

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Construction Practitioners Registration Bill
1998**

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**Construction Practitioners Registration Bill
1998**

A BILL

FOR

**An Act to provide for the registration of construction
practitioners and for a related purpose**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Construction Practitioners Registration Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 **3. Interpretation**

(1) In this Act, unless the contrary intention appears—

“certifier” means a person who performs services as a certifier under the *Building Act 1972* or a prescribed law;

10 “Code” means the code of ethics prepared under section 12, being the code as amended and in effect from time to time;

“construction work” means—

(a) work that is building work for the purposes of the *Building Act 1972*; or

15 (b) work that is prescribed, being work in relation to which a prescribed law applies;

“determined fee” means the fee—

(a) determined by the Minister; or

(b) calculated in accordance with a manner determined by the Minister;

20 under section 30 for the purposes of the provision where the expression occurs;

“prescribed law” means a prescribed Act or prescribed regulations that provides or provide for the appointment of a registered construction practitioner as certifier in relation to construction work;

25 “qualifications” includes training and experience;

“registered construction practitioner” means a person who is registered under this Act.

(2) For the purposes of this Act, a person is covered by insurance if he or she holds professional indemnity or public liability insurance or other insurance of a prescribed kind, in accordance with the regulations, against liabilities arising out of any activity carried out, or to be carried out, by that person as a certifier, being insurance—

35 (a) taken out with an insurer approved in writing by the Chief Executive; and

(b) providing cover against liabilities for the period referred to in subsection 27 (1).

PART II—ADMINISTRATION

Division 1—Registration

4. Categories of registration

5 There shall be such categories of registration as are set out or described in the regulations.

5. Application

(1) Application may be made to the Chief Executive for registration under this Act.

(2) An application—

- 10 (a) may only be made by a natural person;
- (b) shall be in writing and signed by the applicant;
- (c) shall state each category of registration that is sought;
- (d) shall be in accordance with the regulations;
- (e) shall contain such information as is prescribed;
- 15 (f) shall be accompanied by such documents as are prescribed; and
- (g) shall be accompanied by the determined fee.

(3) The Chief Executive may exempt an applicant who has previously been a registered construction practitioner from such requirements of regulations made for the purposes of paragraph (2) (e) or (f) as the Chief Executive deems appropriate.

20

6. Qualifications

The qualifications required in respect of each category of registration are as prescribed.

7. Determination of applications

25 (1) The Chief Executive shall, if satisfied that—

- (a) an application complies with section 5;
- (b) the applicant has the qualifications prescribed in relation to a category of registration that is applied for; and
- 30 (c) if the application is granted, the applicant will be covered by insurance for the period that commences on the grant of the application and expires on the anniversary of that grant;

register the applicant in each category that has been applied for and in respect of which the applicant is qualified.

35 (2) If, after making such enquiries as are reasonable in the circumstances, the Chief Executive is not satisfied in accordance with

subsection (1) in relation to 1 or more categories of registration applied for, he or she shall refuse the application in relation to each category in respect of which the Chief Executive is not so satisfied.

5 (3) The Chief Executive may ask the applicant to provide such further information or documents as may be reasonably required in order to determine the application and may refuse the application if the request is not complied with within a reasonable time.

8. Entitlement to act as certifier

10 (1) A registered construction practitioner is not entitled to perform services as a certifier in relation to construction work if he or she has an interest in the work.

(2) For the purposes of this section, a registered construction practitioner has an interest in construction work if he or she, or a person related to the practitioner—

- 15 (a) has a legal or equitable interest in the land on which the construction work is, or is to be, carried out;
- (b) has prepared, or intends to prepare, drawings intended to be used in relation to the construction of the construction work;
- 20 (c) has carried out, or intends to carry out, any of the construction work; or
- (d) has a financial interest in the construction or completion of the construction work.

(3) For the purposes of this section, a person is related to a registered construction practitioner if he or she is—

- 25 (a) a person with whom the practitioner has a personal, professional, commercial or financial relationship;
- (b) an employer or employee of the practitioner; or
- (c) a company of which the practitioner is a director or in which he or she holds a share.

30 9. Term of registration

(1) Registration under this Act is not in effect while it is suspended.

(2) A person ceases to be registered under this Act when his or her registration is surrendered or cancelled.

35 (3) The registration of a person who becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors, is cancelled by virtue of this subsection.

10. Annual fee and statement

(1) On or before the anniversary of his or her registration under this Act (in this section called the “renewal date”), a registered construction practitioner shall give to the Chief Executive—

- 5 (a) a statement setting out the prescribed particulars;
(b) the determined fee; and
(c) such evidence as the Chief Executive may reasonably require to show that the registered construction practitioner will be covered by insurance for the period that commences on the renewal date
10 and expires not earlier than the next succeeding renewal date.

(2) Where subsection (1) is not complied with, the registration is cancelled by virtue of this subsection.

(3) In this section, a reference to a registered construction practitioner shall be read as including a reference to a registered construction practitioner
15 whose registration is under suspension.

11. Register

(1) The Chief Executive shall establish and maintain a register of construction practitioners (in this section referred to as the “Register”).

(2) The Register—

- 20 (a) shall contain—
(i) such particulars of each registration under this Act as are prescribed; and
(ii) such other information as the Chief Executive considers appropriate; and
25 (b) may be kept in such form as the Chief Executive considers appropriate.

(3) The Chief Executive shall determine a place where the Register is to be kept.

(4) A person is entitled to have access to the Register and to make copies
30 of any entry at the place determined under subsection (3) during ordinary office hours.

(5) The Chief Executive may satisfy a request for access under subsection (4) by making available a copy of the Register, or a copy of the relevant part of the Register, certified by the Chief Executive, or a person
35 designated by the Chief Executive for this purpose, to be a true copy of the Register.

Division 2—Code of ethics

12. Code of ethics

5 (1) The Chief Executive may cause to be prepared and published for the purposes of this Act a code of ethics to be observed by registered construction practitioners.

(2) The Chief Executive may, by instrument, amend the Code.

(3) An instrument under this section and any instrument revoking, amending or affecting such an instrument, are disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

10 **13. Evidence of Code**

(1) In any proceedings, evidence of the Code as in force on a specified date or during a specified period may be given by the production of a copy of the Code certified by the Chief Executive, in writing, to be a true copy of the Code as at that date or during that period.

15 (2) For the purposes of subsection (1), a certificate that purports to have been signed by the Chief Executive shall be taken to have been so signed unless the contrary is proved.

Division 3—Enforcement

14. Interpretation

20 In this Division—

“compliance auditor” means a person who is a compliance auditor by virtue of subsection 15 (3).

15. Compliance auditors

25 (1) There shall be 1 or more compliance auditors for the purposes of this Act.

(2) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of a compliance auditor.

30 (3) A compliance auditor is any public servant for the time being performing the duties of a Government Service office referred to in subsection (2).

(4) A compliance auditor shall perform such functions as the Chief Executive directs for the purposes of this Act.

16. Identity cards

(1) The Chief Executive shall issue to a compliance auditor an identity card that specifies the auditor's name and office, and on which appears a recent photograph of the auditor.

- 5 (2) Upon ceasing to be a compliance auditor, a person shall not fail, without reasonable excuse, to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

17. Powers of compliance auditors

10 (1) For the purpose of discharging his or her functions, a compliance auditor may, during ordinary business hours and with such assistance as is necessary and reasonable, enter upon or into any premises (other than residential premises) used by a registered construction practitioner.

15 (2) A compliance auditor who enters upon or into premises in pursuance of subsection (1) is not authorised to remain on the premises if, on request by or on behalf of the occupier or person apparently in charge of the premises, the compliance auditor does not produce his or her identity card.

(3) Where a compliance auditor enters upon or into premises in accordance with subsection (1), he or she may—

- 20 (a) inspect any books, documents, plans, drawings or records relating to the activities of the registered construction practitioner as a certifier;
- (b) make copies of, or take extracts from, any books, documents or records referred to in paragraph (a);
- 25 (c) require any person on the premises to furnish information relating to any books, documents or records referred to in paragraph (a); and
- (d) require a person apparently in charge of the premises—
- 30 (i) to produce any book, document or record referred to in paragraph (a);
- (ii) to give to the compliance auditor access to any computer in which any information relevant to the activities of the registered construction practitioner as a certifier is stored; or
- (iii) to print any information referred to in subparagraph (ii).

35 (4) The occupier or person in charge of premises upon or into which a compliance auditor has entered in pursuance of subsection (1) shall provide the compliance auditor with all reasonable facilities and assistance for the effective exercise of his or her powers under this section.

18. Obstruction of compliance auditors

A person shall not, without reasonable excuse—

- (a) obstruct or hinder a compliance auditor in the exercise of his or her functions under this Act; or
- 5 (b) fail to comply with a requirement of a compliance auditor under subsection 17 (3).

Penalty: 50 penalty units or imprisonment for 6 months, or both.

PART III—DISCIPLINARY PROVISIONS

19. Interpretation

10 In this Part—

“disciplinary notice” means a notice under section 20.

20. Notice of intended disciplinary action

15 The Chief Executive may cause a notice in writing to be served on a registered construction practitioner requiring him or her to show cause why disciplinary action should not be taken in relation to him or her on any of the following grounds:

- (a) that the registration had been effected in error or in consequence of a false statement or misleading information furnished by or on behalf of the registered person;
- 20 (b) that the registered construction practitioner has contravened a condition imposed on his or her registration under subparagraph 22 (6) (a) (v);
- (c) that the registered construction practitioner has contravened a provision of, or a requirement made under, this Act, the *Building Act 1972* or a prescribed law, being a provision or requirement relating to the practitioner in his or her capacity as a certifier;
- 25 (d) that the registered person has failed to exercise due skill, care or diligence in the performance of a function as certifier under the *Building Act 1972* or a prescribed law;
- 30 (e) that the registered construction practitioner has failed to comply with a provision of the Code.

21. Preliminary suspension of registration

35 (1) Where the Chief Executive considers it necessary in the public interest to do so, having regard to the circumstances leading to the decision to serve a disciplinary notice and the ground or grounds specified in the notice, he or she may suspend the registration of the person on whom the notice is to be or has been served.

(2) The Chief Executive—

- (a) is not required to give notice of his or her intention to suspend a registration under subsection (1) to any person; and
- (b) may suspend a registration under subsection (1) at the time of the service of a disciplinary notice or at any time thereafter until the day referred to in subsection 22 (9).

(3) A suspension under subsection (1)—

- (a) takes effect when written notice of the suspension is given to the registered construction practitioner; and
- (b) expires on the day referred to in subsection 22 (9).

22. Procedure

(1) A disciplinary notice—

- (a) shall contain full particulars of the facts or circumstances on the basis of which the Chief Executive has formed the opinion that the ground or grounds specified in the notice exists or exist; and

(b) shall specify—

- (i) where the registration has been suspended under section 21—a period of time that commences not less than 7 days and ends not more than 14 days after the date of service of the notice; or
- (ii) in any other case—a period of time that commences not less than 14 days and ends not more than 28 days after the date of service of the notice;

within which the registered construction practitioner may show cause to the Chief Executive why his or her registration should not be suspended or cancelled.

(2) A person on whom a disciplinary notice has been served may apply in writing for an extension of the period within which he or she is required to show cause under paragraph (1) (b).

(3) Upon receiving an application under subsection (2), the Chief Executive may extend the period of time by not more than 28 days or refuse to extend the period.

(4) The Chief Executive may extend a period of time under subsection (3) even though the application is made after its expiry.

(5) After the expiry of the period of time specified in a disciplinary notice or any extension of that period, the Chief Executive may fix a time and place for an inquiry into the proposed suspension or cancellation of registration and shall give notice in writing of the time and place of that inquiry to the registered construction practitioner and any other person who has made representations in relation to that suspension or cancellation.

- (6) At the completion of an inquiry the Chief Executive shall—
- (a) if satisfied that a ground specified in the disciplinary notice exists—
- (i) cancel the registration;
 - 5 (ii) cancel the registration in relation to a specified category of registration;
 - (iii) suspend the registration for a specified period;
 - (iv) suspend the registration for a specified period in relation to a specified category of registration;
 - 10 (v) impose or vary a condition on the registration;
 - (vi) require the registered construction practitioner to undertake a specified course of training and provide evidence of its satisfactory completion;
 - 15 (vii) require the registered construction practitioner to provide to the Chief Executive such information as the Chief Executive may require in relation to activities undertaken by the practitioner as a certifier, being activities that are specified in the notice; or
 - (viii) reprimand the registered construction practitioner; or
 - 20 (b) if not so satisfied—decide to take no further action in relation to the notice.

(7) For the purposes of subsection (6), where no cause to the contrary has been shown and no representation has been made, the Chief Executive may be satisfied in accordance with paragraph (6) (a).

- 25 (8) Subject to section 28, the Chief Executive shall cause—
- (a) the registered construction practitioner in relation to whom an inquiry has been held; and
 - (b) any person who has made representations in relation to the inquiry;
- to be notified in writing of the Chief Executive's decision.

30 (9) A decision under paragraph (6) (a) takes effect on the day when the notification under paragraph (8) (a) occurs.

23. Notification of decision

35 (1) The Chief Executive shall notify the specified particulars of a decision that affects a registration in a daily newspaper printed, published and circulated in the Territory.

- (2) For the purposes of subsection (1), the specified particulars are—
- (a) the name of the person whose registration has been affected;

- (b) any other name known to the Chief Executive under which the person is carrying on business or has, during the period of his or her registration, carried on business;
- 5 (c) the address or addresses at which the person is carrying on business or has, during the period of his or her registration, carried on business;
- (d) the nature of the decision;
- (e) the date on which the suspension or cancellation took effect and, in the case of a suspension, the period of suspension; and
- 10 (f) the ground or grounds on which the decision was based.
- (3) A notice shall not be published under subsection (1) unless—
- (a) the period of time or any extension of the period of time within which an application for review of, or appeal from, the Chief Executive's decision may be made has expired; or
- 15 (b) where an application for review or appeal has been made—
- (i) the period of time within which any appeal or further appeal may be instituted has expired; or
- (ii) an appeal or further appeal has been instituted and has been withdrawn or dismissed, and no further appeal is possible.

20 **24. Removal of condition**

- (1) A registered construction practitioner on whose registration a condition has been imposed under subparagraph 22 (6) (a) (v) may apply to the Chief Executive in writing for removal of the condition.
- (2) The Chief Executive may, if satisfied that it is appropriate to do so,
25 remove the condition.

PART IV—LIMITATION OF LIABILITY

25. Interpretation

In this Part—

- 30 "building action" means an action (including a counter-claim) for damages for loss or damage arising out of, or concerning—
- (a) defective building work;
- (b) defective construction work other than building work; or
- (c) the negligent performance by a registered construction practitioner of a function as a certifier under the *Building Act 1972* or a prescribed law, or the negligent failure to
35 perform such a function;
- other than an action for damages for death or personal injury;

“building approval” has the same meaning as in the *Building Act 1972*;

“building work” means building work for the purposes of the *Building Act 1972* in respect of which a building approval has been issued after the commencement of this section.

5 **26. Limit of liability of persons jointly or severally liable**

(1) A court that determines an award of damages in a building action shall give judgment against each defendant to the action who is found to be jointly or severally liable for the damage for such proportion of the total amount of the damages as the court considers to be just, having regard to the extent of that defendant’s responsibility for the loss or damage.

(2) Notwithstanding any other Act or any rule of law, the liability for damages of a person found to be jointly or severally liable for damages in a building action is limited to the amount for which judgment is given against that person.

15 (3) A person found to be liable for a proportionate part of damages in accordance with subsection (1) in a building action is not liable to contribute to the damages apportioned to any other person in the action or to indemnify any other such person in respect of those damages.

27. Limitation on time when building action may be brought

20 (1) A building action may not be brought more than 10 years after—
(a) if a certificate of occupancy has been issued in relation to the relevant building work—the day on which the certificate of occupancy has been issued;
(b) where paragraph (a) does not apply and the certifier has, in the course or upon completion of the building work, inspected it—the day on which the last inspection took place; or
25 (c) where neither paragraph (a) nor paragraph (b) applies—the day on which the relevant building was first occupied or used.

(2) In this section—

30 “building”, in the case of building work that consists of the alteration of a building, means the building as altered;

“certificate of occupancy” means a certificate under section 53 of the *Building Act 1972*.

PART V—MISCELLANEOUS

35 **28. Review of decisions**

(1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive—

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- 5 (a) refusing an application for registration in relation to a category of registration under subsection 7 (2);
- (b) suspending the registration of a registered construction practitioner under subsection 21 (1);
- 10 (c) refusing to extend a period of time under subsection 22 (3);
- (d) cancelling the registration of a registered construction practitioner under subparagraph 22 (6) (a) (i);
- (e) cancelling the registration of a registered construction practitioner in relation to a category of registration under subparagraph 22 (6) (a) (ii);
- 15 (f) suspending the registration of a registered construction practitioner under subparagraph 22 (6) (a) (iii);
- (g) suspending the registration of a registered construction practitioner in relation to a category of registration under subparagraph 22 (6) (a) (iv);
- 20 (h) imposing a condition on a registration under subparagraph 22 (6) (a) (v); or
- (i) varying a condition on a registration under subparagraph 22 (6) (a) (v).
- (2) Where a decision referred to in subsection (1) is made, the Chief Executive shall give notice in writing of the decision to the person affected by the decision.
- (3) A notice under subsection (2) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

29. Cancellation of insurance

30 An insurer who cancels a policy of insurance by virtue of which a registered construction practitioner is covered by insurance for the purposes of this Act shall notify the Chief Executive of the cancellation within 3 days of its occurrence.

30. Power of Minister to determine fees

The Minister may, by instrument published in the *Gazette*, determine fees, or manners for calculating fees, for the purposes of this Act.

31. Regulations

- 35 (1) The Executive may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe—
- (a) in relation to any or all categories of registration—

- 5
- (i) the insurers with whom a registered construction practitioner who is registered in that category may effect insurance;
- (ii) the amount, or minimum amount, of insurance cover to be held by a registered construction practitioner, either in total or in relation to each category in which he or she is registered;
- 10 (iii) the amount, or maximum amount, of any excess applicable in relation to the insurance cover of a registered construction practitioner, including the amount or maximum amount applicable to each category of registration and the circumstances in which the amount or maximum amount may be varied; and
- 15 (iv) the terms or conditions of any policy of insurance for the purposes of this Act;
- (b) the information to be provided from time to time to the Chief Executive by a registered construction practitioner; and
- (c) penalties not exceeding 10 penalty units for offences against the regulations.

20 **32. Amendment of the Law Reform (Miscellaneous Provisions) Act**

Section 13 of the *Law Reform (Miscellaneous Provisions) Act 1955* is amended by adding at the end the following subsection:

25 “(2) This Part has effect subject to Part IV of the *Construction Practitioners Registration Act 1998*.”

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

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