



Australian Capital Territory

Construction and Energy Efficiency Legislation Amendment Act 2014

A2014-2

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Australian Capital Territory

Construction and Energy Efficiency Legislation Amendment Act 2014

A2014-2

An Act to amend legislation relating to construction and energy efficiency, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Construction and Energy Efficiency Legislation Amendment Act 2014*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

- [Building Act 2004](#)
- [Construction Occupations \(Licensing\) Act 2004](#)
- [Construction Occupations \(Licensing\) Regulation 2004](#)
- [Electricity Safety Act 1971](#)
- [Electricity Safety Regulation 2004](#)
- [Energy Efficiency \(Cost of Living\) Improvement Act 2012](#).

Part 2 Building Act 2004

4 Contravention of requirements for building work involving asbestos Section 42A (2) and (3)

substitute

- (2) A person commits an offence if—
- (a) the person—
 - (i) is licensed under the *Construction Occupations (Licensing) Act 2004* as a builder, asbestos assessor or asbestos removalist; and
 - (ii) carries out the building work; and
 - (b) the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42; and
 - (c) the person either—
 - (i) knew that the building work was not carried out in compliance with section 42; or
 - (ii) was reckless about whether the building work was carried out in compliance with section 42.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

5 Section 42A (4)

omit

6 Section 42A (5) and (6)

substitute

- (5) A person commits an offence if—
- (a) the person carries out the building work; and
 - (b) the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42; and
 - (c) the person intended to carry out the building work in a way that did not comply with the requirements under section 42.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (6) A person commits an offence if—
- (a) the person is the owner of a parcel of land where the building work is carried out; and
 - (b) the carrying out of the building work does not comply with 1 or more of the requirements for carrying out the building work under section 42; and
 - (c) the person intended to have the building work carried out in a way that did not comply with section 42.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

**7 Structural engineer's certificate
Section 47 (1)**

substitute

- (1) The owner of a parcel of land where building work is being, or has been, carried out must, if requested by the certifier, give the certifier a certificate by a professional engineer about the structural sufficiency, soundness and stability of the building as erected or altered for the purposes for which the building is to be occupied or used.

8 Section 47 (2)

omit

require the certificates

substitute

request a certificate

9 Section 47 (3)

omit

require the

substitute

request a

**10 Completion of building work
Section 48 (1) (a)**

after

appears

insert

to the certifier

11 Section 48 (1) (c)

omit

12 Section 49

substitute

49 Complying with building code

- (1) A person commits an offence if the person—
- (a) is a licensed builder; and
 - (b) carries out building work; and
 - (c) either—
 - (i) knows the building work does not, or will not, result in a building that complies with the building code; or
 - (ii) is reckless about whether the building work does or will result in a building that complies with the building code.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
- (a) the person is a licensed builder; and
 - (b) the person carries out building work; and
 - (c) the building work does not, or will not, result in a building that complies with the building code.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

- (4) For an offence against subsection (2), building work is taken not to result in a building that complies with the building code if, for any provision of the building code with which the building must comply—
- (a) the building does not, or will not, comply with the deemed-to-satisfy provision of the building code; and
 - (b) the approved plans for the building work do not state an alternative solution under the building code.

Example

A building that is being constructed has approved plans showing that the building will comply with the performance standard for fire safety systems in the building code by using the deemed-to-satisfy provisions. However, the parts of the fire safety system that have been installed do not comply with the deemed-to-satisfy provisions. There is no approved alternative solution for the building and so the building work is taken not to result in a building that complies with the building code.

Note 1 Although some provisions of the building code may not apply to a building work, every provision of the building code that does apply to the building work must be complied with.

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).

- (5) A person commits an offence if the person—
- (a) carries out building work; and
 - (b) intends to carry out the building work in a way that will not result in a building that complies with the building code.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (6) For this section, building work is taken to result in a building that complies with the building code if—
- (a) the building complies with the building code as in force at the time the approved plans for the building work were approved; or
 - (b) if there are no approved plans for the building work or approved plans are not required for the building work—the building complies with the building code as in force at the time the building work is carried out.

13 Section 51

substitute

51 Carrying out building work in contravention of s 42

- (1) A licensed builder commits an offence if—
- (a) the builder carries out building work on a parcel of land; and
 - (b) the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), building work is taken to be carried out in compliance with section 42 (1) (d) if the builder had been issued with an exemption assessment B notice, stating that the building work was exempt from requiring building approval, not more than 3 months before the day the building work began.
- (3) An offence against subsection (1) is a strict liability offence.
- (4) A licensed builder commits an offence if—
- (a) the builder carries out building work on a parcel of land; and

- (b) the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42; and
- (c) the builder either—
 - (i) knew that the building work was not carried out in compliance with section 42; or
 - (ii) was reckless about whether the building work was carried out in compliance with section 42.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (5) A person commits an offence if—
- (a) the person—
 - (i) carries out building work on a parcel of land; or
 - (ii) is the owner of the parcel of land on which building work is carried out; and
 - (b) the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42; and
 - (c) the person
 - (i) if the person carried out the building work—intended to carry out the building work in a way that did not comply with the requirements under section 42.
 - (ii) if the person is the owner of the parcel of land—intended to have the building work carried out in a way that did not comply with section 42.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

Part 3 Construction Occupations (Licensing) Act 2004

14 Intention to make rectification order Section 34 (2) (d) (i)

omit

, because of the relationship between the entity and the land owner

15 Rectification order inappropriate Section 37 (1) (c)

substitute

(c) is not satisfied that it is appropriate to make a rectification order in relation to the entity, because—

(i) the registrar is satisfied on reasonable grounds that the entity is not able to do a thing in the way that would be required by the order; or

(ii) of the relationship between the entity and the land owner; and

(d) is satisfied that the act that caused the contravention happened, or ended, less than 10 years before the day the Territory proposes to authorise someone under this section.

16 Rectification order offence Section 40

omit

200

substitute

2000

17 Section 56 heading

substitute

56 Occupational discipline**18 Section 56 (1)**

substitute

- (1) If the registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the registrar may take 1 or more of the following actions—
 - (a) apply to the ACAT for an occupational discipline order in relation to the licensee;
 - (b) reprimand the licensee;
 - (c) 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;
 - (d) impose a condition on the licence, or amend an existing condition.

**19 Considerations before making occupational discipline orders
New section 57 (2) (i)**

insert

- (i) any action taken by the registrar under section 56.

20 New part 19

insert

Part 19 Transitional—rectification orders

171 Meaning of *commencement day*—pt 19

In this part:

commencement day means the day this part commences.

172 Further notice about making rectification order

- (1) This section applies if before the commencement day—
 - (a) the registrar gave written notice to an entity and land owner under section 34 (Intention to make rectification order); and
 - (b) the registrar did not—
 - (i) make a rectification order under section 38; or
 - (ii) authorise a licensee to enter the land under section 37 (2).
- (2) The registrar must give further written notice to the entity and land owner, stating that—
 - (a) as stated in the notice under section 34, the registrar will not make a rectification order if the registrar is not satisfied that 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
 - (b) in addition, the registrar will not make a rectification order if the registrar is not satisfied that it is appropriate to make a rectification order in relation to the entity, because the registrar is satisfied on reasonable grounds that the entity is not able to do a thing in the way that would be required by the order; and

- (c) as stated in the notice under section 34, if the registrar does not make a rectification order—
 - (i) the Territory may authorise someone else to enter the land to—
 - (A) do the things stated in this notice; or
 - (B) start or finish the work stated in the notice; and
 - (ii) if the Territory authorises someone under subparagraph (i)—the entity will have to pay for the things to be done.

173 Expiry—pt 19

This part expires 1 year after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Part 4 Construction Occupations (Licensing) Regulation 2004

21 Reviewable decisions Schedule 4, item 15, column 2

after

(b)

insert

, (c) or (d)

Part 5 Electricity Safety Act 1971

22 Part 2 heading

substitute

Part 2 Electrical wiring work and electrical installations

23 Directions to rectify unsafe installations New section 8 (2A)

insert

- (2A) The direction may also require the person to give the inspector written information about the installation or work.

Examples

- 1 a written report about a test required in the direction by the person who did the test
- 2 an electrical engineer's report about whether work complies with relevant standards

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).

24 New section 8 (3A) and (3B)

insert

- (3A) Subsection (3B) applies if—
- (a) the direction requires the person who carried out the electrical wiring work to do a thing; and
 - (b) the person—
 - (i) is not licensed, authorised or qualified to do the thing; or

- (ii) if a licence, authorisation or qualification is not required to do the thing—does not have appropriate experience and skill to do the thing.
- (3B) The person must arrange, and pay for, the thing to be done by someone who—
 - (a) is licensed, authorised or qualified to do the thing; or
 - (b) if a licence, authorisation or qualification is not required to do the thing—has appropriate experience and skill to do the thing.

25 Section 27*substitute***27 Offences—energy efficiency requirements for non-prescribed articles of electrical equipment**

- (1) A trader commits an offence if—
 - (a) the trader sells an article of electrical equipment; and
 - (b) the article does not comply with the energy efficiency standard prescribed by regulation that applies to the article.

Maximum penalty: 50 penalty units.

- (2) A trader commits an offence if—
 - (a) the trader sells an article of electrical equipment; and
 - (b) the article is not labelled in accordance with a regulation with an energy efficiency label.

Maximum penalty: 10 penalty units.

- (3) A person commits an offence if—
- (a) the person attaches an energy efficiency label to an article of electrical equipment; and
 - (b) the article does not have the energy efficiency rating indicated by the label.

Maximum penalty: 30 penalty units.

- (4) A person commits an offence if the person attaches to an article of electrical equipment anything that falsely appears to be an energy efficiency label.

Maximum penalty: 30 penalty units.

- (5) This section does not apply to a second-hand article of electrical equipment.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

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

- (7) In this section:

energy efficiency label means an energy efficiency label prescribed by regulation.

Examples if regulation made for s 27—applicable law

- 1 The ACT makes a regulation under s 27 about 2 articles of electrical equipment that are not the subject of Ministerial determinations (***GEMS determinations***). The ACT law is the applicable law about those articles.

- 2 The ACT makes a regulation under s 27 about an article of electrical equipment that is the subject of a GEMS determination. The ACT requires '5 star' efficiency for that article, while the GEMS determination provides for '4 star' efficiency. Even though the ACT law appears to be inconsistent with the GEMS determination, the 5 star standard must be met, as the 5 star article would comply simultaneously with both the ACT law and the Commonwealth law.

Note 1 The [Greenhouse and Energy Minimum Standards Act 2012](#) (Cwlth) (the *Commonwealth Act*) applies greenhouse and energy minimum standards (*GEMS*) in association with the supply and commercial use of products that use energy, or affect the energy used by another product. These standards are provided for by requirements in GEMS determinations.

Section 27 only operates if a regulation is made for it, and s 27 and the regulation are consistent with the Commonwealth Act and able to operate concurrently with it (see [Self-Government Act](#), s 28 and [Commonwealth Act](#), s 9).

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).

26 Power to inspect electrical wiring work Section 57 (1)

omit

part 2 (Electrical wiring work)

substitute

part 2 (Electrical wiring work and electrical installations)

27 **Regulation-making power**
New section 66 (2) to (6)

after the note, insert

- (2) A regulation may make provision in relation to energy for articles of electrical equipment, including the following:
 - (a) standards of energy efficiency;
 - (b) examination and testing;
 - (c) labels and labelling.
- (3) A regulation may apply, adopt or incorporate the law of another jurisdiction or an instrument as in force from time to time.
- (4) The [Legislation Act](#), section 47 (5) or (6) does not apply in relation to the law of another jurisdiction or an instrument applied, adopted or incorporated under a regulation.

Note Laws of another jurisdiction and instruments mentioned in s (4) do not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) do not apply (see [Legislation Act](#), s 47 (7)).

- (5) A regulation may create offences and fix maximum penalties of not more than 60 penalty units for the offences.
- (6) In this section:
law of another jurisdiction—see the [Legislation Act](#), section 47 (10).

Part 6 **Electricity Safety Regulation 2004**

28 **Section 2 heading**

substitute

2 **Exemption from inspection etc—Act, s 4**

29 **Section 3 heading**

substitute

3 **Exemption from AS/NZS 3000—Act, s 5 (3) and s 6 (2)**

30 **Section 3**

omit

5 (1) (a)

substitute

5 (1)

31 **Energy efficiency standards—Act, s 27 (5) (a) and (7) Section 6**

omit

32 **Articles of electrical equipment—labelling Section 8**

omit

Part 7

Energy Efficiency (Cost of Living) Improvement Act 2012

33 New section 19 (1A)

before subsection (1), insert

- (1A) This section applies to a NERL retailer in a compliance period unless, during the compliance period the retailer did not—
- (a) have electricity sales in the ACT; and
 - (b) undertake eligible activities, including to complete eligible activities commenced in a previous compliance period; and
 - (c) acquire or apply for approval to acquire an abatement factor under section 18; and
 - (d) have a carried forward shortfall or surplus from a previous compliance period.

34 Information to be given to administrator Section 19 (1) (f)

substitute

- (f) for a tier 2 NERL retailer—the extent to which the retailer’s energy savings obligation will be achieved by paying an energy savings contribution;

Note For par (f), the energy savings contribution may be expressed as a percentage of the retailer’s energy savings obligation.

35 Compliance with energy savings obligations—retailer energy savings result
New section 20 (1A)

before subsection (1), insert

- (1A) This section applies to—
- (a) a tier 1 retailer; and
 - (b) a tier 2 retailer that tells the administrator under section 19 (1) (f) that the retailer energy saving obligation will not include an energy savings contribution.

36 Section 20 (7) and (8)

omit

2 weeks

substitute

10 working days

37 New sections 20A to 20C

insert

20A Compliance with energy savings obligations—tier 2 retailer energy savings result and contribution

- (1) This section applies to a tier 2 retailer that tells the administrator under section 19 (1) (f) that the retailer energy saving obligation will include an energy savings contribution.
- (2) The administrator must determine the result (a *retailer energy savings result*) of a NERL retailer's compliance with the retailer's energy savings obligation, expressed as a number of tonnes of carbon dioxide equivalent greenhouse gas emissions.

- (3) A retailer energy savings result for a NERL retailer must be worked out as follows:

$$(\text{RESO} + \text{CFS}) - (\text{A} + \text{S})$$

A means the total abatement factors for eligible activities undertaken or acquired in the compliance period.

CFS means the carried forward shortfall.

RESO means the retailer's energy savings obligation.

S means the carried forward surplus.

- (4) A retailer energy savings result is—
- (a) if the result is a positive number—a notional shortfall; and
 - (b) if the result is a negative number—a surplus.
- (5) The administrator must give a NERL retailer written notice of the retailer's retailer energy savings result.
- (6) If the NERL retailer has a surplus, the notice must show the surplus to be carried forward to the next compliance period.

20B Compliance with energy savings obligations—tier 2 retailer contribution for shortfall

- (1) This section applies if a tier 2 NERL retailer's retailer energy savings result is a notional shortfall.
- (2) The administrator's notice under section 20A (5) must give the retailer the following information:
- (a) the notional shortfall;
 - (b) the maximum percentage of the retailer's retailer energy savings result that the retailer may carry forward to the next compliance period being the following:
 - (i) for a shortfall in the compliance period 1 January 2013 to 31 December 2013—10%;

- (ii) for a shortfall in the compliance period 1 January 2014 to 31 December 2014—10%;
 - (iii) for a shortfall in the compliance period 1 January 2015 to 31 December 2015—nil;
 - (c) the amount of energy savings contribution the retailer told the administrator would be paid to meet the retailer's energy savings obligation;
 - (d) the amount of energy savings contribution that the retailer must pay to—
 - (i) have no shortfall; or
 - (ii) if the notional shortfall exceeds the amount that the retailer may carry forward to the next compliance period—carry forward the maximum shortfall that may be carried forward (the *minimum payment*);
 - (e) if the retailer does not pay the energy savings contribution—the shortfall penalty payable by the retailer.
- (3) Not later than 10 working days after receiving a notice under section 20A (5), the NERL retailer must give the administrator written notice of—
- (a) the percentage of the retailer's retailer energy savings result that the retailer elects to carry forward to the next compliance period; and
 - (b) the amount of energy savings contribution that the retailer will pay; and
 - (c) acknowledgement that a shortfall penalty is payable for any shortfall not paid for by the energy savings contribution.

- (4) Not later than 10 working days after receiving a notice mentioned in subsection (3), the administrator must give the NERL retailer written notice of—
- (a) the amount of the retailer's retailer energy savings result to be carried forward to the next compliance period; and
 - (b) the amount of the energy savings contribution payment; and
 - (c) the method of payment; and
 - (d) the period, of at least 28 days, within which the payment must be made; and
- Note* A payment invoice issued to a tier 2 retailer for an energy savings contribution may form part of the written notice.
- (e) the shortfall penalty payable by the retailer if the retailer does not pay the energy savings contribution.

20C Compliance with energy savings obligations—tier 2 retailer failure to pay energy saving contribution

- (1) This section applies if a tier 2 NERL retailer fails to pay the retailer's energy savings contribution within the period stated in the notice to the retailer under section 20B (4) (d).
- (2) For section 22 (Penalties for noncompliance), the NERL retailer's energy saving contribution is taken to be 0.

**38 Compliance with priority household obligations—retailer priority household result
Section 21 (7) and (8)**

omit

2 weeks

substitute

10 working days

39 Section 22

substitute

22 Penalties for noncompliance

- (1) If a NERL retailer's retailer energy savings result is a net shortfall, the retailer is liable to pay a penalty (a *shortfall penalty*) to the Territory.
- (2) If a tier 1 NERL retailer's retailer priority household result is a net shortfall, the retailer is liable to pay a shortfall penalty to the Territory.
- (3) A shortfall penalty is \$70 per tonne of carbon dioxide equivalent greenhouse gas emissions in the net shortfall.

Note A shortfall penalty imposed under this Act must be paid to the Territory.

- (4) In this section:

net shortfall means—

- (a) for a tier 1 NERL retailer—the total of the retailer's—
 - (i) retailer energy savings result shortfall less the amount of the shortfall that the retailer carries forward to the next compliance period; or
 - (ii) retailer priority household result shortfall less the amount of the shortfall that the retailer carries forward to the next compliance period; and
- (b) for a tier 2 NERL retailer—the total of the retailer's retailer energy savings result shortfall, less—
 - (i) the amount of the shortfall that the retailer carries forward to the next compliance period; and
 - (ii) the retailer's energy savings contribution.

40 New section 24A

insert

24A Delegation

The administrator may delegate the administrator's functions under this Act to a public servant.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

**41 Power to enter premises
Section 32 (1) (d), new example and notes**

insert

Example—par (d)

an imminent risk to the health or safety of a person

Note 1 An authorised person who enters premises may seize anything at the premises in accordance with s 36 (3) and (4). The authorised person has the power to make a direction to destroy or otherwise dispose of the thing, or make the thing safe or arrange for someone else to make it safe in accordance with s 47.

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).

**42 Forfeiture of seized things
Section 46 (1) (b) (i)**

after

10

insert

working

43 Section 47*substitute***47 Power to destroy etc unsafe things**

- (1) This section applies to anything inspected or seized under this part by an authorised person if the person is satisfied on reasonable grounds that the thing—
 - (a) puts the health or safety of people at risk; or
 - (b) is likely to cause damage to property or the environment.
- (2) The authorised person may give a written direction to any of the following to destroy or otherwise dispose of the thing, or make the thing safe:
 - (a) a person who owned the thing;
 - (b) a person in charge of the premises where the thing is;
 - (c) if the authorised person believes on reasonable grounds that an eligible activity by a NERL retailer relating to the thing is a reason for the matters mentioned in subsection (1) (a) or (b)—the NERL retailer.
- (3) The direction may state 1 or more of the following:
 - (a) what action must be taken;
 - (b) how the thing must be kept until the action is taken;
 - (c) the period within which the action must be taken.
- (4) A person must comply with a direction given to the person under subsection (2).

Maximum penalty: 50 penalty units.
- (5) An offence against this section is a strict liability offence.

- (6) Alternatively, if the thing has been seized under this part, the authorised person may—
- (a) destroy or otherwise dispose of the thing; or
 - (b) make the thing safe.
- (7) Costs incurred by the Territory in relation to an action under subsection (6) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
- (a) if the authorised person is satisfied on reasonable grounds that the owner is responsible for making the thing unsafe—the owner of the thing;
 - (b) if the authorised person is satisfied on reasonable grounds that a person in control of the premises where the thing was is responsible for making the thing unsafe—the person in control of the premises who is responsible for making the thing unsafe;
 - (c) if the authorised person is satisfied on reasonable grounds that the NERL retailer is responsible for making the thing unsafe—the NERL retailer.

**44 Application for order disallowing seizure
Section 48 (1)**

after

10

insert

working

**45 Reviewable decisions
Schedule 1, new items 2A and 2B**

insert

2A	20A	determining retailer energy savings result	NERL retailer receiving the result
2B	20B	determining minimum payment for tier 2 retailer	NERL retailer receiving the result

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2013.

2 Notification

Notified under the [Legislation Act](#) on 5 March 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Construction and Energy Efficiency Legislation Amendment Bill 2014, which originated in the Legislative Assembly as the Construction and Energy Efficiency Legislation Amendment Bill 2013 (No 2) and was passed by the Assembly on 25 February 2014.

Clerk of the Legislative Assembly

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