

2003

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

CONSTRUCTION OCCUPATIONS (LICENSING) REGULATIONS 2003
EXPOSURE DRAFT

EXPLANATORY STATEMENT

Circulated with the authority of
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Minister for Planning

Outline

The Construction Occupations (Licensing) Regulations contain much of the administrative requirements for the effective operation of the new Construction Occupations (Licensing) Act.

Parts 1 of the regulations contain the administrative and explanatory provisions for the operation of the regulations. Part 2 contains the requirement for licence applications and information to be contained on licences. Part 3 covers the details to be included in the new construction occupations register, including the availability of the register for inspection, the details to be kept, and the length of time for which licences can be issued.

The eligibility requirements to be licensed, including skills assessment provisions and corporation, partnership and nominees stipulations, are detailed in Part 4. Provisions relating to licence conditions are contained in Part 5. This includes specific provisions for corporate and partnership licences, and operative drainer, certain gasfitters and certain plumber classes of licence. There are also miscellaneous provisions covering the return of licences, endorsements that can be placed on licences, and the replacement of licences.

Part 6 of the Regulations specify the classes of licence for each construction occupation, and refers to Schedule 1 of the regulation, which provides detail of the construction work that can be done under each class of licence in each construction occupation. Part 7 outlines the reporting requirements to the Minister in relation to disciplinary actions undertaken in a financial year. Part 8 deals with the transitional provisions for the *Construction Practitioners Registration Act 1998*.

Schedule 1 specifies the classes of construction occupations licence and functions, Schedule 2 lists demerit disciplinary grounds for each construction occupation and Schedule 3 lists general demerit disciplinary grounds that apply to all construction occupations.

Revenue/cost implications

The regulations and Act give effect to a more streamlined licensing process to replace the existing multiple licensing processes. Reallocation of existing resources will enable the new scheme to be administered with no additional cost.

Formal Regulations

Part 1 Preliminary

Part 1 contains regulations that are administrative in nature. **Regulations 1 and 2** give the formal name of the Regulations and set the date that the Regulations come into force as the day on which the Construction Occupation Licensing Act commences, which is on a date determined by the Minister. **Regulation 3** explains that the dictionary contained at the end of the regulations is a part of the regulations, and provides notes how the definitions are structured and how they apply to the Act. **Regulation 4** explains that the “notes” that appear in the regulations are only explanatory, and not part of the regulations.

Regulation 5 specifies that provisions in other legislation apply to offence committed under these regulations. The notes in regulation 5 explain the application of the *Criminal Code* and *Legislation Act 2001* to the regulations.

Part 2 Licences

Regulation 6 outlines the specifics that must be included in an application for a licence. Details include the applicant’s name the construction occupation and class of licence and any endorsements being applied for in the application. All applicants must be able to provide evidence that they are eligible to be licensed in the class of licence or endorsement for which they are applying.

Other mandatory details include and relevant previous licenses held, information on any convictions or finding of guilt for any offence involving fraud, dishonesty or violence, punishable by imprisonment for 1 year or more and, if the applicant has, details of each conviction or finding. The applicant’s access to financial resources adequate to complete any work that will be authorised under the licence must also be provided with the application.

If the applicant is a partnership there are a range of business details required, including proof of the existence of the partnership, the name of each partner; and where the partner is a corporation—the partner’s ACN. Contact details for each nominee are also required. Similar details are required where the applicant is a corporation.

Additional information on insurance coverage is required if the licence application is for a building surveyor or plumbing plan certifier licence.

Regulation 7 outlines the information that will be included on a licence issued under the Act. The information includes the licensee’s name, the period of the licence, and the construction occupation and class of construction occupation the licence relates to and any endorsement on the licence.

Where the licensee is a partnership the name of each partner will be included and the partner's ACN where applicable. For a corporation, its ACN will be included.

The licence will also clearly indicate if the licence is subject to conditions and, if it is, the construction occupation or class of construction occupation to which the conditions apply. The conditions can be either specified on the licence or indicated, with the details of the conditions being available on the register.

Regulation 8 specifies that the term for which a licence in the construction occupations of builder, electrician, plumber, drainer and gasfitter is for not longer than three years. An applicant may apply for a licence, which is only for a one year period.

Regulation 9 specifies that the length of licence for the construction occupations of building surveyor or plumbing plan certifier is for not longer than one year. If the applicant for the licence or licence renewal for building surveyor or plumbing plan certifier has insurance required under these regulations for a period less than 1 year, the licence can only be issued for the same period of the insurance.

Part 3 Register

Regulation 10 contains provisions that specify the details that the Registrar is required to ensure are on the Construction Occupations Register. This includes the licensee's licence contact details and where required under the licence class, their insurance details. Any previous suspension of a licence and the reasons for that suspension, and details of any disciplinary action taken against the licensee is also included.

Regulation 11 enables the registrar to correct a mistake, error or omission in the register, or alter or omit an inaccurate entry.

Part 4 Eligibility to be licensed

Part 4 outlines the eligibility requirements for licensing and stipulates the length of time for which certain licenses can be issued.

There are circumstances where a person, corporation or partnership is not eligible to be licensed. **Regulation 12** does not allow an entity to be licensed if the entity is licensed in another occupation or class of occupation, the licence is suspended and the registrar is satisfied that, because of the grounds for the suspension, it is not appropriate for the entity to be licensed in the occupation or class of occupation.

Regulation 13 specifies that an individual is not eligible to be licensed if the licence would allow the applicant to provide a construction service without supervision and the individual has been found guilty of an offence that involves fraud or dishonesty and is punishable by imprisonment for at least 1 year.

Regulation 14 enables the registrar to declare in writing, the qualifications that are necessary for individual to be eligible for a licence.

There will be circumstances where the registrar is not satisfied that a person has the necessary qualifications to be eligible for a licence. In those circumstances the registrar may require the applicant to undertake an assessment to find out whether the applicant has a skill reasonably necessary to satisfactorily exercise the functions in the class of licence for which the applicant applied. **Regulation 15** specifies that the assessment can be practical, written or oral or a combination of the three. The assessment can also involve a test or series of tests. The registrar must ensure that an appropriately qualified person or a registered training provider, such as an Institute of Technology undertakes the assessment. The applicant is required to pay any reasonable costs incurred to set up the assessment, and if they do not pay those costs they are not eligible to be licensed.

There are certain construction occupation and classes within those occupations, where a corporation or a partnership is eligible to be licensed. **Regulation 16** lists those occupations and classes, which are builder, the electrical contractor class of electrician, gasfitter, and plumber. Where a corporation or partnership is eligible to be licensed the corporation or partnership must have a nominee who is licensed in the occupation or class. If a partner in a partnership has been found guilty, whether in the ACT or anywhere else, of an offence involving fraud, dishonesty or violence punishable by imprisonment for at least 1 year, they are not eligible to be licensed.

Regulation 17 specifies that an individual is only eligible to be licensed in the class of owner-builder if they own the land where the building work is to be undertaken, has a building approval in place under the *Building Act 1972*, and has not been granted an owner builder licence in relation to other land in the previous 5 years.

For the construction occupations of building surveyor, there are insurance requirements that must be met to be eligible for a licence. **Regulation 18** specifies that the applicant must have professional indemnity insurance that provides indemnity against claims for breach of professional duty as a building act certifier. The indemnity must include a minimum limit of \$1 000 000 for any 1 claim, and a minimum limit of indemnity of \$1 000 000 for the total of all claims against the insured made in the period of cover. A minimum limit of indemnity for the costs and expenses of defending or settling a claim of 20% of the limit of indemnity for the claim is also required.

Regulation 19 has similar requirements as those outlined in **Regulation 18**, but specifies the insurance requirements for plumbing plan certifiers. A plumbing plan certifier is required to have professional indemnity insurance that provides indemnity against claims for breach of professional duty as a certifier, and a minimum limit of liability of \$1 000 000 for each period of insurance.

Nominees

Where a corporation or partnership is able to apply for a licence, they are required to have a nominee, who is responsible for the construction work that can be undertaken with the corporation or partnership's licence. **Regulation 20** stipulates that the

nominee must be an individual, and where the entity is a corporation, the nominee must be either a director or employee of the corporation. In the case of a partnership, the nominee must be a partner or a nominee of a corporation that is part of the partnership. In both circumstances, the nominee must be licensed in the same construction occupation as the entity (or as the entity is applying to be licensed in) and be able to exercise the functions of a nominee on a daily basis. If the construction occupation is divided into classes the nominee must be licensed in the same class as, or a class that allows the exercising of the same functions as, the class the entity is licensed in (or applying to be licensed in).

Part 5 Licence conditions and endorsements

Part 5 outlines the standard conditions that apply to licences and the capacity to endorse work under certain licences. **Regulation 21** clarifies that a licence is subject to the conditions in division 5.1. This is in addition to any conditions that the registrar may impose under section 21 of the Act.

If a licensee changes any details that are recorded in the register, **Regulation 22** requires the licensee to inform the registrar in writing of the changes within 2 weeks. Under **Regulation 23**, where the licensee is a corporation, they must notify the registrar in writing if a person becomes or stops being a director or nominee within 2 weeks of the change occurring. **Regulation 24** applies to partnership licenses, and requires the licensee to advise the registrar in writing if a person becomes or stops being a partner or nominee within 2 weeks of the change occurring.

Under **Regulation 25**, a condition of a licence in the operative drainer class is that the licensee only does construction work as an employee. Similarly under **Regulation 26** licenses in the classes of journey person gasfitter and restricted automotive gasfitter-LPG, can only do construction work as an employee. In the licence classes of journey person plumber, and provisional sprinkler fitter, **Regulation 27** specifies that a condition of the licence is that the licensee only does construction work as an employee.

Miscellaneous

If the registrar varies a condition on a licence **Regulation 28** enables the registrar to require a licensee to return the licence to the registrar so that the registrar can include the variation in the licence. If the registrar requires the return of the licence the licensee must comply with the request, and the registrar is required to return the licence as soon as it is varied, unless the licence is suspended or cancelled.

There are circumstances where registrar may, on application, endorse a licence that enables the licensee to do construction work not otherwise allowed under that licence. **Regulation 29** provides for the endorsement of a builder licence for specialist building work. The registrar must be satisfied that the applicant has the necessary qualifications and experience to undertake the work before issuing an endorsement. The registrar is able to place conditions on the endorsement.

Regulation 30 enables the registrar to endorse a plumber licence to do backflow prevention device test work. As with **Regulation 29**, the registrar must be satisfied that the applicant has the necessary qualifications and experience to undertake the work before issuing an endorsement.

If a licensed person has lost their licence, or it has been stolen, destroyed or damaged, **Regulation 31** enables the registrar to issue a replacement licence. A fee may also be charged for the issue of the replacement licence.

Part 6 Construction occupation classes

Part 6, **Regulations 32-38** specify those construction occupations that are divided into classes, and refers to the appropriate part of schedule 1 of the regulations for each class. The construction occupations of builder, building surveyor, drainer, electrician, gasfitter, and plumber are listed. Plumbing plan certifier is not divided into classes and is therefore not included.

Part 7 Miscellaneous

Part 7 outlines the reporting requirements to the Minister, and the matters within the Act that have appeal rights to the Administrative Appeals Tribunal.

Regulation 39 explains that Schedule 2 of the Regulations contains the short description for a disciplinary ground of contravening the Act or operational Acts, and the number of demerit points that attached to each breach. Schedule 3 deals with disciplinary grounds that are not covered by section 55(1)(a) of the Act.

Regulation 40 requires the registrar to provide a report to the Minister and the end of each financial year, outlining what disciplinary action has been taken against licensed person. The report must detail the name of the licensee or former licensee, the action that resulted in disciplinary action, what disciplinary action was taken, and the result of any review of the decision to take disciplinary action.

There are a large number of decisions under the Act that are reviewable decisions to the Administrative Appeals Tribunal. **Regulation 41** lists each instance, and includes matters relating to the issue or refusal to issue a licence, any variation to licence conditions, suspensions and revocations of licences and issuing of rectification orders.

Part 8 Transitional

Part 8 makes provision for the continuation of certain provisions within the *Construction Practitioners Registration Act 1989*, as in force immediately before the commencement of the Act, section 7 (Who is a *construction practitioner*?).

Regulations 42-45 ensure that registration, suspensions of registrations and disciplinary action taken under that Act still have legal effect.

Schedule 1 Classes of construction occupation licence and functions

Schedule 1, as referred to in Part 6 of the Regulations, identifies each construction occupation that has been divided into classes of licence. It names each licence class and, in column 4 outlines what construction work is allowed under that licence class.

Part 1.1 Builder

column 1 item	column 3 construction occupation class	column 4 construction work
1	class A	building work other than specialist building work
2	class B	building work, other than specialist building work, in relation to a building with not more than 3 storeys
3	class C	building work, other than specialist building work, in relation to a class 1, class 2 or class 10a building that has 2 or less storeys
4	class D	non-structural basic building work, other than specialist building work
5	owner-builder	Building work, other than specialist building work, in relation to a class 1, class 2 or class 10a building that is the licensee's main home or ancillary to it

Part 1.2 Building surveyor

1	principal building surveyor	building certification work
2	general building surveyor	building certification work in relation to a building that is 3 storeys or lower and that has a floor area of 2 000m ² or less
3	principal government building surveyor	building certification work
4	government building surveyor	building certification work in relation to a building that is 3 storeys or lower and that has a floor area of 2 000m ² or less

Part 1.3 Drainer

1	advanced sanitary drainer	Sanitary drainage work without supervision
2	journeyman drainer	sanitary drainage work under supervision of licensee with advanced sanitary drainer licence
3	operative drainer	sanitary drainage work under supervision of licensee with advanced sanitary drainer licence

Part 1.4 Electrician

1	electrical contractor	1 electrical wiring work without supervision 2 supervision of electrical wiring work
2	unrestricted	1 electrical wiring work without supervision 2 supervision of electrical wiring work
3	electrotechnology assembly and servicing	incidental electrical work in relation to electrotechnology assembly and servicing
4	electrotechnology systems	incidental electrical wiring work in relation to electrotechnology systems
5	restricted—plumbing and gas fitting	incidental electrical wiring work in relation to plumbing and gasfitting work
6	restricted—refrigeration and air conditioning	incidental electrical wiring work in relation to refrigeration and air conditioning work
7	Restricted – type B gas appliances	Incidental electrical wiring work in relation to type B gas appliances

8	permit	1 electrical wiring work under supervision 2 incidental electrical work
9	restricted permit	incidental electrical work under the supervision of a licensee with a licence in 1 or more of the following classes: (a) unrestricted (b) restricted-electrical fitting (c) restricted-mechanical fitting (d) restricted-plumbing and gas fitting (e) restricted-refrigeration and air conditioning

Part 1.5 Gasfitters

1	advanced	gasfitting work, other than LP gas (liquid phase) installation, without supervision
2	general	1 gasfitting work for pressures below 21kPa without supervision 2 gasfitting work for pressures above 21kPa under the supervision of an advanced gasfitter
3	journeyperson gasfitter	gasfitting work under the general supervision of a licensee with an advanced gasfitter licence or unrestricted licence
4	LPG gasfitter (vapour phase)	LP gas (vapour phase) installation without supervision
5	LPG gasfitter (liquid phase)	LP gas (liquid phase) installation without supervision
6	restricted automotive—LPG	LP gas fuel installation on motor vehicles
7	restricted automotive—NGV	NGV fuel installation on motor vehicles
8	restricted automotive – LPG forklifts	gasfitting for LPG forklifts
9	restricted automotive – NGV forklifts	gasfitting for NGV forklifts

Part 1.6 Plumbers

1	sanitary plumber	sanitary plumbing work without supervision
2	water supply plumber	water supply plumbing work, other than fire sprinkler work, without supervision
3	journeyperson plumber	sanitary plumbing work under supervision of licensee with sanitary plumber licence
4	sprinkler fitter	fire sprinkler work
5	journeyperson sprinkler fitter	fire sprinkler work under the supervision of licensee with sprinkler fitter licence

Schedule 2 Demerit disciplinary grounds

Schedule 2 lists each demerit disciplinary ground for each construction occupation that fall under that are covered by the disciplinary ground under section 55 (1)(a) of the Act, which is contravening the Act or and operational Act. Column 1 gives an item number to each demerit, column 2 provides a detailed description of the demerit disciplinary ground, column 3 provides a short description and column 4 specifies the number of demerit points that attach to the item.

Schedule 3 Licence demerit disciplinary grounds under Act, s 55 (1) (other than par (a))

Schedule 3 lists each demerit disciplinary ground for each construction occupation that are covered by the disciplinary grounds other than section 55 (1)(a) of the Act. Column 1 gives an item number to each demerit, column 2 provides a detailed description of the demerit disciplinary ground, column 3 provides a short description and column 4 specifies the number of demerit points that attach to the item.

Dictionary

The Dictionary, as referred to in regulation 3, forms part of the regulations, and defines commonly used terms within the regulations.