

Australian Capital Territory

Professional Engineers (Fire Safety Engineering) Code of Practice 2024

Disallowable instrument DI2024–280

made under the

Professional Engineers Act 2023, s 85 (Codes of practice)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Professional Engineers (Fire Safety Engineering) Code of Practice 2024* as presented to the Legislative Assembly. It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Section 85 of the *Professional Engineers Act 2023 (the Act)* permits the Minister to approve a code of practice for professional engineers, an area of engineering or a professional engineering service. This Code of Practice (the Code) for professional engineers providing professional engineering services in the area of fire safety engineering is made under section 85 (1) (b) of the *Act*. Under section 27 (b) of the *Act*, a professional engineer is obligated to comply with the *Act*, including any approved code of practice. The failure to comply with this Code is both a ground for disciplinary action and an offence (sections 36 and 61 of the *Act*).

This code of practice under section 85 of the *Act* 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 (the Legislation Act)*.

The purpose of this instrument is to set standards of conduct for professional engineers providing professional engineering services in the area of fire safety engineering. This supports the objects of the *Act* to uphold standards of practice and maintain public confidence in the standard of services provided by professional engineers in the ACT. It also supports the recommendations of the National Building Confidence Report 2018 and is based on the model Code of Conduct for Fire Safety Engineers developed by the Australian Building Codes Board (ABCB) in response to the National Building Confidence Report.

This instrument sets out professional conduct obligations and applies to professional providing professional engineering services in the area of fire safety engineering.

Professional engineers providing professional engineering services in fire safety engineering must comply with this instrument in addition to any general Code of Practice applicable to professional engineers.

Regulatory Impact Statement (RIS)

Section 34 of 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 RIS to be prepared for the proposed law.

A RIS is not required in this instance as this instrument does not impose appreciable costs on the community or part of the community. The *Act* establishes the ACT's professional engineers registration scheme, the requirement to be registered and the obligations on professional engineers. This instrument sets out professional conduct obligations.

Human Rights

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

Section 27B (1) of the *Human Rights Act 2004* (the *HRA*) expressly provides that the practice of a trade, occupation or profession may be regulated by law. Determining standards of conduct is common practice in occupational registration schemes.

A detailed human rights assessment is contained in the [Explanatory Statement](#) to the *Professional Engineers Bill 2022* including consideration of the impact of the introduction of a professional engineers registration scheme in the ACT on the right to work under section 27B of the *HRA*.

Any engagement with or limitation on the right to work in section 27B of the *HRA* is considered reasonable and justifiable.

Clause Notes

Clause 1 names the instrument the *Professional Engineers (Fire Safety Engineering) Code of Practice 2024*.

Clause 2 provides that this instrument commences on 6 March 2025.

Clause 3 approves the code of practice for professional engineers providing professional engineering services in the area of fire safety engineering in Schedule 1.

Clause 4 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. The instrument incorporates the Australian Fire Engineering Guidelines (AFEG) and the National Construction Code (NCC). The AFEG is available free of charge from the Australian Building Codes Board (ABCB) website at ncc.abcb.gov.au. Copyright in the NCC is collectively owned by the Australian Government and the states and territories. The arrangement between jurisdictions is that the NCC will be published on behalf of the jurisdictions in a single place by the ABCB on their website at www.abcb.gov.au. It would not be appropriate to publicly notify the NCC on an ACT legislation register. The notes to section 4 of the instrument describe methods of access to these documents, including accessing the NCC through the ABCB website and through the ACT Government's planning website.

Schedule 1 contains the code of practice for professional engineers providing professional engineering services in the area of fire safety engineering. The code of practice covers specific standards expected of fire safety engineers in alignment with the ACT Code of Practice for all professional engineers and the model code of conduct for Fire Safety Engineers developed by the ABCB in response to the National Building Confidence Report.