

Australian Capital Territory

# Construction Occupations (Licensing) (Qualifications) Declaration 2024 (No 3)

Disallowable instrument DI2024-276

made under the

Construction Occupations (Licensing) Regulation 2004, s 13 (Eligibility for licence—suitability and financial requirements—Act, s 18 and s 24A)

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Construction Occupations (Licensing) (Qualifications) Declaration 2024 (No 3)* (the **declaration**) as made by the Minister. It has been prepared to assist the reader of the declaration. It does not form part of the declaration and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the declaration. It is not, and is not meant to be, a comprehensive description of the declaration.

### OVERVIEW

Section 13 of the *Construction Occupations (Licensing) Regulation 2004* (the Regulation) permits the Minister to declare the qualification requirements necessary for an entity to be eligible to be licensed in a construction occupation or occupation class.

The declaration covers the construction occupations and associated occupation classes of:

- Building Assessor,
- Drainer,
- Electrician,
- Gasfitter,
- Gas Appliance Worker,
- Plumber,
- Plumbing Plan Certifier,
- Works Assessor;
- Builder; and
- Building Surveyor.

It prescribes qualifications for particular applicants for new licences. It does not prescribe general requirements for renewing licensees or financial requirements.

This declaration is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to section 64 of the *Legislation Act 2001*.

### **Declaration Updates**

This instrument has been varied from the previous declaration to:

1. introduce qualification requirements for the new occupation classes of medical gasfitter, medical gas technician, medical gasfitter permit and medical gas technician permit; and
2. remove outdated qualifications requirements resulting from the new professional engineers registration scheme for plumbing plan certifiers; and
3. makes other minor editorial amendments.

There are no other changes to the instrument.

### **REGULATORY IMPACT STATEMENT (RIS)**

Section 34 of the *Legislation Act 2001* (the *Legislation Act*) provides that if a proposed subordinate law or disallowable instrument (the *proposed 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 to be prepared for the proposed law.

A RIS is not required for this instrument as the new provisions in Schedule 1 are not likely to impose appreciable costs on the community or a part of the community. The new provisions establish eligibility criteria for medical gas licence practitioners which may include qualifications, experience and competencies. The eligibility criteria established is consistent with the requirements for medical gas installers in other jurisdictions and is not expected to result in a more than minor change in the obligations and behaviour of, or impact on, individuals and businesses currently engaging in medical gas work.

The *Building and Construction Legislation Amendment Act 2023* introduced a licensing framework for people installing and working on medical gas systems and established new licence classes for people undertaking medical gas work. The [explanatory statement](#) for this Act identified that the new classes would be supported by new qualifications requirements for those undertaking such work. It identified that incorporating medical gas licensing into the construction occupations licensing framework would result in mandatory qualifications, experience and competencies being required from all licensees.

### **SCRUTINY COMMITTEE PRINCIPLES**

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters.

This instrument is consistent with the Scrutiny Committee principles.

This instrument refers to Australian Standard AS2896:2021 *Medical gas systems – installation and testing of non-flammable medical gas pipeline systems*. This is the technical standard used by the sector and the sector have knowledge of the standard in undertaking their professional services. The standard referenced is available for purchase from [www.standards.org.au](http://www.standards.org.au). There are challenges relating to the ability to provide public access to Australian Standards due to copyright issues.

Standards Australia has recently released an initiative (Reader Room) that provides limited, no-fee access to the entire catalogue of Australian Standards for non-commercial purposes, that is for personal, domestic or household use. This initiative provides access for free to a maximum of three standards every 12 months, with access for 24 hours at a time. The Reader Room is available at <https://readerroom.standards.org.au/>.

## **CONSISTENCY WITH HUMAN RIGHTS**

A detailed assessment of the human rights implications of the addition of new licensing requirements for medical gasfitters and medical gas technicians was contained in the [explanatory statement](#) to the *Building and Construction Legislation Amendment Act 2023*.

It was recognised in that [explanatory statement](#) that the new licensing framework engaged the right to work (section 27B (1) of the HRA) and may limit this right by restricting access to what was a previously self-regulated profession.

Section 27B (1) of the *Human Rights Act 2004* (HRA) expressly provides that the practice of a trade, occupation or professional may be regulated by law. Determining eligibility criteria such as qualifications, experience and competencies is common practice in occupational registration schemes.

The new licensing framework introduces licence classes under the occupation of gasfitter in the *Construction Occupations (Licensing) Regulation 2004* – medical gasfitter, medical gas technician, medical gasfitter permit and medical gas technician permit. The new permit licence classes support people entering the industry for the first time.

The classes of medical gasfitter and medical gas technician enable the carrying out of relevant work without supervision. The eligibility criteria for these licence classes build upon the licensing framework and consist of two primary methods.

Method 1 is consistent with existing occupations within the instrument and establishes a foundation encompassing both qualifications and experience, including a recognised trade qualification in plumbing.

Method 2 has been developed to allow an alternative pathway for applicants who have been working in the industry for a significant period of time but who may not have a formal qualification. This allows applicants for both the medical gasfitter and medical

gas technician licence to demonstrate relevant skills, knowledge and behaviours instead of formal qualifications such as prescribed under Method 1.

The alternative pathway at Method 2 allows for continuity of service in the medical gas field by enabling experienced tradespeople to apply for a licence under the new licensing framework without the need to undertake further training and qualifications, due to their extensive on-the-job experience. The people using this pathway already have an established understanding of relevant codes and standards applicable to medical gas piping systems.

To ensure appropriately skilled people are applying through Method 2, the practical experience required under this method includes an additional requirement to confirm knowledge and experience applying Australian Standard 2896:2021 – *Medical Gas Systems – Installation and Testing of Non-Flammable Medical Gas Pipeline Systems*. This mitigates the potential for people without an understanding of relevant, up-to-date codes and standards from applying through Method 2.

There are significant risks to health, safety and the economic wellbeing of individuals resulting from the provision of medical gas services where an individual does not have adequate qualifications, experience or follow an established verification process for the installation. The need to mitigate these risks has been recognised in the establishment of the requirement for demonstration of knowledge and experience applying the Australian Standard. Understanding of how to read and apply the Australian Standard is integral to the industry as formal qualifications in this field are limited.

Attesting to knowledge and experience applying the Australian Standard provides assurance of an applicant's ability to interpret and apply a relevant standard in the absence of a trade qualification, such as the Certificate III in Plumbing required in Method 1, in which knowledge and application of standards is included as part of the course structure.

The requirement to confirm knowledge and experience applying the Australian Standard introduced by this instrument is rationally connected to the objective of ensuring the safety and correct installation of medical gas systems. It is considered reasonable and likely that a person working in the medical gas field would already have knowledge of, and access to, the referenced Australian Standard in order to meet the practical experience requirements for obtaining a licence.

This requirement will assist in protecting the community from adverse outcomes associated with medical gas systems that are not installed or commissioned correctly, which is established in the Australian Standard and by requiring skills and experience to be verified for people applying for a medical gas licence.

Additionally, licensees working on medical gas systems will be working under the building regulatory system in premises that are largely regulated by relevant health legislation. The Australian Standard contains requirements applicable to the gasfitter and gas technician as well as relevant hospital and health care facility staff, ensuring applicants are aware of the interrelationship between the building and health regulatory systems.

The framework has been designed to be the least restrictive approach and with sufficient safeguards to ensure the limitation on the right to work can be considered reasonable and justifiable.

## Clause Notes

**Clause 1** is a formal provision that deals with the name of the instrument.

**Clause 2** is a formal provision that deals with the commencement of the instrument. The instrument, except parts of the schedule 1, dictionary and schedule 1, Part 4 (gasfitter occupation classes of medical gas fitter, medical gas fitter permit, medical gas technician and medical gas technician permit) commences on the day after notification.

Parts of schedule 1, dictionary and schedule 1, Part 4 (gasfitter occupation classes of medical gas fitter, medical gas fitter permit, medical gas technician and medical gas technician permit) relating to the new medical gas licensing framework commence on commencement of the *Construction Occupations (Licensing) Amendment Regulation 2024*, section 4.

**Clause 3** declares that schedule 1 contains the qualification requirements necessary for an entity to be eligible to be licensed, or obtain an endorsement, in a construction occupation or occupation class.

**Clause 4** provides that where more than one method of eligibility is described, an applicant only needs to demonstrate eligibility in accordance with one of the methods.

**Clause 5** disapplies the requirement in section 47 (5) of the *Legislation Act 2001*. Section 47 (5) provides that the text of an instrument applied or incorporated as in force at a particular time in a disallowable instrument is taken to be a notifiable instrument made under the relevant instrument, and therefore must be published on the Legislation Register. As noted above, this instrument applies AS2896:2021.

**Clause 6** revokes the current declaration.

**Schedule 1** contains the qualification requirements necessary for an entity to be eligible to be licensed in a construction occupation or occupation class. It contains separate parts for occupations as follows:

- Part 1 – Building Assessors
- Part 2 – Drainer
- Part 3 - Electrician
- Part 4 – Gasfitter and Gas Appliance Worker
- Part 5 – Plumber and Plumbing Plan Certifier
- Part 6 – Works Assessor
- Part 7 - Builder

- Section 1 – Qualification requirements
- Section 2 – Mandatory building work experience requirements
- Section 3 – Building technology
- Part 8 – Building surveyor