assessment Framework requires an assessment of climate change impacts for government bills or for major policy proposals. A statement of effects must be included in the explanatory statement for the relevant Bill.

The climate change impacts of this Bill have been considered and potential impacts are:

- enforcement powers in the *Energy Efficiency (Cost of Living) Improvement Act 2012* assist with achieving the greenhouse gas abatement targeted under the Act.
- new heads of power for energy efficiency and environmental standards for electrical installations allow for regulations to be made that may contribute to the reduction of greenhouse gas emissions in the Territory. No regulations are proposed as part of the Bill.

The proposed law is consistent with the policy objectives of the regulatory framework for construction occupations licensing, carrying out of work, occupational discipline, keeping of registers and the investigation of complaints for the construction industry already in place. This law exists to protect the public and responds to the substantial risks to workers, building occupants, users of building services and the general public inherent in construction work.

The proposed law is consistent with the policy objectives of the regulatory framework for the Energy Efficiency Improvement Scheme created by the EE Act already in place. This law exists to create an energy savings obligation on retailers with an authorisation to sell electricity in the Territory and provide means of complying with the obligations, including paying a contribution or carrying out eligible activities under the Act.

### *Scrutiny of Bills Principles*

The laws in this Bill are entirely consistent with Scrutiny Committee (the Committee) principles, in that they:

- accord with the general objects of the Acts under which they are made, as discussed above;
- do not unduly trespass on rights previously established by law, as they preserve existing rights, reduce limitations of rights for certain parties and interfere with privacy and other human rights only insofar as is necessary for participants in a regulated industry, consumer protection and enforcement of legislation;
- do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions, as even restrictions based on matters of imminent public safety are subject to subsequent review if restrictions are not lifted on application; and
- do not contain matters which should properly be dealt with in an Act of the Legislative Assembly, in that all provisions other than a provision placing a new reviewable decision in the relevant schedule to the *Construction Occupations (Licensing) Regulation 2004*, are in an Act.

This explanatory statement meets the technical and stylistic standards expected by the Committee.

## Offences and penalties

The Bill recasts existing offences and includes new offences in relation to:

- Electricity Safety Act, new section 8A, *Offences – energy efficiency requirements for electrical wiring work and electrical installations* for failing to comply with standards for energy or power conservation or limit harm to the environment carrying a maximum penalty of 50 penalty units per offence.
- Construction Occupations (Licensing) Act, new section 80C, *Inspectors – entry to premises* for failing to take reasonable steps to comply with a requirement by an inspector for reasonable assistance to exercise functions carrying a maximum penalty of 50 penalty units.
- Construction Occupations (Licensing) Act, new section 80CE, *Identity cards* for an inspector failing to return an identity card after cessation of their appointment as an inspector carrying a maximum penalty of 1 penalty unit.

### *Justification of penalties*

The proposed offences and penalties are warranted for the following reasons when considering the Territory's *Guide for Framing Offences*:

1. At its highest function, the services covered by the Act are regulated to protect the public.
2. Failing to comply with a request for information or assistance is an obstruction of the investigation process and the enforcement of the relevant Acts.
3. The consequences of not complying with procedures and technical standards for work can be high and include serious injury or death to workers, building occupants and other members of the public.
4. The penalties reflect the relative seriousness of the particular offences within the legislative scheme and the level of responsibility carried by the people falling within the obligation.

The penalty for each offence is commensurate with like provisions in the respective Acts.

- Failing to comply with existing standards for the sale of electrical equipment based on energy efficiency in section 27 (1) of the *Electricity Safety Act 1971* also has a maximum penalty of 50 penalty points. These penalties are lower than breaches of electrical safety standards, which carry higher risks and can result in imprisonment.
- The penalty of 50 penalty units for not taking reasonable steps to comply with a requirement of the inspector to help with exercising the inspector's functions is consistent with existing provisions for compliance auditors.
- The existing penalty of 1 penalty unit for failing to return an identity card has been expanded to incorporate the new inspectors that can be appointed under the COLA.

The amendments in the Bill are intended to improve the operation of construction legislation and give the regulator sufficient options to effectively administer the relevant Acts.

Standard defences available in the *Criminal Code 2002* would apply to these offences.

### **Human Rights Implications**

This bill may engage the right to privacy. This limitation is addressed below.

Section 12 of the Human Rights Act states that:

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The following provisions of the bill may engage the right to privacy:

- Construction Occupations (Licensing) Act (COLA)
  - Clause 17, Division 6.3 – which creates a new power for inspecting building assessment work and works assessment and allows entry to premises where relevant work was carried out, taking photographs, films, audio, video or other recordings, and seizing things.
  - Clause 17, Division 6.5 – which provides for applying for, obtaining and executing a search warrant.
  - Clauses 18 and 19 – which provide for information from the register kept by the Construction Occupations Registrar that can be made available to the public.
- *Energy Efficiency (Cost of Living) Improvement Act 2012* (EE Act)
  - Clause 43 – Information sharing provisions
  - Clause 45 Division 5.5C – Information gathering powers (Information requests)

#### *Importance and purpose of limitation*

Actions under the COLA are regulated primarily because of their capacity to impact on the consumer protections, safety, health and amenity of the occupants and users of buildings.

The work regulated under COLA involves work at premises and can include physical assessment of properties, land or structures. New inspection powers for building assessment work and works assessment work allow for verification of work against the standards put in place for public protection.



Search warrant powers are included to cater for times when access to something, or verification of an activity, at premises is critical to the operation and enforcement of the COLA but cannot be obtained using standard inspection or information gathering powers.

Public availability of information on the register of construction licensees is an important public protection so that people that intend to engage or have engaged a construction practitioner are able to access information about that practitioner, including that they hold a licence authorised for the work to be carried out and any other limitations that may prevent them undertaking a construction service.

Section 24 (2) of the EE Act provides that the Administrator is responsible for determining NERL retailers' compliance with the retailer's energy savings obligations. To adequately carry out this function, the Administrator must be able to access relevant documents and information.

As electricity retailers operating under the EE Act are likely to be corporations, there is not expected to be any human rights implications for retailers associated with information gathering and sharing provisions.

#### *Nature and extent of the limitation*

The extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy. For inspection powers, entry to residential premises can be obtained only after consent is given by the occupier of the premises. It should be noted that in many instances, it will be the occupant or landowner that requests an investigation or lodges a complaint about work and so may invite an inspection. A search warrant can be issued only by a magistrate and only when the object or activity to which the application relates is connected with an offence.

Things may be seized at premises only if an inspector is satisfied on reasonable grounds that the thing is connected with an offence and it is consistent with the purposes of the entry told to the occupier. Seizure powers also offer protection for the rights of an occupant or landowner as things can be seized if they put the health or safety of people or their property at risk. The Bill includes standard provisions about managing seized things. An inspector must give a receipt for a seized thing, allow access to the thing and return it within statutory timeframes. If an item is taken out of premises it must be stored in a way consistent with the Privacy Act, which prevents widespread access to an item and dissemination of information that may impact on a person's privacy or damage their reputation.

Public availability of all information on the register of construction licensees is already required by the COLA. The new provisions limit the publication of information to balance public protections with privacy and fairness for licensees. Therefore, the Bill will reduce rather than increase access to private licensee information. The amount of information that is

published on a regular basis will be more comprehensive and include finalised disciplinary actions and occupational discipline. In most cases, details may only be published if the licensee:

- has not applied for review of the decision to make the order within the period allowed under the *ACT Civil and Administrative Tribunal Act 2008*; or
- has applied for review of the decision but the ACAT has not completed the review or set aside the action.

In others, such as for interim suspensions which take immediate effect, information in the register must clearly indicate the interim nature of the actions. It is reasonable that information that a licence is suspended pending further action is provided to people engaging construction practitioners to prevent them entering into a contract with a person who is unable to carry out the work. However, context for such actions would need to be provided on the register. The provisions also complement existing ‘show cause’ processes before information comes to be recorded in the Registrar’s register and subsequently published on the public register. For example, a contravention of a rectification order may only be recorded in the primary register after the Registrar notifies the relevant licensee that it is intended a contravention will be recorded and the licensee is given two weeks to make representations about recording the information.

In addition, the provisions do not override requirements to comply with directions or orders from a court or tribunal about the removal of information from the public register and work with the current process for requesting removal of information from the register under section 111 of the COLA and other reviewable decisions that may result in information being included or removed from the Registrar’s register. That is, if information is removed from the Registrar’s register then it will not continue to appear in the public register. The Registrar would also need to update the register by the end of the next working day after the day a licence is suspended or cancelled (and that information is to be included in the register) and to remove information when a suspension or cancellation is lifted, overturned, expired or the like.

As noted, the extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy. It is generally agreed that there is a diminished expectation of privacy during the course of regulated activities (*R v Jarvis* [2002] 3 SCR 757). As stated in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 “*The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should ... be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.*”

Participants in the construction industry have a clear understanding that this is, and has long been, a regulated industry. Current provisions in the COLA anticipate full disclosure of information on the register as the Registrar has no clear powers to refuse a request from a member of the public for any and all information on the register. As noted above, the provisions increase protections for licensees as all of the information included in the public register other than person names, relates directly to business activities and not to personal details. Access to other information would need to be by application, with the Registrar considering the nature of the information and whether it relates to the provision of a construction service before providing. The Registrar is not required to consider this at present.

It should also be noted that licensees can be individuals, partnerships or corporations. As human rights considerations apply only to individuals, care needs to be taken that provisions do not unreasonably disadvantage non-individual licensees by subjecting them to a greater level of scrutiny and public information than individuals.

Sections 170 and 171 of the Legislation Act require that provisions for information requests under the EE Act must be interpreted to preserve the common law privileges against self-incrimination and exposure to the imposition of a civil penalty, as well as preserving client legal privilege. Retailers and people that participate in activities under the EE Act are aware that the Administrator has an obligation to enforce the legislation and protect the public. This may include referring information to other regulators with responsibility for health, safety, consumer protection or environmental obligations that relate to activities offered under the EE Act.

Section 12 of the Human Rights Act includes a qualifier that privacy is not to be interfered with ‘unlawfully or arbitrarily’. The impacts on privacy in this instance are not arbitrary as the bill clearly defines the manner in which an inspector may enter premises or seize things, how information requests can be made and information shared between relevant entities. The impact is necessary to administer the legislation.

#### *Relationship between the limitation and its purpose*

The inspection powers and search warrant powers are in place to enforce legislation. Information provided by building assessors and works assessors is relied on by consumers to make informed choices, for example about purchase and lease of residential premises, and by the Government to determine if a unit title can be issued. Non-compliant assessments can have significant financial impacts and inspections help to prevent unintentional or intentional non-compliance with the law. In addition, offences against the COLA and its operational Acts can involve matters of life safety, health and amenity of workers, the public and the eventual occupants and users of buildings and other structures.

The construction industry is regulated primarily because of the capacity of construction work to impact the life safety, health and amenity of workers, the public and the eventual occupants and users of buildings and other structures. Regulation of the industry is in response to the high risks associated with the work. The ability for people engaging construction practitioners to access reasonable information relating to their activities is integral to the effectiveness of regulation for the industry. The publication of licensee information is related to a business context.

Information on the activities of retailers under the EE Act is critical to its enforcement. In addition, activity record forms for the EE Act must be provided and signed by people receiving activities under the Act. This notice includes information about the potential for an authorised person to provide information to other regulators to determine compliance with the Act.

*Any less restrictive means available to achieve the purpose*

There are no other, less restrictive ways to achieve the required purpose.

There are no other means available for accessing the physical premises where licensed building assessment or works assessment work has been carried out or seizing things if required.

Search warrants are the only feasible legal method of accessing premises if other methods of obtaining evidence of the commission of an offence are not available or would otherwise compromise the exercise of functions under the COLA.

The current system of minimal disclosure of licensee information due to the lack of clarity in the COLA does not serve practitioners or people who engage construction services.

Other, less restrictive ways of obtaining information for determining compliance with the EE Act are not likely to achieve the required purpose. There are limited other means available for the Administrator to meet obligations to administer and enforce the Act if relevant information is not provided on request. This leads to an obstruction of the audit process and the enforcement of the Act.

### **Strict Liability Offences**

There are no strict liability offences in the Bill.

## Clause Notes

### Part 1 Preliminary

#### Clause 1 Name of Act

This clause provides that the name of the Act is the *Construction and Energy Efficiency Legislation Amendment Act 2014*.

#### Clause 2 Commencement

This clause provides for the commencement of the Act for all provisions other than those in clauses 18 and 19 on the day after its notification day.

Clauses 18 and 19 will commence on a day fixed by the Minister by written notice. The provisions will automatically commence once 6 months have elapsed from the date of notification.

#### Clause 3 Legislation Amended

This clause provides that the legislation mentioned in the clause is amended by the Act.

### Part 2 Construction Occupations (Licensing) Act 2004

#### Clause 4 What is a *building assessor*? Section 8A (3)

This clause omits the definition of *building assessment work* and associated note as this definition currently applies only to section 8A of the Act, which is for defining the scope of licensable work. With the inclusion of inspection powers that relate to building assessment work in clause 17, the definition is relocated to the Dictionary so that it applies to all relevant sections of the Act (see clause 21).

#### Clause 5 What is a *works assessor*? Section 14A (3) and note

This clause omits the definition of *works assessment work* and associated note as this definition applies only to section 14A of the Act, which is for defining the scope of licensable work. With the inclusion of inspection powers that relate to works assessment work in clause 17, the definition is relocated to the Dictionary so that it applies to all relevant sections of the Act (see clause 23).

#### Clause 6 Section 75

This clause substitutes a new section 75, which previously included a definition of *compliance auditor* for Part 6. The new section expands to include a definition of an inspector, being an inspector appointed under new section 80A (clause 17), and *officer*, which collectively defines compliance auditors and inspectors.

The clause also includes new division heading of 6.1 (Preliminary).

These amendments are part of changes to introduce a new inspection function and search warrant powers under the Act. However, as some powers and processes are shared by compliance auditors and inspectors, to avoid unnecessary duplication of provisions in the Act, for relevant provisions a collective term of *officer* is used.

The clause also inserts a new Division 6.2 that includes some existing provisions for compliance auditors with a heading of *Compliance auditors*. This is necessary as the Bill includes a new inspection function and also introduces powers for search warrants (clause 17). These different concepts are all related to enforcement but are sufficiently different to require location in separate divisions. As compliance auditors and inspectors perform different roles, there is a need to delineate the respective functions for each type of officer.

**Clause 7      Section 76 heading**

Clause 7 amends the existing heading of 76 (*Compliance auditors*) to a new heading of *Compliance auditors—appointment*. This better reflects the content of the section.

**Clause 8      Section 77 heading**

Clause 8 amends the existing heading of 77 (*Role of compliance auditor*) to a new heading of *Compliance auditors—functions*. This better reflects the content of the section.

**Clause 9      Sections 78 and 79**

This clause omits sections 78 and 79 as the provisions for identity cards are relocated and expanded to include the new role of inspectors for the Act in new Division 6.4 (clause 17).

**Clause 10     Section 80 heading**

This clause substitutes a new heading of *Compliance auditors—entry to premises* for the existing heading of *Functions of compliance auditors—entry to premises*. The section is also renumbered to section 78 to accommodate the relocation of provisions from existing sections 78 and 79 in clause 9.

**Clause 11     Functions of compliance auditors—entry to premises  
Section 80 (2)**

This clause substitutes a new section 80 (2), which will be section 78 (2) with the renumbering of existing section 80, as a consequence of new provisions for search warrants in new Division 6.5 (clause 17). This is important as if a search warrant is issued it will be a compliance auditor or another officer that carries out the search and so must be permitted to enter if authorised under a search warrant.

## **Clause 12     Section 80A**

Clause 12 omits existing section 80A. This section relates to consent to entry processes for compliance auditors and is relocated in the Bill to new Division 6.4 (clause 17) that provides for powers and obligations common to compliance auditors and inspectors.

## **Clause 13     Section 80B heading**

This clause substitutes a new heading for section 80B and renumbers the heading to section 79 as a result of the relocation of provisions from existing sections 78 and 79 in clause 9. The new heading *Compliance auditors—production of documents* reflects that the function of compliance auditors is defined in section 77. This clause relates to powers of compliance auditors rather than functions.

## **Clause 14     Section 80C heading**

This clause renumbers section 80C as section 80 as a consequence of provisions in existing clauses 78 and 79 being relocated to new Division 6.4 (clause 17).

This clause makes consequential amendments to the heading to revise references to former section 80B which has been renumbered and renamed under clause 13.

## **Clause 15     Non-compliance with s 80B                   Section 80C (1)**

This clause makes consequential amendments to section 80C (1) to revise references to former section 80B which has been renumbered and renamed under clause 13. This clause does not affect the operation or change the intention of the existing offence provisions.

## **Clause 16     Section 80C (2) (b)**

This clause makes consequential amendments to section 80C (1) to revise references to former section 80B which has been renumbered under clause 13. This clause does not affect the operation or change the intention of the existing offence provisions.

## **Clause 17     New divisions 6.3 to 6.5**

Clause 17 inserts the following new divisions:

- 6.3, for a new inspection function and associated powers under the Act
- 6.4 for powers and processes common to compliance auditors and inspectors  
and
- 6.5 for search warrants

### *Division 6.3*

Division 6.3 creates a new inspection function specifically for building assessment work and works assessment work. This is necessary because there are no other operational Acts that apply to certain aspects of this type of work. Requirements for work are prescribed in the Act or in codes of practice made under the Act. Therefore, there are no existing inspection powers that apply specifically to this type of work.

Physical inspection of work is necessary to determine compliance with all relevant requirements for work that requires onsite assessment of structures and other features on land. This addresses an inequality in the system as all other licensed work under COLA is subject to specific physical inspection powers as intended by the original legislation.

The function of an inspector is to inspect the work undertaken by licensees for compliance with this Act, the operational Acts and other legislation that applies to building assessors. Inspection powers relate to premises and to land as the role of works assessors and building assessors includes assessing landscape elements that may not be part of premises.

For consistency across construction legislation, the provisions in Division 6.3 are based on existing inspection powers in the Electricity Safety Act (Part 7), Gas Safety Act (Part 6) and Water and Sewerage Act (Part 4), which are all operational Acts under COLA. Consistent with provisions for compliance auditors and other inspection powers the Bill introduces an offence with a maximum penalty of 50 penalty points for not taking reasonable steps to comply with a requirement of the inspector to help with exercising the inspector's functions. Further information is in the section on offences.

Depending on the expertise of the officer, an inspector's appointment may be limited to a single occupation, occupation class or only certain inspection functions as deemed appropriate by the Registrar. An appointment must not exceed 5 years.

#### *Division 6.4*

This division relocates existing sections 78, 79 and 80A for identity cards and consent to entry and expands them to apply also to inspectors appointed under new section 80A (Inspectors—appointment). This section includes provisions common to both compliance auditors and inspectors, which are termed collectively as *officers* for this Part.

The provisions in existing section 78 are amended to also require that the construction occupations register must also give an identity card to inspectors appointed under the Act. This is consistent with the requirement for an identity card for compliance auditors. As for compliance auditors, the card must state the inspector's name that the person is an inspector, a recent photograph of the person, and the card's date of issue and expiry.

To protect people from unscrupulous practices and people pretending to be an inspector to gain entry to premises or obtain information, powers of an inspector may only be exercised in relation to a person only if the inspector first shows the person the inspector's identity card (clause 12). This is important so that people can clearly identify inspectors and be confident they have the appropriate authorisation to exercise the functions of an inspector.

This clause extends the existing offence for a compliance auditor failing to return an identity card as soon as practicable but no later than 7 days after of the end of his or her appointment to inspectors created in this Bill. The offence carries a maximum penalty of 1 penalty unit.



As the exercise of inspector functions in relation to a person is linked to the showing of an identity card, it is important that only those people with a current appointment and authorisation to exercise relevant functions should have a card. There is no need for a former inspector to retain a card as the person has no authority to exercise the functions of an inspector.

Existing consent to entry provisions will also be relevant for an inspector's entry to residential premises, which requires consent from the occupier. Compliance auditors and inspectors will be required to use the same process for obtaining consent.

### *Division 6.5 Search warrants*

This division inserts standard provisions for search warrants. The inclusion of these powers is reasonable when considering the potential life safety, environmental and economic costs of non-compliance with construction legislation.

The exercise of powers under the warrant must be in accordance with the warrant, meaning that officers cannot remove things that are not mentioned in the warrant or enter premises outside hours indicated in the warrant. Officers must also announce entry and provide details of the warrant to occupiers.

### **Clause 18     The register Section 107 (4)**

This clause substitutes a new section 107 (4) for the Act. The existing section requires that the Registrar must make the register available to the public. There is no limitation on the provision of information that may be contained in the register.

New provisions require the Registrar to make available to the public information in the register required to be made available (see clause 19).

A person wishing to access information on the register not required to be made public may apply to the Registrar for access to the information. The Registrar must consider:

- (a) the reason the person requires the information, including whether it is related to the provision of a construction service
- (b) whether the information includes personal or other information the Registrar believes would be inappropriate or illegal to disclose, and
- (c) whether the provision of the information would compromise the exercise of a function under the Act or an operational Act.

This is important to provide clarity on which information in the register must be published and which information should be available only on application. The provisions are intended to create an appropriate balance between the privacy of personal information and information that may be inappropriate to disclose, and information that predominantly relates to a business purpose. If the Registrar refuses to give access to information the applicant can request a review by ACAT.

#### **Clause 19      New section 107A**

This clause prescribes the content of the register that must be made available to the public. This effectively creates a ‘public register’ that includes a subset of information from the register kept by the Registrar in accordance with section 107.

It also requires that the information is published on a weekly basis on an ACT Government website.

However, if information about a suspension or cancellation is required to be made public and a licensee incurs a suspension or cancellation or an existing suspension or cancellation is lifted, overturned or expired the Registrar would need to update the register by the end of the next working day after the event.

In addition to the information already published by the Registrar, the names of nominees and certain information about automatic and interim suspensions, occupational discipline orders made by ACAT, suspension, disqualification or other actions taken as the result on an accumulation of demerit points will be included in the public register. The register would also contain information about former licensees that held a licence within the last ten years if available.

Information proposed for inclusion has been selected mindful of the differing internal and external review processes associated with different types of actions that may be taken under the COLA. This is balanced with the need for expedient dissemination of information to the public. Therefore, in the case of a number of actions that are subject to review, information would not be able to be published until the period of review is complete and if a review is requested, that a decision on the review has not been made or the action overturned.

#### **Clause 20      New part 20**

This clause inserts transitional provisions that apply to Part 6 as amended by clause 17 to licensees and former licensees. This means that inspections and other actions can take place in relation to the work of people that are no longer licensed at the time the provisions commence. This is important because construction services carried out before the commencement of the provisions may still have significant impacts on people, property or the environment. The provisions also provide consistency with the ability for a rectification order to be issued to a former licensee.

The section expires 1 year after the day the provisions commence. However, section 154A (2) provides that the repeal of the section does not end the effect of the provisions.

**Clause 21 Dictionary, new definition of *building assessment work***

This clause relocates the existing definition of *building assessment work* from sections 8A (3). There are no changes to the definition.

**Clause 22 Dictionary, new definition of *compliance auditor***

The clause also inserts a new definition of *compliance auditor* referring readers of the Act to the definitions in Part 6 (Enforcement). This amendment is related to the amendments in clause 17, which provide for powers that can be exercised by inspectors, or compliance auditors or both (collectively defined as officers for the purposes of Part 6).

**Clause 23 Dictionary, new definitions**

The clause also inserts new definitions of *inspector* and *officer* referring readers of the Act to the definitions in Part 6 (Enforcement). These amendments are related to the amendments in clause 17, which include new inspection powers for building assessment work and works assessment work and provide for powers that can be exercised by inspectors, or compliance auditors or both (collectively defined as *officers* for the purposes of Part 6).

The clause also includes the definition and *works assessment work* relocated from section 14A (3). There are no changes to the definition.

**Part 3            Construction Occupations (Licensing) Regulation 2004**

**Clause 24        Reviewable decisions  
                      Schedule 4, new item 21A**

This clause includes a new reviewable decision in Schedule 4, which applies to a decision by the Construction Occupations Registrar to refuse to provide information under new section 107 (5) (clause 18).

This amendment allows the person that applied for the information to seek a review of the decision by the ACAT.

## **Part 4            Electricity Safety Act 1971**

### **Clause 25      Part 2 heading**

This clause includes a new division 2.1 *Electrical wiring work and electrical installations – safety* as Part 2 will include both standards for safety and standards for conservation of energy and power and minimisation of environmental harm (clause 37).

### **Clause 26      New division 2.2**

This clause inserts provisions that allow regulations to be made to promote the efficient use or conservation of power and energy or to limit harm to the environment. These powers complement existing powers to in section 27 that apply to the sale and labelling of products that must meet certain energy efficiency standards.

These standards would be in addition to existing electrical safety standards. Therefore new offences that correspond specifically to carrying out wiring work, working on an electrical installation or disposing of electrical equipment in a way that does not comply with the energy or environmental standards are also included so that the provisions can be enforced. Further information on the offences is in the *Offences* section of the explanatory statement.

The new provisions are intended for standards to promote an environmental or efficiency aim rather than purely a safety outcome.

This is consistent with the Commonwealth *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) as that Act regulates for the supply of products rather than installation standards.

### **Clause 27      Definitions for pt3 Section 9, definition of *approved first seller***

This clause revises the existing definition of an approved first seller, being a person registered under section 14 (2), as a consequence of removing the registration process under the Act (see clause 30). As certain products may still need to be registered under regulations or a corresponding law and have a role in ACT legislation the concept of an approved first seller is still required. As such the new definition is a person who either –

- manufactures a prescribed article of electrical equipment in the ACT or another state or territory; or
- imports a prescribed article of electrical equipment into the ACT from outside Australia; and
- is registered or approved as an approved first seller (however described) under a relevant safety standard.

**Clause 28 Declaration of prescribed articles of electrical equipment**  
**New section 11A (4A) to (4C)**

Section 11A (4) provides that a safety standard for prescribed articles of electrical equipment can be made by adopting a law of a State, as in force at a particular time or from time to time, under which the article or safety standard is prescribed.

Clause 28 inserts a new section 11A (4A) that clarifies a safety standard may include a registration, approval or certification requirement and if it does that requirement applies to the safety standard.

This is important as at present all of the safety standards adopted by corresponding law have a registration process similar to that in Part 3 of the Act. Product approvals and certification are a critical part of ensuring compliance with safety standards and operate across Australia.

However under a system of corresponding law the Registrar may still refuse to recognise a registration or declaration of compliance held by an approved first seller if the Registrar is satisfied that the approved first seller cannot ensure compliance of a product or the approval is invalidated because of circumstances that would ordinarily prevent a seller from registering a product. These powers are similar to existing powers in section 14 (4), which will be removed by clause 31.

**Clause 29 Sale or installation of prescribed articles**  
**Section 12 (1) (b) (i)**

This clause makes a consequential amendment to Section 12 (1) (b) (i) as a result of removing the registration process for articles of electrical equipment under clause 31. This allows an offence to apply when a declaration of compliance is not registered in accordance with a standard made by the construction occupations registrar, which replaces the existing process under section 16. This does not change the intent or operation of the existing offence.

**Clause 30 Section 12 (2) (b) (i)**

This clause makes a consequential amendment to Section 12 (2) (b) (i) as a result of removing the registration process for articles of electrical equipment under clause 31. This allows an offence to apply when a declaration of compliance is not registered in accordance with a standard made by the construction occupations registrar, which replaces the existing process under section 16. This does not change the intent or operation of the existing offence.

**Clause 31 Sections 14 to 19**

Clause 31 repeals sections 14 to 19 of the Act. These sections provide for registrations for prescribed articles of electrical equipment. These provisions have never been used as there is no demand for product registration in the ACT.

States and territories use a system of corresponding laws to recognise each other's product approval legislation. This clause allows for registration requirements in a corresponding law or prescribed in a safety standard set by the construction occupations registrar if required. A number of provisions already permit the use of corresponding laws that are substantially the same as Part 3 and to date the ACT has used these provisions to reference external legislation without separately regulating the same products. This includes the safety standards that generally require registration of prescribed articles of equipment.

The Registrar would retain the power to prevent the sale of an unsafe item, refuse to recognise a registration and to require testing of the product but the Act would no longer include a registration process. Registrations would be managed by other jurisdictions and recognised in the ACT as per the current national arrangements.

**Clause 32      Multiple occupations, classes and authorisation  
Section 20**

This clause replaces the reference in section 20 to the authority, being the planning and land authority, with a references to the registrar (construction occupations registrar). This clause complements clause 41, which transfers all residual powers of the planning and land authority in the ESA to the construction occupations registrar. This reflects the responsibilities of the registrar under the Construction Occupations (Licensing) Act, which include administering the *Electricity Safety Act 1971*, and provides for a single regulator of all related provisions.

**Clause 33      Registers  
Sections 21 (1) (b) and (c)**

This clause makes a consequential amendment to omit sections 21 (1) (b) and (c) as a result of removing the registration process for articles of electrical equipment under clause 27. As there will not be a registration process under the Act, the Registrar will not be required to keep corresponding registers of approved first sellers or declarations of compliance. This will not have an effect on the maintenance of existing records as there are no current approved sellers or declarations of compliance.

**Clause 34      Revocation of a nominee's appointment  
Section 30 (2) (a)**

This clause replaces the reference in section 30 (2) (a) to the authority, being the planning and land authority, with a references to the registrar (construction occupations registrar). This clause complements clause 41, which transfers all residual powers of the planning and land authority in the ESA to the construction occupations registrar. This reflects the responsibilities of the registrar under the Construction Occupations (Licensing) Act, which include administering the *Electricity Safety Act 1971*, and provides for a single regulator of all related provisions.

**Clause 35      Emergency rectification order**  
**Section 39**

This clause replaces the reference in section 39 to the authority, being the planning and land authority, with a references to the registrar (construction occupations registrar). This clause complements clause 41, which transfers all residual powers of the planning and land authority in the ESA to the construction occupations registrar. This reflects the responsibilities of the registrar under the Construction Occupations (Licensing) Act, which include administering the *Electricity Safety Act 1971*, and provides for a single regulator of all related provisions.

**Clause 36      Power to inspect electrical wiring work**  
**Section 57 (1)**

This clause includes a technical amendment to a reference to Part 2 to reflect the heading as amended by the *Construction and Energy Efficiency Legislation Amendment Bill 2013 (No 2)*.

**Clause 37      Regulation-making power**  
**New section 66 (2)**

This clause includes a new section 66 (2) which expands the regulation-making power to allow regulations to be made to promote the efficient use or conservation of power and energy or to limit harm to the environment. The existing power extends only to energy efficiency of appliances.

With the increasing focus on the efficient use of energy and the need for environmental conservation, there may be instances where a standard for certain installations, or installed equipment and appliances is desirable. As an example, there may new standards that apply when an existing electrical installation is upgraded to correspond with similar provisions in the building code for installations in new buildings.

There are no standards proposed at the time of presentation of the Bill.

**Clause 38      Schedule1, items 3 to 8**

Clause 38 makes consequential amendments to Schedule 1 to remove reviewable decisions that relate to the registration, suspension, cancellation and transfer of registration of approved first sellers of electrical equipment and declarations of compliance under the Act.

The provisions in section 14-19 that relate to these decisions are omitted in this Bill (see clause 31).

**Clause 39      Dictionary, note 2**

This clause inserts a reference to the construction occupations registrar in Note 2 as an example of a term defined in the Legislation Act, Dictionary, Part 1. The construction occupations registrar has a number of powers under the Act. The inclusion provides readers of the Act with a signpost to where further information can be found.



#### **Clause 40 Dictionary, note 2**

Note 2 provides examples of terms defined in the Legislation Act, Dictionary, Part 1. This clause omits the reference to the planning and land authority. This is required as amendments in clauses 28 will mean that the planning and land authority no longer be a term used in the Act.

#### **Clause 41 Further amendments, mentions of *planning and land authority***

This clause transfers all residual powers of the planning and land authority in the ESA to the construction occupations registrar. This reflects the responsibilities of the registrar under the Construction Occupations (Licensing) Act, which include administering the *Electricity Safety Act 1971*, and provides for a single regulator of all related provisions.

The sections amended relate to:

- declaring an article of electrical equipment as prescribed or not prescribed
- approving testing laboratories for the purposes of the Act
- notices prohibiting the sale or installation of articles of electrical equipment, giving directions about unsafe articles, and publishing safety warnings
- publishing reports on serious electrical accidents
- information gathering for administering the Act.

## **Part 5 Energy Efficiency (Cost of Living) Improvement Act 2012**

### **Clause 42 Achieving energy savings obligations New section 14 (4)**

To link the offence in section 17 for undertaking eligible activities before lodgement of a compliance plan for a compliance period, this clause provides that an activity is taken not to have been undertaken in accordance with a code of practice if it is commenced before a compliance plan for the compliance period in which the activity is commenced is given under section 17. The power to exclude activities aligns with the policy intent of requiring a compliance plan.

The provisions are not intended to prevent completion of an individual activity commenced under a previous compliance period for which a plan was given. The completion of an eligible activity commenced legitimately in a previous compliance period under a correctly lodged compliance plan could extend to the next compliance period.

The provisions are intended to apply to activities undertaken on or after the date of commencement of the provisions.

### **Clause 43 NERL retailer must lodge compliance plan Section 17 (3)**

This clause is a technical amendment to subsection 17 (3) so that consistent terminology is used in the section. It does not affect the operation or intent of the section or the offence.

### **Clause 44 Compliance with energy savings obligations—retailer energy savings result New section 20 (3A) and (3B)**

This clause clarifies that the Administrator is able to exclude an abatement factor from a retailer's energy savings result if the Administrator is not satisfied that the activity complies with a relevant approved code of practice. The Administrator may also substitute data that the he or she believes on reasonable grounds is correct.

This is important as reported data may be incorrect and the Administrator is responsible for ensuring compliance with the Act, including that any eligible activity for which abatement is claimed is undertaken in accordance with a code of practice.

### **Clause 45 New section 20D**

This clause allows the Administrator to re-calculate an energy savings result and issue revised energy savings contributions or penalties up to 5 years from the end of the compliance period to which the energy savings result relates. A period of 5 years aligns with recordkeeping requirements under section 26 of the Act, which requires NERL retailers to keep the records that are necessary for the Administrator to determine whether the retailer's energy savings obligations have been complied with for at least 5 years after the end of the compliance year to which the record relates.

This is important as sales figures may be revised and activities may be determined to be not in accordance with a code of practice after an energy savings result is calculated for a compliance period. Acquittal of a target and achievement of abatement factors should be based on accurate data and take into account non-compliance discovered within a reasonable amount of time from the end of the compliance period to which it relates.

The decision to re-calculate an energy savings result is a reviewable decision.

**Clause 46 Compliance with priority household obligations—retailer priority household result**  
**New section 21 (2A) and (2B)**

This clause clarifies that the Administrator is able to exclude an abatement factor from a retailer's priority household result if the Administrator is not satisfied that the activity complies with a relevant approved code of practice. The Administrator may also substitute data that the he or she believes on reasonable grounds is correct.

This is important as reported data may be incorrect and the Administrator is responsible for ensuring compliance with the Act, including that any eligible activity for which abatement is claimed is undertaken in accordance with a code of practice.

**Clause 47 Codes of practice**  
**New section 25 (1) (e)**

This clause clarifies that the Administrator can make codes of practice under 25 that relate to auditing the Administrator may request as part of a report under section 19, including the purpose of the audit, qualifications of auditors, the appointment and removal of auditors; auditors obligations and how audits must be reported.

**Clause 48 New part 4A**

This clause inserts information sharing provisions to allow the Administrator to share information related to compliance with the Act with other relevant Territory and non-territory entities.

This is important as many of the activities that can be undertaken for the Act have aspects that are regulated under other legislation such as the Construction Occupations (Licensing) Act, the Work Health and Safety Act, and the Australian Consumer Law. It is intended that for an activity to count towards the energy savings result for a retailer, all applicable legislation in the ACT and other relevant jurisdictions is complied with. This is so that abatement for an activity is not awarded independently or at the expense of the activity complying with other relevant laws.

To determine compliance with requirements for the activity the Administrator may need to obtain information from, or provide information about, the undertaking of eligible activities to other regulatory authorities.

## **Clause 49    New division 5.5A to 5.5C**

This clause inserts new divisions 5.5A, 5.5 B and 5.5C

Division 5.5A provides for powers of the Administrator to address contraventions of codes of practice. This is important as codes of practice are in place to ensure minimum health, safety, environmental and consumer protection requirements are followed.

The Administrator may only take an action after a ‘show cause ‘ process has been completed and actions taken by the Administrator under this section are reviewable.

Rectification order powers in the Bill are intended to complement existing powers in other Territory legislation that relates to carrying out eligible activities or other obligations under the Act. The Administrator may make a rectification order if satisfied that there is a threat to the health and safety of people, or damage to property or the environment. The Administrator may also authorise another person to complete rectification if it would be inappropriate to require the retailer to return to a premises because of the relationship between the retailer and the landowner. The decision to authorise another person to complete work is also reviewable.

If there is another Territory law that could address the matters the rectification order would cover, the Administrator must first refer the matter to the agency responsible for administering the law, and be satisfied that risks to health, safety and environment have not been addressed under the Territory law.

Division 5.5B allows the Administrator to restrict the operation of a retailer on the grounds of public safety. This may mean that the retailer cannot create abatement factors for a certain activity until such time as adequate safety measures are in place or people carrying out activities are retrained.

This is important as retailers must have appropriate quality assurance processes in place to ensure compliance with the Act including codes of practice intended to protect public safety. If they do not it is appropriate that the Administrator take reasonable steps to prevent situations likely to create safety issues and compromise the integrity of the Act. The Administrator could not restrict a retailer undertaking particular activities where they are not associated with the Act.

A decision not to revoke a restriction under this section is a reviewable decision.

New division 5.5C includes new information gathering powers for the Administrator. This is important as the Administrator is responsible for determining compliance with the Act. This may include obtaining access to information that is held by retailers, other parties they have contracted to undertake eligible activities as well as suppliers and recipients of activities.

The provisions also avoid the need for an authorised person to enter premises only to obtain relevant information.

The provisions preserve common law protections such as client legal privilege and the right not to self-incriminate.

A person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the administrator in accordance with an information requirement.

#### **Clause 50     Schedule 1**

This clause inserts a new Schedule 1 to accommodate new reviewable decisions included in the Bill.

#### **Clause 51     Dictionary, definition of *auditor***

This clause omits the definition of *auditor* from the dictionary.

Section 19 (2) provides for an audit of some or all of the information provided by the retailer as part of an annual compliance report to be audited. This may include audits of records, reported sales and obligations, as well as other financial information such as for the cost of compliance with the Act.

The term *auditor* in the Act is defined solely in relation to financial auditing, which may not be the focus of the audit requested or appropriate for the type of information that may be audited. Auditors are not referred to in the Act other than in the dictionary definition.

This provision is related to amendments in clause 47.

#### **Clause 52     Dictionary, new definitions**

This clause includes new definition of *compliance information*, *information requirement*, *non-territory agency* and *regulatory agency* in the dictionary, which point readers of the Act to new part 4A.

The new definition of *rectification order* points to new section 49E (Rectification orders), which provides for new powers to rectify work in certain circumstances.

All of the new definitions correspond to amendment in clause 49.