



Australian Capital Territory

# Building and Construction Legislation Amendment Act 2019

A2019-48

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J2019-629

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Australian Capital Territory

# Building and Construction Legislation Amendment Act 2019

**A2019-48**

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An Act to amend legislation about building and construction, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Building and Construction Legislation Amendment Act 2019*.

### 2 Commencement

- (1) This Act (other than sections 27 to 29) commences on the day after it's notification day:

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

- (2) Sections 27 to 29 commence on a day fixed by the Minister by written notice.

*Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 2* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

### 3 Legislation amended

This Act amends the following legislation:

- [Architects Act 2004](#)
- [Building Act 2004](#)
- [Building and Construction Industry \(Security of Payment\) Act 2009](#)
- [Construction Occupations \(Licensing\) Act 2004](#)
- [Construction Occupations \(Licensing\) Regulation 2004](#).

## Part 2 Architects Act 2004

### 4 Section 69A

*substitute*

#### 69A Delegation by board

The architects board may delegate the board's functions under this Act to the registrar.

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

### 5 Calling board meeting New section 75 (4) and (5)

*insert*

- (4) The board chairperson may decide to hold a meeting using a method of communication, or a combination of methods of communication, that allows a board member taking part to hear what each other member taking part says without the members being in each other's presence.

**Examples**

a phone link, an internet or intranet link

- (5) A board member taking part in a meeting conducted under subsection (4) is taken, for all purposes, to be present at the meeting.

## Part 3 Building Act 2004

### 6 Appointment of certifiers—work not begun Section 19

*omit*

may

*substitute*

must

### 7 New section 19 (2)

*after the note, insert*

- (2) This section does not apply to building work that is exempt from the following provisions:
- (a) division 3.2 (Certifiers and government certifiers);
  - (b) division 3.3 (Building approvals);
  - (c) division 3.4 (Building commencement notices and building work signs);
  - (d) section 43 (Stages of building work).

### 8 Appointment of certifiers—work begun New section 19A (1) (c)

*insert*

- (c) the building work is not building work that is exempt from the following provisions:
- (i) division 3.2 (Certifiers and government certifiers);
  - (ii) division 3.3 (Building approvals);



- (iii) division 3.4 (Building commencement notices and building work signs);
- (iv) section 43 (Stages of building work).

**9 Section 19A (2)**

*omit*

may

*substitute*

must

**10 Requirements for carrying out building work  
Section 42 (1) (d)**

*substitute*

- (d) for building work that requires building approval under division 3.3, the building work—
  - (i) must be carried out in accordance with approved plans; or
  - (ii) if plans have not been approved for the building work—must not be carried out;
- (da) for building work that involves handling asbestos or disturbing friable asbestos—the building work must be carried out in accordance with approved plans that comply with this Act in relation to the asbestos;

**11 Section 47 heading**

*substitute*

**47 Certifier may request engineer's certificate**

**12 Section 47 (1)**

*substitute*

- (1) The owner of a parcel of land where building work is being, or has been, carried out must, if required by the certifier, give the certifier a certificate by a professional engineer about either of the following:
- (a) 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;
  - (b) matters relating to the health, safety and amenity of the building that may affect whether the building, as erected or altered for the purposes for which the building is to be occupied or used, is fit for occupation or use.
- (1A) For subsection (1), the professional engineer must be an engineer in the field for which the engineer is giving a certificate.

**Examples**

- 1 An engineer giving a certificate about a matter mentioned in s 47 (1) (a) must be a structural engineer.
- 2 An engineer giving a certificate about a matter mentioned in s 47 (1) (b) that relates to fire protection and safety must be a fire engineer.

**13 Completion of building work  
Section 48 (3) (i)**

*omit*

section 47 (Structural engineer's certificate)

*substitute*

section 47 (Certifier may request engineer's certificate)

**14 Section 48 (3) (j)**

*omit*

section 47

*substitute*

section 47 (1) (a)

**15 Complying with building code  
Section 49 (4) (b)**

*omit*

an alternative solution

*substitute*

a performance solution

**16 Section 49 (4), example**

*omit*

alternative solution

*substitute*

performance solution

**17 New section 53A**

*insert*

**53A Stop notices—display of sign**

- (1) This section applies if a stop notice has been issued under section 53 in relation to building work on a parcel of land.

- (2) If the construction occupations registrar is satisfied on reasonable grounds that it is necessary or desirable to protect the public, the registrar may display a sign on or near the parcel of land, stating that a stop notice has been issued in relation to building work on the parcel of land.
- (3) A sign under this section must comply with any requirement prescribed by regulation.
- (4) A person commits an offence if—
  - (a) a sign is displayed under subsection (2); and
  - (b) the person moves, alters, damages, defaces, covers or prevents access to the sign; and
  - (c) the construction occupations registrar has not authorised the person to move, alter, damage, deface, cover or prevent access to the sign.

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.

## **18 New section 59A**

*insert*

### **59A Stop notices register**

- (1) The construction occupations registrar must keep a register of stop notices (the *stop notices register*).
- (2) The stop notices register may be kept in any form, including electronically, that the construction occupations registrar decides.
- (3) The construction occupations registrar must include the following information about a stop notice issued under section 53:
  - (a) the name of the person to whom the stop notice was issued;

- (b) the date the stop notice was issued;
  - (c) the building work to which the stop notice relates;
  - (d) the address of the parcel of land where the building work is being, or is to be, carried out;
  - (e) the reason the stop notice was issued;
  - (f) anything else the construction occupations registrar considers relevant.
- (4) The stop notices register must also include the information mentioned in subsection (3) in relation to a stop notice issued in the period beginning on the day 10 years before the construction occupations registrar most recently updates the register, if the information is available.
- (5) The construction occupations registrar may make available to the public information that is included in the register if the registrar is satisfied on reasonable grounds that publishing the information is—
- (a) appropriate; and
  - (b) necessary or desirable to protect the public.
- (6) However, the construction occupations registrar must not make available to the public personal information, or other information about a stop notice, if the registrar—
- (a) is satisfied on reasonable grounds that making the information available is not necessary or desirable to protect the public; or
  - (b) believes it would be inappropriate or illegal to disclose the information.

- (7) The construction occupations registrar may include information on the stop notices register about a stop notice issued in relation to building work on a parcel of land and make the information available to the public under subsection (5), whether or not—
- (a) the owner of the parcel of land or someone else has applied to—
    - (i) the registrar for cancellation of the stop notice under section 55 or section 56; or
    - (ii) the ACAT for review of the decision to issue the stop notice; or
  - (b) the time for making an application under section 55 or section 56 has ended; or
  - (c) the time for applying to the ACAT for review of a decision under section 53 has ended.
- (8) However, the construction occupations registrar must update information mentioned in subsection (3) and made available to the public under subsection (5) not later than the end of the next working day after the day—
- (a) the stop notice is lifted and the registrar is satisfied on reasonable grounds that making information about the stop notice available to the public is no longer necessary or desirable to protect the public; or
  - (b) the registrar receives a direction from the ACAT or a court about removing information from the register.

**19 New division 7.2A***insert***Division 7.2A Non-compliant buildings and building work****133A Powers in relation to non-compliant buildings**

- (1) This section applies if a building inspector believes on reasonable grounds that—
  - (a) a building does not comply with this Act or is unsafe; or
  - (b) building work has been done otherwise than in accordance with this Act.
- (2) The building inspector may give the occupier of the building or the premises where the building work is located a written direction not to use the building or premises, or part of the building or premises, until the building or premises are made safe and comply with this Act.
- (3) If the building inspector believes on reasonable grounds that a building or building work is unsafe because work done or supervised by a builder was not done in accordance with this Act, the inspector may give the builder a written direction to take stated action to make the building or building work safe and comply with this Act.
- (4) A direction under this section may also require the person to give the building inspector information, in writing, about the building or building work.

**Examples—information**

- 1 a written report about a test required in the direction by the person who did the test
- 2 a written engineer's report about whether building work complies with a relevant standard
- 3 a certificate from a building surveyor that building work complies with this Act

- (5) However, a direction under this section must not require the evacuation of people from the building or premises.

*Note* The chief officer of an emergency service has the power to evacuate people or animals from a building or close any premises (see *Emergencies Act 2004*, s 34 (1) (l) and (m)).

- (6) Subsection (7) applies if—
- (a) a written direction under subsection (3) requires a person 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.
- (7) 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.

**Example**

A written direction under s (3) requires Sophie to undertake further building work. Sophie is no longer a licensed builder, and she is not able to get a new licence. Sophie must arrange, and pay for, a licensed builder to do the building work.

- (8) A person commits an offence if the person—
- (a) is given a direction under this section; and
  - (b) fails, without reasonable excuse, to comply with the direction.

Maximum penalty: 50 penalty units.



**20 Giving copies of documents  
New section 145 (2) and (3)**

*insert*

- (2) Despite subsection (1) (b), if the plans relate to the common property of a units plan (whether or not the plans also relate to individual units), the following people are entitled to copies of the plans, including any documents attached to the plans:
  - (a) the owners corporation for the units plan;
  - (b) the owners corporation manager, if the owners corporation has given the manager written authority to have the plans.
- (3) However, plans given to a person under subsection (2) must not include identifying information for the proprietor of a unit, other than the proprietor's name.

## Part 4

# Building and Construction Industry (Security of Payment) Act 2009

### 21 Report—authorised nominating authority Section 35 (2)

*substitute*

- (2) A report must include the following:
- (a) the activities of the authorised nominating authority under the Act;
  - (b) costs and expenses charged by the authorised nominating authority for any service provided by the authority in relation to an adjudication application made to the authority;
  - (c) any other information determined, in writing, by the Minister.
- (3) A determination under subsection (2) (c) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## Part 5 Construction Occupations (Licensing) Act 2004

### 22 Licence applications New section 17 (3A)

*insert*

- (3A) A regulation may prescribe how an applicant may, or must, demonstrate that the applicant satisfies a requirement in relation to an application.

### 23 Eligibility for licence Section 18 (2) and examples and note

*omit*

### 24 Decision on licence application New section 19 (4) (a) (via)

*insert*

- (via) has contravened, or is contravening, a rectification undertaking (however described) under this Act or a corresponding law; or

### 25 Licence renewal New section 25 (3) (a) (iiia)

*insert*

- (iiia) has contravened, or is contravening, a rectification undertaking (however described) under this Act or a corresponding law; or

**26 New section 26C**

*in division 3.1, insert*

**26C Criminal liability of executive officers—s 26B**

- (1) An executive officer of a corporation is taken to commit an offence if—
- (a) the corporation commits an offence against section 26B; and
  - (b) the officer was reckless about whether the offence would be committed; and
  - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the offence; and
  - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: 100 penalty units.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with section 26B;
  - (b) that the corporation implements any appropriate recommendation arising from such an assessment;
  - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with section 26B;
  - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.

- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section applies whether or not the corporation is prosecuted for, or convicted of, an offence against section 26B.
- (5) This section does not apply if the corporation has a defence to a prosecution for an offence against section 26B.

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

- (6) In this section:

*executive officer*, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

## **27 Nominees of corporations and partnerships** **New section 28 (2) (d)**

*insert*

- (d) the corporation or partnership has a written record of policies and procedures for effectively managing and supervising the nominee and the corporation's or partnership's obligations under the licence, including arrangements for communicating regularly with the nominee in relation to the construction services provided by the corporation or partnership; and

## **28 New section 28 (3) (f)**

*insert*

- (f) the corporation or partnership has a written record of policies and procedures for effectively managing and supervising each nominee and the corporation's or partnership's obligations under the licence, including arrangements for communicating regularly with each nominee in relation to the construction services provided by the corporation or partnership.

**29 New section 28 (3A)***insert*

- (3A) The failure of a corporation or partnership to have the policies and procedures mentioned in subsection (2) (d) or (3) (f) is not a reasonable excuse to prevent the taking of any of the following actions in relation to the licensee or construction services carried out under the licence:
- (a) the making of a rectification order;
  - (b) the taking of occupational discipline;
  - (c) the imposition of a condition on the licence under section 21 (Licence conditions);
  - (d) the recording of demerit points under section 91;
  - (e) the taking of any other action under this Act or an operational Act.

**30 Part 4 heading***substitute***Part 4 Rectification orders, enforceable undertakings and other obligations on licensees****Division 4.1 Preliminary****31 Section 33 heading***substitute***33 Definitions—pt 4**

**32 Section 33, new definitions**

*insert*

*entity*—see section 34 (1) (a).

*rectification undertaking*—see section 47B.

**33 New division 4.2 heading**

*after section 33, insert*

**Division 4.2 Rectification orders and other obligations on licensees****34 Intention to make rectification order  
Section 34 (1), new example**

*insert*

4 a licensed plumber, who is the nominee of a licensee that is a corporation, does or supervises plumbing work as the nominee of the licensee

**35 Section 34 (2) (d) (i)**

*substitute*

- (i) the registrar will not make a rectification order if—
  - (A) the registrar is not satisfied it is appropriate to make a rectification order in relation to the entity; or
  - (B) if the registrar accepts a rectification undertaking from the entity—the entity complies with, and does not withdraw, the undertaking; and

**36 New section 34 (3)**

*insert*

- (3) A submission mentioned in subsection (2) (c) may include a rectification undertaking in relation to the construction service mentioned in the written notice.

**37 When rectification order may be made  
New section 35 (1) (d)**

*before the notes, insert*

- (d) if the registrar has accepted a rectification undertaking from the entity in response to the notice—the entity has failed to comply with, or has withdrawn, the undertaking.

**38 Section 35 (3) and examples and note**

*substitute*

- (3) If the registrar makes an order under section 38 in relation to an entity, the registrar may also make an order under section 38 in relation to—
- (a) if the entity is a corporation—a director of the entity; or
  - (b) if the entity is a partnership—
    - (i) a partner of the partnership; or
    - (ii) a director of a corporation that is a partner of the partnership.
- (4) If the entity has failed to comply with, or has withdrawn, the rectification undertaking, the registrar may make an order under section 38 in relation to the entity without giving the entity another notice under section 34.



- (5) However, the registrar may only make an order under section 38 in relation to the entity before the latest of the following:
- (a) if the registrar first became aware of the act that caused the contravention within 6 months before the end of the 10-year period—1 year after the registrar became aware of the act; or
  - (b) if the registrar gave the entity a notice under section 34 before the end of the 10-year period—1 year after the entity was given the notice; or
  - (c) in any other case—the day the 10-year period ends.

- (6) In this section:

***10-year period*** means the period starting on the later of the following days:

- (a) the day the act that caused the contravention happened or ended;
- (b) the day any certificate was issued by the registrar under any of the following provisions of the *Building Act 2004* in relation to the building the subject of the construction service:
  - (i) section 69 (Certificates of occupancy);
  - (ii) section 71 (2) (Certificate for building work involving demolition);
  - (iii) section 72 (2) (Certificate for building work involving erection of structure);
  - (iv) section 73 (Certificates of occupancy and use for owner-builders).

**39 Section 36 heading**

*substitute*

**36 Considerations for deciding when rectification order appropriate****40 Rectification orders  
New section 38 (2A)**

*insert*

- (2A) However, a rectification order need not state how a thing required to be done under the order is to be done.

**Example**

A rectification order requires an entity to rectify a building so that it complies with a stated performance requirement of the building code. The rectification order need not include details of how the work is to be undertaken or how the building may need to be redesigned or altered to comply with the requirement.

**41 New sections 39A and 39B**

*insert*

**39A Rectification order—licensee or former licensee wound up etc before order made**

- (1) This section applies if—
- (a) the registrar believes on reasonable grounds that—
    - (i) a licensee or former licensee (the *entity*) has provided a construction service otherwise than in accordance with this Act or an operational Act; and
    - (ii) it may be appropriate to make a rectification order; and
  - (b) the entity is a corporation; and

- (c) before the registrar makes the order—
  - (i) the entity becomes the subject of a winding-up order; or
  - (ii) a controller or administrator is appointed for the entity; or
  - (iii) the entity is deregistered.
- (2) The registrar may give each person who was a director of the entity at or after the time the construction service was provided—
  - (a) if the registrar gave the entity notice under section 34 (Intention to make rectification order) before the entity was wound up, or a controller or administrator was appointed for the entity or the entity was deregistered—a copy of the notice and a statement to the effect that the person is invited to make submissions about the making of the order within 28 days after the day the person receives the notice; or
  - (b) a written notice in accordance with section 34 (2) (a), (b), (d) and (e) and a statement to the effect that the person is invited to make submissions about the making of the order within 28 days after the day the person receives the notice.
- (3) The registrar may make a rectification order in relation to a person who was a director of the entity at or after the time the construction service was provided if, after considering any submissions made within the 28 days, the registrar is satisfied—
  - (a) the entity contravened this Act or an operational Act; and
  - (b) it is appropriate to make a rectification order in relation to the person.
- (4) The rectification order may also require the person to give the registrar written information about a thing required to be done under the order.
- (5) Subsection (6) applies if—
  - (a) the order requires the person 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.
- (6) 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.

**39B Rectification order—licensee or former licensee wound up after order made**

- (1) This section applies if—
  - (a) the registrar makes a rectification order in relation to a licensee or former licensee (the *entity*); and
  - (b) the entity is a corporation; and
  - (c) after the registrar makes the order—
    - (i) the entity becomes the subject of a winding-up order; or
    - (ii) a controller or administrator is appointed for the entity; or
    - (iii) the entity is deregistered.
- (2) The order is taken to have been made in relation to each person who was a director of the entity at or after the time the construction service was provided.
- (3) Subsection (4) applies if—
  - (a) a rectification order or emergency rectification order requires an entity to do a thing; and

- (b) a person who was a director of the entity at or after the time the construction service was provided—
  - (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.
- (4) 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.

**42 New division 4.3**

*insert*

**Division 4.3 Rectification undertakings****47B Registrar may accept undertakings**

- (1) The registrar may accept a written undertaking (a ***rectification undertaking***) given by an entity relating to the entity's contravention or alleged contravention of this Act or an operational Act in providing a construction service.
- (2) A rectification undertaking must include the following:
  - (a) a statement that, on acceptance of the undertaking by the registrar, the entity—
    - (i) understands that the undertaking is an enforceable undertaking under this Act; and
    - (ii) agrees to be bound by the undertaking;

- (b) a statement that the entity recognises the registrar's concerns in relation to the entity's contravention or alleged contravention of this Act or an operational Act;
- (c) a statement that the entity understands that details of the undertaking may be included in the public register if the registrar believes on reasonable grounds that it is necessary or desirable to protect the public;
- (d) one or more undertakings relating to the contravention or alleged contravention that will result in the rectification of the work done in the course of providing the construction service;
- (e) anything else prescribed by regulation.

**Examples—undertakings**

- 1 to take particular action to rectify, or arrange or pay for the rectification of, work needed as a direct or indirect result of the contravention of this Act or an operational Act
  - 2 to take particular action to compensate people adversely affected by a contravention of this Act or an operational Act
- (3) A rectification undertaking may provide for any matters agreed between the registrar and the entity.
  - (4) The registrar or a person may suggest draft undertakings before a rectification undertaking is given by an entity under subsection (1).

**47C Notice of decision and reasons for decision**

- (1) The registrar must give an entity that proposes to give a rectification undertaking written notice of the registrar's decision to accept or reject the rectification undertaking and of the reasons for the decision.
- (2) A written notice to accept the rectification undertaking must include information about the following:
  - (a) the effect of accepting the undertaking;
  - (b) the consequences of contravening the undertaking;

- (c) withdrawing or varying the undertaking;
- (d) anything else prescribed by regulation.

**47D When rectification undertaking becomes enforceable**

A rectification undertaking takes effect and becomes enforceable—

- (a) when the registrar’s decision to accept the undertaking is given to the entity that gave the undertaking; or
- (b) at any later date stated by the registrar.

**47E Withdrawal or variation of rectification undertaking**

- (1) An entity that has given a rectification undertaking may at any time, with the written agreement of the registrar—
  - (a) withdraw the undertaking; or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different contravention or alleged contravention of this Act or an operational Act.

**47F Ending rectification undertaking**

- (1) The registrar may end a rectification undertaking by written notice to the entity that gave the undertaking, if satisfied on reasonable grounds that the undertaking is no longer necessary or desirable to ensure that the person complies with this Act or an operational Act.
- (2) The registrar may act under subsection (1) on the registrar’s own initiative or on the application of the entity that gave the undertaking.
- (3) The undertaking ends when the entity that gave the undertaking receives the registrar’s notice.

**47G Undertaking not admission of fault etc**

- (1) This section applies if an entity gives the registrar a rectification undertaking in relation to a contravention or alleged contravention of this Act or an operational Act, whether or not the undertaking is accepted by the registrar.
- (2) Giving the undertaking is not—
  - (a) an express or implied admission of fault or liability by the entity in relation to the contravention or alleged contravention; or
  - (b) relevant to deciding fault or liability in relation to the contravention or alleged contravention.
- (3) A rectification undertaking is not admissible in evidence in a court or tribunal in any proceeding in relation to the contravention or alleged contravention.

**47H Contravention of rectification undertaking**

- (1) This section applies if the registrar—
  - (a) believes on reasonable grounds that an entity has contravened a rectification undertaking; and
  - (b) has not—
    - (i) authorised someone to take action under section 37 (3) in relation to the work stated in the rectification undertaking; or
    - (ii) made a rectification order in relation to the entity that gave the rectification undertaking requiring the entity to take the action stated in the undertaking.
- (2) The registrar may apply to the Magistrates Court for an order under subsection (3).



- (3) If the Magistrates Court is satisfied that the rectification undertaking has been contravened, the court may make 1 or more of the following orders:
- (a) an order requiring the entity that gave the undertaking to ensure that the undertaking is not contravened;
  - (b) an order requiring the entity that gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;
  - (c) an order that the court considers appropriate requiring the entity that gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;
  - (d) an order discharging the undertaking.
- (4) In addition to the orders mentioned in subsection (3), the court may make any other order the court considers appropriate in the circumstances, including orders directing the entity that gave the undertaking to pay to the Territory—
- (a) the costs of the proceeding; and
  - (b) the reasonable costs of the registrar in monitoring compliance with the undertaking in the future.

#### **471 Proceeding for contravention or alleged contravention**

- (1) No proceeding may be brought, and no disciplinary action may be taken, against a person for a contravention, or alleged contravention, of this Act or an operational Act if a rectification undertaking is in effect in relation to that contravention.

- (2) No proceeding may be brought, and no action in relation to a ground for occupational discipline may be taken, for a contravention or alleged contravention of this Act or an operational Act against an entity that has given a rectification undertaking in relation to the contravention and who has completely discharged the undertaking.
- (3) The registrar may accept a rectification undertaking in relation to a contravention or alleged contravention before a proceeding or action in relation to a ground for occupational discipline in relation to the contravention has been finalised.
- (4) If the registrar accepts a rectification undertaking before the proceeding or action in relation to a ground for occupational discipline is finalised, the registrar must take all reasonable steps to have the proceeding or action discontinued.

#### **47J Rectification undertaking offence**

- (1) A person commits an offence if—
  - (a) the person gives a rectification undertaking; and
  - (b) the Magistrates Court makes an order under section 47H (3) in relation to the undertaking; and
  - (c) the person fails to comply with the order.

Maximum penalty: 2 000 penalty units.

- (2) Each partner of a partnership commits an offence if—
  - (a) the partnership gives a rectification undertaking; and
  - (b) the Magistrates Court makes an order under section 47I (3) in relation to the undertaking; and
  - (c) the partners, or some of them, fail to comply with the order.

Maximum penalty: 2 000 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.

**43 New section 53A**

*in division 5.1, insert*

**53A Cancellation of licence following automatic suspension**

- (1) This section applies if a licensee's licence has been automatically suspended under this division.
- (2) If the registrar is satisfied on reasonable grounds that the cause of the suspension still exists at the end of 3 months after the date the registrar became aware of the cause of suspension, the registrar may cancel the licensee's licence.

**44 Skill assessment of licensees  
Section 55A (1) (a) (ii)**

*omit*

section 56 (Application to ACAT for occupational discipline)

*substitute*

section 56 (Occupational discipline)

**45 Occupational discipline  
Section 56 (1) (a)**

*substitute*

- (a) apply to the ACAT for an occupational discipline order in relation to 1 or more of the following:
- (i) the licensee;
  - (ii) if the licensee is a corporation—a director of the corporation;
  - (iii) if the licensee is a partnership—
    - (A) a partner of the partnership; or
    - (B) a director of a corporation that is a partner of the partnership;

**46 New section 56 (1A)**

*insert*

- (1A) The registrar may make an application under subsection (1) (a)—
- (a) if the application is in relation to a person mentioned in subsection (1) (a) (ii) or (iii)—whether or not the registrar has made an application in relation to the licensee; and
  - (b) if the licensee is a corporation or partnership—whether or not the corporation or partnership still exists when the application is made.

**47**      **Considerations before making occupational discipline orders**  
**Section 57 (1)**

*omit*

a licensee

*substitute*

a person mentioned in section 56 (1) (a)

**48**      **Section 57 (2)**

*omit*

a licensee

*substitute*

the person

**49**      **Section 57 (2)**

*omit*

the licensee

*substitute*

the person

**50**      **Section 57 (2) (e) and (g)**

*omit*

the licensee's

*substitute*

the person's

**51 New section 58AA**

*after section 58, insert*

**58AA Occupational discipline orders—directors or partners of licensees**

- (1) This section applies if the ACAT is considering an application for an occupational discipline order in relation to a licensee that is a corporation or partnership.
- (2) The ACAT may also make an occupational discipline order in relation to any of the following people, whether or not an application has been made in relation to the person:
  - (a) if the licensee is a corporation—a director of the corporation;
  - (b) if the licensee is a partnership—
    - (i) a partner of the partnership; or
    - (ii) a director of a corporation that is a partner of the partnership.
- (3) The ACAT may only make an order under subsection (2) in relation to a person mentioned in subsection (2) if the person has been given—
  - (a) notice of the application for an occupational discipline order in relation to the licensee; and
  - (b) notice that the ACAT is considering making an order in relation to the person; and
  - (c) the opportunity to make representations to the ACAT in relation to the proposed order.
- (4) Section 58 applies to a person mentioned in subsection (2) as if the person were a licensee.

**52 Register—public information  
New section 107A (6) (aa)**

*insert*

- (aa) details of any cancellation under division 5.1, including the date of the cancellation and the reason for the cancellation;

**53 New section 107A (8) and (9)**

*insert*

- (8) The public register—
  - (a) must also include details about any order by the ACAT or a court in relation to a rectification undertaking given by a licensee that has been licensed in the period beginning on the day 10 years before the registrar most recently updates the register, and accepted by the registrar; and
  - (b) may include any other details about the rectification undertaking if the registrar believes on reasonable grounds that it is necessary or desirable to protect the public.
- (9) Information about a rectification undertaking included on the public register under subsection (8) (b) must be removed from the register if—
  - (a) the undertaking has ended and the registrar no longer believes on reasonable grounds that its inclusion is necessary or desirable to protect the public; or
  - (b) the registrar receives a direction from the ACAT or a court, on application by the licensee who gave, or a person affected by, the undertaking, to remove the information.

**54 Recording rectification orders  
Section 108 (2)**

*omit*

the licensee

*substitute*

the person

**55 New section 111A**

*insert*

**111A Register of rectification undertakings**

- (1) The registrar must keep a register of rectification undertakings (the *undertakings register*).
- (2) The undertakings register must include the following details for each undertaking:
  - (a) the name of the entity that gave the undertaking;
  - (b) particulars of the undertaking given;
  - (c) the date the undertaking takes effect;
  - (d) particulars of any withdrawal or variation of the undertaking, including the date of the withdrawal or variation;
  - (e) anything else prescribed by regulation.
- (3) The undertakings register may include any other information the registrar considers relevant.
- (4) The undertakings register may be kept in any form, including electronically, that the registrar decides.



- (5) The registrar may—
- (a) correct a mistake, error or omission in the undertakings register; and
  - (b) change a detail in the register to keep the register up-to-date.

**56 New section 126B**

*insert*

**126B Directors liability for amounts**

- (1) Subsection (2) applies if—
- (a) a corporation is convicted of an offence against this Act or an operational Act; and
  - (b) a penalty for the offence is imposed on the corporation; and
  - (c) the amount of the penalty is not paid within the time required for payment.
- (2) Liability to pay the amount of the penalty mentioned in subsection (1) attaches to—
- (a) each individual who was a director of the corporation when the offence was committed; and
  - (b) each individual who is a director of the corporation when the penalty is imposed.
- (3) Subsection (4) applies if—
- (a) the ACAT requires a corporation to pay an amount under section 58 (3); and
  - (b) the amount is not paid within the time required for payment.

- (4) Liability to pay the amount mentioned in subsection (3) attaches to—
- (a) each individual who was a director of the corporation when the act or omission that was a ground for occupational discipline happened; and
  - (b) each individual who is a director of the corporation when the ACAT made the order for payment under section 58 (3).
- (5) Subsection (6) applies if—
- (a) a corporation has a debt owing to the Territory under this Act or an operational Act; and
  - (b) the debt is not paid when it is due.
- (6) Liability to pay the amount mentioned in subsection (5) attaches to—
- (a) each individual who was a director of the corporation when the debt was incurred; and
  - (b) each individual who is a director of the corporation when payment for the debt is due.
- (7) A liability under subsection (2), (4) or (6) to pay an amount applies regardless of the status of the corporation, including, for example, that the corporation is being, or has been, wound up.
- (8) If a liability under subsection (2), (4) or (6) to pay an amount attaches to 2 or more people, each person is jointly and severally liable for payment of the amount.

## Part 6 Construction Occupations (Licensing) Regulation 2004

### 57 Reviewable decisions Schedule 4, item 13

*substitute*

13	<a href="#">Act, s 38</a>	make rectification order	person or entity to which rectification order relates
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### 58 Schedule 4, new item 15A

*insert*

15A	<a href="#">Act, 53A (2)</a>	cancel licence following 3-month period of automatic suspension	licensee
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### 59 Schedule 4, new item 22A

*insert*

22A	<a href="#">Act, 107A (8) (b)</a>	include information about rectification undertaking on public register	licensee who gave, or a person affected by, the rectification undertaking
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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 24 October 2019.

**2 Notification**

Notified under the [Legislation Act](#) on 9 December 2019.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Building and Construction Legislation Amendment Bill 2019, which was passed by the Legislative Assembly on 28 November 2019.

Clerk of the Legislative Assembly

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