



Australian Capital Territory

Construction Occupations (Licensing) Act 2004

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About this republication

The republished law

This is a republication of the *Construction Occupations (Licensing) Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2012. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 January 2012.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Construction Occupations (Licensing) Act 2004

An Act to regulate construction occupations, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Construction Occupations (Licensing) Act 2004*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*building work*—see the *Building Act 2004*, section 6.' means that the term 'building work' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important concepts

6 What is a *construction practitioner*?

- (1) A *construction practitioner* is an entity that provides, has provided or proposes to provide a construction service.
- (2) A *construction service* is the doing or supervision of work in a construction occupation.

Note *Supervise*—see dict.

- (3) For this Act, the regulations may—
 - (a) prescribe work as work in a construction occupation; and
 - (b) exclude work from a construction occupation.

7 What is a *construction occupation*?

Each of the following is a *construction occupation*:

- (a) asbestos assessor;
- (b) asbestos removalist;
- (c) builder;
- (d) building assessor;
- (e) building surveyor;
- (f) drainer;
- (g) electrician;
- (h) gasfitter;
- (i) plumber;
- (j) plumbing plan certifier;
- (k) works assessor.

7A Who is an *asbestos assessor*?

- (1) An *asbestos assessor* is an individual who provides, has provided or proposes to provide an asbestos assessment service.
- (2) An *asbestos assessment service* is the doing or supervising of all or any of the following work for this Act, the *Building Act 2004*, the *Civil Law (Sale of Residential Property) Act 2003*, the *Dangerous Substances Act 2004* or the *Residential Tenancies Act 1997*:
 - (a) air monitoring for asbestos;
 - (b) identifying the location, type and condition of asbestos in buildings, including by taking samples;
 - (c) assessing the risk resulting from the identified asbestos;
 - (d) advising on how the asbestos should be managed;
 - (e) reporting about the work mentioned in paragraphs (a) to (c).

7B What is an *asbestos removalist*?

- (1) An *asbestos removalist* is an entity that provides, has provided or proposes to provide an asbestos removal service.
- (2) An *asbestos removal service* is the doing or supervising of building work that involves all or any of the following:
 - (a) handling (including disturbing) asbestos in buildings;
 - (b) removing and disposing of asbestos from buildings.

8 What is a *builder*?

- (1) A *builder* is an entity that provides, has provided or proposes to provide a building service.
- (2) A *building service* is the doing or supervising of building work, other than building work that involves handling asbestos or disturbing friable asbestos.

Note **Building work**—see the *Building Act 2004*, section 6.

- (3) In this section:

disturbs friable asbestos—see the *Building Act 2004*, section 10B.

friable asbestos—see the *Building Act 2004*, dictionary.

8A What is a *building assessor*?

- (1) A *building assessor* is an entity that provides, has provided or proposes to provide a building assessment service.
- (2) A *building assessment service* is the doing of building assessment work.
- (3) In this section:

building assessment work means preparing and providing—

- (a) an energy efficiency certificate under the *Building Act 2004*; or
- (b) an energy efficiency rating statement; or
- (c) a statement, certificate or other document prescribed by regulation.

Note *Energy efficiency certificate*—see the *Building Act 2004*, s 139C.

9 What is a *building surveyor*?

- (1) A *building surveyor* is an entity that provides, has provided or proposes to provide—
- (a) a building certification service; or
- (b) an exemption assessment service; or
- (c) a works assessment service.

Note *Works assessment service*—see s 14A (2).

- (2) An *exemption assessment service* is the doing of exemption assessment work.

(3) A *building certification service* is the doing of building certification work.

(4) In this section:

building certification work means anything a building certifier may or must do under the *Building Act 2004*.

Note The *Building Act 2004* requires a building surveyor to be appointed as a certifier before doing building certification work. It also restricts the building certification work certain building surveyors may do depending on their occupation class.

exemption assessment work means undertaking an exemption assessment under the *Building Act 2004*.

10 What is a *drainer*?

(1) A *drainer* is an entity that provides, has provided or proposes to provide a sanitary drainage service.

(2) A *sanitary drainage service* is the doing or supervision of sanitary drainage work.

(3) In this section:

sanitary drainage work—see *Water and Sewerage Act 2000*, dictionary.

11 What is an *electrician*?

(1) An *electrician* is an entity that provides, has provided or proposes to provide electrical wiring services.

(2) An *electrical wiring service* is the doing or supervision of electrical wiring work.

(3) In this section:

electrical wiring work—see the *Electricity Safety Act 1971*, dictionary.

12 What is a *gasfitter*?

- (1) A *gasfitter* is an entity that provides, has provided or proposes to provide a gasfitting service.
- (2) A *gasfitting service* is the doing or supervision of gasfitting work.
- (3) In this section:
gasfitting work—see the *Gas Safety Act 2000*, dictionary.

13 What is a *plumber*?

- (1) A *plumber* is an entity that provides, has provided or proposes to provide a plumbing service.
- (2) A *plumbing service* is the doing or supervision of—
 - (a) sanitary plumbing work; or
 - (b) water supply plumbing work.
- (3) In this section:
sanitary plumbing work—see *Water and Sewerage Act 2000*, dictionary.
water supply plumbing work—see *Water and Sewerage Act 2000*, dictionary.

14 What is a *plumbing plan certifier*?

- (1) A *plumbing plan certifier* is an entity that provides, has provided or proposes to provide a plumbing plan certification service.
- (2) A *plumbing plan certification service* is the doing of plumbing plan certification work.
- (3) In this section:
plumbing plan certification work means anything a certifier appointed under the *Water and Sewerage Act 2000* may or must do under that Act.

14A What is a works assessor?

- (1) A *works assessor* is an entity who provides, has provided or proposes to provide a works assessment service.
- (2) A *works assessment service* is the doing of works assessment work.
- (3) In this section:

works assessment work means—

- (a) undertaking an exemption assessment under the *Planning and Development Act 2007*; or
- (b) providing, including doing anything incidental to providing, a unit title assessment report under the *Unit Titles Act 2001*.

Note *Unit title assessment report*—see the *Unit Titles Act 2001*, s 22B.

15 Classes of construction occupations

The regulations may divide a construction occupation into classes.

16 What is an operational Act?

Each of the following is an *operational Act*:

- *Building Act 2004*
- *Dangerous Substances Act 2004*
- *Electricity Safety Act 1971*
- *Gas Safety Act 2000*
- *Planning and Development Act 2007*
- *Unit Titles Act 2001*
- *Utilities Act 2000*
- *Water and Sewerage Act 2000*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act*, s 104).

Part 3 Construction practitioners licences

Note about application of the Mutual Recognition Act 1992 (Cwlth) and the Trans-Tasman Mutual Recognition Act 1997 (Cwlth)

These Commonwealth Acts allow people licensed in certain occupations in a local jurisdiction to carry on the occupations in another local jurisdiction and provide an alternate way of applying for licences in the ACT or another local jurisdiction. Because of the Self-Government Act, s 28, the requirements for licences under this Act cannot validly require anything of people being licensed under the Commonwealth Acts that would be inconsistent with those Acts. Accordingly, provisions of this Act, such as the requirements for applications, do not apply to the licensing of people under the Commonwealth Acts. Also, the Commonwealth Acts set out when conditions may be placed on people licensed under those Acts. For more information, see the Commonwealth Acts.

Division 3.1 General

17 Licence applications

- (1) An individual, corporation or partnership may apply to the registrar to be licensed in a construction occupation or, for a construction occupation that is divided into classes, in an occupation class.

Note 1 If a form is approved under s 128 for an application, the form must be used.

Note 2 A fee may be determined under s 127 for this section.

Note 3 An entity's entitlement to apply for a licence may be affected by a disqualification (see s 98 (3)).

- (2) However, a corporation or partnership may apply under subsection (1) in relation to a construction occupation or occupation class only if the regulations allow a corporation or partnership to be licensed in the occupation or class.
- (3) The regulations may prescribe the requirements for applications.

- (4) If this Act or the regulations prescribe requirements for applications, the registrar need not consider an application that does not comply with the requirements.

18 Eligibility for licence

- (1) The regulations may prescribe when an entity is eligible, or not eligible, to be licensed in a construction occupation or occupation class, including the qualifications the entity must have to be eligible to be licensed in the occupation or class.
- (2) The regulations may prescribe how an applicant may, or must, demonstrate that the applicant satisfies a requirement in relation to an application.

Examples

- 1 by requiring the applicant to hold a qualification
- 2 by requiring the applicant to pass a practical or written test

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 Decision on licence application

- (1) If an entity applies for a licence for a construction occupation or occupation class, the registrar must issue, or refuse to issue, the licence.
- (2) However, the registrar may issue a licence other than the licence applied for if—
- (a) the applicant is not eligible for the licence applied for; and
 - (b) the applicant is eligible for the other licence; and
 - (c) the licence issued is in the same construction occupation as, but a different occupation class from, the licence applied for; and
 - (d) the applicant agrees to the issue of the licence.

- (3) The registrar must refuse to issue a licence for a construction occupation or occupation class to an applicant if—
 - (a) the registrar is not satisfied that the applicant is eligible to be licensed in the occupation or class; or
 - (b) the applicant is disqualified from holding a licence under section 98 (Licence disqualification).
- (4) If an application for occupational discipline in relation to an applicant or nominee of an applicant has been made by the registrar under division 5.2 (Occupational discipline—licensees), the registrar need not decide whether to licence the applicant until the application has been dealt with by the ACAT, and any appeal or review arising from the occupational discipline, is finished.

20 Multiple occupations, classes and authorisation

- (1) A licence may authorise the licensee to provide construction services in 1 or more construction occupations and 1 or more occupation classes.
- (2) A licence authorises the licensee to provide construction services in each construction occupation or occupation class to which it relates, subject to any condition, and in accordance with any endorsement, on the licence.

21 Licence conditions

- (1) The regulations may prescribe—
 - (a) conditions on licences; and
 - (b) when conditions on licences (whether imposed under the regulations or by the registrar) take effect.
- (2) The registrar may amend a licence by putting a condition on the licence, or by amending or cancelling a condition the registrar has put on the licence, at any time by written notice given to the licensee, unless the regulations provide otherwise.

- (3) The registrar may amend a licence by putting a condition on the licence, or amending the licence, only if satisfied that it is necessary or desirable to protect the public.

22 Endorsements on licences

- (1) The registrar may, in accordance with the regulations, endorse a licence.
- (2) An endorsement authorises the licensee to provide a stated kind of construction service that the licensee would not otherwise be allowed to provide under the licence.

23 Form of licence

- (1) A licence must be signed by the registrar and contain the following details in relation to the licensee:
 - (a) the licensee's full name;
 - (b) each construction occupation, and occupation class (if any), in which the licensee is licensed;
 - (c) a unique identifying number (the *licence number*) for each construction occupation and occupation class in which the licensee is licensed.

Note A licence may be endorsed under s 22.

- (2) The regulations may require or allow other information to be included on a licence.

24 Term of licence

The regulations may prescribe the maximum period for which a licence is issued or renewed.

25 Licence renewal

- (1) A licensee may apply to the registrar for renewal of the licence before the licence term ends.
- (2) The registrar must renew a licence on application if satisfied that the applicant would be eligible to be licensed if the application were for a new licence of the same kind.
- (3) The renewal of a licence begins on the day after the licence being renewed ends.
- (4) A suspended licence may be renewed, but the renewed licence is suspended until the suspension ends.

26 Voluntary licence cancellation

The registrar must cancel a licensee's licence if—

- (a) the licensee asks, in writing, for the cancellation; and
- (b) the licensee gives the licence to the registrar or satisfies the registrar that the licence has been lost, stolen or destroyed; and
- (c) the registrar is satisfied that—
 - (i) the licensee cannot exercise his or her functions because of mental or physical incapacity; or
 - (ii) another licensee is to take over the licensee's functions in relation to construction services that have not been completely provided; or
 - (iii) it is otherwise appropriate to approve the cancellation.

26A Entitlement to act as works assessor

- (1) A licensed construction practitioner is not entitled to perform services as a works assessor if the practitioner has an interest in the work (the *works*) to be considered for the works assessment service.

- (2) For this section, a licensed construction practitioner has an *interest* in the works if the practitioner, or an entity related to the practitioner—
- (a) has a legal or equitable interest in the land where the works are, or are to be, carried out; or
 - (b) has prepared, or intends to prepare, drawings intended to be used in relation to the works, unless—
 - (i) the works have been certified by another entity; and
 - (ii) the other entity is not related to the practitioner; or
 - (c) has carried out, or intends to carry out, any of the works; or
 - (d) has a financial interest in the construction or completion of the works.
- (3) For this section, an entity is *related to* a licensed construction practitioner if the entity is—
- (a) an entity with which the practitioner has a personal, professional, commercial or financial relationship; or
 - (b) an employer or employee of the practitioner; or
 - (c) a company of which the practitioner is a director or in which the practitioner holds a share.
- (4) For this section, works have been *certified* if—
- (a) a building approval has been issued for the works; or
 - (b) a development approval has been issued for the works; or
 - (c) a works assessment service has been provided for the works.

Division 3.2 Nominees

27 Meaning of *mandatory requirement* for div 3.2

In this division:

mandatory requirement of the nominee means a written requirement by the nominee that the corporation or partnership do something, or not do something, in compliance with, or to achieve compliance with, this Act or an operational Act.

28 Nominees of corporations and partnerships

- (1) A corporation or partnership is eligible to be licensed only if it complies with subsection (2) or (3).
- (2) The corporation or partnership complies with this subsection if—
 - (a) it has a single nominee appointed by it; and
 - (b) the nominee is responsible for the supervision of the construction services provided by it.
- (3) The corporation or partnership complies with this subsection if—
 - (a) it has 2 or more nominees appointed by it; and
 - (b) each nominee is responsible for the supervision of particular construction services provided by it; and
 - (c) there is a written record of the construction services each nominee is responsible for supervising; and
 - (d) between them, the nominees are responsible for the adequate supervision of all the construction services to be provided by the corporation or partnership.
- (4) A corporation or partnership may, in writing, appoint an eligible individual to be a nominee.

- (5) If the nominee is to be responsible for the adequate supervision of only some of the construction services to be provided by the corporation or partnership, the appointment must state the services for which the nominee is responsible.
- (6) For subsection (4), an individual is an *eligible individual* if the individual—
- (a) is eligible under the regulations to be appointed as a nominee; and
 - (b) is licensed in the construction occupation and occupation class (if any) appropriate for each of the construction services for which the individual is to be responsible; and
 - (c) agrees in writing to the appointment.
- (7) A nominee of a corporation or partnership automatically stops being a nominee if the nominee—
- (a) ceases to be eligible under the regulations to be appointed as a nominee; or
 - (b) ceases to be licensed in a construction or occupation class (if any) appropriate for any of the construction services for which the nominee is responsible.

29 Resignation of nominee

- (1) A nominee of a corporation or partnership may resign his or her appointment only with the registrar's approval.
- (2) The registrar may approve the resignation of the nominee only if satisfied that—
- (a) the corporation or partnership has refused to comply with a mandatory requirement of the nominee; or
 - (b) the nominee cannot exercise his or her functions because of mental or physical incapacity; or

- (c) the nominee, or entity that appointed the nominee, has arranged for another nominee to take over the nominee's functions; or
- (d) it is otherwise appropriate to approve the resignation.

30 Revocation of nominee's appointment

- (1) A corporation or partnership may revoke a nominee's appointment only with the registrar's approval.
- (2) The registrar may approve the revocation of the nominee's appointment only if satisfied that—
 - (a) the nominee cannot exercise his or her functions because of mental or physical incapacity; or
 - (b) the nominee, or entity that appointed the nominee, has arranged for another nominee to take over the nominee's functions; or
 - (c) it is otherwise appropriate to approve the resignation.

31 Role of nominees

- (1) A nominee of a licensed corporation or partnership has the following functions:
 - (a) to supervise the construction services of the corporation or partnership for which the nominee is responsible (the *relevant construction service*);
 - (b) to ensure that the relevant construction services comply with this Act and the operational Acts.
- (2) The nominee commits an offence if the nominee fails to—
 - (a) adequately supervise the relevant construction services; or

- (b) ensure that the relevant construction services comply with this Act and the operational Acts.

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply to a failure of a nominee of a corporation or partnership (the *nominee's firm*) if—
 - (a) the nominee had given the nominee's firm a mandatory requirement in relation to the matter that made up the failure; and
 - (b) the nominee had given the registrar a copy of the mandatory requirement; and
 - (c) the failure would not have happened if the mandatory requirement had been complied with.
- (4) The licensed corporation or partnership commits an offence if the nominee fails to—
 - (a) adequately supervise the relevant construction services; or
 - (b) ensure that the relevant construction services comply with this Act and the operational Acts.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.

32 Legislation Act and nominee appointments

The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a nominee of a corporation or partnership.

Part 4 Rectification orders and other obligations on licensees

33 Meaning of *authorised action* and *authorised licensee* in pt 4

In this part:

authorised action, for an authorised licensee, means what the licensee is authorised to do under section 41 (Failure to comply with order) or section 42 (Action on emergency rectification order).

authorised licensee means a licensee authorised under section 41 or section 42.

33A Rectification orders—exercise of registrar’s powers

To remove any doubt, the registrar is not prevented from having a belief on reasonable grounds, or being satisfied, about a matter mentioned in this part in relation to a construction service only because the registrar, the planning and land authority, a certifier or another entity has—

- (a) given a certificate, or approval under—
 - (i) this Act or an operational Act in relation to the construction service; or
 - (ii) the *Planning and Development Act 2007* in relation to the place where, or the territory lease under which, the construction service was provided; or
- (b) otherwise endorsed the construction service under this Act or an operational Act.

34 Intention to make rectification order

- (1) This section applies if the registrar believes on reasonable grounds that—

- (a) a licensee or former licensee (the *entity*) has provided a construction service otherwise than in accordance with this Act or an operational Act; and
- (b) it may be appropriate to make a rectification order.

Examples of licensee or former licensee

- 1 a licensed builder does building work
- 2 a drainer who was licensed, does sanitary drainage work while unlicensed
- 3 a licensed gasfitter does gasfitting work and then becomes unlicensed

Note 1 If deciding under this section whether it may be appropriate to make a rectification order, the registrar must consider the considerations mentioned in s 36.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The registrar may give the entity, and the land owner in relation to whose land the construction service was provided, a written notice that—
 - (a) gives details of the rectification order that may be made; and
 - (b) explains why the registrar intends to make the order; and
 - (c) invites submissions about the making of the order within the time stated in the notice that is not less than 5 working days after the day the entity or land owner receives the notice.

35 When rectification order may be made

- (1) This section applies if—
 - (a) the registrar has given an entity notice under section 34; and
 - (b) the entity provided the construction service, or part of the construction service, to which the notice relates; and
 - (c) after considering any submissions made within the time mentioned in the notice, the registrar is satisfied—

- (i) the entity is contravening, or has contravened, this Act or an operational Act; and
- (ii) it is appropriate to make a rectification order in relation to the entity.

Note 1 If deciding under this section whether it is appropriate to make a rectification order, the registrar must consider the considerations mentioned in s 36.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The registrar may make an order under section 38 (Rectification orders) in relation to the entity.
- (3) However, the registrar may not make an order under section 38 in relation to the entity if a submission is made that satisfies the registrar that the act that caused the contravention happened, or ended, more than 10 years before the day the registrar proposes to make the order.

Example of contravention

A builder built a house without a building approval. The registrar is satisfied that the building of the house started 12 years ago and finished 9 years ago. The registrar may make a rectification order in relation to the construction service of building the house.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

36 Considerations for deciding under s 34 and s 35

- (1) In deciding whether it is, or may be, appropriate to make a rectification order in relation to an entity that is contravening, or has or may have contravened, this Act, the registrar must consider the following:
 - (a) any injury, loss or damage caused, or that could have been caused, by the contravention;

- (b) if a rectification order is proposed—how the proposed order may affect people affected by the contravention.

Examples of effect of contravention, including injury, loss and damage

- 1 reduction in safety, reliability, durability, soundness, functionality, accessibility, serviceability, service life, usability, usefulness, amenity, aesthetic quality, value or efficiency of thing affected by contravention
- 2 adverse affect on health of user of thing affected by contravention

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The registrar may consider anything else that is relevant.
- (3) However, the registrar need not consider whether the registrar, planning and land authority, a certifier or other entity has—
 - (a) given a certificate, or approval under—
 - (i) this Act or an operational Act in relation to the construction service; or
 - (ii) the *Planning and Development Act 2007* in relation to the place where, or the territory lease under which, the construction service was provided; or
 - (b) otherwise endorsed the construction service under this Act or an operational Act.

37 Rectification order inappropriate

- (1) This section applies if the registrar—
 - (a) has given an entity (other than the land owner) notice under section 34 (Intention to make rectification order); and
 - (b) after considering any submissions made within the time mentioned in the notice, is satisfied that the entity is contravening or has contravened this Act or an operational Act; and

- (c) is not satisfied that—
 - (i) it is appropriate to make a rectification order in relation to the entity, because of the relationship between the entity and the land owner; and
 - (ii) the act that caused the contravention happened, or ended, more than 10 years before the day the Territory proposes to authorise someone under this section.
- (2) The Territory may, in writing, authorise a licensee to enter the land where the work to which the notice under section 34 related was to be done and—
 - (a) take the action stated in the notice; or
 - (b) start or finish the work stated in the notice.
- (3) The authorised licensee must—
 - (a) give the owner of the land written notice that the licensee intends to enter the land at least 24 hours before the licensee enters the land; and
 - (b) give a copy of the notice to the entity before entering the land.
- (4) However, the Territory must not authorise someone until—
 - (a) if the entity applied for review of the decision to authorise a licensee under this section within the period for review (the ***review period***) of the decision allowed under the *ACT Civil and Administrative Tribunal Act 2008*—the review is finally disposed of; or
 - (b) the review period has ended.
- (5) The entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

38 Rectification orders

- (1) The registrar may make an order (a *rectification order*) in relation to an entity requiring the entity—
 - (a) to take stated action to rectify work done as part of a construction service; or
 - (b) to demolish a building or part of a building where a construction service has been provided and provide the construction service under this Act or an operational Act; or
 - (c) to start or finish stated work in relation to which a construction service has been, is being or was proposed to be provided.
- (2) If the entity is not licensed to do something required to be done under the order, the entity must arrange, and pay for, the thing to be done.
- (3) The rectification order must state a period within which what is required to be done must be done.
- (4) The stated period for a rectification order other than an emergency rectification order must not be less than 1 month after the day the rectification order is given to the entity.

Note Details of the rectification order must be included in the register (see s 108).

- (5) A copy of the rectification order must be given to the land owner.

39 Emergency rectification order

- (1) The registrar may make a rectification order (an *emergency rectification order*) under section 38 in relation to a licensee or former licensee (the *entity*), without giving the entity notice under section 34, if the registrar is satisfied that—
 - (a) the entity has provided a construction service other than in accordance with this Act or an operational Act; and
 - (b) it is appropriate to make a rectification order; and

- (c) it is not appropriate to give notice under section 34 of the registrar's intention to make a rectification order because the need to act promptly to protect the health or safety of people, public or private property or the environment, outweighs the importance of giving the notice before making an order.
- (2) A rectification order that is an emergency rectification order must also include the following:
- (a) a statement explaining that the order is an emergency rectification order;
 - (b) a statement explaining that, if the thing ordered to be done is not done within the period (the *completion period*) stated in the order—
 - (i) the Territory may authorise a licensee to enter the land where the thing is to be done to do the thing ordered; and
 - (ii) neither the Territory nor the authorised licensee need give the land owner or entity against whom the order is made further notice of the authorised licensee doing the thing on the land; and
 - (iii) the entity against which the order has been made will be liable for the reasonable cost incurred in doing the thing ordered.
- (3) The completion period must not be less than 24 hours.

40 Rectification order offence

- (1) A person commits an offence if the person intentionally fails to comply with a rectification order given to the person.
- Maximum penalty: 200 penalty units.
- (2) Each partner commits an offence if—
- (a) the partnership is given a rectification order; and

- (b) the partners, or some of them, intentionally fail to comply with the rectification order.

Maximum penalty: 200 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—
 - (a) that—
 - (i) the partner did not know about the failure to comply; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or
 - (b) that the partner was not in a position to influence the other partners in relation to the failure to comply.

41 Failure to comply with order

- (1) This section applies if an entity (the *ordered entity*) in relation to whom a rectification order is made contravenes the rectification order.
- (2) The Territory may, in writing, authorise a licensee to enter the land where the work to which the rectification order relates is to be done and—
 - (a) take the action stated in the rectification order; or
 - (b) start or finish the work stated in the rectification order.
- (3) The authorised licensee must—
 - (a) give the owner of the land written notice that the licensee intends to enter the land at least 24 hours before the licensee enters the land; and
 - (b) give a copy of the notice to the ordered entity before entering the land.
- (4) However, the Territory must not authorise someone until—

- (a) if the ordered entity applied for review of the decision within the period for review (the *review period*) of the decision to make the rectification order allowed under the *ACT Civil and Administrative Tribunal Act 2008*—the review is finally disposed of; or
 - (b) the review period has ended.
- (5) The ordered entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

42 Action on emergency rectification order

- (1) This section applies if—
- (a) the registrar has made an emergency rectification order; and
 - (b) the emergency rectification order includes the information mentioned in section 39 (2); and
 - (c) the ordered entity has contravened the order.
- (2) The Territory may, in writing, authorise a licensee to enter the land where the work to which the rectification order is to be done and—
- (a) take the action stated in the rectification order; or
 - (b) start or finish the work stated in the rectification order.
- (3) The ordered entity is liable for the reasonable cost incurred in doing anything under subsection (2) and the cost is taken to be a debt owing to the Territory.

43 Hindering or obstructing authorised licensee

- (1) An entity commits an offence if—
- (a) the entity knows someone is an authorised licensee; and

- (b) the entity hinders or obstructs the authorised licensee in the exercise of an authorised action.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1) (b).

44 Damage etc by authorised licensee to be minimised

- (1) In the exercise of an authorised action, an authorised licensee must take reasonable steps to ensure that the licensee, and anyone helping the licensee, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an authorised licensee, or a person assisting an authorised licensee, damages anything in the exercise or purported exercise of a function under this part, the authorised licensee must give written notice of the particulars of the damage to the person the authorised licensee believes on reasonable grounds is the owner of the thing.
- (3) If the damage occurs on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

45 Compensation

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised licensee or person assisting an authorised licensee.
- (2) Compensation may be claimed and ordered in a proceeding for—
- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

46 Protection of authorised licensees from liability

- (1) An authorised licensee does not incur civil liability for an authorised action done honestly for this Act.
- (2) A civil liability that would, apart from this section, attach to the authorised licensee attaches instead to the Territory.
- (3) This section does not prevent an application for occupational discipline being made in relation to an authorised licensee in relation to an authorised action done by the licensee.

47 Licensee to give evidence of insurance

- (1) Before providing a construction service to a person (the *client*), a licensee must give the client evidence of what insurance the licensee holds in relation to the service the licensee is to provide.
- (2) The licensee may ask the client to sign an acknowledgment that the client has been told about the licensee's insurance.
- (3) The acknowledgment must state the time and date it was given.

Note If a form is approved under s 128 for an acknowledgment, the form must be used.

- (4) If the client signs the acknowledgment, the licensee must immediately give the client a copy of it.
- (5) The registrar may assume that the client was not told about the insurance the licensee holds if—

- (a) a question arises whether the client was told about the licensee's insurance; and
 - (b) an acknowledgment under this section is not produced; and
 - (c) it is not proved that the licensee told the client about the insurance.
- (6) The licensee is taken to have given evidence of what insurance the licensee holds before providing a construction service to a person if the licensee advertised the insurance held at the time of providing the services in a way likely to come to the attention of the client.

Example of advertising insurance held

- 1 Including details of insurance in the telephone directory, if the details are correct at the time the service is provided.
- 2 Having details of insurance on the vehicle used to provide the service or transport to the location to provide the service, if the details are correct at the time the service is provided.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (7) In this section:

evidence of insurance includes a fidelity certificate.

fidelity certificate—see the *Building Act 2004*, section 84.

Part 5 Automatic licence suspension and occupational discipline

Division 5.1 Automatic licence suspension

48 Automatic suspension of individual licence

- (1) This section applies to an individual who is licensed.
- (2) The individual's licence is automatically suspended if the individual—
 - (a) provides, or proposes to provide, a construction service for a fee; and
 - (b) becomes bankrupt or personally insolvent.
- (3) However, if the individual is a nominee or employee of a licensed entity the licence is not suspended.

Note The regulations impose a condition on the individual's licence.

49 Automatic suspension of corporate licence

- (1) This section applies to a corporation that is licensed.
- (2) The corporation's licence is automatically suspended if the licensee—
 - (a) enters into a winding-up; or
 - (b) is found guilty, whether in the ACT or anywhere else, of an offence that—
 - (i) involves fraud, dishonesty or violence; and
 - (ii) is punishable by imprisonment for at least 1 year.

50 Automatic suspension of partnership licence

- (1) This section applies to a partnership that is licensed in a construction occupation or occupation class.
- (2) The partnership's licence in the construction occupation or occupation class is automatically suspended if—
 - (a) a partner's licence in the same occupation or class is suspended or cancelled; or
 - (b) a partner who is not a licensee is found guilty, whether in the ACT or anywhere else, of an offence that—
 - (i) involves fraud, dishonesty or violence; and
 - (ii) is punishable by imprisonment for at least 1 year.

51 Automatic suspension of licence—construction occupations

- (1) This section applies if—
 - (a) an entity that is licensed in a construction occupation stops being eligible to provide a construction service for the construction occupation because the entity is not insured in accordance with the regulation; and
 - (b) the construction occupation is not divided into classes.

Note A regulation may divide a construction occupation into classes (see s 15).

- (2) The entity's licence is automatically suspended when the insurance cover stops.

52 Automatic suspension of licence—occupation classes

- (1) This section applies if an entity that is licensed in an occupation class stops being eligible to provide a construction service for the occupation class because the entity is not insured in accordance with the regulation.

Note A regulation may divide a construction occupation into classes (see s 15).

- (2) The entity's licence is automatically suspended in relation to the class when the insurance cover stops.

52A Suspension of licence—public safety

- (1) This section applies if a licensed construction practitioner engages in conduct that the registrar decides, on reasonable grounds, presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to property.

Examples

- 1 A licensed construction practitioner is licensed to undertake demolition work that involves the removal of asbestos. An inspection of building work being undertaken by the practitioner reveals that the practitioner is employing methods of demolition that are inconsistent with the standards for managing asbestos, and has left asbestos exposed in an area which is access by members of the public and where fibres can be carried into the surrounding environment. The registrar decides to suspend the practitioner's licence to prevent the practitioner from undertaking further work until the practitioner's methods are assessed and corrected.
- 2 A licensed builder has built 7 of 11 proposed dual-occupancy residences. An inspection of 1 of the residences reveals that no fire wall has been built between the 2 occupancies, inconsistent with the building approval. The registrar decides to suspend the builder's licence to inspect the other built residences and prevent other residences being built without a fire wall.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The licensed construction practitioner's licence is suspended when the registrar gives the practitioner notice—

- (a) of the nature of the conduct; and
 - (b) of the nature of the risk; and
 - (c) that the practitioner may apply in writing to the registrar to revoke the suspension.
- (3) However, during the suspension the registrar may allow the licensed construction practitioner to undertake construction work, within the scope of the licensee's licence, necessary to comply with a rectification order.
- (4) The registrar may give the notice orally, in writing or in electronic form.
- (5) However, if the registrar gives the notice orally, the registrar must give the notice in writing or in electronic form within 2 days after giving the notice orally.

53 End of licence suspension

- (1) This section applies if the licence of a construction practitioner has been suspended under 1 or more of the following sections:
- section 48 (Automatic suspension of individual licence);
 - section 49 (Automatic suspension of corporate licence);
 - section 50 (Automatic suspension of partnership licence);
 - section 51 (Automatic suspension licence—construction occupations);
 - section 52 (Automatic suspension of licence—occupation classes);
 - section 52A (Suspension of licence—public safety).
- (2) The registrar must revoke the suspension if satisfied that the cause of the suspension no longer exists.
- (3) The registrar may revoke the suspension if satisfied that the circumstance that caused the suspension will not put consumers of

the construction practitioner's construction services at a greater risk from using the services than if the thing had not happened.

- (4) A revocation must be in writing given to the licensee.
- (5) The suspension ends 3 months after the day it begins, unless otherwise revoked.

Note The suspension on a licence may be held over to a new licence if the suspended licence expires without being renewed (see s 63).

Division 5.2 Occupational discipline—licensees

54 Meaning of *licensee*—div 5.2

In this division:

licensee means a licensee or a former licensee.

55 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:
 - (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) if the licensee is an individual—the licensee executes a personal insolvency agreement;
 - (e) 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;
 - (f) if the licensee is a corporation or partnership—the licensee has, or had, no nominee;
 - (g) the licensee's licence has been automatically suspended under division 5.1 (Automatic licence suspension) and the cause of the suspension still exists.
- (2) In subsection (1) (a), a reference to a contravention of this Act or an operational Act includes a reference to the following:
- (a) a contravention of the Criminal Code, part 2.4 (Extensions of criminal responsibility) in relation to an offence against this Act or an operational Act or otherwise in relation to this Act or an operational Act;
 - (b) a contravention of the Criminal Code in relation to a document given, or required to be given, under this Act or an operational Act;
 - (c) a contravention of the Criminal Code in relation to anything done, or not done, under this Act or an operational Act.
- (3) A ground for occupational discipline applies to a former licensee if the ground applied to the former licensee while licensed.
- (4) A regulation may prescribe a short description of a ground for occupational discipline under subsection (1) (a).

56 Application to ACAT for occupational discipline

- (1) If the registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the registrar may—
 - (a) apply to the ACAT for an occupational discipline order in relation to the licensee; or
 - (b) take the following disciplinary action:
 - (i) reprimand the licensee;
 - (ii) 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;
 - (iii) impose a condition on the licence, or amend an existing condition.
- (2) If a regulation prescribes a short description of a ground for occupational discipline under section 55 (1) (a), the registrar may use the short description in the application.

57 Considerations before making occupational discipline orders

- (1) This section applies if the ACAT is considering an application for an occupational discipline order in relation to a licensee.
- (2) Without limiting the matters the ACAT must consider in relation to a licensee, the ACAT must consider the following:
 - (a) the degree of responsibility of the licensee for the act or omission that made up the ground for occupational discipline;
 - (b) the number of people detrimentally affected by the doing of something, or not doing something, that made up the ground for occupational discipline;

- (c) the extent to which it is necessary to discourage the licensee and others from doing something, or not doing something, that made up the ground for occupational discipline;
- (d) whether, and the extent to which, it is necessary to protect the public from the licensee;
- (e) the desirability of making the licensee responsible for the consequences of the licensee's acts or omissions;
- (f) the desirability of maintaining public confidence in the regulatory system set up by this Act;
- (g) the licensee's regard, or disregard, for public safety and protection of the environment when doing something, or not doing something, that made up the ground for occupational discipline.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 (3) sets out other considerations that must be taken into account by the ACAT.

58 Occupational discipline orders—licensees

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may, if the licensee is licensed in more than 1 occupation class—
- (a) cancel or suspend a single occupational class or each of the occupational classes; or
 - (b) direct the registrar to place a condition on or remove or amend a condition of a single occupational class or each of the occupational classes.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

59 Interim licence suspension

- (1) This section applies if the registrar has applied to the ACAT for occupational discipline in relation to a licensee.
- (2) The registrar may, by written notice given to the licensee, suspend (an *interim suspension*) a licensee's licence.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (3) However, the registrar may only suspend the licence under subsection (2) if the registrar—
 - (a) has taken into account the ground for occupational discipline; and
 - (b) believes on reasonable grounds that it is in the public interest to suspend the licence before the ACAT makes an occupational discipline order.
- (4) An interim suspension may be for 2 weeks or less, but may be extended once for 1 week if the registrar is satisfied that it is in the public interest to extend the suspension.

Note An interim suspension must be recorded on the register (see s 110).

60 Effect of interim suspension

- (1) This section applies if the registrar suspends a licence under section 59.
- (2) The licence is suspended as soon as the licensee receives the notice of suspension.
- (3) The suspension ends when the earlier of the following happens:
 - (a) the licensee receives a notice of revocation under section 61;
 - (b) the ACAT makes an occupational discipline order in relation to the licensee.

61 Revocation of interim suspension

- (1) This section applies if the registrar suspends a licence under section 59 (Interim licence suspension).
- (2) The registrar may, at any time before the ACAT makes an occupational discipline order, revoke the suspension by written notice given to the licensee.
- (3) If the registrar revokes the suspension of a licensee licensed as a builder, the registrar must notify in writing each entity notified of the suspension under section 62.

62 Builders licence affected by occupational discipline or other action

- (1) This section applies if a licensee has a builders licence and 1 of the following applies:
 - (a) the registrar becomes aware that the licence has been automatically suspended under division 5.1;
 - (b) the registrar suspends the licence under section 59 (Interim licence suspension);
 - (c) a defined occupational discipline order is made in relation to the licensee.
- (2) The registrar must notify each building certifier in writing about the action taken in relation to the licence as soon as practicable.
- (3) The registrar must notify each building certifier in writing if—
 - (a) the registrar notified the building certifiers about the action; and
 - (b) the action, or the decision to take the action, is reversed, stayed, varied or set aside.

(4) In this section:

defined occupational discipline order means an occupational discipline order of a kind mentioned in—

- (a) section 58 (2) (a); or
- (b) the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (e), (f) or (g).

63 Effect of non-renewal on suspended licence

(1) This section applies if—

- (a) a licence (the *original licence*) for a construction occupation or occupation class has been suspended for a period; and
- (b) the original licence expires before the end of the suspension period without being renewed; and
- (c) the licensee is issued with a licence (the *new licence*) in the same construction occupation or occupation class within 3 years after the day the original licence expired.

(2) The new licence is suspended for the remainder of the suspension period.

64 Requirement to return surrendered licence

(1) This section applies if a person surrenders the person's licence because the licence is suspended.

Note It is an offence not to surrender a licence that has been suspended or cancelled (see s 86).

(2) The registrar must return the licence to the person not later than the last day of the suspension.

(3) If the licence is varied during the suspension, the licence as varied must be returned.

- (4) However, the registrar need not return the licence if the licence expires, or is cancelled, during the suspension.

Part 6 Enforcement

75 Meaning of *compliance auditor* for pt 6

In this part:

compliance auditor means a compliance auditor appointed under section 76.

76 Compliance auditors

- (1) The registrar may appoint a public servant to be a compliance auditor for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) An appointment must not be for longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

77 Role of compliance auditor

- (1) A compliance auditor is responsible for auditing the forms and other paperwork required to be provided by licensees for this Act and the operational Acts.
- (2) A compliance auditor has any other function given to the compliance auditor by the registrar.

78 Identity cards

- (1) The registrar must give a compliance auditor an identity card stating the person's name and that the person is a compliance auditor.
- (2) The identity card must show—

- (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
- (a) the person ceases to be a compliance auditor; and
 - (b) the person does not return the person's identity card to the registrar as soon as practicable (but within 7 days) after the day the person ceases to be a compliance auditor.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

79 Functions not to be exercised before identity card shown

A compliance auditor may exercise a function under this Act in relation to a person only if the compliance auditor first shows the person his or her identity card.

80 Functions of compliance auditors

- (1) A compliance auditor may, during ordinary business hours and with any assistance that is necessary and reasonable, enter premises (other than residential premises) used by a licensed construction practitioner.
- (2) The compliance auditor 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) The compliance auditor may do 1 or more of the following in relation to the premises:
- (a) inspect any document on the premises that relates to the licensee's activities;

- (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).

Examples of documents

plan, map, book, drawing

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) 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.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

Part 7 Offences

81 Pretending to be licensed

- (1) A person commits an offence if the person—
 - (a) is not licensed in a construction occupation or occupation class; and
 - (b) pretends to be licensed in the occupation or class.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

82 No nominee

- (1) A corporation commits an offence if the corporation—
 - (a) advertises or otherwise offers to provide a service in a construction occupation or occupation class; and
 - (b) does not have a nominee who has a licence that authorises the nominee to provide the service.Maximum penalty: 50 penalty units.
- (2) Each partner in a partnership commits an offence if the partnership—
 - (a) advertises or otherwise offers to provide a service in a construction occupation; and
 - (b) does not have a nominee who has a licence that authorises the nominee to provide the service.Maximum penalty: 50 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2), if the partner proves that—

- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.
- (4) An offence against this section is a strict liability offence.

83 Advertising without details

- (1) A person commits an offence if the person—
- (a) advertises that the person provides, or will provide, a service in a construction occupation or occupation class; and
 - (b) does not include the following in the advertisement:
 - (i) the person's name as recorded on the person's licence;
 - (ii) the person's licence number;
 - (iii) if the person is a corporation—the person's ACN (if any).

Maximum penalty: 5 penalty units.

Examples of advertising required to include details

- 1 providing a prospective client with a letter, business card, sample contract, brochure and items such as caps, shirts and mugs, each with the construction service company name printed on it
- 2 vehicle signage or clothing such as a T-shirt, with a construction occupation or class stated on it eg 'Jo Jones licensed plumber'
- 3 a radio advertisement describing the features of a display home open for inspection and including a musical jingle mentioning 'ACME Homes', advertising to the public that ACME Homes provides construction services

- 4 a sign erected outside a building construction site states only 'ACME Constructions', advertising to the public that ACME Constructions provides construction services at the site
- 5 an entry in a published directory that lists an entity by name, address, telephone number, construction occupation or class, for example 'ACME Plumbing, plumbers and drainers'

Examples that are not advertising or are not required to include details

- 1 a builder talking to a prospective client about the services the builder can provide to the particular client
- 2 ACME Homes advertises in the newspaper stating that a particular display home is for sale, but the advertising, states that ACME Homes is the owner, builder and seller of the house, not that it offers building services generally
- 3 a sign erected outside a building construction site states only 'ACME', which does not advertise that ACME is providing construction services at the site
- 4 an entry in a published directory that lists an entity alphabetically by name and includes the entity's address and telephone number, even if the name of the entity implies that the entity can provide the service, for example, 'ACME Plumbing, 1 Smith St, City, 55577777'
- 5 ACME Home Services advertises offering to arrange the provision of electrical services, but the advertisement includes the following statements: 'ACME Homes Services does not provide electrical wiring services, independent contractors provide those services'

Note An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Each partner in a partnership commits an offence if the partnership—
 - (a) advertises that the partnership provides, or will provide, a service in a construction occupation or occupation class; and
 - (b) does not include the following in the advertisement:
 - (i) the partnership's name as recorded on the partnership's licence;

- (ii) the partnership's licence number.

Maximum penalty: 5 penalty units.

Example of advertising required to include details

The examples in subsection (1) apply to this subsection.

Examples that are not advertising or are not required to include details

The examples in subsection (1) apply to this subsection.

- (3) It is a defence to a prosecution for an offence against subsection (2), if the partner proves that—
 - (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.
- (4) An offence against this section is a strict liability offence.

84 Certain entities not to provide construction services

- (1) A person commits an offence if the person—
 - (a) provides a service (whether as an employee or otherwise) in a construction occupation or occupation class; and
 - (b) either—
 - (i) is not licensed in the occupation or class; or
 - (ii) if an endorsement on the licence is required for the person to be authorised to provide the service provided and the licence does not have that endorsement.

Maximum penalty: 50 penalty units.

- (2) Each partner in a partnership commits an offence if the partnership—
- (a) provides a service in a construction occupation or occupation class; and
 - (b) either—
 - (i) is not licensed in the occupation or class; or
 - (ii) if an endorsement on the licence is required for the partnership to be authorised to provide the service provided and the licence does not have that endorsement.

Maximum penalty: 50 penalty units.

- (3) This section does not apply if—
- (a) an individual provides the service, whether directly or for an entity; and
 - (b) the individual is working under the supervision of a licensee whose licence authorises the provision of the service; and
 - (c) the licensee is not required by a condition or endorsement on the licence to provide the service as an employee or under supervision; and
 - (d) a regulation allows the service to be provided by an individual without a licence if provided under the supervision of a licensee.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

(ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

(5) An offence against this section is a strict liability offence.

85 Allowing unlicensed people to provide construction service

(1) A person commits an offence if—

- (a) the person engages someone else (the *worker*), or allows an employee (also the *worker*), to provide a construction service for the person; and
- (b) the worker is not licensed to provide the service; and
- (c) the person is reckless about whether the worker is licensed to provide the service.

Maximum penalty: 50 penalty units.

(2) Each member of a partnership commits an offence if—

- (a) a partner engages someone else (the *worker*), or allows an employee of the partnership (also the *worker*), to provide a construction service for the partnership; and
- (b) the worker is not licensed to provide the service; and
- (c) the partner is reckless about whether the worker is licensed to provide the service.

Maximum penalty: 50 penalty units.

(3) This section does not apply to an entity that provides a service if—

- (a) the service is provided under the supervision of a licensee; and
- (b) the licensee is not required by a condition or endorsement on the licence to provide the service as an employee or under supervision; and

- (c) a regulation allows the service to be provided by an individual without a licence if provided under the supervision of a licensee.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
 - (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

86 Surrender of licences

- (1) A person commits an offence if—
 - (a) the person's licence has been suspended or cancelled; and
 - (b) the person does not surrender the licence to the registrar within 2 weeks after the day of suspension or cancellation.

Maximum penalty: 5 penalty units.

- (2) Each partner commits an offence if—
 - (a) the partnership's licence has been suspended or cancelled; and
 - (b) the licence is not surrendered to the registrar within 2 weeks after the day of suspension or cancellation.

Maximum penalty: 5 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that the licence has been destroyed, lost or stolen.

- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

87 Breach of licence conditions or codes

- (1) A licensee commits an offence if the licensee contravenes a condition of the licence.
Maximum penalty: 50 penalty units.
- (2) Each partner in a partnership commits an offence if—
- (a) the partnership is a licensee; and
 - (b) the licensee contravenes a condition of the licence.
- (3) A person who is a licensee commits an offence if the person contravenes a code of practice applicable to the person.
Maximum penalty: 50 penalty units.
- (4) Each partner in a partnership commits an offence if the partnership—
- (a) is a licensee; and
 - (b) contravenes a code of practice applicable to the licensee.
- Maximum penalty: 50 penalty units.

- (5) It is a defence to a prosecution for an offence against subsection (2) or (4) if the partner proves that—
- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.
- (6) An offence against this section is a strict liability offence.

88 Notification of cancellation of insurance

- (1) An insurer commits an offence if—
- (a) the insurer provides a policy of insurance to a entity who is, or is applying to be, licensed in a construction occupation or occupation class; and
 - (b) the insurance is required under the regulations for the entity to be eligible for the licence; and
 - (c) the insurer cancels the policy of insurance; and
 - (d) fails to give the registrar written notice of the cancellation within 3 days after the day of cancellation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

Part 8 Demerit points system

Note In this part, *licensee* has an extended meaning (see s 89, def *licensee*).

89 Definitions—pt 8

In this part:

demerit ground for occupational discipline, in relation to a licensee—

- (a) means a ground for occupational discipline in relation to the licensee for which the ACAT may make an occupational discipline order; but
- (b) does not include a ground for occupational discipline if—
 - (i) the ground is a contravention of this Act or an operational Act; and
 - (ii) an infringement notice may be issued in relation to the contravention.

demerit points register means the register under section 91.

disciplinary incident, for a demerit ground for occupational discipline, means the circumstances that gave rise to the demerit ground for occupational discipline.

infringement notice—see the *Magistrates Court Act 1930*, section 117.

licensee, in relation to a demerit ground for occupational discipline, includes an entity that was licensed when the disciplinary incident for the demerit ground for occupational discipline happened.

90 Meaning of *previous 3 years* for pt 8

- (1) In this part:

previous 3 years, in relation to a licensee with demerit points, means the 3 year period ending on the day the licensee last incurred a demerit point.

- (2) For this section, *3 year period* does not include a period of less than 3 years during which a licensee is unlicensed.
- (3) Also, if a licensee incurs demerit points while unlicensed and becomes licensed within 3 years after incurring them, for the purpose of working out the *3 year period* in relation to the licensee the demerit points are taken to have been incurred when the licensee next becomes licensed.

91 Recording demerit points

- (1) If a demerit ground for occupational discipline exists in relation to a licensee, the registrar must record, in the demerit points register, against the licensee or former licensee, and for the relevant construction occupation, the number of demerit points prescribed under the regulations for the demerit ground for occupational discipline.
- (2) The demerit points must be recorded in the demerit points register for the day when they are incurred.
- (3) In this section:

relevant construction occupation, for a demerit ground for occupational discipline, means—

- (a) the construction occupation in relation to which the disciplinary incident happened; or

- (b) if the disciplinary incident did not happen in relation to a construction occupation—the main construction occupation in which the licensee was providing construction services when the disciplinary incident happened.

92 When demerit points are *incurred*

- (1) This section applies to demerit points to be recorded against a licensee for a construction occupation in the demerit points register for a demerit ground for occupational discipline.
- (2) A demerit point is taken to have been *incurred* by the licensee for the demerit ground for occupational discipline on the day when the registrar first becomes aware of the disciplinary incident.

93 Deleting demerit points

- (1) This section applies to demerit points incurred by a licensee for a construction occupation, recorded in the register and taken into account for—
 - (a) a notice of licence suspension under section 97; or
 - (b) a notice of licence disqualification under section 98; or
 - (c) other action (*disciplinary action*) allowed to be taken under section 95 (2) (c).
- (2) The demerit points are deleted from the register at the beginning of the period of suspension or disqualification, or on the imposition of the disciplinary action, relating to the licence for the construction occupation.
- (3) Subsection (2) does not prevent the registrar keeping a record of deleted demerit points.

94 Warning notices

- (1) This section applies if—
 - (a) the registrar records a demerit point against a licensee for a construction occupation; and
 - (b) in the previous 3 years, the licensee has incurred at least 10 other demerit points for the construction occupation; and
 - (c) the registrar has not sent the licensee a notice under this section within the 3 month period ending on the day the demerit point is incurred.
- (2) The registrar must tell the licensee in writing how many points the licensee has and the effect of this part.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (3) Failure to comply with subsection (2) does not affect the validity of anything done by the registrar or a court.

95 Consequences of incurring demerit points—licensees

- (1) This section applies to a licensee if the licensee—
 - (a) has a licence; and
 - (b) incurred 15 or more demerit points for a construction occupation within the previous 3 years.
- (2) The registrar must consider the disciplinary incidents for which the licensee incurred the demerit points and—
 - (a) serve a notice of licence suspension under section 97 on the licensee in relation to the licensee's licence in the construction occupation; or
 - (b) serve a notice of licence disqualification under section 98 on the licensee in relation to the licensee's licence in the construction occupation; or

- (c) take any other action against the licensee that—
 - (i) the ACAT could take or direct the registrar to take; and
 - (ii) the registrar considers appropriate.
- (3) In considering what action to take under subsection (2), the registrar must take into account the following considerations:
 - (a) the need to protect public safety;
 - (b) the desirability of not allowing people to undertake work which they are financially unable to complete;
 - (c) the regularity of the disciplinary incidents to which the demerit points relate;
 - (d) the seriousness of the disciplinary incidents to which the demerit points relate;
 - (e) the likelihood of further disciplinary incidents relating to the licensee.
- (4) The registrar may take into account any other relevant consideration.

96 Consequences of incurring demerit points—applicant for issue or renewal of licence

- (1) This section applies to a licensee if—
 - (a) the licensee applies to the registrar for a licence (including the renewal of a licence) for a construction occupation; and
 - (b) the licensee has incurred 15 or more demerit points for the construction occupation within the previous 3 years.
- (2) The registrar may refuse the licensee’s application and serve a notice of licence disqualification on the licensee under section 98.

- (3) The registrar may only take action under subsection (2) if satisfied that the public would be at risk if the licensee were allowed to provide the construction services authorised by the licence.

97 Licence suspension

- (1) A notice of licence suspension served on a licensee by the registrar under this section—
- (a) must state the date of the notice; and
 - (b) must state each construction occupation or occupation class to which the notice relates; and
 - (c) must state the date, at least 21 days after the day the notice is served on the licensee, when the suspension of the licensee's licence is to begin; and
 - (d) must state the period of licence suspension; and
 - (e) must include any other information required under the regulations; and
 - (f) may include any additional information the registrar considers appropriate.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) The licensee's licence is suspended for the period of licence suspension.
- (3) To remove any doubt, a licence may be suspended in relation to all construction occupations or occupation classes it relates to.

98 Licence disqualification

- (1) A notice of licence disqualification served on a licensee by the registrar under this section—
- (a) must state the date of the notice; and

- (b) must state each construction occupation or occupation class to which the notice relates; and
- (c) must state the date, at least 21 days after the day the notice is served on the licensee, when the disqualification of the licensee to obtain a licence is to begin (the *date of effect*); and
- (d) if the licensee has a licence—must state that the licence is cancelled on the date of effect; and
- (e) must state the period of licence disqualification; and
- (f) must include any other information required under the regulations; and
- (g) may include any additional information the registrar considers appropriate.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) If the licensee has a licence, the licence is cancelled in relation to each construction occupation or occupation class mentioned in the notice on the date of effect.
- (3) The licensee is disqualified from holding a licence in each construction occupation or occupation class during the period of licence disqualification and is not entitled to apply for, or be issued with, a licence in the construction occupation or occupation class during the period.
- (4) To remove any doubt, a licence may be cancelled in relation to all construction occupations or occupation classes it relates to.

99 Demerit points incurred but not taken into account for notice of licence suspension etc

- (1) This section applies to—
 - (a) demerit points incurred by a licensee on or before the date of a notice of licence suspension or licence disqualification served on the licensee under this part that were not taken into account for the notice; and
 - (b) demerit points incurred by the licensee after the date of the notice and before the period of licence suspension or licence disqualification applying under the notice begins.
- (2) The demerit points are only taken into account in relation to the licensee from the end of the period of licence suspension or licence disqualification applying under the notice.

100 Issue of licence suspension notice etc

The registrar may give a notice of licence suspension or licence disqualification to a licensee under this part without giving the licensee an opportunity to make representations why the notice should not be given.

101 Keeping demerit points register

- (1) The demerit points register may include information given to the registrar under this Act and any other information the registrar considers appropriate.
- (2) The demerit points register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the registrar considers appropriate.
- (3) The registrar must correct a mistake, error or omission in the demerit points register subject to the requirements (if any) of the regulations.

- (4) This section does not limit the functions of the registrar in relation to the demerit points register.

102 Security and disclosure of information in demerit points register

- (1) The registrar must ensure that information in the demerit points register is kept securely and may be disclosed only in accordance with this Act or another law in force in the ACT.

Note 1 The Information Privacy Principles apply to the registrar. Principle 4 states requirements about the storage and security of personal information and principle 11 states when personal information may be disclosed by an agency (see *Privacy Act 1988* (Cwlth), s 14).

Note 2 Access to the register may be sought under the *Freedom of Information Act 1989* (which also provides that certain information is exempt from disclosure).

- (2) The registrar must give information about a licensee's demerit points to the licensee on application.

Part 9 Administration

103 Construction occupations registrar

- (1) The director-general may appoint a public servant as the Australian Capital Territory Construction Occupations Registrar (the *registrar*).

Note For the making of appointments, see Legislation Act, div 19.3.1 (Appointments—other than acting appointments).

- (2) However, the director-general must not appoint a person under subsection (1) unless satisfied that the person has relevant experience or a relevant qualification in 1 or more of the following areas:
- (a) asbestos assessment;
 - (b) building;
 - (c) building assessment;
 - (d) building surveying;
 - (e) draining;
 - (f) electrical;
 - (g) engineering;
 - (h) gasfitting;
 - (i) plumbing;
 - (j) works assessment;
 - (k) administration of building or construction industry regulatory schemes.
- (3) The appointment must not be for longer than 3 years.

104 Registrar's functions

- (1) The registrar has the following functions:
 - (a) to keep the registers under this Act;
 - (b) to administer operational Acts;

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).
 - (c) to decide applications in relation to licences;
 - (d) to maintain the standard of construction occupations by—
 - (i) acting on complaints made about construction practitioners, including by applying to the ACAT for occupational discipline if appropriate; and
 - (ii) providing construction practitioners with information about developments in the construction industry.
- (2) The registrar has any other function given to the registrar under this Act or another Territory law.

104A Codes of practice

- (1) The registrar may, in writing, approve a code of practice for—
 - (a) a construction occupation; or
 - (b) a class of construction occupation; or
 - (c) a construction service.

Note Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).
- (2) An approved code of practice may consist of a code, standard, rule, specification or provision relating to the construction occupation or class, or a construction service, and may apply, adopt or incorporate

a law or instrument, or a provision of a law or instrument, as in force from time to time.

Note A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

- (3) An approved code of practice is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 An amendment or repeal of an approved code of practice is also a notifiable instrument (see Legislation Act, s 46 (2)).

105 Delegation by registrar

The registrar may delegate the registrar's functions under this Act or another Territory law to a public servant.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

106 Deputy registrars

- (1) The registrar may appoint a public servant as deputy registrar for each construction occupation.
- (2) The appointment must not be for longer than 2 years.
- (3) 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.
- (4) However, the registrar may—
 - (a) limit the functions the deputy registrar may exercise, either in the instrument of appointment or in writing later; and
 - (b) give the deputy registrar written directions about the exercise of the functions.

- (5) If the registrar gives the deputy registrar written directions about the exercise of a function, the deputy registrar may only exercise the function in accordance with the directions.

107 The register

- (1) The registrar must keep a register of licensees.

Note Particulars about licensees are prescribed under the regulations. This part includes a requirement to record other information in the register.

- (2) The register may be kept in any form, including electronic form, that the registrar decides.
- (3) The register may be divided into parts.
- (4) The registrar must make the register available to the public.

108 Recording rectification orders

- (1) If the registrar makes a rectification order, the registrar must include the following in the register in relation to the order:
- (a) the date the order was made;
 - (b) what the rectification order required.
- (2) However, the registrar may only include information under subsection (1) if the licensee to whom the rectification order relates—
- (a) has not applied for review of the decision to make the order within the period allowed under the *ACT Civil and Administrative Tribunal Act 2008*; or
 - (b) has applied for review of the decision but the ACAT has not set aside the rectification order.

109 Recording contravention of rectification orders

- (1) This section applies if—
 - (a) the registrar is satisfied that an entity has contravened a rectification order; and
 - (b) the registrar proposes to include the details of the contravention in the register.
- (2) The registrar must tell the entity in writing that—
 - (a) the registrar proposes to include the details of the contravention in the register; and
 - (b) the entity may 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.
- (3) 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—
 - (a) the entity contravened the rectification order; and
 - (b) it is appropriate to include the details in the register.

110 Recording interim licence suspension

If the registrar suspends a licence under section 59 (Interim licence suspension), the registrar must immediately include the following in the register in relation to the suspension:

- (a) the date of suspension;
- (b) the length of the suspension;
- (c) whether the suspension has been extended.

111 Removal of information from register

- (1) This section applies to information included in the register under the following sections:
 - (a) section 108 (Recording rectification orders);
 - (b) section 109 (Recording contravention of rectification orders);
 - (c) section 110 (Recording interim licence suspension).
- (2) An entity may apply for the removal of the information from the register if the information relates to something the entity did or did not do.
- (3) On receiving an application from an entity, the registrar may remove the information from the register if satisfied that—
 - (a) no further information to which this section applies has been recorded in relation to the entity; and
 - (b) it is 5 years or longer since the day, or last day, that the event to which the information relates happened.
- (4) Subsection (3) does not prevent the registrar keeping a record of information removed from the register.

112 Annual report by registrar

- (1) The registrar is a public authority for the *Annual Reports (Government Agencies) Act 2004*.
- (2) A report prepared by the registrar under the *Annual Report (Government Agencies) Act 2004* for a financial year must include the details prescribed under the regulations.

113 Evidentiary certificates

- (1) The registrar may issue a certificate, signed by the registrar, stating that on a date or during a period stated that—
 - (a) an entity named in the certificate was or was not licensed; and

- (b) if the entity was licensed—
 - (i) the entity was licensed in the construction occupation, and occupation class (if any), in which the entity was licensed; and
 - (ii) the licence was, or was not, suspended.
- (2) A licence or certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a licence or certificate under this section is taken to be such a document.

Part 10 Advisory boards

114 Establishment of advisory boards

- (1) The registrar must establish an advisory board for a construction occupation.
- (2) An advisory board may, but need not, relate to more than 1 construction occupation.

115 Constitution of advisory board

- (1) An advisory board must have at least 7, but not more than 9 members.
- (2) At least 4 of the advisory board members must be licensed in the construction occupation, or 1 of the construction occupations, for which the advisory board is established.
- (3) Of the 4 advisory board members mentioned in subsection (2), not more than 2 of them may represent a body established to represent the interests of people working in the construction occupation or 1 of the construction occupations.
- (4) At least 1, but not more than 3, of the advisory board members must represent an educational institution, or industry training body, relevant to the construction occupation.
- (5) At least 1 of the advisory board members must be a lawyer.
- (6) At least 1 of the advisory board members must be a community representative who is not licensed.

116 Advisory board functions

An advisory board for a construction occupation has the following functions:

- (a) to advise the registrar about qualifications for the construction occupation;

- (b) to help with investigations for the construction occupation if asked by the registrar;
- (c) to help develop and maintain codes of practice for the construction occupation if asked by the registrar.

Part 11 Complaints

117 Who may complain?

- (1) Anyone who believes a licensee is contravening, or a licensee or former licensee has contravened, this Act, or an operational Act, may complain to the registrar.
- (2) Notice of a contravention given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work) is taken to be a complaint made under this section.

118 Form of complaint

- (1) A complaint must be—
 - (a) in writing; and
 - (b) signed by the person making the complaint (the *complainant*); and
 - (c) include the complainant's name and address.
- (2) However, the registrar—
 - (a) may accept a complaint for consideration even if it does not comply with subsection (1); and
 - (b) must accept a complaint for consideration even if it does not comply with subsection (1) if the complaint is notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work).
- (3) 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 not doing so.

119 Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the registrar.
- (2) If the complainant withdraws the complaint, the registrar—
 - (a) need take no further action on the complaint; and
 - (b) may continue to act on the complaint if the registrar considers it appropriate to do so; and
 - (c) need not report to the complainant under section 123 (Action after investigating complaint) on the results of any action on the complaint.

120 Further information about complaint etc

- (1) The registrar may, at any time, require a complainant—
 - (a) to give the registrar further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the registrar must give the complainant a reasonable period of time within which the requirement is to be satisfied and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement made of the complainant under subsection (1), the registrar may, but need not, take further action in relation to the complaint.
- (4) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work).

121 Investigation of complaint

The registrar must take reasonable steps to investigate each complaint the registrar accepts for consideration.

Note A complaint must be in writing, but the registrar may accept a complaint that is not in writing (see s 118).

122 No further action

- (1) The registrar must not take further action on a complaint if satisfied that—
- (a) the complaint lacks substance; or
 - (b) the complaint is frivolous, vexatious or was not made in good faith; or
 - (c) the complaint has been adequately dealt with.

Note The registrar may also take no further action on a complaint if the complainant has not complied with a requirement made under s 120 (1) (see s 120 (3)).

- (2) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work).

123 Action after investigating complaint

- (1) After investigating a complaint against a licensee or former licensee, the registrar must—
- (a) if satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) do both of the following:
 - (A) apply to the ACAT for an occupational discipline order in relation to the licensee;

- (B) tell the complainant in writing that the application has been made; or
 - (ii) take the following disciplinary action:
 - (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 amend an existing condition; or
 - (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) tell the complainant in writing that the registrar will take no further action on the complaint; and
 - (ii) take no further action on the complaint; or
 - (c) if the complaint was a notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work) and the registrar is satisfied it should be referred to the planning and land authority—refer the complaint to the planning and land authority.
- (2) Subsection (1) (b) (ii) does not prevent the registrar from taking further action in relation to a complaint if the registrar becomes satisfied that a ground for occupational discipline exists in relation to the complaint.
- (3) The registrar refers a complaint to the planning and land authority by giving the authority—
- (a) a copy of the complaint or a summary of the information provided in the complaint; and

- (b) any information relating to the complaint that the registrar considers may be helpful to the authority; and
- (c) a statement about why the registrar considers that the authority is more appropriate to deal with the complaint than the registrar.

Note The registrar need not notify the complainant under subsection (1) if the complainant has withdrawn the complaint (see s 119).

Part 11AA Information sharing

123AA Definitions—pt 11AA

In this part:

public safety agency means any of the following:

- (a) the registrar;
- (b) the director-general responsible for this Act or an operational Act;
- (c) an inspector appointed under an operational Act;
- (d) the director-general responsible for the *Emergencies Act 2004*;
- (e) the commissioner and chief officers appointed under the *Emergencies Act 2004*;
- (f) an inspector appointed under the *Emergencies Act 2004*;
- (g) the director-general responsible for the *Work Health and Safety Act 2011*;
- (h) the commissioner appointed under the *Work Health and Safety Act 2011*;
- (i) an inspector appointed under the *Work Health and Safety Act 2011*;
- (j) an agency prescribed by regulation.

public safety information means information in relation to a situation that presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to property, that is disclosed to, or obtained by, a public safety agency because the agency is, or has been, a public safety agency.

123AB Sharing public safety information

- (1) A public safety agency may give public safety information to another public safety agency.
- (2) A public safety agency may request public safety information from another public safety agency.
- (3) A public safety agency that receives a request under subsection (2) may comply with the request.
- (4) However, a public safety agency (the *giving agency*) must not give public safety information to another public safety agency (the *receiving agency*) unless the giving agency is satisfied that the receiving agency will use the information to exercise a function given to the receiving agency under a territory law.

Part 11AB Energy efficiency rating statements

123AC Meaning of *energy efficiency rating statement*

In this Act:

energy efficiency rating statement means a statement prepared in accordance with section 123AD.

123AD Energy efficiency rating statement

- (1) This section applies if a person is required to give an energy efficiency rating statement under a territory law.

Examples

- the requirement to give an energy efficiency rating statement under the *Civil Law (Sale of Residential Property) Act 2003*, s 23
- the requirement to give an energy efficiency rating statement under the *Residential Tenancies Act 1997*, s 12

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) An energy efficiency rating statement must be prepared—
- (a) by a building assessor; and
 - (b) in accordance with—
 - (i) a code of practice (if any) in relation to the statement; or
 - (ii) if a regulation provides for energy efficiency rating statements—the regulation.

123AE Conflict of interest—building assessors

- (1) A building assessor must not prepare an energy efficiency rating statement for a building if the building assessor is—

- (a) for a statement under the *Civil Law (Sale of Residential Property) Act 2003*—
 - (i) the seller, a family member of the seller under that Act, or the seller’s agent or lawyer; or
 - (ii) a member of a firm that the seller under that Act, or the seller’s agent or lawyer, is a member of; or
 - (iii) someone else carrying on a business if the seller under that Act, or the seller’s agent or lawyer or a family member of the seller, has a direct or indirect right to participate in the profits of the business; or
 - (b) for a statement under the *Residential Tenancies Act 1997*—
 - (i) the lessor, a family member of the lessor under that Act, or the lessor’s agent or lawyer; or
 - (ii) a member of a firm that the lessor under that Act, or the lessor’s agent or lawyer, is a member of; or
 - (iii) someone else carrying on a business if the lessor under that Act, or the lessor’s agent or lawyer or a family member of the lessor, has a direct or indirect right to participate in the profits of the business; or
 - (c) in any case—a person who—
 - (i) has a legal or equitable interest in the building; or
 - (ii) has a financial interest in the building.
- (2) However, a building assessor who has a conflict of interest mentioned in subsection (1) may prepare an energy efficiency rating statement if—
- (a) the building assessor prepares the statement for a new building; and
 - (b) the statement is based on an energy efficiency certificate in relation to the building; and

- (c) the statement is consistent with the certificate; and
- (d) the building assessor gives—
 - (i) the registrar a declaration of the assessor's conflict of interest; and
 - (ii) the seller or lessor a copy of the declaration.

Note If a form is approved under s 128 for the declaration, the form must be used.

- (3) In this section:

energy efficiency certificate—see the *Building Act 2004*, section 139C.

family member, of a person, means—

- (a) the person's domestic partner; or
- (b) the person's parent or child; or
- (c) the person's brother, sister, half-brother or half-sister; or
- (d) the parent or child of the person's domestic partner.

Part 11A Notification and review of decisions

123A Meaning of *reviewable decision*—pt 11A

In this part:

reviewable decision means a decision prescribed by regulation.

123B Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

123C Review of reviewable decisions

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity prescribed by regulation for the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 12 Miscellaneous

125 Protection of registrar, advisory boards etc

- (1) This section applies to a person who is, or has been—
 - (a) the registrar or a deputy registrar; or
 - (b) an advisory board member.
- (2) A civil proceeding does not lie against a person to whom this section applies in relation to loss, damage or injury of any kind to someone else because of an act done, or omitted to be done honestly in the exercise (or purported exercise) of a function under this Act.

126 AS 3500 and Legislation Act, s 47

The Legislation Act, section 47 (6) does not apply to AS 3500 under this Act.

127 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).
- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

128 Approved forms

- (1) The registrar may approve forms for this Act.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

Note The Legislation Act contains provisions about forms (see s 255).

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

129 Regulation-making power

- (1) The Executive may make regulations for this Act.
- (2) The regulations may make provision in relation to—
- (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.
- (3) The regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 10 penalty units for offences against the regulations.
- (4) The regulations may adopt an Australian Standard as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (5) The Legislation Act, section 47 (6) does not apply to an Australian Standard mentioned in subsection (4).

131 Review of Act

The Minister must review the 1st 2 years of operation of this Act and present a report of the review to the Legislative Assembly not later than 3 years after commencement day.

Part 14 Transitional—Construction Occupations Legislation Amendment Act 2006

154 Transitional—conduct engaged in before 1/9/04

- (1) Part 4 (Rectification orders and other obligations on licensees) and part 5 (Automatic licence suspension and occupational discipline) apply to conduct engaged in before 1 September 2004 as if—
 - (a) a reference to a construction service included a reference to a construction service provided before 1 September 2004; and
 - (b) a reference to this Act included a reference to a related Act; and
 - (c) a reference to a licensee or former licensee included a reference to a person who was a registered construction practitioner under the *Construction Practitioners Registration Act 1998* (whether or not the person is also a licensee or former licensee for this Act); and
 - (d) all other necessary changes were made; and
 - (e) any changes prescribed by regulation were made.
- (2) In this section:
related Act means any of the following Acts:
 - (a) the *Construction Practitioners Registration Act 1998*; or
 - (b) an operational Act; or
 - (c) the *Building Act 1972*; or
 - (d) the *Energy and Water Act 1988*; or
 - (e) the *Gas Act 1992*; or

(f) the *Plumbers, Drainers and Gasfitters Board Act 1982*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (3) This section expires on 31 August 2014.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Part 16 **Transitional—Construction
Occupations Legislation
Amendment Act 2010 and
Construction Occupations
Legislation (Exemption
Assessment) Amendment Act
2010**

158 **Meaning of *commencement day*—pt 16**

In this part:

commencement day means the day this part commences.

159 **Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation Amendment Act 2010* and the *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) A regulation under subsection (2) expires 2 years after the day it commences.

160 **Expiry—pt 16**

This part expires 2 years after the commencement day.

Part 16 Transitional—Construction Occupations Legislation Amendment Act 2010 and
Construction Occupations Legislation (Exemption Assessment) Amendment
Act 2010

Section 160

Part 17 **Transitional—energy efficiency rating statements**

Division 17.1 **General**

161 **Meaning of *commencement day*—pt 17**

In this part:

commencement day means the day this part commences.

162 **Transitional effect—Disapplication of Legislation Act, s 88**

This part is not a law to which the Legislation Act, s 88 (Repeal does not end effect of transitional laws etc) applies.

163 **Expiry—pt 17**

- (1) This part, other than division 17.3, expires 3 years after the commencement day.
- (2) Division 17.3 and this subsection expire 1 year after the commencement day.

Division 17.2 **Energy efficiency rating statements**

164 **Definitions—div 17.2**

In this division:

old energy efficiency rating means an energy efficiency rating prepared before the commencement day in accordance with the *Civil Law (Sale of Residential Property) Act 2003*, part 3 as in force immediately before the commencement day.

old energy efficiency rating statement means an energy efficiency rating statement prepared before the commencement day in accordance with the *Civil Law (Sale of Residential Property) Act 2003*, part 3 as in force immediately before the commencement day.

165 Transitional—status of old energy efficiency rating

An old energy efficiency rating is taken, on and after the commencement day, to be an energy efficiency rating under the *Civil Law (Sale of Residential Property) Act 2003*.

166 Transitional—status of old energy efficiency rating statement

An old energy efficiency rating statement is taken, on and after the commencement day, to be an energy efficiency rating statement under this Act.

Division 17.3 Registered assessors

167 Meaning of *registered assessor*—div 17.3

In this division:

registered assessor means an individual who the planning and land authority has registered by recording the individual's relevant details in the authority's register of energy assessors for the *Civil Law (Sale of Residential Property) Energy Efficiency Rating Guidelines Determination 2009* (DI2009-124) as in force immediately before the commencement day, if that registration has not lapsed, been invalidated, suspended or cancelled.

168 Transitional—status of registered assessor

A registered assessor is taken, on and after the commencement day, to be a licensed building assessor under this Act.

169 Transitional—endorsement of licence to operate software

- (1) This section applies if a registered assessor was registered to operate stated software immediately before the commencement day.
- (2) The registered assessor's building assessor's licence is taken, on and after the commencement day, to be endorsed to authorise the assessor to operate the stated software.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- bankrupt or personally insolvent
- building code
- director-general (see s 163)
- entity
- Legislation Act
- occupational discipline order
- reviewable decision notice
- under
- working day.

AS 3500 means the following standards, as in force from time to time:

- (a) AS 3500.1.1;
- (b) AS 3500.2.1;
- (c) AS/NZS 3500.

asbestos assessment service—see section 7A (2).

asbestos assessor—see section 7A (1).

asbestos removalist—see section 7B (1).

asbestos removal service—see section 7B (2).

authorised action, for part 4 (Rectification orders and other obligations on licensees)—see section 33.

authorised licensee, for part 4 (Rectification orders and other obligations on licensees)—see section 33.

builder—see section 8.

building assessor—see section 8A.

building certification service—see section 9 (3).

building certifier—see the *Building Act 2004*, dictionary, definition of *certifier*.

building service—see section 8 (2).

building surveyor—see section 9.

building work—see the *Building Act 2004*, section 6.

class, of a construction occupation, means a class into which the occupation is divided under the regulations (see section 15).

code of practice means a code of practice approved under section 104A.

compliance auditor, for part 6 (Enforcement)—see section 76.

conduct means an act or an omission to do an act.

construction occupation—see section 7.

construction practitioner—see section 6.

construction service—see section 6 (2).

demerit disciplinary ground, for part 8 (Demerit points system)—see section 89.

demerit points register, for part 8 (Demerit points system)—see section 89.

disciplinary incident, for part 8 (Demerit points system)—see section 89.

drainer—see section 10.

electrical wiring service—see section 11 (2).

electrician—see section 11.

emergency rectification order—see section 39.

endorsement means an endorsement under section 22.

energy efficiency rating statement—see section 123AC.

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act.

former licensee means an entity that has been a licensee.

gasfitter—see section 12.

gasfitting service—see section 12 (2).

ground for occupational discipline—see section 55.

infringement notice—see *Magistrates Court Act 1930*, section 117.

licence means a licence under this Act.

licensee—

- (a) for division 5.2 (Occupational discipline—licensees)—see section 54; and
- (b) for part 8 (Demerit points system)—see section 89.

licence number, for a licence—see section 23 (1) (c).

mandatory requirements, for division 3.2 (Nominees)—see section 27.

nominee, of a corporation or partnership, means a person who is appointed as a nominee of the corporation or partnership under section 28 (Nominees of corporations and partnerships).

occupational discipline means—

- (a) something done by the ACAT by an occupational discipline order; or

(b) something done by the registrar in accordance with an occupational discipline order; or

(c) something done by the registrar under section 95.

occupation class means a class into which a construction occupation is divided under section 15.

operational Act—see section 16.

plumber—see section 13.

plumbing plan certification service—see section 14 (2).

plumbing plan certifier—see section 14.

plumbing service—see section 13 (2).

previous 3 years, for part 8 (Demerit points system)—see section 90.

public safety agency, for part 11AA (Information sharing)—see section 123AA.

public safety information, for part 11AA (Information sharing)—see section 123AA.

rectification order—see section 38 (1).

register means the register kept under section 107.

registrar—see section 103.

reviewable decision, for part 11A (Notification and review of decisions)—see section 123A.

sanitary drainage service—see section 10 (2).

storey—see the *Building Act 2004*, dictionary.

supervise includes direct.

works assessment service—see section 14A (2).

works assessor—see section 14A (1).

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Construction Occupations (Licensing) Act 2004 A2004-12

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

remainder commenced 1 September 2004 (s 2 and CN2004-8)

as modified by

Construction Occupations (Licensing) Regulations 2004 SL2004-36 (as am by SL2004-44 reg 5; A2005-34 amdt 1.38; SL2005-18 s 4)

taken to have been notified LR 26 March 2004 (A2004-12,
s 151 (3) (a))

reg 1 taken to have commenced 26 March 2004 (LA s 75 (1))

remainder commenced 1 September 2004 (A2004-12, s 151 (3) (b))

Construction Occupations (Licensing) Amendment Regulations 2004 (No 1) SL2004-44 reg 5

notified LR 8 September 2004

reg 1, reg 2 commenced 8 September 2004 (LA s 75 (1))

reg 5 commenced 9 September 2004 (reg 2)

Note These regulations only amend the Construction Occupations
(Licensing) Regulations 2004 SL2004-36.

as amended by

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.9

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.9 commenced 2 June 2005 (s 2 (1))

Construction Occupations Legislation Amendment Act 2005 A2005-34 sch 1 pt 1.3, amdt 1.38

notified LR 6 July 2005

s 1, s 2 commenced 6 July 2005 (LA s 75 (1))

sch 1 pt 1.3, amdt 1.38 commenced 27 July 2005 (s 2)

Endnotes

3 Legislation history

Construction Occupations (Licensing) Amendment Regulation 2005 (No 1) SL2005-18 s 4

notified LR 26 August 2005

s 1, s 2 commenced 26 August 2005 (LA s 75 (1))

s 4 commenced 27 August 2005 (s 2)

Note These regulations only amend the Construction Occupations (Licensing) Regulation 2004 SL2004-36.

Construction Occupations Legislation Amendment Act 2006 A2006-15 sch 1 pt 1.2

notified LR 6 April 2006

s 1, s 2 commenced 6 April 2006 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 September 2006 (s 2 and CN2006-19)

Asbestos Legislation Amendment Act 2006 A2006-16 sch 1 pt 1.4 (as am by A2006-24 s 4)

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

amdt 1.29, amdt 1.32 commenced 18 November 2006 (s 2 (2) and LA s 79)

amdt 1.30 commenced 1 July 2006 (s 2 (2) and CN2006-14)

sch 1 pt 1.4 remainder commenced 1 July 2006 (s 2 (1) as am by A2006-24 s 4)

Asbestos Legislation Amendment Act 2006 (No 2) A2006-24

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

remainder commenced 19 May 2006 (s 2)

Note This Act only amends the Asbestos Legislation Amendment Act 2006 A2006-16.

Building Legislation Amendment Act 2007 A2007-26 sch 1 pt 1.3

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

s 3, amdt 1.87, amdt 1.88 commenced 30 November 2007 (s 2 (1) and CN2007-16)

sch 1 pt 1.3 remainder commences 31 March 2008 (s 2 (1) and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.16

notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.16 commenced 26 August 2008 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.10

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.10 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

as modified by

ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009 SL2009-2 s 67 and sch 1 (as am by A2009-49 amdt 1.2, amdt 1.3)

notified LR 29 January 2009
s 1, s 2 commenced 29 January 2009 (LA s 75 (1))
s 67 and sch 1 commenced 2 February 2009 (s 2 and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

as amended by

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.17

notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.17 commenced 22 September 2009 (s 2)

Statute Law Amendment Act 2009 (No 2) A2009-49 amdt 1.2, amdt 1.3, sch 1 pt 1.4, sch 3 pt 3.10

notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
amdt 1.2, amdt 1.3, sch 1 pt 1.4, sch 3 pt 3.10 commenced 17 December 2009 (s 2)

Note This Act also amends the ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009 SL2009-2.

Endnotes

3 Legislation history

Construction Occupations Legislation Amendment Act 2010 A2010-8 pt 2

notified LR 3 March 2010
s 1, s 2 commenced 3 March 2010 (LA s 75 (1))
pt 2 commenced 4 March 2010 (s 2 (1))

Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010 A2010-24 pt 3

notified LR 8 July 2010
pt 1 commenced 8 July 2010 (s 2 (1))
pt 3 commenced 8 July 2011 (s 2)

Construction Occupations Legislation Amendment Act 2010 (No 2) A2010-32 pt 4

notified LR 1 September 2010
s 1, s 2 commenced 1 September 2010 (LA s 75 (1))
s 3 commenced 18 February 2011 (LA s 75AA)
pt 4 commenced 1 March 2011 (s 2 and LA s 79)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.34

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.34 commenced 1 July 2011 (s 2 (1))

Planning and Building Legislation Amendment Act 2011 A2011-23 pt 3

notified LR 6 July 2011
pt 1 commenced 6 July 2011 (s 2 (1))
s 7 commenced 8 July 2011 (s 2 (3) and see Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010 A2010-24 s 2)
pt 3 remainder commenced 7 July 2011 (s 2 (5))

Work Health and Safety (Consequential Amendments) Act 2011 A2011-55 sch 1 pt 1.2

notified LR 14 December 2011
s 1, s 2 commenced 14 December 2011 (LA s 75 (1))
sch 1 pt 1.2 commenced 1 January 2012 (s 2 and see Work Health and Safety Act 2011 A2011-35, s 2 and CN2011-12)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

What is a *construction occupation*?

s 7 sub A2006-16 amdt 1.28
am A2010-8 s 4; A2010-32 s 16; pars renum R21 LA

Who is an *asbestos assessor*?

s 7A ins A2006-16 amdt 1.28

What is an *asbestos removalist*?

s 7B ins A2006-16 amdt 1.28

What is a *builder*?

s 8 am A2006-16 amdt 1.29; A2009-20 amdt 3.41

What is a *building assessor*?

s 8A ins A2010-32 s 17

What is a *building surveyor*?

s 9 sub A2010-8 s 5
am A2010-24 ss 27-29; ss, pars renum R24 LA

What is a *plumbing plan certifier*?

s 14 am A2010-8 s 6

What is a *works assessor*?

s 14A ins A2010-8 s 7
am A2010-24 s 30

What is an *operational Act*?

s 16 sub A2006-16 amdt 1.30
am A2010-8 s 8; A2010-24 s 31

Licence applications

s 17 am A2006-15 amdt 1.19

Decision on licence application

s 19 am A2008-36 amdt 1.92

Entitlement to act as works assessor

s 26A ins A2010-8 s 9

Nominees of corporations and partnerships

s 28 am A2005-34 amdt 1.22

Rectification orders—exercise of registrar's powers

s 33A ins A2007-26 amdt 1.87
(2)-(4) exp 29 February 2008 (s 33A (4) (LA s 88 declaration
applies))
am A2010-24 s 32

Endnotes

4 Amendment history

When rectification order may be made

s 35 am A2005-34 amdt 1.23

Considerations for deciding under s 34 and s 35

s 36 am A2007-26 amdt 1.88
(4)-(6) exp 29 February 2008 (s 36 (6) (LA s 88 declaration
applies))
am A2010-24 s 33

Rectification order inappropriate

s 37 am A2008-36 amdt 1.93

Failure to comply with order

s 41 am A2008-36 amdt 1.94

Protection of authorised licensees from liability

s 46 am A2008-36 amdt 1.95

Automatic licence suspension and occupational discipline

pt 5 hdg sub A2008-36 amdt 1.96

Automatic suspension of individual licence

s 48 am A2009-49 amdt 3.22

Automatic suspension of licence—construction occupations

s 51 am A2006-15 amdt 1.19
sub A2010-8 s 10

Automatic suspension of licence—occupation classes

s 52 am A2006-15 amdt 1.19
sub A2010-8 s 10

Suspension of licence—public safety

s 52A ins A2010-32 s 18

End of licence suspension

s 53 hdg sub A2010-32 s 19
s 53 am A2008-36 amdt 1.97; A2010-8 s 11; A2010-32 s 20

Occupational discipline—licensees

div 5.2 hdg sub A2008-36 amdt 1.98

Meaning of licensee—div 5.2

s 54 am A2008-28 amdt 3.59
sub A2008-36 amdt 1.98

Grounds for occupational discipline

s 55 sub A2008-36 amdt 1.98

Application to ACAT for occupational discipline

s 56 am A2006-15 amdt 1.6; A2007-26 amdt 1.89
sub A2008-36 amdt 1.98
mod SL2009-2 mod 1.1
mod lapsed 17 December 2009 (SL2009-2 mod 1.1 om by
A2009-49 amdt 1.3)
am A2009-49 amdt 1.11

Considerations before making occupational discipline orders

s 57 sub A2008-36 amdt 1.98

Occupational discipline orders—licensees

s 58 sub A2008-36 amdt 1.98

Interim licence suspension

s 59 am A2006-15 amdt 1.19
sub A2008-36 amdt 1.98

Effect of interim suspension

s 60 am A2006-15 amdt 1.7
sub A2008-36 amdt 1.98

Revocation of interim suspension

s 61 sub A2008-36 amdt 1.98

Builders licence affected by occupational discipline or other action

s 62 am A2006-15 amdt 1.8, amdt 1.19
sub A2008-36 amdt 1.98

Effect of non-renewal on suspended licence

s 63 sub A2008-36 amdt 1.98

Requirement to return surrendered licence

s 64 sub A2008-36 amdt 1.98

Effect of non-renewal on suspended licence

s 65 om A2008-36 amdt 1.98

Disciplinary inquiries

div 5.3 hdg om A2008-36 amdt 1.99

Notice of inquiry

s 66 om A2008-36 amdt 1.99

Inquiry procedure

s 67 om A2008-36 amdt 1.99

Evidence at inquiry

s 68 om A2008-36 amdt 1.99

Legal representation at inquiry

s 69 om A2008-36 amdt 1.99

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4 Amendment history

Advisory board assistance at inquiry

s 70 om A2008-36 amdt 1.99

Registrar may require appearance, information or documents

s 71 om A2008-36 amdt 1.99

Witness expenses

s 72 om A2008-36 amdt 1.99

Miscellaneous

div 5.4 hdg om A2008-36 amdt 1.99

Multiple occupation or class licences

s 73 om A2008-36 amdt 1.99

Requirement to return surrendered licence

s 74 om A2008-36 amdt 1.99

Identity cards

s 78 am A2005-20 amdt 3.91; ss renum R5 LA (see A2005-20 amdt 3.92)

No nominee

s 82 am A2006-15 amdt 1.9

Advertising without details

s 83 mod SL2004-36 reg 52 (as am by SL2004-44 reg 5; om R4 LA)
(3)-(5) exp 9 March 2005 (s 83 (5))
am A2005-34 amdt 1.24, amdt 1.25; A2006-15 amdt 1.10

Certain entities not to provide construction services

s 84 am A2006-15 amdt 1.11, amdt 1.12

Allowing unlicensed people to provide construction service

s 85 am A2006-15 amdt 1.13, amdt 1.14

Surrender of licences

s 86 am A2006-15 amdt 1.15

Breach of licence conditions or codes

s 87 am A2006-15 amdt 1.16

Notification of cancellation of insurance

s 88 am A2006-15 amdt 1.19; A2010-8 s 12

Definitions—pt 8

s 89 sub A2008-36 amdt 1.100
def **demerit disciplinary ground** om A2008-36 amdt 1.100
def **demerit ground for occupational discipline** ins
A2008-36 amdt 1.100
def **demerit points register** sub A2008-36 amdt 1.100
def **disciplinary incident** sub A2008-36 amdt 1.100

def ***infringement notice*** sub A2008-36 amdt 1.100
def ***licensee*** am A2006-15 amdt 1.19
sub A2008-36 amdt 1.100

Recording demerit points

s 91 am A2008-36 amdt 1.101; A2009-49 amdt 3.23

When demerit points are *incurred*

s 92 am A2008-36 amdt 1.101

Deleting demerit points

s 93 am A2008-36 amdt 1.102

Consequences of incurring demerit points—licensees

s 95 am A2008-36 amdt 1.103

Construction occupations registrar

s 103 am A2006-16 amdt 1.31; A2010-8 s 13; pars renum R20 LA;
A2010-32 s 21; pars renum R21 LA; A2011-22 amdt 1.101

Registrar's functions

s 104 am A2008-36 amdt 1.104, amdt 1.105; A2011-23 s 6;
A2010-24 s 34; A2011-23 s 7

Codes of practice

s 104A ins A2010-32 s 22
am A2011-23 s 8

Recording rectification orders

s 108 am A2008-36 amdt 1.106

Recording contravention of rectification orders

s 109 am A2006-15 amdt 1.19

Recording interim licence suspension

s 110 am A2008-36 amdt 1.107

Removal of information from register

s 111 am A2006-15 amdt 1.19

Establishment of advisory boards

s 114 (3), (4) exp 1 September 2005 (s 114 (4))

Advisory board functions

s 116 am A2008-36 amdt 1.108

Who may complain?

s 117 am A2007-26 amdt 1.90

Form of complaint

s 118 am A2007-26 amdt 1.91

Further information about complaint etc

s 120 am A2007-26 amdt 1.92

Endnotes

4 Amendment history

No further action

s 122 am A2007-26 amdt 1.93

Action after investigating complaint

s 123 am A2007-26 amdt 1.94, amdt 1.95; A2008-36 amdt 1.109, amdt 1.110
mod SL2009-2 mod 1.2
mod lapsed 17 December 2009 (SL2009-2 mod 1.2 om by A2009-49 amdt 1.3)
am A2009-49 amdt 1.12

Information sharing

pt 11AA hdg ins A2010-32 s 23

Definitions—pt 11AA

s 123AA ins A2010-32 s 23
def **public safety agency** ins A2010-32 s 23
am A2011-22 amdt 1.102; A2011-55 amdt 1.3
def **public safety information** ins A2010-32 s 23

Sharing public safety information

s 123AB ins A2010-32 s 23

Energy efficiency rating statements

pt 11AB hdg ins A2010-32 s 23

Meaning of energy efficiency rating statement

s 123AC ins A2010-32 s 23

Energy efficiency rating statement

s 123AD ins A2010-32 s 23

Conflict of interest—building assessors

s 123AE ins A2010-32 s 23

Notification and review of decisions

pt 11A hdg ins A2008-36 amdt 1.111

Meaning of reviewable decision—pt 11A

s 123A ins A2008-36 amdt 1.111

Reviewable decision notices

s 123B ins A2008-36 amdt 1.111

Review of reviewable decisions

s 123C ins A2008-36 amdt 1.111

Review of decisions

s 124 am A2006-15 amdt 1.19
om A2008-36 amdt 1.112

Protection of registrar, advisory boards etc

s 125 am A2008-36 amdt 1.113

Repeals and transitional provisions

pt 13 hdg exp 1 September 2005 (s 153 (1))

Definitions for pt 13

s 130 exp 1 September 2005 (s 153 (1))

Legislation repealed

s 132 om LA s 89 (3)

End of licences or registration of people taken to be licensed or registered

s 133 exp 1 September 2005 (s 153 (1))

Building surveyors

s 134 exp 1 September 2005 (s 153 (1))

Electricians

s 135 table renum R6 LA
exp 1 September 2005 (s 153 (1))

Plumbers, drainers and gasfitters

s 136 exp 1 September 2005 (s 153 (1))

Fire sprinkler's licence

s 137 mod SL2004-36 reg 53 (as am by SL2004-44 reg 5)
mod lapsed 27 July 2005 when s 53 SL2004-36 om by
A2005-34 amdt 1.38
am A2005-34 amdt 1.26
exp 1 September 2005 (s 153 (1))

Plumbing plan certifiers

s 138 exp 1 September 2005 (s 153 (1))

Suspensions under repealed Act

s 139 exp 1 September 2005 (s 153 (1))

Suspended electricians

s 140 exp 1 September 2005 (s 153 (1))

Application of rectification orders

s 141 am A2005-34 amdt 1.27
exp 1 September 2005 (s 153 (1))

Applications for registration under repealed Act

s 142 exp 1 September 2005 (s 153 (1))

Former licensee in s 54 (3)

s 143 am A2005-34 amdt 1.28
exp 1 September 2005 (s 153 (1))

Applications for builders' licences under Building Act

s 144 exp 1 September 2005 (s 153 (1))

Eligible applicants for builders' licences without qualifications

s 145 exp 1 September 2005 (s 153 (1))

Endnotes

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Current builder's licence

s 146 exp 1 September 2005 (s 153 (1))

Applications for licence or permit under Electricity Safety Act

s 147 exp 1 September 2005 (s 153 (1))

Applications for licence or certificate of competency under Plumbers, Drainers and Gasfitters Board Act

s 148 exp 1 September 2005 (s 153 (1))

Contraventions before commencement day

s 149 mod SL2004-36 s 52 (as am by SL2005-18 s 4)
exp 1 September 2005 (s 153 (1))

Meaning of *demerit disciplinary ground* for pt 8

s 150 exp 1 September 2005 (s 153 (1))

Supervision by nominees—Act, s 28 (3) (b)

s 151 exp 1 September 2004 (s 151 (5))
ins as mod SL2004-36 reg 54 (as am by SL2004-44 reg 5)
mod lapsed 27 July 2005 when s 54 SL2004-36 om by
A2005-34 amdt 1.38

Water and Sewerage Act, s 49 (5)

s 151A ins as mod SL2004-36 reg 54 (as am by SL2004-44 reg 5)
mod lapsed 27 July 2005 when s 54 SL2004-36 om by
A2005-34 amdt 1.38

Transitional regulations

s 152 exp 1 September 2005 (s 153 (1))

Expiry of pt 13

s 153 exp 1 September 2005 (s 153 (1))

Transitional—Construction Occupations Legislation Amendment Act 2006

pt 14 hdg ins A2006-15 amdt 1.17

Transitional—conduct engaged in before 1/9/04

s 154 ins A2006-15 amdt 1.17
am A2008-36 amdt 1.114
exp 31 August 2014 (s 154 (3) (LA s 88 declaration applies))

Transitional—Asbestos Legislation Amendment Act 2006

pt 15 hdg ins A2006-16 amdt 1.32
exp 18 November 2007 (s 157)

Effect of building licence authorising building work involving asbestos

s 155 ins A2006-16 amdt 1.32
exp 18 November 2007 (s 157)

Renewal of building surveyor licences

s 156 ins A2006-16 amdt 1.32
exp 18 November 2007 (s 157)

Expiry—pt 15

s 157 ins A2006-16 amdt 1.32
exp 18 November 2007 (s 157)

**Transitional—Construction Occupations Legislation Amendment Act 2010
and Construction Occupations Legislation (Exemption Assessment)
Amendment Act 2010**

pt 16 hdg ins A2010-24 s 35
exp 8 July 2013 (s 160)

Meaning of commencement day—pt 16

s 158 ins A2010-24 s 35
exp 8 July 2013 (s 160)

Transitional regulations

s 159 ins A2010-24 s 35
exp 8 July 2013 (s 160)

Expiry—pt 16

s 160 ins A2010-24 s 35
exp 8 July 2013 (s 160)

Transitional—energy efficiency rating statements

pt 17 hdg ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

General

div 17.1 hdg ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Meaning of commencement day—pt 17

s 161 ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Transitional effect—Disapplication of Legislation Act, s 88

s 162 ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Expiry—pt 17

s 163 ins A2010-32 s 24
(2) exp 1 March 2012 (s 163 (2))
(1) exp 1 March 2014 (s 163 (1))

Energy efficiency rating statements

div 17.2 hdg ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Definitions—div 17.2

s 164 ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))
def **old energy efficiency rating** ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Endnotes

4 Amendment history

def **old energy efficiency rating statement** ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Transitional—status of old energy efficiency rating
s 165 ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Transitional—status of old energy efficiency rating statement
s 166 ins A2010-32 s 24
exp 1 March 2014 (s 163 (1))

Registered assessors
div 17.3 hdg ins A2010-32 s 24
exp 1 March 2012 (s 163 (2))

Meaning of registered assessor—div 17.3
s 167 ins A2010-32 s 24
exp 1 March 2012 (s 163 (2))

Transitional—status of registered assessor
s 168 ins A2010-32 s 24
exp 1 March 2012 (s 163 (2))

Transitional—endorsement of licence to operate software
s 169 ins A2010-32 s 24
exp 1 March 2012 (s 163 (2))

New regulations
sch 1 om R1 LA

Dictionary
dict am A2008-36 amdt 1.115; A2009-49 amdt 3.24; A2010-32 s 25; A2011-22 amdt 1.103
def **AS 3500** mod SL2004-36 reg 55 (as am by SL2004-44 reg 5)
sub A2005-34 amdt 1.29
def **asbestos assessment service** ins A2006-16 amdt 1.33
def **asbestos assessor** ins A2006-16 amdt 1.33
def **asbestos removalist** ins A2006-16 amdt 1.33
def **asbestos removal service** ins A2006-16 amdt 1.33
def **building assessor** ins A2010-32 s 26
def **building certification service** ins A2009-20 amdt 3.42
def **building service** ins A2009-20 amdt 3.42
def **code of practice** ins A2010-32 s 26
def **conduct** ins A2006-15 amdt 1.18
def **construction service** ins A2009-20 amdt 3.42
def **daily ACT newspaper** om A2009-20 amdt 3.43
def **disciplinary action** om A2008-36 amdt 1.116
def **disciplinary ground** om A2008-36 amdt 1.116
def **disciplinary notice** om A2008-36 amdt 1.116

def **electrical wiring service** ins A2009-20 amdt 3.44
def **energy efficiency rating statement** ins A2010-32 s 26
def **engage** ins A2006-15 amdt 1.18
def **former licensee** am A2006-15 amdt 1.19
def **gasfitting service** ins A2009-20 amdt 3.44
def **ground for occupational discipline** ins A2008-36
amdt 1.117
def **inquiry** om A2008-36 amdt 1.118
def **licensee** sub A2008-36 amdt 1.119
def **occupational discipline** ins A2008-36 amdt 1.120
def **plumbing plan certification service** ins A2009-20
amdt 3.44
def **plumbing service** ins A2009-20 amdt 3.44
def **public safety agency** ins A2010-32 s 26
def **public safety information** ins A2010-32 s 26
def **reviewable decision** ins A2008-36 amdt 1.121
def **reviewable decisions** om A2008-36 amdt 1.121
def **sanitary drainage service** ins A2009-20 amdt 3.44
def **works assessment service** ins A2010-8 s 14
def **works assessor** ins A2010-8 s 14

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Sept 2004	1 Sept 2004– 1 Sept 2004	not amended	new regulations
R2 2 Sept 2004	2 Sept 2004– 8 Sept 2004	not amended	commenced expiry
R3 9 Sept 2004	9 Sept 2004– 9 Mar 2005	not amended	modifications by SL2004-36 as am by SL2004-44
R4 10 Mar 2005	10 Mar 2005– 1 June 2005	not amended	commenced expiry
R5 2 June 2005	2 June 2005– 26 July 2005	A2005-20	amendments by A2005-20
R6 (RI) 28 July 2005	27 July 2005– 26 Aug 2005	A2005-34	amendments by A2005-34 reissue for textual correction in s 83
R7 27 Aug 2005	27 Aug 2005– 1 Sept 2005	A2005-34	modifications by SL2004-36 as am by SL2005-18
R8 (RI) 9 May 2006	2 Sept 2005– 30 June 2006	A2005-34	commenced expiry reissue for republishing correction

Republication No and date	Effective	Last amendment made by	Republication for
R9 1 July 2006	1 July 2006– 31 Aug 2006	A2006-24	amendments by A2006-16 as amended by A2006-24
R10 1 Sept 2006	1 Sept 2006– 17 Nov 2006	A2006-24	amendments by A2006-15
R11 18 Nov 2006	18 Nov 2006– 18 Nov 2007	A2006-16	amendments by A2006-16
R12 19 Nov 2007	19 Nov 2007– 29 Nov 2007	<u>A2007-26</u>	commenced expiry
R13 30 Nov 2007	30 Nov 2007– 29 Feb 2008	<u>A2007-26</u>	commenced expiry
R14 1 Mar 2008	1 Mar 2008– 30 Mar 2008	<u>A2007-26</u>	commenced expiry
R15* 31 Mar 2008	31 Mar 2008– 25 Aug 2008	A2007-26	amendments by A2007-26
R16 26 Aug 2008	26 Aug 2008– 1 Feb 2009	A2008-28	amendments by A2008-28
R17 2 Feb 2009	2 Feb 2009– 21 Sept 2009	SL2009-2	amendments by A2008-36 and modifications by SL2009-2
R18 22 Sept 2009	22 Sept 2009– 16 Dec 2009	A2009-20	amendments by A2009-20
R19 17 Dec 2009	17 Dec 2009– 3 Mar 2010	A2009-49	amendments by A2009-49
R20 4 Mar 2010	4 Mar 2010– 28 Feb 2011	A2010-8	amendments by A2010-8
R21 1 Mar 2011	1 Mar 2011– 30 June 2011	A2010-32	amendments by A2010-32
R22 1 July 2011	1 July 2011– 6 July 2011	A2011-22	amendments by A2011-22

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R23 7 July 2011	7 July 2011– 7 July 2011	<u>A2011-23</u>	amendments by A2011-23
R24 8 July 2011	8 July 2011– 31 Dec 2011	A2011-23	amendments by A2010-24 and A2011-23

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