

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning and Land Management)

Building and Construction Legislation Amendment Bill 2016

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	3
4	Legislation repealed	3
Part 2	Building Act 2004	
5	New section 17A	4
6	Section 43	5
7	Stage inspections Section 44 (1)	7
8	New section 44 (1A)	7

J2013-697

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page
9	New section 44 (2A) and (2B) 7
10	Section 44 (4) 8
11	New section 44 (6A) 8
12	Section 44 (7) (b) (i) 9
13	Meaning of <i>prescribed requirements</i> —div 5.1 Section 66, definition of <i>prescribed requirements</i> , paragraph (b), except note 9
14	Certificates of occupancy Section 69 (1) and note 9
15	Section 69 (4) 10
16	Part 6 heading 10
17	Definitions—pt 6 Section 84, definition of <i>complying residential building work insurance</i> 10
18	Section 84, new definitions 10
19	Section 84, definition of <i>residential building</i> 11
20	Residential building work to which pt 6 does not apply Section 87 (1) (d) 13
21	Section 87 (2) 13
22	New section 87A 13
23	New division 6.2A 13
24	Appointment of building inspectors New section 128 (2) to (6) 16
25	New division 7.2 heading 17
26	Inspection of building work where no approval Section 131 (3) 17
27	Section 133 17
28	New division 7.3 heading 18
29	Section 134 heading 18
30	New sections 134A to 134E and division 7.4 18
31	Division 8.2 heading 27
32	Approval of codes of practice Section 139B (2) 27
33	New section 139BA 27
34	Dictionary, new definitions 28
35	Dictionary, new definition of <i>residential building work contract</i> 28

	Page
36	Further amendments, mentions of <i>residential building work</i> 29
37	Further amendments, mentions of <i>warranties, insurance</i> 29
Part 3	Building (General) Regulation 2008
38	Stages of building work—Act, s 43 (1) (a) Section 33, note 31
39	Section 34 31
40	New section 35A 33
41	Part 4 heading 34
42	Building work to which pt 6 does not apply Section 37 34
43	Sections 39, 40 and 41 headings 34
44	Exempt buildings and building works Schedule 1, part 1.3, column 3 35
45	Schedule 1, part 1.3, items 3, 5, 7, 15 and 16, column 4 35
Part 4	Building and Construction Industry (Security of Payment) Act 2009
46	Application of Act Section 9 36
47	New sections 37A and 37B 36
Part 5	Construction Occupations (Licensing) Act 2004
48	Decision on licence application Section 19 (4) 38
49	New section 19 (7) 39
50	New section 24A 40
51	Licence renewal Section 25 (2) 40
52	Section 25 (3) (a) 40
53	Section 25 (3) (a) (i) and (ii) 41
54	New section 25 (7) 41
55	New section 26B 42
56	Nominees of corporations and partnerships New section 28 (2) (c) 43

Contents

	Page
57	New section 28 (3) (e) 43
58	Section 28 (7) 44
59	When rectification order may be made Section 35 (3), example, except note 44
60	Automatic suspension of corporate licence Section 49 (2) 45
61	New section 50A 45
62	End of licence suspension Section 53 (1) 46
63	Section 53 (5) and note 46
64	Grounds for occupational discipline Section 55 (1) (a) 47
65	New section 55 (1) (h) 47
66	Occupational discipline orders—licensees New section 58 (3) and (4) 47
67	New section 58A 48
68	Interim licence suspension Section 59 (4) and note 50
69	Effect of interim suspension Section 60 (3) (b) 50
70	Information requirements Section 80E (1) (a) 51
71	Breach of licence conditions or codes New section 87 (7) 51
72	Codes of practice Section 104A 51
73	Section 116 51
74	New section 126A 52
75	Regulation-making power Section 129 (2) (e) 53
76	Section 129 (3) 53
77	New part 22 53
78	Dictionary, definition of <i>code of practice</i> 54

		Page
Part 6	Construction Occupations (Licensing) Regulation 2004	
79	Licence applications—Act, s 17 (3) Section 5 (m), except note	55
80	Section 13	55
81	Section 19 heading	56
82	Section 19 (d), example and note	56
83	Comply with code of practice New section 21A (3)	56
84	Corporate licences Section 22 (2)	57
85	Section 22 (3)	57
86	Partnership licences Section 23 (2)	57
87	Section 23 (3)	57
Part 7	Planning and Development Act 2007	
88	Authority functions Section 12 (1) (j)	58

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning and Land Management)

Building and Construction Legislation Amendment Bill 2016

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Building and Construction Legislation Amendment*
4 *Act 2016*.

5 **2 Commencement**

6 (1) This Act (other than the following provisions) commences on the
7 day after its notification day:

- 8 • sections 17 to 22
9 • section 24
10 • section 34
11 • section 46.

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

14 (2) The provisions mentioned in subsection (1) commence on a day
15 fixed by the Minister by written notice.

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

19 (3) If the provisions mentioned in subsection (1) have not commenced
20 within 12 months beginning on this Act's notification day, they
21 automatically commence on the first day after that period.

22 (4) The [Legislation Act](#), section 79 (Automatic commencement of
23 postponed law) does not apply to the provisions mentioned in
24 subsection (1).

3 Legislation amended

This Act amends the following legislation:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Building and Construction Industry (Security of Payment) Act 2009*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*
- *Planning and Development Act 2007.*

4 Legislation repealed

The following legislative instruments made under the *Construction Occupations (Licensing) Act 2004* are repealed:

- *Construction Occupations (Licensing) Building Energy Efficiency Assessment Sale and Lease of Residential Premises Code of Practice 2012 (No 1)* (NI2012-228)
- *Construction Occupations (Licensing) Unit Title Landscaping Works Assessment Code of Practice 2010* (NI2010-529)
- *Construction Occupations (Licensing) Unit Title Site Assessment Code of Practice 2010 (No 2)* (NI2010-582)
- *Constructions Occupations (Licensing) Unit Title Unit Fitness Assessment Code of Practice 2010* (NI2010-632).

1 **Part 2 Building Act 2004**

2 **5 New section 17A**

3 *insert*

4 **17A Certifier—functions**

5 A certifier appointed for building work or proposed building work
6 has the following functions in relation to the work:

- 7 (a) receiving and deciding an application from a land owner for—
8 (i) building approvals for the work; and
9 (ii) amendments to building approvals for the work;
10 (b) for building work on buildings other than class 1, class 10a or
11 class 10b buildings—stating in the relevant building approval
12 the structural framework, the placement of formwork and the
13 steel reinforcing for any reinforced concrete member that will
14 require inspection before proceeding beyond that stage;
15 (c) receiving and deciding an application from a building licensee
16 for a commencement notice for the work;
17 (d) inspecting building work at prescribed stages, and stages stated
18 in a building approval, to determine compliance with this Act,
19 including the following:
20 (i) requesting and verifying records of tests for the building
21 work;
22 (ii) if building work does not comply with this Act—giving
23 the building licensee notice of the noncompliance and
24 directions on how to achieve compliance;
25 (iii) giving directions about safety precautions to the building
26 licensee if required;
27 (iv) authorising building work to proceed beyond a stage if
28 appropriate;

- 1 (v) providing advice to the construction occupations registrar
2 about the completeness of building work and compliance
3 with this Act;
- 4 (e) notifying the construction occupations registrar about
5 contraventions or suspected contraventions of this Act;
- 6 (f) issuing stop notices if appropriate;
- 7 (g) giving building licensees directions about safety precautions;
- 8 (h) telling the planning and land authority if the certifier suspects
9 there is non-compliant site work;
- 10 (i) maintaining documents, records and information in relation to
11 building approvals, stage inspections, directions, notices and
12 other matters as required under the following:
- 13 (i) this Act;
- 14 (ii) a code of practice under this Act;
- 15 (iii) a code of practice under the *Construction Occupations*
16 *(Licensing) Act 2004*;
- 17 (j) any other function under this Act or prescribed by regulation.

18 *Note 1* Eligibility criteria for appointment of certifiers and suspension and
19 ending appointments are set out in this division and the regulation.

20 *Note 2* Power to make a decision includes power to reverse or change the
21 decision (see [Legislation Act](#), s 180).

22 **6 Section 43**

23 *substitute*

24 **43 Stages of building work**

- 25 (1) A regulation may prescribe—
- 26 (a) stages of building work; and
- 27 (b) exceptions to allow building work to proceed beyond a stage
28 without a stage inspection; and

1 (c) conditions for building work to proceed beyond a stage without
2 a stage inspection.

3 *Note* Power to make a statutory instrument (including a regulation) includes
4 power to make different provision in relation to different matters or
5 different classes of matters, and to make an instrument that applies
6 differently by reference to stated exceptions or factors (see [Legislation](#)
7 [Act](#), s 48).

8 (2) A building licensee in charge of building work must give the
9 certifier a required written notice when building work reaches a
10 stage of building work.

11 (3) A building licensee commits an offence if—

12 (a) building work has reached a stage; and

13 (b) the building work is not within a prescribed exception; and

14 (c) the licensee—

15 (i) does building work beyond the stage; and

16 (ii) fails to give the certifier the required written notice
17 before the building work beyond the stage was started.

18 Maximum penalty: 50 penalty units.

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

20 (5) In this section:

21 ***required written notice*** means a notice that—

22 (a) is dated on the day it is given; and

23 (b) states the stage of building work that has been reached; and

24 (c) includes a statement that—

25 (i) the building work done for the stage was carried out in
26 accordance with approved plans; and

- 1 (ii) if the building work involved handling asbestos or
2 disturbing friable asbestos—the approved plans comply
3 with this Act in relation to the asbestos.

4 *Note* The licensee may give the notice electronically (see *Electronic*
5 *Transactions Act 2001*, s 8).

6 **7 Stage inspections**
7 **Section 44 (1)**

8 *omit*

9 section 43 (3) (a)

10 *substitute*

11 section 43 (2)

12 **8 New section 44 (1A)**

13 *insert*

14 (1A) A regulation may make provision for the inspection of stages of
15 building work.

16 **9 New section 44 (2A) and (2B)**

17 *insert*

18 (2A) A building licensee commits an offence if—

19 (a) building work has reached a stage; and

20 (b) the building work is not within a prescribed exception; and

21 (c) the licensee does building work beyond the stage; and

22 (d) the licensee does not obtain—

23 (i) written notice under subsection (2) (a) stating that the
24 work may proceed beyond the stage subject to directions
25 for achieving compliance; or

- 1 (ii) a certificate under subsection (2) (b).
2 Maximum penalty: 50 penalty units.
- 3 (2B) A building licensee commits an offence if—
4 (a) building work has reached a stage; and
5 (b) the building work is not within a prescribed exception; and
6 (c) the licensee does building work beyond the stage; and
7 (d) the licensee obtains—
8 (i) written notice under subsection (2) (a) but does not
9 comply with a direction for achieving compliance; or
10 (ii) a certificate under subsection (2) (b) but does not comply
11 with a condition of the certificate.
- 12 Maximum penalty: 50 penalty units.

13 **10 Section 44 (4)**

14 *omit*
15 subsection (3)
16 *substitute*
17 this section

18 **11 New section 44 (6A)**

19 *insert*
20 (6A) If a building licensee in charge of building work is required under
21 subsection (6) to conduct a test, the licensee must, as soon as
22 practicable after the test is completed, give the certifier the written
23 results of the test.

12 Section 44 (7) (b) (i)

omit

section 43 (3) (a)

substitute

section 43 (2)

**13 Meaning of *prescribed requirements*—div 5.1
Section 66, definition of *prescribed requirements*,
paragraph (b), except note**

substitute

(b) for any other building work—the requirements of this Act.

**14 Certificates of occupancy
Section 69 (1) and note**

substitute

(1) The construction occupations registrar must issue a certificate of occupancy for building work that involves the erection or alteration of a building if, on application by the owner of the parcel of land where the building work was carried out, the registrar is satisfied that—

(a) the building work has been completed in accordance with the prescribed requirements for the building work; and

(b) the building as erected or as altered is fit for occupation and use as a building of the class stated in the approved plans for that building work.

Note 1 If the building work only involved erecting part of a building, see s (3).

Note 2 Power to make a decision includes power to reverse or change the decision (see [Legislation Act](#), s 180).

1 **15 Section 69 (4)**

2 *substitute*

- 3 (4) A regulation may prescribe matters that must be considered by the
4 construction occupations registrar in deciding whether a building is
5 fit for occupation and use.

6 *Note* Power to make a statutory instrument (including a regulation) includes
7 power to make different provision in relation to different matters or
8 different classes of matters, and to make an instrument that applies
9 differently by reference to stated exceptions or factors (see [Legislation](#)
10 [Act](#), s 48).

11 **16 Part 6 heading**

12 *substitute*

13 **Part 6 Residential buildings—statutory**
14 **warranties, standard conditions,**
15 **insurance and fidelity certificates**

16 **17 Definitions—pt 6**
17 **Section 84, definition of *complying residential building***
18 ***work insurance***

19 *substitute*

20 *complying residential building work insurance* means an insurance
21 policy issued in relation to insurable residential building work that
22 complies with section 90.

23 **18 Section 84, new definitions**

24 *insert*

25 *insurable residential building* means a residential building—

- 26 (a) the residential parts of which (other than a part of the building
27 that is a structurally integral adjunct to the building) are
28 classified as a class 1 or class 2 residential building; and

1 (b) that has no more than 3 storeys at any point, excluding any
2 storey used exclusively for parking.

3 **Examples**

4 1 A building has 2 wings, which are structurally independent of each other.
5 The north wing has 3 storeys including the ground storey. The south wing
6 has 6 storeys including the ground storey. All storeys contain residential
7 units. The north wing is an insurable residential building. The south wing is
8 not an insurable residential building because it is 6 storeys.

9 2 A building has 2 wings that are dependent on each other for structural
10 support. The north wing has 3 storeys including the ground storey. All
11 storeys contain residential units. The lower 3 storeys of the south wing are
12 structurally integrated with the north wing. A structural instability in any of
13 the lower 3 storeys in the south wing could compromise the structural
14 integrity of both wings of the building. The south wing storeys that are
15 higher than the north wing are structurally independent of the north wing.
16 The north wing of the building is an insurable residential building. The
17 lower 3 storeys of the south wing are an insurable residential building to the
18 extent that they are a structurally integral adjunct to the building as a whole.
19 The upper 3 storeys of the south wing are not an insurable residential
20 building because they are over 3 storeys and not a structurally integral
21 adjunct to the building.

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

25 *insurable residential building work* means residential building
26 work in relation to an insurable residential building.

27 **19 Section 84, definition of *residential building***

28 *substitute*

29 *residential building* means—

30 (a) a building intended mainly for private residential use; or

- 1 (b) part of a building mentioned in paragraph (a) (whether or not
2 the part is intended for private residential use) if the part
3 provides structural support, or is a structurally integral adjunct,
4 to the building.

5 **Examples**

- 6 1 A building has shops on its ground storey and hotel accommodation on its
7 2nd and 3rd storey. The building is not a residential building because it is
8 not used mainly for private residential use.
- 9 2 A 4-storey residence has a parking garage as its ground storey. A structural
10 instability in the garage could compromise the building's structural integrity.
11 The garage is a residential building because it is a part of the building that is
12 a structurally integral adjunct to the building and the building is a residential
13 building.
- 14 3 A single storey residence has a garage attached at the side. The roof trusses
15 of the building span across the residence and garage in a single span.
16 A structural instability in the garage could compromise the structural
17 integrity of the roof trusses and, because of that, compromise the structural
18 integrity of the building. The garage is a residential building because it is a
19 part of the building that is a structurally integral adjunct to the building and
20 the building is a residential building.
- 21 4 A single storey residence has a garage attached at the side and under the
22 same roofline as the residence. The garage is mainly used for cars and is not
23 for residential use. No structural elements of the residence depend on the
24 garage for structural integrity. A structural instability in the garage could not
25 compromise the structural integrity of the residence. The garage is not a
26 residential building because it is not a structurally integral adjunct to a
27 building intended primarily for residential use. The residence, apart from the
28 garage, is a residential building.

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

-
- 1 **20 Residential building work to which pt 6 does not apply**
2 **Section 87 (1) (d)**
- 3 *omit*
- 4 **21 Section 87 (2)**
- 5 *omit*
- 6 **22 New section 87A**
- 7 *insert*
- 8 **87A Residential building work to which div 6.2 does not apply**
9 This division does not apply to residential building work prescribed
10 by regulation.
- 11 **23 New division 6.2A**
- 12 *insert*
- 13 **Division 6.2A Standard conditions**
- 14 **89A Residential building work contract to which div 6.2A does**
15 **not apply**
- 16 This division does not apply to a residential building work contract
17 if the cost of the residential building work under the contract is less
18 than the amount prescribed by regulation.
- 19 **89B Meaning of *residential building work contract*—div 6.2A**
- 20 (1) In this division:
- 21 *residential building work contract* means a contract—
- 22 (a) to carry out residential building work, to which the builder is a
23 party; or

Section 23

1 (b) for the sale of a residential building, or part of a residential
2 building, if the contract involves carrying out residential
3 building work; or

4 (c) to arrange for someone else to carry out residential building
5 work.

6 *Note* If a form is approved under s 151 for this provision, the form must be
7 used.

8 (2) For this division, a contract *involves* carrying out residential
9 building work if—

10 (a) the contract is to purchase a residential building before, at, or
11 after the completion of residential building work; or

12 (b) the completion of the contract depends on the completion of
13 residential building work; or

14 (c) progress payments under the contract relate to the progress of
15 residential building work.

16 **89C Standard conditions for residential building work**
17 **contract**

18 (1) A regulation may prescribe the following for a residential building
19 work contract:

20 (a) a standard condition;

21 (b) the meaning of a term used in a residential building work
22 contract (a *prescribed term*).

23 (2) A person commits an offence if—

24 (a) the person enters into a residential building work contract; and

25 (b) under the contract the person—

26 (i) is required to carry out residential building work; or

27 (ii) sells a residential building, or part of a residential
28 building, and carrying out residential building work is
29 involved in the contract; or

- 1 (iii) arranges for someone else to carry out residential
2 building work; and
- 3 (c) the residential building work contract does not include—
- 4 (i) each standard condition; or
- 5 (ii) if the residential building work uses a prescribed term—
6 the meaning of the prescribed term.

7 Maximum penalty: 10 penalty units.

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

9 **89D Required documents for residential building work**
10 **contract**

- 11 (1) A regulation may prescribe the documents (the *required*
12 *documents*) that must be attached to a residential building work
13 contract.
- 14 (2) A person commits an offence if—
- 15 (a) the person enters into a residential building work contract; and
- 16 (b) under the contract the person—
- 17 (i) is required to carry out residential building work; or
- 18 (ii) sells a residential building, or part of a residential
19 building, and carrying out residential building work is
20 involved in the contract; or
- 21 (iii) arranges for someone else to carry out residential
22 building work; and
- 23 (c) the required documents are not attached to the residential
24 building work contract.

25 Maximum penalty: 10 penalty units.

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

Section 24

1 **89E Prohibited conditions for residential building work**
2 **contract**

- 3 (1) A regulation may prescribe a prohibited condition for a residential
4 building work contract.
- 5 (2) A prohibited condition, that is included in a residential building
6 work contract, is void.

7 **24 Appointment of building inspectors**
8 **New section 128 (2) to (6)**

9 *insert*

10 (2) A person must not be appointed under this section unless the
11 construction occupations registrar is satisfied that the person is
12 competent to exercise the functions of a building inspector under
13 this Act.

14 (3) A regulation may prescribe matters that the construction
15 occupations registrar must consider in relation to a person's
16 competency for subsection (2).

17 (4) An appointment must be for a term of not longer than 5 years.

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

21 (5) A building inspector has the functions of a building inspector under
22 this Act and any other function given to the inspector by the
23 construction occupations registrar.

24 (6) A building inspector must exercise the inspector's functions in
25 accordance with—

26 (a) the instrument of appointment; and

27 (b) any directions the construction occupations registrar gives the
28 inspector.

25 New division 7.2 heading

after section 129, insert

**Division 7.2 Inspection of building work and
authority for required work****26 Inspection of building work where no approval
Section 131 (3)**

substitute

- (3) The construction occupations registrar may, in writing, authorise a building inspector to order the opening or cutting into or pulling down of the building work.
- (4) The construction occupations registrar may, in writing, authorise a person to assist a building inspector who is authorised to act under subsection (3).
- (5) A written authority may only be given if the construction occupations registrar believes on reasonable grounds that the person authorised has the necessary skills and qualifications to act under this section.

27 Section 133

substitute

133 Power to authorise required work

- (1) This section applies if—
- (a) a notice has been issued under part 4 (Stop and other notices and demolition orders); and
- (b) the notice has not been complied with.

Section 28

- 1 (2) The construction occupations registrar may, in writing, authorise a
2 building inspector to—
- 3 (a) enter premises where the building work mentioned in the
4 notice has been, is being or should have been carried out; and
- 5 (b) carry out the building work mentioned in the notice.
- 6 (3) The construction occupations registrar may, in writing, authorise a
7 person to assist a building inspector who is authorised to act under
8 subsection (2).
- 9 (4) A written authority may only be given if the construction
10 occupations registrar believes on reasonable grounds that the person
11 authorised has the necessary skills and qualifications to act under
12 this section.

13 **28 New division 7.3 heading**

14 *after section 133, insert*

15 **Division 7.3 Entry and seizure**

16 **29 Section 134 heading**

17 *substitute*

18 **134 Building inspectors—entry to premises**

19 **30 New sections 134A to 134E and division 7.4**

20 *after section 134, insert*

21 **134A Building inspectors—powers on entry**

- 22 (1) A building inspector who enters premises under this part may, for
23 this Act, do 1 or more of the following in relation to the premises,
24 anything on the premises, and the land around the premises:
- 25 (a) inspect or examine;

-
- 1 (b) inspect and copy, or take an extract from, any document at the
2 premises;
- 3 (c) take measurements or conduct tests;
- 4 (d) take samples;
- 5 (e) take photographs, films, audio, video or other recordings;
- 6 (f) take onto the premises any people, equipment or material the
7 inspector reasonably needs to exercise the inspector's functions
8 under this Act;
- 9 (g) require the occupier, or anyone at the premises, to give
10 information, answer questions, or produce documents or
11 anything else, reasonably needed to exercise the inspector's
12 functions under this Act.

13 *Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the
14 privilege against self-incrimination and client legal privilege.

- 15 (2) A person must take all reasonable steps to comply with a
16 requirement made of the person under subsection (1) (g).

17 Maximum penalty: 50 penalty units.

18 **134B Building inspectors—power to seize things**

- 19 (1) A building inspector who enters premises under this part with the
20 occupier's consent may seize anything at the premises if—
- 21 (a) the inspector is satisfied on reasonable grounds that the thing is
22 connected with an offence against this Act; and
- 23 (b) seizure of the thing is consistent with the purpose of the entry
24 told to the occupier when seeking the occupier's consent.
- 25 (2) A building inspector who enters premises under a warrant under this
26 part may seize anything at the premises that the inspector is
27 authorised to seize under the warrant.

Section 30

- 1 (3) A building inspector who enters premises under this part (whether
2 with the occupier's consent, under a warrant or otherwise) may seize
3 anything at the premises if satisfied on reasonable grounds that—
4 (a) the thing is connected with an offence against this Act; and
5 (b) the seizure is necessary to prevent the thing from being—
6 (i) concealed, lost or destroyed; or
7 (ii) used to commit, continue or repeat the offence.
- 8 (4) Also, a building inspector who enters premises under this part
9 (whether with the occupier's consent or otherwise) may seize
10 anything at the premises if satisfied on reasonable grounds that the
11 thing—
12 (a) puts the health or safety of people at risk; or
13 (b) may cause damage to property or the environment.
- 14 (5) The powers of a building inspector under subsections (3) and (4) are
15 additional to any powers of the inspector under subsection (1) or any
16 other territory law.
- 17 (6) Having seized a thing, a building inspector may—
18 (a) remove the thing from the premises where it was seized (the
19 *place of seizure*) to another place; or
20 (b) leave the thing at the place of seizure but restrict access to it.
- 21 (7) A person commits an offence if—
22 (a) the person interferes with a seized thing, or anything
23 containing a seized thing, to which access has been restricted
24 under subsection (6); and
25 (b) the person does not have a building inspector's approval to
26 interfere with the thing.
- 27 Maximum penalty: 50 penalty units.
- 28 (8) An offence against this section is a strict liability offence.

1 **134C Building inspectors—receipt for things seized**

- 2 (1) As soon as practicable after a thing is seized by a building inspector
3 under this part, the inspector must give a receipt for it to the person
4 from whom it was seized.
- 5 (2) If, for any reason, it is not practicable to comply with subsection (1),
6 the building inspector must leave the receipt, secured conspicuously
7 at the place of seizure.

8 **134D Access to things seized**

- 9 A person who would, apart from the seizure, be entitled to a thing
10 seized under this part may—
- 11 (a) inspect it; and
- 12 (b) if it is a document—take extracts from it or make copies of it.

13 **134E Return of things seized**

- 14 (1) A thing seized under this part must be returned to its owner, or
15 reasonable compensation must be paid to the owner by the Territory
16 for the loss of the thing, if—
- 17 (a) a prosecution for an offence relating to the thing is not
18 instituted within 90 days of the seizure; or
- 19 (b) the court does not find the offence proved in a prosecution for
20 an offence relating to the thing.
- 21 (2) A thing seized under this part is forfeited to the Territory if a
22 court—
- 23 (a) finds an offence relating to the thing to be proved; and
- 24 (b) orders the forfeiture.
- 25 (3) If subsection (2) (a) applies, but a court does not order forfeiture of
26 the thing seized, the construction occupations registrar must return
27 the thing to its owner or the Territory must pay reasonable
28 compensation to the owner for the loss of the thing.

1 **Division 7.4 Search warrants**

2 **134F Warrants generally**

- 3 (1) A building inspector may apply to a magistrate for a warrant to enter
4 premises.
- 5 (2) The application must be sworn and state the grounds on which the
6 warrant is sought.
- 7 (3) The magistrate may refuse to consider the application until the
8 inspector gives the magistrate all the information the magistrate
9 requires about the application in the way the magistrate requires.
- 10 (4) The magistrate may issue a warrant only if satisfied there are
11 reasonable grounds for suspecting—
- 12 (a) there is a particular thing or activity connected with an offence
13 against this Act; and
- 14 (b) the thing or activity is, or is being engaged in, at the premises,
15 or may be, or may be engaged in, at the premises within the
16 next 14 days.
- 17 (5) The warrant must state—
- 18 (a) that a building inspector may, with any necessary assistance
19 and force, enter the premises and exercise the inspector's
20 powers under this part; and
- 21 (b) the offence for which the warrant is issued; and
- 22 (c) the things that may be seized under the warrant; and
- 23 (d) the hours when the premises may be entered; and
- 24 (e) the date, within 14 days after the day of the warrant's issue,
25 that the warrant ends.

-
- 1 (6) In this section:
- 2 ***connected***—an activity is ***connected*** with an offence if—
- 3 (a) the offence has been committed by engaging or not engaging in
- 4 it; or
- 5 (b) it will provide evidence of the commission of the offence.
- 6 **134G Warrants—application made other than in person**
- 7 (1) A building inspector may apply for a warrant by phone, fax, radio or
- 8 other form of communication if the inspector considers it necessary
- 9 because of—
- 10 (a) urgent circumstances; or
- 11 (b) other special circumstances.
- 12 (2) Before applying for the warrant, the building inspector must prepare
- 13 an application stating the grounds on which the warrant is sought.
- 14 (3) The building inspector may apply for the warrant before the
- 15 application is sworn.
- 16 (4) After issuing the warrant, the magistrate must immediately fax a
- 17 copy to the building inspector if it is practicable to do so.
- 18 (5) If it is not practicable to fax a copy to the building inspector—
- 19 (a) the magistrate must—
- 20 (i) tell the building inspector what the terms of the warrant
- 21 are; and
- 22 (ii) tell the building inspector the date and time the warrant
- 23 was issued; and
- 24 (b) the building inspector must complete a form of warrant (the
- 25 ***warrant form***) and write on it—
- 26 (i) the magistrate's name; and
- 27 (ii) the date and time the magistrate issued the warrant; and

Section 30

- 1 (iii) the warrant's terms.
- 2 (6) The faxed copy of the warrant, or the warrant form properly
3 completed by the building inspector, authorises the entry and
4 exercise of the inspector's powers under this part.
- 5 (7) The building inspector must, at the first reasonable opportunity,
6 send to the magistrate—
- 7 (a) the sworn application; and
- 8 (b) if the inspector completed a warrant form—the completed
9 warrant form.
- 10 (8) On receiving the documents, the magistrate must attach them to the
11 warrant.
- 12 (9) A court must find that a power exercised by a building inspector
13 was not authorised by a warrant under this section if—
- 14 (a) the question arises in a proceeding before the court whether the
15 exercise of power was authorised by a warrant; and
- 16 (b) the warrant is not produced in evidence; and
- 17 (c) it is not proved that the exercise of power was authorised by a
18 warrant under this section.

19 **134H Search warrants—announcement before entry**

- 20 (1) A building inspector must, before anyone enters premises under a
21 search warrant—
- 22 (a) announce that the inspector is authorised to enter the premises;
23 and
- 24 (b) give anyone at the premises an opportunity to allow entry to
25 the premises; and
- 26 (c) if an occupier of the premises, or someone else who apparently
27 represents the occupier, is present at the premises—identify
28 himself or herself to the person.

1 (2) The building inspector is not required to comply with subsection (1)
2 if the inspector believes on reasonable grounds that immediate entry
3 to the premises is required to ensure—

4 (a) the safety of anyone (including the inspector or any person
5 assisting); or

6 (b) that the effective execution of the warrant is not frustrated.

7 **134I Details of search warrant to be given to occupier etc**

8 If an occupier of premises, or someone else who apparently
9 represents the occupier, is present at the premises while a search
10 warrant is being executed, the building inspector or a person
11 assisting must make available to the person—

12 (a) a copy of the warrant; and

13 (b) a document setting out the rights and obligations of the person.

14 **134J Occupier entitled to be present during search etc**

15 (1) If an occupier of premises, or someone else who apparently
16 represents the occupier, is present at the premises while a search
17 warrant is being executed, the occupier or the other person is
18 entitled to observe the search being conducted.

19 (2) However, the person is not entitled to observe the search if—

20 (a) to do so would impede the search; or

21 (b) the person is under arrest, and allowing the person to observe
22 the search being conducted would interfere with the objectives
23 of the search.

24 (3) This section does not prevent 2 or more areas of the premises being
25 searched at the same time.

- 1 **134K Moving things to another place for examination or**
2 **processing**
- 3 (1) A thing found at premises entered under a search warrant may be
4 moved to another place for examination or processing to decide
5 whether it may be seized under the warrant if—
- 6 (a) both of the following apply:
- 7 (i) there are reasonable grounds for believing that the thing
8 is or contains something to which the warrant relates;
- 9 (ii) it is significantly more practicable to do so having regard
10 to the timeliness and cost of examining or processing the
11 thing at another place and the availability of expert
12 assistance; or
- 13 (b) the occupier of the premises agrees in writing.
- 14 (2) The thing may be moved to another place for examination or
15 processing for not longer than 72 hours.
- 16 (3) A building inspector may apply to a magistrate for an extension of
17 time if the inspector believes on reasonable grounds that the thing
18 cannot be examined or processed within 72 hours.
- 19 (4) The building inspector must give notice of the application to the
20 occupier of the premises, and the occupier is entitled to be heard on
21 the application.
- 22 (5) If a thing is moved to another place under this section, the building
23 inspector must, if practicable—
- 24 (a) tell the occupier of the premises the address of the place where,
25 and time when, the examination or processing will be carried
26 out; and
- 27 (b) allow the occupier or the occupier’s representative to be
28 present during the examination or processing.

- 1 (6) The provisions of this part relating to the issue of search warrants
2 apply, with any necessary changes, to the giving of an extension
3 under this section.

4 **31 Division 8.2 heading**

5 *substitute*

6 **Division 8.2 Codes of practice and guidelines**

7 **32 Approval of codes of practice**
8 **Section 139B (2)**

9 *substitute*

- 10 (2) A code of practice may set out practices, standards and other matters
11 about building certification and building work.

12 **33 New section 139BA**

13 *in division 8.2, insert*

14 **139BA Approval of guidelines**

- 15 (1) The Minister may approve guidelines for this Act.

16 *Note* A power given under an Act to make a statutory instrument (including a
17 code of practice) includes power to amend or repeal the instrument (see
18 [Legislation Act](#), s 46 (1)).

- 19 (2) A guideline may set out standards and other matters about building
20 approval applications, documentation, plans and specifications for
21 building work.

- 22 (3) An approved guideline is a disallowable instrument.

23 *Note 1* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the [Legislation Act](#).

25 *Note 2* An amendment or repeal of a code of practice is also a disallowable
26 instrument (see [Legislation Act](#), s 46 (2)).

Section 34

1 (4) The construction occupations registrar must make a copy of a
2 guideline, and any instrument applied (with or without change) by
3 the guideline, available for public inspection during ordinary office
4 hours at—

5 (a) the office of the construction occupations registrar; or

6 (b) another place prescribed by regulation.

7 *Note* A reference to an instrument includes a reference to a provision of an
8 instrument (see [Legislation Act](#), s 14 (2)).

9 (5) In this section:

10 *applied* includes adopted and incorporated.

11 **34 Dictionary, new definitions**

12 *insert*

13 *insurable residential building*, for part 6 (Residential buildings—
14 statutory warranties, standard conditions, insurance and fidelity
15 certificates)—see section 84.

16 *insurable residential building work*, for part 6 (Residential
17 buildings—statutory warranties, standard conditions, insurance and
18 fidelity certificates)—see section 84.

19 **35 Dictionary, new definition of *residential building work*
20 *contract***

21 *insert*

22 *residential building work contract*, for division 6.2A (Standard
23 conditions)—see section 89B.

1 **36 Further amendments, mentions of *residential building***
2 ***work***

- 3 *before*
4 residential building work
5 *insert*
6 insurable
7 *in*
8 • section 37
9 • section 38
10 • section 90
11 • section 93

12 **37 Further amendments, mentions of *warranties, insurance***

- 13 *omit*
14 warranties, insurance
15 *substitute*
16 warranties, standard conditions, insurance
17 *in*
18 • section 6
19 • section 69 (2C) (c)
20 • section 73
21 • dictionary, definitions of
22 *actuary*
23 *approval criteria*
24 *approved scheme*
25 *builder*
26 *building*

1	<i>building work</i>
2	<i>complying residential building work insurance</i>
3	<i>completion day</i>
4	<i>cost</i>
5	<i>fidelity certificate</i>
6	<i>fidelity fund scheme</i>
7	<i>prudential standards</i>
8	<i>residential building</i>
9	<i>residential building work</i>
10	<i>special actuary</i>
11	<i>storey</i>

1 **Part 3** **Building (General)**
2 **Regulation 2008**

3 **38 Stages of building work—Act, s 43 (1) (a)**
4 **Section 33, note**

5 *substitute*

6 *Note* The [Act](#), s 43 requires certain things to be done before building work
7 proceeds beyond a prescribed stage.

8 **39 Section 34**

9 *substitute*

10 **34 Offence—building work above damp-proof course level**

11 (1) A building licensee in charge of building work commits an offence
12 if the licensee—

- 13 (a) does building work above damp-proof course level; and
14 (b) the building work is not within a prescribed exception; and
15 (c) fails to ensure that the certifier has received—
16 (i) a plan signed by a registered surveyor stating the position
17 of the building in relation to the boundaries of the parcel
18 of land where the building is to be erected and stating the
19 level that the floor, or floors, of the building will have in
20 relation to a level stated in the approved plans; or
21 (ii) for building work on an original building on original
22 land—the original survey plan.

23 Maximum penalty: 50 penalty units.

24 (2) A building licensee in charge of building work commits an offence
25 if the licensee—

- 26 (a) does building work above damp-proof course level; and
27 (b) the building work is not within a prescribed exception; and

Section 39

- 1 (c) fails to ensure that the certifier is satisfied that the position of
2 the building, and the level of the floor, or floors, are in
3 accordance with—
- 4 (i) the approved plans; and
- 5 (ii) any condition of the following:
- 6 (A) an advice mentioned in the [Act](#),
7 section 27 (1) (b) (i);
- 8 (B) an approval or consent mentioned in the [Act](#),
9 section 27 (1) (b) (iii).
- 10 Maximum penalty: 50 penalty units.
- 11 (3) An offence against this section is a strict liability offence.
- 12 (4) In this section:
- 13 ***damp-proof course*** means a continuous layer of impervious
14 material placed in a masonry wall or pier, or between a wall or pier
15 and a floor, to prevent the upward or downward migration of water.
- 16 ***original building*** means an existing class 1, class 10a or class 10b
17 building.
- 18 ***original land*** means any building resulting from the work that is to
19 be located completely on the same parcel of land as the original
20 building.
- 21 ***original survey plan*** means a plan signed by a registered surveyor
22 if—
- 23 (a) the arrangement of the boundaries of the original land, and
24 location and levels of the original building, have not changed
25 since the original survey plan was made; and
- 26 (b) no building on which the work is to be carried out is, or
27 building resulting from the work is to be, situated closer than
28 100mm away from the boundary of the parcel of land.

40 New section 35A

in division 3.4, insert

35A Certificates of occupancy—fitness for occupation and use—Act, s 69 (4)

For the [Act](#), section 69 (4) the following are prescribed:

- (a) for plumbing, sewerage and drainage work carried out in, or in relation to, building work—
 - (i) for work that must be inspected under the [Water and Sewerage Act 2000](#)—that the work has been inspected and passed in accordance with that Act; or
 - (ii) for all other work—a certificate under the [Water and Sewerage Act 2000](#) that the plumbing, sewerage and drainage work complies with that Act; and
- (b) for electrical wiring work carried out in, or in relation to, building work—
 - (i) for work that must be inspected under the [Electricity Safety Act 1971](#)—that the work has been inspected and passed in accordance with that Act; or
 - (ii) for all other work—a certificate under the [Electricity Safety Act 1971](#) that the electrical wiring work complies with that Act; and
- (c) for gas fitting work carried out in, or in relation to, building work—
 - (i) for work that must be inspected under the [Gas Safety Act 2000](#)—that the work has been inspected and passed in accordance with that Act; or

1 (ii) for all other work—a certificate under the *Gas Safety*
2 *Act 2000* that the gas fitting work complies with that Act.

3 *Note* A reference to an Act includes a reference to the statutory instruments
4 made or in force under the Act, including any regulation (see
5 [Legislation Act](#), s 104).

6 **41 Part 4 heading**

7 *substitute*

8 **Part 4 Residential buildings—statutory**
9 **warranties, standard conditions,**
10 **insurance and fidelity certificates**

11 **42 Building work to which pt 6 does not apply**
12 **Section 37**

13 *omit*

14 warranties, insurance

15 *substitute*

16 warranties, standard conditions, insurance

17 **43 Sections 39, 40 and 41 headings**

18 *substitute*

19 **39 Minimum insurance for insurable residential building**
20 **work—Act, s 90 (1) (b)**

21 **40 Period of insurance for insurable residential building**
22 **work—Act, s 90 (1) (c) and (d)**

23 **41 Period of claims for insurable residential building work—**
24 **Act, s 90 (1) (i)**

1	44	Exempt buildings and building works
2		Schedule 1, part 1.3, column 3
3		<i>omit</i>
4		warranties, insurance
5		<i>substitute</i>
6		warranties, standard conditions, insurance
7	45	Schedule 1, part 1.3, items 3, 5, 7, 15 and 16, column 4
8		<i>omit</i>
9		otherwise—the building code
10		<i>substitute</i>
11		otherwise—the relevant deemed-to-satisfy provision of the building code

1 **Part 4** **Building and Construction**
2 **Industry (Security of Payment)**
3 **Act 2009**

4 **46 Application of Act**
5 **Section 9**

6 *before*
7 residential building work
8 *insert*
9 insurable

10 **47 New sections 37A and 37B**

11 *in division 4.4, insert*

12 **37A Approval of codes of practice**

13 (1) The Minister may approve a code of practice for an authorised
14 nominating authority.

15 *Note* A power given under an Act to make a statutory instrument (including a
16 code of practice) includes power to amend or repeal the instrument (see
17 [Legislation Act](#), s 46 (1)).

18 (2) An approved code of practice is a disallowable instrument.

19 *Note 1* A disallowable instrument must be notified, and presented to the
20 Legislative Assembly, under the [Legislation Act](#).

21 *Note 2* An amendment or repeal of a code of practice is also a disallowable
22 instrument (see [Legislation Act](#), s 46 (2)).

1 **37B Breach of code of practice**

2 A person commits an offence if the person—

3 (a) is an authorised nominating authority; and

4 (b) contravenes a code of practice applicable to the authorised
5 nominating authority.

6 Maximum penalty: 50 penalty units.

1 **Part 5** **Construction Occupations**
2 **(Licensing) Act 2004**

3 **48** **Decision on licence application**
4 **Section 19 (4)**

5 *substitute*

6 (4) The registrar may refuse to issue a licence for a construction
7 occupation, or occupation class, to an applicant if—

8 (a) the applicant, or a director or nominee of an applicant that is a
9 corporation, or a partner or nominee of an applicant that is a
10 partnership, is a licensee, a related licensee, or a former
11 licensee (however described) under this Act or a corresponding
12 law who—

13 (i) as a result of disciplinary action (however described) is,
14 or has been, disqualified from holding a licence (however
15 described) or prohibited from providing a construction
16 service (however described) under this Act or a
17 corresponding law; or

18 (ii) is, or has been, subject to occupational discipline
19 (however described) under this Act or a corresponding
20 law; or

21 (iii) the registrar believes on reasonable grounds surrendered
22 a licence (however described) in circumstances that
23 related to a ground for occupational discipline (however
24 described) under this Act or a corresponding law; or

25 (iv) has contravened, or is contravening, a court order or an
26 order made by the ACAT (or a similar State tribunal)
27 relating to a construction service, construction occupation
28 or occupation class under this Act or a corresponding
29 law; or

- 1 (v) has contravened, or is contravening, this Act or a
2 condition of a licence or a previous or related licence; or
- 3 *Note* A reference to an Act includes a reference to the statutory
4 instruments made or in force under the Act, including any
5 regulation (see [Legislation Act](#), s 104).
- 6 (vi) has contravened, or is contravening, a rectification order
7 (however described) under this Act or a corresponding
8 law; or
- 9 (vii) has a debt owing to the Territory under section 37 (5),
10 section 41 (5) or section 42 (3) and does not have, or is
11 not complying with, a formal arrangement to pay the
12 debt; and
- 13 (b) the registrar believes on reasonable grounds that the refusal is
14 necessary or desirable to protect the public.

49 New section 19 (7)

16 *insert*

17 (7) In this section:

18 ***related licence*** means a licence under this Act or a corresponding
19 law that is held by a related licensee.

20 ***related licensee*** means—

- 21 (a) if the applicant, or a director, partner or nominee of the
22 applicant is or has been a director or nominee of a corporation
23 (the ***related corporation***) that is or has been a licensee under
24 this Act or a corresponding law—the related corporation; or
- 25 (b) if the applicant, or a director, partner or nominee of the
26 applicant is or has been a partner or nominee of a partnership
27 (the ***related partnership***) that is or has been a licensee under
28 this Act or a corresponding law—the related partnership.

Section 50

50 **New section 24A**

insert

24A **Eligibility for licence renewal**

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

51 **Licence renewal**
Section 25 (2)

substitute

- (2) The registrar must renew a licence on application if satisfied that the applicant—
- (a) would be eligible to be licensed if the application were for a new licence of the same kind; or
- (b) is eligible for renewal of the licence.

52 **Section 25 (3) (a)**

omit everything before subparagraph (i), substitute

- (a) the applicant, or a director or nominee of an applicant that is a corporation, or a partner or nominee of an applicant that is a partnership, or a related licensee of the applicant—

53 Section 25 (3) (a) (i) and (ii)

substitute

- (i) has contravened, or is contravening, a court order or an order made by ACAT relating to the applicant's licence or a related licence (including work done by the licensee or a related licensee); or
- (ii) has contravened, or is contravening, this Act or a condition of the applicant's licence or a condition of a licence or a related licence; or

54 New section 25 (7)

insert

(7) In this section:

related licence means a licence under this Act or a corresponding law that is held by a related licensee.

related licensee means—

- (a) if a director, partner or nominee of the applicant is or has been a director or nominee of a corporation (the ***related corporation***) that is or has been a licensee under this Act or a corresponding law—the related corporation; or
- (b) if a director, partner or nominee of the applicant is or has been a partner or nominee of a partnership (the ***related partnership***) that is or has been a licensee under this Act or a corresponding law—the related partnership; or

- 1 (c) if a director, partner or nominee of the applicant is or has been
2 a licensee under this Act or a corresponding law—the director,
3 partner or nominee.

4 **55 New section 26B**

5 *in division 3.1, insert*

6 **26B Notification requirements for licensees**

- 7 (1) A licensee must give the registrar written notice of the following
8 events or circumstances (a *notification event*);
- 9 (a) for an individual who is the licensee—the individual becomes
10 bankrupt or personally insolvent;
- 11 (b) for a corporation that is the licensee—
- 12 (i) the corporation becomes the subject of a winding-up
13 order; or
- 14 (ii) a controller or administrator is appointed for the
15 corporation;
- 16 (c) for a partnership that is licensed in a construction occupation or
17 occupation class—a partner's licence in the same occupation or
18 class is suspended or cancelled;
- 19 (d) the licensee, or a director or partner of the licensee, is found
20 guilty, whether in the ACT or anywhere else, of an offence
21 that—
- 22 (i) involves fraud, dishonesty or violence; and
23 (ii) is punishable by imprisonment for at least 1 year;

- 1 (e) the licensee is not insured for a construction occupation or
2 occupation class in accordance with the regulation;
- 3 (f) for a corporation or partnership that is the licensee—the
4 licensee does not have the required nominee or nominees for
5 the construction occupation or occupation class of the licence.
- 6 (2) The notice must be given within 24 hours after the notification
7 event.
- 8 (3) A licensee commits an offence if the licensee—
9 (a) knows about a notification event; and
10 (b) fails to give the notice required under this section.
- 11 Maximum penalty: 100 penalty units.

12 **56 Nominees of corporations and partnerships**
13 **New section 28 (2) (c)**

14 *insert*

- 15 (c) the nominee can, at all times, adequately supervise the
16 construction services provided by it.

17 **57 New section 28 (3) (e)**

18 *insert*

- 19 (e) between them, the nominees can, at all times, adequately
20 supervise all the construction services to be provided by the
21 corporation or partnership.

58 Section 28 (7)

substitute

- (7) A nominee of a corporation or partnership for a construction service, construction occupation or occupation class automatically stops being a nominee for the construction service, construction occupation or occupation class if the nominee stops being eligible to be appointed as a nominee for the construction service, construction occupation or occupation class.

Example

Satnam is a class A builder and is the appointed nominee for a corporation that provides construction services. The registrar applies to the ACAT for an occupational discipline order and the ACAT orders the cancellation of Satnam's class A builders licence. The cancellation of the licence means that Satnam is not eligible to be a nominee and his appointment as a nominee automatically ends. There is no need for Satnam to resign as nominee or for the corporation to revoke his appointment.

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).

**59 When rectification order may be made
Section 35 (3), example, except note**

substitute

Examples

- 1 The registrar issues a notice of intention to issue a rectification order to a licensee for completed work. The submission from the licensee claims that the work was completed 11 years ago but does not provide any evidence to satisfy the registrar that the act that caused the contravention to happen ended 11 years ago. The registrar may issue the rectification order to the licensee.

- 1 2 A licensee undertook work that did not comply with the required technical
2 standards 13 years previously without obtaining or providing a required
3 certification. The licensee did not bring the work into compliance with the
4 relevant certification until 4 years after the work was complete. The registrar
5 is not satisfied that the act that caused the contravention ended over 10 years
6 ago and may issue the rectification order to the licensee.
- 7 3 The registrar receives a submission from a licensee who was issued with a
8 notice of intention to issue a rectification order. The submission includes
9 verifiable information that demonstrates the relevant work was completed
10 10 years and 2 months prior to the date the registrar intends to issue the
11 rectification order. The registrar may not make the order.

12 **60 Automatic suspension of corporate licence**
13 **Section 49 (2)**

14 *substitute*

- 15 (2) The corporation's licence is automatically suspended if the
16 corporation—
- 17 (a) becomes the subject of a winding-up order; or
- 18 (b) has a controller or administrator appointed for the corporation;
19 or
- 20 (c) is found guilty, whether in the ACT or anywhere else, of an
21 offence that—
- 22 (i) involves fraud, dishonesty or violence; and
- 23 (ii) is punishable by imprisonment for at least 1 year.

24 **61 New section 50A**

25 *insert*

26 **50A Automatic suspension of licence—no nominee**

- 27 (1) This section applies to a corporation or partnership that is licensed
28 in a construction occupation or occupation class.

Section 62

- 1 (2) The corporation's or partnership's licence in the construction
2 occupation or occupation class is automatically suspended if—
- 3 (a) a nominee is not appointed for the construction occupation or
4 occupation class; or
- 5 (b) if there is only 1 nominee for the construction occupation or
6 occupation class—the nominee stops being the nominee for the
7 construction occupation or occupation class.

8 *Note* A nominee may stop being a nominee automatically (see s 28), on
9 resignation with the registrar's approval (see s 29) or on revocation with
10 the registrar's approval (see s 30).

11 **62 End of licence suspension**
12 **Section 53 (1)**

13 *insert*

- 14 • section 50A (Automatic suspension of licence—no nominee);

15 **63 Section 53 (5) and note**

16 *substitute*

- 17 (5) A suspension, other than a suspension under section 52A
18 (Suspension of licence—public safety), ends if the registrar is given
19 notice of the suspension, on the earlier of—
- 20 (a) the day the suspension is revoked under this section; or
- 21 (b) 3 months after the day the registrar is given notice of the
22 suspension.
- 23 (6) If the registrar is not given notice of a suspension, other than a
24 suspension under section 52A, the suspension continues as long as
25 the cause of the suspension continues.

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

- 1 (7) A suspension under section 52A (Suspension of licence—public
2 safety) ends on the earlier of—
3 (a) the day the suspension is revoked under this section; or
4 (b) 3 months after the day it begins.

5 **64 Grounds for occupational discipline**
6 **Section 55 (1) (a)**

- 7 *omit*
8 , or a nominee or employee of the licensee,
9 *substitute*
10 , or a director, partner, nominee or employee of the licensee,

11 **65 New section 55 (1) (h)**

- 12 *insert*
13 (h) the licensee ceases to be eligible to hold a licence.

14 **66 Occupational discipline orders—licensees**
15 **New section 58 (3) and (4)**

- 16 *insert*
17 (3) In addition to any other occupational discipline order the ACAT
18 may make, the ACAT may require the licensee to pay to the
19 Territory a stated amount of not more than—
20 (a) if the licensee is an individual—\$20 000; or
21 (b) if the licensee is a corporation or a partnership—\$100 000.

- 22 *Note* The [ACT Civil and Administrative Tribunal Act 2008](#), s 66 sets out other
23 occupational discipline orders the ACAT may make.

Section 67

- 1 (4) If the ACAT makes an order for payment under subsection (3) in
2 relation to an occupational discipline order against a licensee the
3 ACAT must not make an order for payment under the *ACT Civil
4 and Administrative Tribunal Act 2008*, section 66 (2) (h) in relation
5 to the same occupational discipline order for the licensee.

67 New section 58A

7 *insert*

**8 58A Occupational discipline orders—related licence of
9 licensee**

- 10 (1) This section applies if—
11 (a) the ACAT makes an occupational discipline order in relation to
12 a licensee; and
13 (b) a related licensee has a related licence.

14 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out
15 matters the ACAT must consider when the ACAT makes an order.

- 16 (2) In addition to any other occupational discipline order the ACAT
17 may make, the ACAT may—
18 (a) cancel or suspend the related licence; or
19 (b) direct the registrar to place a condition on, or remove or amend
20 a condition on, the related licence.

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

- 23 (3) The ACAT may only make an order under subsection (2) if the
24 related licensee has been given—
25 (a) notice of the application for an occupational discipline order in
26 relation to a licensee; and

-
- 1 (b) notice that the ACAT is considering making an order in
2 relation to the related licensee; and
- 3 (c) the opportunity to make representations to the ACAT in
4 relation to the proposed order.
- 5 (4) In this section:
- 6 *related licence* means a licence under this Act that is held by a
7 related licensee.
- 8 *related licensee* means—
- 9 (a) if the licensee is a corporation—
- 10 (i) if a director or nominee of the licensee is a director or
11 nominee of a corporation (the *related corporation*) that is
12 a licensee under this Act—the related corporation; or
- 13 (ii) if a director or nominee of the licensee is a partner or
14 nominee of a partnership (the *related partnership*) that is
15 a licensee under this Act—the related partnership; or
- 16 (iii) if a director or nominee of the licensee is a licensee under
17 this Act—the director or nominee; and
- 18 (b) if the licensee is a partnership—
- 19 (i) if a partner or nominee of the licensee is a director or
20 nominee of a corporation (the *related corporation*) that is
21 a licensee under this Act—the related corporation; or
- 22 (ii) if a partner or nominee of the licensee is a partner or
23 nominee of a partnership (the *related partnership*) that is
24 a licensee under this Act—the related partnership; or
- 25 (iii) if a partner or nominee of the licensee is a licensee under
26 this Act—the partner or nominee; and

Section 68

- 1 (c) if the licensee is an individual—
- 2 (i) if the licensee is a director or nominee of a corporation
- 3 (the *related corporation*) that is a licensee under this
- 4 Act—the related corporation; or
- 5 (ii) if the licensee is a partner or nominee of a partnership
- 6 (the *related partnership*) that is a licensee under this
- 7 Act—the related partnership.

8 **68 Interim licence suspension**

9 **Section 59 (4) and note**

10 *substitute*

- 11 (4) An interim suspension may be—
- 12 (a) for 2 weeks or less; but
- 13 (b) if the registrar is satisfied that it is in the public interest to
- 14 extend the suspension—extended until the ACAT decides the
- 15 application for occupational discipline in relation to the
- 16 licence.

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

18 **69 Effect of interim suspension**

19 **Section 60 (3) (b)**

20 *omit*

21 makes an occupational discipline order

22 *substitute*

23 decides the application for occupational discipline

-
- 1 **70 Information requirements**
2 **Section 80E (1) (a)**
- 3 *after*
4 this Act
5 *insert*
6 or an operational Act
- 7 **71 Breach of licence conditions or codes**
8 **New section 87 (7)**
- 9 *insert*
10 (7) In this section:
11 *code of practice* means a code of practice under this Act or an
12 operational Act.
- 13 **72 Codes of practice**
14 **Section 104A**
- 15 *omit*
- 16 **73 Section 116**
- 17 *substitute*
- 18 **116 Advisory board functions**
19 An advisory board for a construction occupation has the following
20 functions:
21 (a) to provide advice about qualifications for the construction
22 occupation if asked by the Minister;
23 (b) to help with investigations for the construction occupation if
24 asked by the registrar;

- 1 (c) to help develop and maintain information about emerging
2 issues in the construction industry related to the construction
3 occupation if asked by the registrar.

4 **74 New section 126A**

5 *insert*

6 **126A Codes of practice**

- 7 (1) The Minister may approve a code of practice for—
8 (a) a construction occupation; or
9 (b) a class of construction occupation; or
10 (c) a construction service.

11 *Note* Power given under an Act to make a statutory instrument (including a
12 code of practice) includes power to amend or repeal the instrument (see
13 [Legislation Act](#), s 46 (1)).

- 14 (2) An approved code of practice may consist of a code, standard, rule,
15 specification or provision relating to the construction occupation or
16 occupation class, or a construction service, and may apply, adopt or
17 incorporate a law or instrument, or a provision of a law or
18 instrument, as in force from time to time.

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

20 *Note 1* A disallowable instrument must be notified, and presented to the
21 Legislative Assembly, under the [Legislation Act](#).

22 *Note 2* An amendment or repeal of an approved code of practice is also a
23 disallowable instrument (see [Legislation Act](#), s 46 (2)).

- 24 (4) The [Legislation Act](#), section 47 (5) or (6) does not apply in relation
25 to a law or instrument mentioned in subsection (2).

26 *Note* Laws and instruments mentioned in s (2) do not need to be notified
27 under the [Legislation Act](#) because s 47 (5) and (6) do not apply (see
28 [Legislation Act](#), s 47 (7)).

1 (5) In this section:
2 *law of another jurisdiction*—see the [Legislation Act](#),
3 section 47 (10).

4 **75 Regulation-making power**
5 **Section 129 (2) (e)**

6 *substitute*
7 (e) compliance with, and administration of, codes of practice.

8 **76 Section 129 (3)**

9 *omit*
10 10 penalty units
11 *substitute*
12 60 penalty units

13 **77 New part 22**

14 *insert*

15 **Part 22 Transitional—Building and**
16 **Construction Legislation**
17 **Amendment Act 2016**

18 **191 Definitions—pt 22**

19 In this part:
20 *commencement day* means the day the *Building and Construction*
21 *Legislation Amendment Act 2016*, part 5 commences.
22 *previous Act* means the [Construction Occupations \(Licensing\)](#)
23 [Act 2004](#) as in force immediately before the commencement day.

1 **192 End of suspension and interim suspension**

2 (1) This section applies to—

3 (a) a licence suspension under division 5.1 (Automatic licence
4 suspension); and

5 (b) an interim licence suspension under section 59 (Interim licence
6 suspension).

7 (2) The suspension of a licence that occurs before the commencement
8 day is taken to end on the day it would have ended under the
9 previous Act.

10 **193 Expiry—pt 22**

11 This part expires 1 year after the day it commences.

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

15 **78 Dictionary, definition of *code of practice***

16 *omit*

17 section 104A

18 *substitute*

19 section 126A

1 **Part 6** **Construction Occupations**
2 **(Licensing) Regulation 2004**

3 **79** **Licence applications—Act, s 17 (3)**
4 **Section 5 (m), except note**

5 *omit*

6 **80** **Section 13**

7 *substitute*

8 **13** **Eligibility for licence—qualifications and financial**
9 **requirements—Act, s 18**

10 (1) The Minister may declare the qualifications and financial
11 requirements necessary for an entity to be eligible to be licensed in a
12 construction occupation or occupation class.

13 (2) Before making a declaration in relation to a construction occupation
14 or occupation class, the Minister may consult the advisory board for
15 the occupation or class.

16 (3) A declaration is a disallowable instrument.

17 *Note* A disallowable instrument must be notified, and presented to the
18 Legislative Assembly, under the [Legislation Act](#).

19 (4) A declaration may apply, adopt or incorporate a law of another
20 jurisdiction or instrument as in force from time to time.

21 (5) The [Legislation Act](#), section 47 (5) or (6) does not apply in relation
22 to the law of another jurisdiction or instrument applied, adopted or
23 incorporated under a declaration.

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

- 1 (6) In this section:
2 *law of another jurisdiction*—see the [Legislation Act](#),
3 section 47 (10).

4 **81 Section 19 heading**

5 *substitute*

6 **19 Eligibility to be nominee—Act, s 28 (6)**

7 **82 Section 19 (d), example and note**

8 *substitute*

9 **Examples**

- 10 1 The individual is not able to exercise the functions of a nominee on a
11 daily basis if the licensee is the nominee for another corporation that
12 has no other nominees and is doing a lot of construction work.
13 2 The individual is reasonably able exercise the functions of a nominee
14 if the nominee is available to attend locations where the construction
15 services the nominee will be responsible for supervising are being
16 carried out.

17 *Note* An example is part of the regulation, is not exhaustive and may
18 extend, but does not limit, the meaning of the provision in which
19 it appears (see [Legislation Act](#), s 126 and s 132).

20 **83 Comply with code of practice**
21 **New section 21A (3)**

22 *insert*

- 23 (3) In this section:
24 *code of practice* means a code of practice under this Act or an
25 operational Act.

1	84	Corporate licences
2		Section 22 (2)
3		<i>omit</i>
4		or nominee
5		<i>substitute</i>
6		or a nominee (other than the sole nominee of the corporation for a
7		construction service, construction occupation or occupation class)
8	85	Section 22 (3)
9		<i>omit</i>
10		2 weeks
11		<i>substitute</i>
12		1 business day
13	86	Partnership licences
14		Section 23 (2)
15		<i>omit</i>
16		or nominee
17		<i>substitute</i>
18		or a nominee (other than the sole nominee of the partnership for a
19		construction service, construction occupation or occupation class)
20	87	Section 23 (3)
21		<i>omit</i>
22		2 weeks
23		<i>substitute</i>
24		1 business day

1 **Part 7** **Planning and Development**
2 **Act 2007**

3 **88 Authority functions**
4 **Section 12 (1) (j)**

5 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

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