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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION OCCUPATIONS LICENSING BILL 2003
EXPOSURE DRAFT

EXPLANATORY STATEMENT

Circulated by the authority of
Minister for Planning
Simon Corbell MLA

Construction Occupations Licensing Bill 2003

Outline

This Bill introduces significant reforms to the regulation of building and construction industry trades. The Bill implements the recommendations of the National Competition Policy Review of Occupational Licensing in the ACT, which reflected reform proposals that had been considered over a number of years.

The legislation introduces a single licensing and disciplinary regime for builders, electricians, plumbers, drainers, gasfitters, building surveyors (certifiers) and plumbing plan certifiers. This replaces the multiple systems that currently exist, and will result in a consistent and transparent approach to the regulation of each trade.

The trades are referred to as construction occupations, and licensees are construction practitioners who provide construction services. Some new provisions have been included to improve the effectiveness of the regulatory scheme, including a demerits points system for licensees, and an infringement notice system for unlicensed persons doing work that requires a licence.

The current licensing boards, which exist for electricians, and plumbers, drainers and gasfitters, are being replaced by Advisory Boards, which can be established for each, or a combination of construction occupations.

Revenue/cost implications

The legislative provisions refine and improve the current systems, and will enable a reallocation of existing resources to administer the provisions. There are no additional costs identified.

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Clause Notes

Part 1 Preliminary

Part 1 deals with the administrative elements of the Act. **Clause 1** gives the formal title of the Act. **Clause 2** stipulates that the Act commences on a day fixed by the Minister. **Clause 3** explains that the dictionary contained at the end of the Act is a part of the Act, and provides notes to explain how the definitions are structured and how they apply to the Act. **Clause 4** explains that the “notes” that appear in the Act are only explanatory, and not part of the regulations.

Clause 5 explains that provisions in other legislation apply to offences committed under the Act. The notes in Clause 5 explain the application of the *Criminal Code* and *Legislation Act 2001* to the Act.

Part 2 Important concepts

Part 2 outlines the fundamental concepts that provide the framework for the operation of the Act.

Clause 6 defines the terms *construction practitioner* and *construction service*. An entity (which can be an individual) who does or supervises the provision of a construction service is a construction practitioner. A *construction service* is doing or supervising works in a *construction occupation*, which is defined in **Clause 7**. There is the capacity to use the regulations to define work as being included or excluded from what is “work”. This takes account of the changing nature of the Standards and Codes that apply to the various construction occupations.

Clause 7 lists the *construction occupations* that are regulated under this Act. They are, builder, building surveyor, drainer, electrician, gasfitter, plumber, and plumbing plan certifier. **Clause 8** defines a builder as an entity who provides a building service, which is the doing or supervising of building work. Building work is defined under section 3 of the *Building Act 1972*. A building surveyor is defined in **Clause 9** as an entity that provides a building certification service. That service is the doing of building certification work, which is anything that is required of a certifier under the *Building Act 1972*. **Clause 10** defines a drainer as an entity that does or supervises the provision of sanitary drainage services, which is also defined in **Clause 10**. The terms sanitary drain, and sanitary drainage work are also defined.

Clause 11 specifies that an electrician is an entity who provides or supervises the provision of electrical wiring services. There is a range of electrical definitions within **Clause 11** that clarify what the provision of electrical wiring service covers. The definitions include, *electrical installation, electricity network, electrical wiring work, extra low voltage and incidental electrical work*. The term gasfitter is defined in **Clause 12** as an entity that does or supervises the provisions of a gasfitting service, which is gasfitting work. The term *gasfitting work* is also defined.

Clause 13 defines a plumber as an entity who does or supervises the provision of a *plumbing service* which is the doing or supervising of *sanitary plumbing work* or *water supply plumbing work*. Both of these terms are defined, in addition to definitions for *backflow prevention device, fire sprinkler service, fire sprinkler work, hot water system, irrigation, irrigation system, sanitary plumbing, sanitary plumbing work, sewage, stormwater, water appliance, water network, water supply plumbing work, and water service*. These definitions are required to ensure there is a clear understanding of the range of work that a plumber can be licensed to undertake.

Clause 14 defines a *plumbing plan certifier* as someone who provides plumbing plan certification services when appointed as a certifier under the *Water and Sewerage Act 2000*.

Clause 15 enables there to be classes of licence within a construction occupations, by specifying those classes in the regulations.

There is a range of legislation that is linked to the Act. The other legislation contains a range of requirements in relation to licensees. The *operational Acts* are specified in **Clause 16** as the *Building Act 1972, Electricity Safety Act 1971, Gas Safety Act 2000*, and the *Water and Sewerage Act 2000*.

Part 3 Construction practitioners licences

Part 3 outlines the requirements for licence applications, eligibility, decisions on applications, conditions on licences and renewal of licenses. Specific requirements for nominees of corporations and partnerships are also in Part 3.

Clause 17 enables individuals, corporations or partnerships to apply to the registrar to be licensed, and for a fee to be imposed for that application. Corporations or partnerships are only able to apply for a licence in a construction occupation or occupation class if the regulations specify that a corporation or partnership can be licensed in the occupation or class. Requirements for applications are prescribed in the regulations, and if the applicant does not meet the requirements, the registrar is not required to consider the application.

The eligibility provisions for a licence are outlined in **Clause 18**. The clause provides that the regulations may prescribe when an entity is eligible, or not eligible, to be licensed in a particular construction occupation or class of occupation. The regulations may include mandatory qualifications and the way in which an applicant may, or must, demonstrate that they satisfy the requirements, such as requiring the applicant to pass a practical or written test.

The registrar is responsible for making a decision on whether or not to grant a licence to an applicant. The registrar is able to delegate this decision making power. **Clause 19** stipulates that the registrar must either issue the licence or refuse to issue the licence. A decision to issue a licence can only be made if the registrar is satisfied that the applicant is eligible to be licensed and is not currently disqualified from holding a licence. If the registrar is not satisfied that the applicant is eligible the registrar has a discretion to issue a licence other than the licence applied for, where the applicant is eligible for another licence that is in the same construction occupation, but a different occupation class. If disciplinary action against an applicant or a nominee of an applicant is being taken under this Act, the registrar does not have to decide whether to issue the licence until after the disciplinary action, and any appeal arising from the disciplinary action, is finished.

Clause 20 enables a licence to be issued that authorises the licensee to work in one or more construction occupations and one or more occupation classes. The registrar is able to impose conditions on a licence. **Clause 21** enables those conditions to be placed on, or removed from, a licence at any time, by issuing a written notice to the lessee. The decision to place conditions on a licence is appealable to the Administrative Appeals Tribunal. In addition to the registrar's power to impose conditions, the regulations may prescribe standard conditions on licences and when conditions on licences (whether imposed under the regulations or by the registrar) take effect. The fundamental reason for this provision is consumer protection, so that the work a licensee can undertake can be limited where it becomes apparent that the restriction is necessary from a public safety or consumer protection perspective.

There are circumstances where the registrar may, on application, endorse a licence that enables the licensee to do construction work not automatically allowed under that licence. **Clause 22** provides that registrar to endorse a license. However, an endorsement can only be made where the regulations stipulate that the particular endorsement is allowed.

There is a range of details that **Clause 23** states must be contained in a licence. The licence must be signed by the registrar and contain the licensee's full name, each construction occupation, and occupation class (if any) in which the licensee is licensed, and a unique identifying number (the *licence number*) for each construction occupation and occupation class in which the licensee is licensed. The regulations can also require or allow for other information to be included on a licence.

Under **Clause 24** the maximum term for which a licence can be issued or renewed, is prescribed in the regulations. **Clause 25** stipulates that a licensee may apply to the registrar for renewal of the licence before the licence expires. If the registrar is satisfied that, if the application were for a new licence of the same kind, the applicant would be eligible to be licensed, the registrar must renew the licence. This does not prevent the registrar from placing conditions on the renewed licence. The renewal of a licence begins on the day after the licence being renewed ends. A suspended licence may be renewed, but the renewed licence is suspended until the suspension ends.

Clause 26 provides for the voluntary cancellation of a licence if certain criteria are met. The registrar must cancel a licensee's licence if the licensee asks, in writing, for the cancellation and the licensee gives the licence to the registrar or satisfies the registrar that the licence has been lost, stolen or destroyed. The registrar must also be satisfied that the licensee is either no longer able to exercise his or her functions because of mental or physical incapacity, or arrangements have been made for another licensee's to take over the provision of the construction service, or it is otherwise appropriate to approve the cancellation.

Nominees of corporations and partnerships

Corporations and partnerships must have a nominee to be eligible to be licensed. There can be more than one nominee for a corporation or partnership. **Clause 27** requires the nominee to be responsible for the adequate direction and supervision of construction services to be carried out by the corporation or partnership. A corporation or partnership may, in writing, appoint an individual as nominee only if the individual is eligible to be a nominee and the individual agrees in writing to the appointment. The eligibility requirements to be a nominee are prescribed in the regulations. If for any reason the appointed nominee is no longer eligible to be the nominee, they automatically stop being the nominee.

Nominees are required to supervise construction work for which they are responsible. A licensee that is a corporation or partnership must ensure that its construction services are adequately directed and supervised by the appropriate nominee.

A nominee may resign his or her appointment only with the approval of the registrar. **Clause 28** enables the registrar to approve the resignation of a nominee only if satisfied that the nominee cannot exercise his or her functions because of mental or physical incapacity, or the nominee, or entity that appointed the nominee, has arranged for another nominee to take over the nominee's functions or it is otherwise appropriate to approve the resignation.

A nominee has a range of responsibilities once they have agreed in writing to be appointed as a nominee. **Clause 29** specifies that the nominee's functions are to adequately direct and supervise the licensee's construction work, and to ensure that the construction services done by the licensee comply with this Act and other Territory and Commonwealth laws. However, if a licensee has nominated more than 1 nominee, each nominee may only carry out the functions in relation to the construction services allocated to the nominee in writing by the licensee.

A nominee must not exercise functions in relation to work that the nominee is not licensed to do. If a nominee fails to exercise the prescribed functions, they can be fined a maximum of 50 penalty units. The licensee is also considered to have committed an offence if their nominee fails, without reasonable excuse, to exercise the nominee's functions under this section. The maximum penalty that the licensee is subject for such an offence is 50 penalty units.

Clause 30 stipulates that the Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a nominee.

Part 4 Obligations on licensees

Part 4 contains provisions that place certain obligations on licensees, including the capacity for the registrar to call compulsory meetings for licensees. Other provisions cover the issue of rectification orders, and the requirement to give evidence of insurance.

Compulsory meetings

There will be circumstances where significant changes occur within a construction occupation that impact on the requirements for providing construction services. Where the change is significant, **Clause 32** enables the registrar to call a compulsory meeting, and also enables the registrar to consult with the appropriate advisory panel to help decide if a compulsory meeting is required. **Clause 31** explains that a compulsory meeting is a meeting called under **Clause 33**. The registrar is required to give written notice of the meeting to each licensee in the relevant construction occupation or class of construction occupation. In circumstances where it is not possible to provide a written notice to each licensee (e.g. urgent need for the meeting), the registrar is able to use other means to advise of the meeting, such as notices in the newspaper.

Clause 34 stipulates that attendance at a compulsory meeting is mandatory. If a licensee does not attend, they must advise the registrar of the reasons in writing. The registrar may then arrange another meeting to enable the licensee to attend. Failure to attend is a breach of the Act that incurs a demerit point, and could result in disciplinary action.

Rectification Orders

It is important that licensees take full responsibility for the construction services they provide. If that work is not done in accordance with this Act or an operational Act the registrar is able to make an order that requires the licensee to rectify the work. **Clause 35** provides definitions for *authorised action* and *authorised licensee* to clarify the use of these terms in this Division.

The registrar must have reasonable grounds to believe that a licensee (or former licensee) has not provided a construction service in accordance with this Act or an operational Act. **Clause 36** enables the registrar to give written notice to the licensee and the owner of the land where the construction service was provided, of the intention to make a rectification order. The written notice must give details of the rectification order that may be made, explain why the registrar intends to make the order and invite submissions about the making of the order within not less than five working days after the day the person receives the notice.

Once the registrar has given the licensee a notice under **Clause 36** and considered any submissions made within the time mentioned in the notice, **Clause 37** enables the registrar to make an order under **Clause 39**. The registrar must be satisfied that the person is

contravening, or has contravened, this Act or an operational Act and that it is appropriate to make a rectification order.

Clause 38 gives the registrar the discretion to not issue a rectification order, if the relationship between the licensee and land owner is such that it would be inappropriate to do so. Where that is the case, the registrar is still able to authorise another licensee to undertake rectification work, with the costs incurred being the responsibility of the original licensee. A decision of the registrar to authorise a licensee under **Clause 38** is appealable to the Administrative Appeals Tribunal.

A rectification order under **Clause 39** can require the licensee (or former licensee) to rectify the work or demolish a building or part of a building and rebuild in accordance with legislative requirements. The registrar can also require stated work that has been or was being or was proposed to be done, to be commenced or finished within a specified period of time. If the entity is not licensed to do the work required, they must arrange and pay for the work to be done by a licensee. This covers circumstances where a licensee has done work that they are not licensed to do, that needs to be finished or rectified. The order must state a period not less than one month, within which the rectification work must be done, provided it is not an emergency rectification order. The registrar must provide a copy of the rectification order to the land owner.

Clause 40 specifies the circumstances in which the registrar can issue a licensee or former licensee with an emergency rectification order. This enables the order to be given without issuing a notice under section 36. To do this the registrar must be satisfied that the person has provided a construction service other than in accordance with this Act or an operational Act. The registrar must also be of the view that the immediate need to protect the health or safety of people, to protect public or private property or protect the environment, is more important than giving a notice under section 36.

An emergency rectification order must include a statement explaining that the order is an emergency rectification order. The order must explain that if the thing ordered to be done is not done within the stated period (of not less than 24 hours) the Territory may authorise a licensed person to enter the land where the thing is to be done to do the thing ordered. Neither the Territory nor the authorised licensee need give the land owner or person against whom the order is made further notice of the authorised licensee doing the thing on the land. The licensee against whom the order has been made will be liable for the reasonable cost incurred in doing the thing ordered.

Under **Clause 41**, it is an offence for a licensee to contravene a rectification order and the maximum penalty that applies is 200 penalty units.

If a person fails to comply with a rectification order **Clause 42** enables the Territory to authorise in writing, a licensee to enter the land where the work is to be done and take the action stated in the rectification order. The licensee may start or finish the work stated in the rectification order. The authorised licensee is required to give the owner of the land at least 24 hours written notice that they intend to enter the land. The authorised licensee must also give a copy of the notice to the ordered entity before entering the land.

If the ordered entity has applied to the Administrative Appeals Tribunal for review of the rectification order, the Territory is not able to authorise someone else to undertake the work until a decision on the application has been made or the review period has ended. The ordered person is liable for the reasonable cost incurred in doing anything under the rectification order and the cost is taken to be a debt owing to the Territory.

Clause 43 relates to emergency rectification orders under **Clause 39**. Where the registrar has made an emergency rectification order and the order is contravened, the Territory may, in writing, authorise a licensee to enter the land where the work to which the emergency rectification order applies, and take the action stated in the rectification order. The ordered entity is liable for the reasonable cost incurred in doing anything under the rectification order and the cost is taken to be a debt owing to the Territory.

Under **Clause 44**, it is a strict liability offence to hinder a person that is known to be the authorised licensee, from undertaking the authorised action. When an authorised licensee is undertaking authorised action, **Clause 45** requires them to ensure that they, and anyone assisting them, take all reasonable steps to avoid causing damage, inconvenience or detriment when undertaking the authorised work. If damage occurs, the authorised licensee or assistant must provide a written notice to the owner of the land detailing the damage. A person is able, under **Clause 46**, to claim reasonable compensation from the Territory if they suffer loss or expense because of the actions of an authorised person or person assisting them. The compensation must be claimed and ordered in a court, or through an offence proceeding against the person making the claim. The regulation may prescribe matters that may, must or must not be taken into account but the court in considering the claim.

Clause 47 stipulates that an authorised person does not incur civil liability for authorised action done honestly, and that the liability attaches to the Territory. However, disciplinary action can be taken against the authorised licensee if they do anything while undertaking the authorised work that would require such action to be taken.

Other requirements

To facilitate greater consumer access to important insurance information, **Clause 48** requires licensees to give evidence of the insurance they hold before providing a construction service to a person. This includes advising the person if they hold no insurance. The licensee

may ask the client to sign an acknowledgment that the client has been told about the licensee's insurance arrangements. The acknowledgment must state the time and date it was given. If the client signs the acknowledgment, the licensee must immediately provide the client with a copy. The clause also stipulates that evidence of insurance also includes a fidelity certificate under section 59 of the *Building Act*.

If a dispute arises as to whether or not the client was advised of the licensee's insurance arrangements, the registrar may assume that the client was not told about the licensee's insurance if an acknowledgment under this section is not produced or the licensee cannot otherwise prove that the client was advised about the insurance.

Part 5 Automatic licence suspension and disciplinary action

Part 5 outlines the circumstances in which a licence can be automatically suspended, and the disciplinary process where the registrar determines that the grounds for taking action exist.

Automatic suspension

If a licensed individual provides, or proposes to provide, a construction service for a fee and becomes bankrupt or applies to take the benefit of any law for the relief of insolvent debtors, **Clause 49** stipulates that the license is automatically suspended. **Clause 50** provides that a corporation's licence is automatically suspended if the licensee enters into a winding-up or is found guilty, whether in the ACT or anywhere else, of an offence that involves fraud, dishonesty or violence and is punishable by imprisonment for at least 1 year. Under **Clause 51** a partnership licence is automatically suspended if a partner's licence in the same occupation or class is suspended or cancelled. The licences is also automatically suspended if a partner who is not a licensee is found guilty, whether in the ACT or anywhere else, of an offence that involves fraud, dishonesty or violence and is punishable by imprisonment for at least 1 year.

The licence of a building surveyor is automatically suspended under **Clause 52** if the licensee stops being eligible to be a building surveyor because the person is not insured in accordance with the regulations. The person's building surveyor licence is automatically suspended when the insurance cover stops. For a plumbing plan certifier licence an automatic suspension occurs under **Clause 53** if a licensed plumbing plan certifier stops being eligible to be a plumbing plan certifier because the person is not insured in accordance with the regulations. The person's plumbing plan certifier licence is automatically suspended when the insurance cover stops.

Under **Clause 54**, the registrar must revoke the automatic suspension if satisfied that the cause of the suspension no longer exists. The registrar also has the discretion to revoke an automatic suspension if satisfied that the thing that caused the suspension will not put consumers of the licensee's construction services at a greater risk from using the services than if the thing had not happened. The registrar is required to provide a written notice of the revocation to the licensee. An automatic suspension ends 3 months after the day it begins, unless otherwise revoked.

Disciplinary action by registrar

Clause 55 lists the *disciplinary grounds* in relation to a licensee. A *disciplinary ground* must exist for the registrar to commence disciplinary action. The grounds are:

- (a) the licensee, or a nominee or employee of the licensee, contravened or is contravening, this Act or an operational Act (including a direction given to the licensee under an operational Act);
- (b) the licensee, knowingly or recklessly, gave someone information in relation to a construction service provided, or to be provided, by the licensee that was false or misleading in a material particular;
- (c) the licensee or a director, partner or nominee of the licensee, has been found guilty, whether in the Territory or anywhere else, of an offence that-
 - i) involves fraud, dishonesty or violence; and
 - ii) is punishable by imprisonment for at least 1 year.
- (d) The licensee contravened, or is contravening, the *Occupational Health and Safety Act 1989*;
- (e) if the licensee is an individual – the licensee has compounded with creditors or made an assignment of remuneration for their benefit;
- (f) if the licensee is a corporation-
 - i) the licensee enters into a scheme of arrangement; or
 - ii) a receiver, manager, receiver and manager or administrator is appointed over the licensee or any of its assets;
- (g) if the licensee is a corporation or partnership – the licensee has, or had, no nominee;
- (h) the licensee's licence has been automatically suspended under division 4.1 (Automatic licence suspension) and the cause of the suspension still exists.

A disciplinary ground applies to a former licensee if the disciplinary ground applied to the former licensee while licensed.

Clause 56 requires the registrar to give a disciplinary notice under **Clause 57** if satisfied that a disciplinary ground exists in relation to a licensee or former licensee. A disciplinary notice given to a licensee or former licensee must include certain information. The notice must state each disciplinary ground that caused the notice to be given, and state details of each ground that the registrar is satisfied would allow a reasonable person to identify the circumstances

that give rise to the ground. The notice must also advise the licensee or former licensee that he or she may, within 12 business days after the day the licensee is given the notice, give a written response to the registrar about the matters in the notice.

If a notice mentions a ground based on work done or not done, or alleged to have been done or not done, the registrar may give a copy of the notice to the owner of any premises to which the work relates. The registrar may also give a copy of the notice to any certifier appointed under the *Building Act 1972*, section 31 (Appointment of certifier) in relation to the work.

If the registrar has given, or proposes to give, a disciplinary notice to a licensee, **Clause 58** enables the registrar to suspend (an *interim suspension*) the licensee's licence by written notice given to the licensee. The registrar may issue an interim suspension if the registrar believes, on reasonable grounds, that it is in the public interest to suspend the licence before making a decision under **Clause 61**. The registrar must take into account the circumstances leading to the decision to send the disciplinary notice and the grounds stated, or to be stated, in the notice. An interim suspension may be for a period of 2 weeks or shorter, but may be extended once for 1 week if the registrar is satisfied that it is in the public interest to extend the suspension. An interim suspension must be recorded on the register.

If the registrar issues an interim licence suspension, **Clause 59** stipulates that the licence is suspended as soon as the licensee receives the notice. The suspension ends when the licensee receives a notice of revocation under **Clause 60**, or the registrar makes a decision under **Clause 61** in relation to the licence, whichever occurs first.

The registrar, under **Clause 60**, may revoke an interim suspension at any time before making a decision under **Clause 61**. The revocation must be made in writing to the licensee. If the registrar revokes the suspension of a licensee licensed as a builder, the registrar must notify in writing each person notified of the suspension under **Clause 63(3)**.

Where the registrar has given a licensee or former licensee a disciplinary notice, the registrar may take disciplinary action in relation to the licensee or former licensee if satisfied on reasonable grounds that a disciplinary ground is established in relation to the licensee or former licensee. **Clause 61** requires the registrar to take into account any response given to the registrar in accordance with the disciplinary notice and may hold an inquiry under **Division 5.3 (Disciplinary inquiries)**, before making the decision on what disciplinary action to take.

If the registrar takes disciplinary action against a licensee or former licensee, the registrar must notify the licensee or former licensee in writing about the decision. The registrar must include in the notice when the action takes effect, which can be when the notice is given to the licensee or former licensee or on the later date stated in the notice.

If the registrar decides to take disciplinary action in relation to a licensee or former licensee, **Clause 62** enables the registrar to do one or more of the following:

- (a) reprimand the licensee or former licensee;
- (b) require the licensee, or, if the licensee is a corporation or partnership, a nominee of the licensee, to complete a stated course of training to the satisfaction of the registrar or another stated person;
- (c) impose a condition on the licence, or vary an existing condition;
- (d) order the licensee to pay to the Territory a financial penalty of not more than \$1 000;
- (e) suspend the licence for a stated period (whether longer than the remaining period of the licence or otherwise) or until a stated thing happens;
- (f) cancel the licence;
- (g) cancel the licence and disqualify the licensee from applying for a licence for a stated period or until a stated thing happens;
- (h) disqualify the former licensee from applying for a licence for a stated period, until the former licensee completes a stated course to the satisfaction of a stated person or until a stated thing happens.

If a builder's licence is under an automatic suspension, interim suspension, or subject to disciplinary action under **Clause 61** (1) (c), (d), (e) or (f), **Clause 63** requires the registrar to notify each building certifier. The notice must be in writing as soon as practicable, and provide details about the disciplinary action or other action taken in relation to the licensee's builders licence. The registrar must also notify each building certifier, in writing if the registrar notified the building certifiers about the taking of disciplinary action or other action and the decision to take the action is reversed or the action is reversed, stayed, varied or set aside.

Clause 64 outlines the requirements for a public notice of a registrar's decision to take disciplinary action against a licensee or former licensee. The registrar may notify the public of the matters prescribed under the regulations by publishing those matters in relation to the decision in a daily ACT newspaper and in any other way the registrar considers appropriate. The decision may only be publicly notified if the time for any review of the decision has ended and no application for appeal or review has been made. If an application for review has been made, the decision must be confirmed on review and the time for further appeal has ended before the public notification can be made. If the decision has been reversed or vacated, the decision must not be publicly notified. If the decision has been altered, the public notification applies to the decision as altered.

Clause 65 deals with circumstances where a licence has been suspended for a period of time, and the suspended licence expires before the end of the suspension period. If the licensee who was issued the expired licence is issued a new licence in the same construction

occupation or class within three years of the expiry date of the original licence, then the new licence is suspended for the remainder of the incomplete suspension period.

Disciplinary inquiries

If the registrar decides to hold an inquiry in relation to a licensee or former licensee, **Clause 66** requires the registrar to give the licensee or former licensee at least 2 weeks written notice of the inquiry. The notice must be accompanied by a copy of the disciplinary notice given to the licensee or former licensee under **Clause 57**. The notice must state whether the registrar considers that any disciplinary ground no longer applies, or has changed, because of any written response made by the licensee or former licensee and, if a ground has changed, how the ground has changed. The notice must also explain that the inquiry may result in the taking of disciplinary action against the licensee or former licensee and tell the licensee or former licensee where and when the inquiry will be held. **Clause 67** enables the registrar to decide any procedure for an inquiry that is not prescribed under this Act, and the registrar may also adjourn an inquiry.

Under **Clause 68**, when an inquiry is held, the registrar may take evidence on oath or affirmation and is not bound by rules of evidence but may inform himself or herself in anyway the registrar considers appropriate. At an inquiry, a licensee or former licensee whose actions are being inquired into may call witnesses. **Clause 69** allows a licensee or former licensee to be represented at an inquiry by a lawyer who may examine witnesses and address the registrar on behalf of the licensee or former licensee. The registrar may appoint a lawyer to examine witnesses in an inquiry and advise the registrar on any matter relating to the inquiry.

If the matter to be considered at an inquiry in relation to a licensee or former licensee is complex or technical, **Clause 70** enables the registrar to require the relevant advisory board to advise the registrar in relation to the issues. **Clause 71** enables the registrar to require in writing, a person to appear before the inquiry on a stated date to give evidence, produce any document or thing in the possession, custody or control of the person. The registrar may set aside a requirement for a person to give evidence or produce documents or other evidence.

The registrar may give a party to the inquiry leave, subject to conditions, to inspect a document or thing produced under this section and make copies of a produced document for the inquiry. A person is taken to have complied with a requirement to produce a document if the person delivers the document or thing to the registrar before the date stated in the requirement.

Where a person is required to attend an inquiry to give evidence and/or produce documents, **Clause 72** requires the notice to be accompanied by an undertaking to appear, to be signed by the person and returned to the registrar by the stated date. It must also include a form to be completed by the person to claim the reasonable costs and expenses of attendance at the inquiry. A person is not entitled to refuse to comply with the requirement because the requirement was not accompanied by the form. **Clause 73** stipulates that a person commits an offence if the person contravenes a requirement made of the person to give evidence or produce a document to an inquiry.

Miscellaneous

If a licensee is licensed in more than 1 construction occupation or more than 1 occupation class, **Clause 74** enables the registrar to suspend, cancel, impose or vary a condition, under this part in relation to a single occupation or occupation class, or each occupation or class, as appropriate.

If a licensee surrenders their licence because the licence was suspended, **Clause 75** requires the registrar to return the licensee no later than the last day of the suspension. If the licence is varied during the suspension period, the licence as varied must be returned. If the licence has expired, or is cancelled during the suspension period, the registrar is not required to return the licence.

Part 6 Enforcement

Part 6 contains provisions that deal with the role of compliance auditors.

Clause 76 defines *compliance auditor* as a compliance auditor appointed under **Clause 77**. Under **Clause 77**, the registrar is empowered to appoint a public servant to be a compliance auditor for this Act, and an appointment must not be for longer than 5 years. The role of a compliance auditor under **Clause 78** is to be responsible for auditing the forms and other paperwork required to be provided by licensees for this Act and the operational Acts. A compliance auditor has any other function given to the compliance auditor by the registrar.

Clause 79 requires the registrar to issue an identity card to a compliance auditor, that states the person is a compliance auditor for this Act, or stated provisions of this Act. The card must and show a recent photograph of the person, their name or the particulars that are prescribed under the *Magistrates Court Act 1930* as the identifying particulars for the person (or both). The card must also show the date of issue of the card, a date of expiry for the card; and anything else prescribed under the regulations. A person commits an offence if the person ceases to be a compliance auditor and does not return their identity card to the registrar as soon as practicable (but within 7 days) after they cease to be a compliance auditor.

Clause 80 stipulates that a compliance auditor may not exercise a function under this Act in relation to a person until the compliance auditor shows the person his or her identity card. The functions of compliance auditors are described in **Clause 81** as the doing of 1 or more of the following in relation to the premises (other than residential) used by a construction practitioner, that they have entered:

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

A compliance auditor may enter the premises during ordinary business hours and with any assistance that is necessary and reasonable. The compliance auditor is not authorised to remain on the premises if they do not produce their identity card at the request of, or on behalf of the occupier or person apparently in charge of the premises. The occupier or person in charge of the premises must give the compliance auditor all reasonable facilities and assistance the compliance auditor needs for the effective exercise of his or her functions under this section.

Clause 82 makes it an offence for a person knowingly or recklessly obstructs, hinders, intimidates or resists a compliance auditor in the exercise of the compliance auditor's functions.

Part 7 Offences

Part 7 contains offence provisions for the Act.

Under **Clause 83**, it is an offence for a person who is not licensed in a construction occupation or occupation class to pretend to be licensed in the occupation or class. It is an offence under **Clause 84** for a corporation to advertise or otherwise offer to provide a service in a construction occupation or occupation class if they do not have a nominee who has a licence that authorises the nominee to provide the service.

Each partner in a partnership commits an offence if the partnership advertises or otherwise offers to provide a service in a construction occupation if they do not have a nominee who has a licence that authorises the nominee to provide the service. However, it is a defence to a prosecution for an offence if the partner proves that they did not know about the advertising or other offer and took all reasonable steps to avoid committing the offence.

Clause 85 stipulates that it is an offence if the person advertises that the person provides, or will provide, a service in a construction occupation or occupation class and does not include the person's full name and licence number in the advertisement.

It is an offence under **Clause 86** for a person to provide a service (as an employee or otherwise) in a construction occupation or occupation class if they are not licensed in the relevant occupation or class, or if there is not an endorsement on the licence that authorises the provision of the service. However, no offence is committed where the person provides the service working under the supervision of a licensee whose licence authorises the provision of the service and the licensee is authorised to supervise the work. This would for example, apply to a person who is undertaking a traineeship that requires "on the job training" under supervision.

It is an offence under **Clause 87** for a person to allow someone else (the *worker*) to provide a construction service for the person, knowing that the person providing the construction service is not licensed. These provisions do not apply to a person who provides a service under the supervision of a licensee authorised to supervise the provision of the service, and the regulations allow the service to be provided by a person without a licence under the supervision of a licensee.

Clause 88 stipulates that it is an offence if a person's licence has been suspended or cancelled and the person does not surrender the licence to the registrar within 2 weeks after the day of suspension or cancellation. In relation to a partnership, each partner commits an offence if the partnership's licence has been suspended or cancelled and the partnership does not surrender the licence to the registrar within 2 weeks after the day of suspension or cancellation, unless the partner proves that the partner took all reasonable steps to surrender the licence. It is a defence to a prosecution the offence if the defendant proves that the licence has been destroyed, lost or stolen.

It is an offence under **Clause 89** to breach any licence conditions or code of practice applicable to the licence. Where the licensee is a partnership, each partner is considered to have committed the offence, unless a partner proves that they exercised appropriate diligence to prevent the conduct from occurring.

It is an offence under **Clause 90** to obstruct or hinder an inquiry or the registrar while holding an inquiry.

An insurer commits an offence under **Clause 91** if the insurer provides a policy of insurance required by a person who is, or is applying to be, a licensed building surveyor or plumbing plan certifier and fails to give the registrar written notice of the cancellation of the insurance policy with 3 days after the day of cancellation.

Part 8 Demerit Points System

Part 8 establishes a demerit points system for licensees and former licensees, and outlines the operations of the points system.

Clause 92 provides definitions for key terms. A *demerit disciplinary ground* is the same as the grounds for taking disciplinary action under section 61, but it excludes a disciplinary ground that is an offence for which an infringement notice may be issued. The *infringement notice* referred to is defined in section 117 of the *Magistrates Court Act 1930* as that Act contains the process for the issuing of infringement notices. Other definitions include *demerit points register*, *disciplinary incident* and *licensee*, which includes a former licensee who was licensed when the demerit disciplinary ground occurred.

Clause 93 clarifies the use of the term *previous 3 years* where it is used within part 8 of the Act. The three year period is in relation to a licensee who has incurred demerit points, and the three year period ends on the day the licensee last incurred a demerit point. If a licensee incurs demerit points while unlicensed and then becomes licensed within 3 years of incurring the demerit points, the remainder of the *previous 3 years* attaches to the new licence.

If a demerit disciplinary ground exists, **Clause 94** requires the registrar to record in the demerit points register, the number of demerit points the licensee has incurred, and in which construction occupation the points have been incurred. **Clause 95** clarifies that the licensee to which the demerit disciplinary ground relates incurs a demerit point on the day when the registrar first becomes aware of the disciplinary incident. The demerit point has a life of three years from when it is incurred.

Under **Clause 96**, the demerit points that attach to a licence at the time of the disqualification, suspension or other disciplinary action, are deleted from the register when the period of the disqualification, suspension or disciplinary action begins. This does not however, prevent the registrar keeping a record of deleted demerit points.

If the registrar records a demerit point against a licensee and in the *previous 3 years* the licensee has accumulated at least six demerit points, **Clause 97** requires the registrar to write to the licensee and advise him or her of how many demerit points are against the licence. The only circumstance in which the registrar is not required to write to the licensee, is when a notice under **Clause 97** has been sent within the previous three months. If the registrar fails to send the written notice, it does not affect the validity of anything done by the registrar or a court.

If a licensee incurs 10 or more demerit points within a construction occupation within the *previous 3 years*, **Clause 98** requires the registrar to serve a notice of licence suspension, or disqualification on the licensee. Alternatively the registrar may take other disciplinary action against the licensee if particular circumstances do not support suspension or disqualification. Before making a decision on the appropriate action to take, the registrar must take into account, the need to protect public safety, the financial capacity of the licensee, the nature and regularity of the breaches, and the likelihood of further disciplinary incidents relating to the licensee. The registrar may also take into account any other relevant information.

Under **Clause 99** if a licensee applies for a new or renewed licence, and has within the *previous 3 years* incurred 10 or more demerit points within the construction occupation in which they are applying for a new or renewed licence, the registrar may refuse to issue the licence. If the registrar refuses to issue the licence, the registrar must service a notice of licence disqualification on the licensee. The registrar may only take this action if satisfied that the public would be at risk if the licensee were allowed to provide the construction service authorised by the licence.

Clause 100 outlines what information must be contained in a notice of licence suspension served on a licensee by the registrar. The notice must state the date of the notice, a date at least 21 days after the day the notice is service on which the suspension is to begin, and the period of the licence suspension. The notice must also include any information required under the regulations, and may include any additional information the registrar considers appropriate.

Clause 101 outlines what information must be contained in a notice of disqualification served on a licensee by the registrar. The notice must state the date of the notice, a date at least 21 days after the day the notice is service on which the disqualification is to begin, and the date on which any existing licence of the licensee is cancelled. The notice must also include the period of the licence disqualification, any information required under the regulations, and may include any additional information the registrar considers appropriate. When a licensee is disqualified from holding a licence, they are not entitled to apply for or be issued with a licence, for the entire period of the disqualification.

There will be circumstances where a breach to which demerit points are attached is discovered on or before the date of a notice of licence suspension or disqualification has been served, but are not taken into account for that notice. Similarly, the licensee may incur demerit points after the date of the notice but before the licence suspension or disqualification period begins. In these circumstances **Clause 102** provides that those demerit points will be taken into account for the relevant licence, when the period of the licence suspension or disqualification ends.

Clause 103 enables the registrar to give a notice of suspension or licence disqualification to a licensee without giving the licensee an opportunity to make representation why the notice should not be given.

Clause 104 clarifies how the demerit points register is to be kept. The register may include information given under this Act, and any other appropriate information. The register can be kept in any form that the registrar considers appropriate, such as a database or part of a database. The registrar is able to correct any errors or omissions in the register, subject to any requirements in the regulations.

The registrar is responsible for ensuring that the information on the demerit points register is kept in accordance with the *Privacy Act 1988* (Commonwealth) and the Information Privacy Principles. This means that the information cannot be made generally available as it contains personal information about the licensee. **Clause 105** also stipulates that the information on the register can only be disclosed in accordance with the *Freedom of Information Act 1989*. However, the registrar is required to give information about a licensee's demerit points if the licensee applies to access that information.

Part 9 Administration

Part 9 contains provisions relating to the functions and responsibilities of the Construction Occupations Registrar (registrar).

Clause 106 enables the chief executive to appoint a public servant as the Australian Capital Territory Construction Occupations Registrar (the *registrar*). The appointment cannot be for longer than 3 years. **Clause 107** outlines the functions of the registrar, which are listed as:

- (a) to keep the register under this Act;
- (b) to administer operational legislation;
- (c) to decide applications in relation to licences;
- (d) to require people to attend compulsory meetings;

- (e) to maintain the standard of construction occupations by—
 - (i) acting on complaints made about construction practitioners, including by disciplining construction practitioners if appropriate; and
 - (ii) developing and maintaining codes of practice; and
 - (iii) providing construction practitioners with information about developments in the construction industry.

The registrar has any other function that is given to the registrar under this Act or another Territory law.

Clause 108 enables the registrar to delegate the registrar's functions under this Act or another Territory law to a public servant. The registrar may appoint deputy registrars under **Clause 109** for each construction occupation, and the appointment must not be for longer than 2 years. A deputy registrar may exercise the functions of the registrar (other than the power to delegate a function) in relation to the construction occupation for which the deputy is appointed. This does not prevent the registrar from limiting the functions the deputy registrar may exercise, either in the instrument of appointment or in writing at a later date. If the registrar places limits on the functions, the deputy registrar must be given written directions about the exercise of the functions.

Under **Clause 110**, the registrar is required to keep a register of licensees. The register may be kept in any form, including electronic form and can be divided into parts. The registrar must make the register available to the public.

If the registrar makes a rectification order, **Clause 111** requires the registrar to include in the register the date the order was made and what the rectification order required. This information cannot be included in the register until the period allowed under the *Administrative Appeals Tribunal Act 1989* to appeal the order has expired, or the Administrative Appeals Tribunal has on application, reviewed the decision but not set aside the rectification order.

If the registrar is satisfied that a person has contravened a rectification order and the registrar proposes to include the details of the contravention in the register, **Clause 112** requires the registrar to tell the person in writing of the intention to include the details of the contravention in the register. The person may then make a submission to the registrar about the inclusion of the details within the time (the *stated time*) stated in the notice, that is not less than 2 weeks. The registrar may include details of the contravention in the register if, after considering any submission made within the stated time, the registrar is satisfied that the person contravened the rectification order and it is appropriate to include the details in the register.

If the registrar suspends a licence under section 58 (interim suspension), **Clause 113** requires the registrar to immediately include details of the suspension in the register. The details must

include the date of suspension, the length of the suspension, and whether the suspension has been extended.

Clause 114 requires the registrar must give to the Minister within 2 months after the end of each financial year a report that sets out the information prescribed under the regulations in relation to disciplinary action taken under this Act during the year.

Under **Clause 115**, the registrar may issue a certificate, signed to the registrar, stating that on a date or during a period stated that an entity named in the certificate, was or was not licensed. If the entity was licensed the certificate may state in what construction occupation and/or class the licence was issued, and whether the licence was, or was not, suspended. A licence or certificate under this section is evidence of the matters stated in it.

Part 10 Advisory boards

Part 10 deals with the establishment and functions of Advisory Boards.

Clause 116 enables the registrar to establish an advisory board for a construction occupation. An advisory board may, but need not, relate to more than 1 construction occupation.

Clause 117 requires the advisory board to consist of at least seven, but not more than nine members. At least four of the advisory board members must be licensed in the construction occupation, or one of the construction occupations, for which the advisory board is established. Of the four advisory board members who is licensed in a construction occupation, not more than two of them may represent a body established to represent the interests of people working in the construction occupation or one of the construction occupations. At least one, but not more than three of the advisory board members must represent an educational institution, or industry training body, relevant to the construction occupation. At least one of the advisory board members must be a lawyer. At least one of the advisory board members must be a community representative who is not licensed.

Under **Clause 118** the functions of an advisory board for a construction occupation are to advise the registrar about qualifications for the construction occupation, and to help with investigations and disciplinary hearings for the construction occupation if asked by the registrar. The advisory board is also required to help develop and maintain codes of practice for the construction occupation if asked by the registrar.

Part 11 Complaints

Part 11 outlines the procedures to be followed when a complaint is received about a licensee or former licensee who provides a construction service.

Under **Clause 119** anyone who believes a licensee or former licensee has contravened this Act or an operational Act may complain to the registrar. **Clause 120** requires the complaint to be in writing and signed by the person making the complaint (the *complainant*). The complaint must include the complainant's name and address. The registrar may accept a complaint for consideration even if the complaint does not meet the requirements in **Clause 120**. If the registrar accepts for consideration a complaint that is not in writing, the registrar must require the complainant to put the complaint in writing unless there is a good reason for a written complaint not being provided.

Clause 121 enables a complaint to be withdrawn at any time by written notice to the registrar. If the complainant withdraws the complaint, the registrar need take no further action on the complaint, but may continue to act on the complaint if the registrar considers it appropriate. If the complaint is withdrawn the registrar need not report to the complainant under section 126 (Action after investigating complaint) on the results of any action on the complaint.

Clause 122 enables the registrar to require a complainant to give the registrar further information about the complaint, or to verify all or part of the complaint by statutory declaration. If the registrar requires further information the registrar must give the complainant a reasonable period of time within which to provide the further information, and may extend that period, whether before or after it ends. If the complainant does not verify all or part of the complaint by statutory declaration the failure does not affect the making of the complaint. If the complainant does not comply with a requirement to provide further information, the registrar must not take further action on the complaint.

Clause 123 requires the registrar must take reasonable steps to investigate each complaint the registrar accepts for consideration. However, **Clause 124** stipulates that the registrar must not take further action on a complaint if satisfied that the complaint lacks substance, the complaint is frivolous, vexatious or was not made in good faith, or the complaint has been adequately dealt with.

After investigating a complaint, **Clause 125** requires the registrar to give a disciplinary notice to the licensee or former licensee who is the subject of the complaint if satisfied that a disciplinary ground exists. The registrar must advise the complainant in writing that the notice has been given. If the registrar is not satisfied that a disciplinary ground exists in relation to the complaint, the registrar must advise the complainant in writing that no further action will be taken. However, this does not prevent the registrar from taking further action

on the complaint if subsequent to the decision, grounds exist for disciplinary action to be taken in relation to the complaint.

Part 12 Miscellaneous

Clause 126 provides for applications to be made to the AAT for review of a *reviewable decision*. The regulations may prescribe which decisions are *reviewable decisions*. If the registrar makes a reviewable decision, the registrar must give a written notice of the decision to each person affected by the decision. The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Clause 127 provides that a person who is, or has been the registrar or a deputy registrar, an advisory board member, acting under the direction or authority of the registrar at an inquiry or a public servant providing administrative assistance at an inquiry is accorded certain protection. The person cannot be prosecuted in a civil proceeding in relation to loss, damage or injury of any kind to someone else because of an act done, or omitted, where it was done honestly in the exercise (or purported exercise) of a function under this Act.

Clause 128 enables the Minister to determine fees for this Act. A determination is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act. **Clause 129** allows the registrar to approve forms for this Act, which are notifiable instruments. If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

Clause 130 enables the Executive to make regulations for the following matters:

- (a) licences; and
- (b) the keeping of the register, including the particulars that must or may be entered in the register; and
- (c) the supervision of licensees' activities; and
- (d) rectification orders; and
- (e) codes of practice.

The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Part 13

Transitional

Clause 131 defines *repealed Act* for this part, as the *Construction Practitioners Registration Act 1998*, as in force immediately before the commencement of this part. **Clause 132** specifies that in relation to section 36 (Intention to make rectification order), a reference to a licensee or former licensee includes a reference to a person who was registered under the repealed Act. A construction service includes a construction service provided before the commencement of this part.

Clause 133 enables the regulations to prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations (Consequential Amendment) Act 2003* or this Act. The regulations may modify the operation of this Act to make provision with respect to any matter that is not, or not adequately, dealt with in this Act or the *Construction Occupations (Consequential Amendment) Act 2003*.

Clause 134 stipulates that Part 13 expires one year after the day it commences.

The dictionary provides a list of definitions for commonly used terms in the Bill.