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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CONSTRUCTION AND ENERGY EFFICIENCY LEGISLATION AMENDMENT
BILL 2013**

**REVISED
EXPLANATORY STATEMENT**

**Presented by
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CONSTRUCTION OCCUPATIONS AND ENERGY EFFICIENCY LEGISLATION AMENDMENT BILL 2013

Overview of the Bill

The Construction and Energy Efficiency Legislation Amendment Bill 2013 (the Bill) amends a number of laws administered by the Environment and Sustainable Development Directorate.

This Bill is intended to clarify a range of regulations applying to construction and related work in the Territory. The Bill will also include new requirements for building documentation and accountability for builders and building certifiers for their own work, which is a priority identified in the previous review of building quality in the ACT and a focus of the ongoing review of the *Building Act 2004*.

The Construction and Energy Efficiency Legislation Amendment Bill 2013 amends the following laws:

- *Architects Act 2004*;
- *Architects Regulation 2004*;
- *Building Act 2004*;
- *Building (General) Regulation 2004*;
- *Construction Occupations (Licensing) Act 2004*;
- *Construction Occupations (Licensing) Regulation 2004*;
- *Electricity Safety Act 1971*;
- *Energy Efficiency (Cost of Living) Improvement Act 2012*;
- *Water and Sewerage Act 2000*; and
- *Water and Sewerage Regulation 2001*.

The Bill also includes consequential amendments to the *Construction Occupations (Licensing) Regulation 2004*.

Architects Act 2004 and Architects Regulation 2004

This Bill amends relevant sections of the *Architects Act 2004* and *Architects Regulation 2004* that provide for declaring qualifications used for eligibility to be a registered architect.

Section 8 of the Architects Act 2004 outlines the requirements for eligibility for registration as an architect. Subsection 8 (2) (a) (i) allows qualifications to be prescribed by regulation. Subsection 8 (2) (a) (ii) allows the Architects Board to accredit courses of study by notifiable instrument.

Prescribed qualifications are generally subject to assessment by the Architects' Accreditation Council of Australia (AACA) and cross-jurisdictional agreement with other State and Territory government accreditation bodies. Prescribing courses gives greater certainty to people undertaking architectural studies about the recognition of the qualification across jurisdictions.

As there are a relatively large number of tertiary institutions that offer architectural studies and courses that may be withdrawn, renamed, repackaged, merged or combined with other degrees or lose accreditation, it would be more efficient if the Registrar, who is a statutory office holder, was able to update the qualifications by instrument. This is consistent with the practice for determining qualifications for construction occupations under the *Construction (Occupations) Licensing Act 2004*.

This will complement the Architects Board's capacity to make an instrument under section 8 (2) (a) (ii).

Building Act 2004 and Building (General) Regulation 2004

This Bill amends sections of the *Building Act 2004* and *Building (General) Regulation 2004* to:

- provide for processes relating to:
 - inspections and documentation for prescribed stages of building work;
 - identification on plans of alternative solutions applying to a building;
 - making the ACT building code under the Act; and
- assist with interpretation of the legislation by inserting new notes and clarifying certain definitions relating to stage inspections, certificates of occupancy, owners, and exemptions for utility service providers.

Builders' notification of completion of stages

The current provisions relating to notification of completion of a stage of building work before it is inspected do not prescribe the form of the notification. This means that notifications could be unrecorded, or be made in the absence of verification that the work is completed and has been carried out in accordance with approved plans. This effectively circumvents the requirement for building certifiers to submit documents relating to the approval, including notifications from the builder for certain stages of work, when the work is completed. This can result in a lack of clarity about when the stage was reached and different recounting and records between practitioners.

This Bill introduces provisions that require a notification of a stage inspection to be in writing, dated with the date of the notification and include statements that the stage has been reached and that the work has been carried out in accordance with approved plans. This standardises the minimum requirements for notifications made to building certifiers. The statement is similar to the requirements for licensed plumbers, gasfitters and electricians when requesting statutory inspections. It is a requirement of the Act that work is completed in accordance with approved plans. If work is not in accordance with the approved plan, it must be altered to be compliant before a notification is given.

Stage inspections

Section 44 provides for the process that building certifiers must follow when undertaking stage inspections. The results and reports relating to stage inspections form part of the documentation that must be lodged with the construction occupations registrar (the Registrar) under section 48 on completion of building work. As building projects may last a number of years, this does not readily allow tracking of the progress of building projects or onsite building audits to be targeted to stages of work that have been completed.

More timely information on stage inspections will also allow tracking of the number, type and results of inspections being carried out, and give a better indication of the level of non-compliance and of trends in inspection failures. This information could be used to target education and training of practitioners and improve public protection from unsafe or non-compliant work.

This Bill inserts a regulation making power for the lodgement of notifications, written directions, test results and other documents from a stage inspection to be submitted to the Registrar within a certain time. The Bill does not include regulations for the new provision. The documents that must be given and the time in which they must be provided will be based on the nature of each stage inspection.

The ACT building code

The building code is the primary technical standard used for building work undertaken in the ACT. The Building Code of Australia (BCA) is a nationally-subscribed document developed and published by the Australian Building Codes Board (the ABCB). The ACT government is represented on the ABCB and on the Building Ministers' Forum, which oversees it. At times, the ACT may introduce its own requirements in conjunction with the published BCA. These requirements may add to or vary the national code and may be printed in the body of the code, or in appendices to the code. In addition, the Minister may also make an ACT Appendix to the code to incorporate ACT-specific requirements, or to amend the provisions or application of the BCA.

Section 136 outlines that the BCA and the ACT Appendix, including any amendments to the BCA, form the ACT building code. The ABCB has a well defined and publicised annual publication process, which involves notification on its website and a series of information sessions in each capital city. The code is generally published well in advance and adopted in the ACT on 1 May each year unless a different date of application for the code, or specific provisions of the code, is included in the ACT Appendix or a regulation. Each change to the code is also subject to public consultation, and industry members are represented on the ABCB and its advisory committees. In addition, amendments to the BCA are generally only made on an annual basis and a new version of the BCA is released each year.

This differs from the process in place at the time these provisions were originally made, which was to publish a series of amendments to a particular version of the code from time to time. The amendments did not follow a regular release schedule. For example, seven amendments to the 1996 version of the BCA were released up to the year 2000.

The ACT Appendix is a disallowable instrument and is published on the ACT Legislation Register. Provisions in the appendix are not necessarily publicised through the BCA publication process and may be revised a number of times throughout the year.

Section 137 obliges the planning and land authority to publish a notice of the publication of each edition of the BCA and each amendment of it by the ABCB. As the process for publishing new codes is well defined, this Bill will substitute a requirement for the construction occupations registrar to publish a notice on the notification for each new ACT Appendix made by the Minister under section 136 (2). The notice must contain information on where to access or obtain a copy of the instrument. The ACT Appendix will be notified and available on the Legislation Register.

The adoption date of the BCA is generally 1 May each year. The jurisdictional adoption date will be listed in tables in each volume of the BCA under sections *History of Amendments* or *History of BCA Adoption*. However, it is possible that other adoption dates may be applied to certain performance requirements in the code. This Bill includes new provisions that make clear that the date of adoption listed in the BCA may be amended by regulation or by the ACT Appendix.

On occasion, the status of the ACT additions and variations published in printed appendices to the BCA has been questioned. While the intent of the code is that a reference to the BCA would include the references to ACT-specific provisions, this is not explicit. This Bill will amend the Act to remove any doubt that the BCA includes any ACT variations or additions published as part of the code i.e. contained in the body of the code and/or in published appendices to the code or its volumes.

The ABCB also publishes a range of non-regulatory guides and handbooks, including the Guide to Volume One (the Guide). Although the Guide is part of the National Construction Code Series, it is not part of the code and is intended only to assist with interpretation. A new note explains that the Guide is not part of the code.

Alternative solutions

The BCA is a performance-based code. While this allows people to deviate from prescriptive standards, they must still meet the relevant performance requirements. In plans that are not annotated, it can be difficult to identify which parts of the building may be subject to an alternative solution, especially after the building is constructed. This is particularly important for building maintenance and the ongoing safety of occupants.

Although it is expected that plans will contain sufficient information for a building certifier to make an assessment and for a builder to construct to the plan, no specific requirements exist for identifying alternative solutions. This Bill will include the minimum requirements for identifying alternative solutions in an application for a building approval and on plans.

Construction Occupations (Licensing) Act 2004 and Construction Occupations (Licensing) Regulation 2004

The amendments to the *Construction Occupations (Licensing) Act 2004* (COLA) and the *Construction Occupations (Licensing) Regulation 2004* (COLR) are to:

- provide for processes relating to:
 - assessing the competency of licensees;
 - directing licensees to undertake training where there is an identified need to develop the skills of practitioners;
 - refusing the grant or renewal of licenses in certain circumstances;
 - issuing rectification orders;
 - information gathering and access to documentation;
 - appointing deputy registrars;
 - prescribing qualifications for applicants;
 - managing exemptions for certain trainees from having to hold a licence; and

- assist with the operation of the demerit point system and occupational discipline by clarifying demerit point grounds and grounds for occupational discipline.

A number of the amendments relate to recommendations of the 2010 report *Building Quality in the ACT* (the report) and the current review of the *Building Act 2004*. The primary focus of the recommendations in the report is to improve the competency, maturity and accountability in the construction industry. Amendments to the COLA and COLR affect all construction occupations regulated under the Act, but allow sufficient scope for decisions made for each of the occupations to take into account the risks and issues specific to the occupation or occupation class.

Skill assessments – post-licensing

At the time a person makes an application to the Construction Occupations Registrar (the Registrar) for a licence in an occupation class, the Registrar can require that the applicant undertakes an assessment or test under section 14 of the COLR if not satisfied that the applicant has a qualification to be eligible for the licence applied for.

If a licensee contravenes the COLA or an operational Act, the Registrar may take disciplinary action that can include requiring a person to undertake training. However, there is no process for the Registrar to assess the licensee to determine if the contravention was due to a lack of skill or knowledge that would benefit from training. This constrains the Registrar in being able to select or recommend the most appropriate disciplinary action to ACAT, or to assess the ongoing risks to consumers.

The Bill gives new powers to the Registrar to require a skills assessment of a licensee if a ground for occupational discipline mentioned in section 55 (1) (a) exists in relation to a licensee, and requiring the licensee to be assessed would assist the Registrar to exercise his or her functions under section 52A (3), 53 or 56. The powers are modelled on the existing powers in section 14 of the COLR, which provide for skills assessment for applicants and are designed to find out whether the licensee has a skill or knowledge reasonably necessary to satisfactorily exercise the functions of a construction occupation or class of construction occupation under the licensee's licence, or the role of a nominee if the licensee is a nominee

The Registrar will need to give the licensee written notice of the assessment and reasonable notice to undertake the assessment. The Registrar would also be able to withdraw the notice to require an assessment, or to change the nature for timing of the assessment if satisfied that this is appropriate based on submissions from the licensee.

New provisions link the results of the assessment to the occupational discipline system so that once the Registrar has made an appraisal of the competency of the practitioner the Registrar can determine what action, if any, is required. Failing to comply with a notice for a skill assessment under the new section is also grounds for occupational discipline. A decision to take disciplinary action is a reviewable decision. A withdrawal of the notice does not affect the operation of occupational discipline grounds in relation to any breach of the COLA or its operational Act.

Directed training

The Bill includes a new power for the Registrar to determine a course of training for a construction occupation or occupation class if the Registrar is satisfied on reasonable grounds that the training is necessary for the development or enhancement of the skills or knowledge of licensees in the construction occupation or class.

Recommendation n) of the 2010 *Building Quality in the ACT* report is to implement a system of continuing professional development for practitioners. There are many options for ongoing skills maintenance and professional development, including requirements to earn minimum points over the period of the licence, or disincentives such as higher licensing fees and additional auditing for practitioners that do not undertake voluntary training. Such systems can be administratively burdensome and have not necessarily been successful where the training is generic and not aimed at addressing a particular skill or required knowledge.

This Bill introduces a system that allows the Registrar to target training appropriate for each occupation as a result of identified deficiencies or need for licensees to competently offer a particular construction service. A requirement would be applied to selected occupations, occupation classes or all licensees as required. Failing to satisfactorily complete the required course or courses relating to the scope of work of a licence may result in a refusal for the licence to be renewed or in occupational discipline. The system would not replace directions for individuals to undertake retraining, but would focus on occupation-wide issues.

As an example of targeted training, when major amendments to the Building Act are made, building surveyors will need to understand these amendments and their obligations in relation to administering them. The directed training in this case may be compulsory attendance at a training session run by the Registrar. In other cases, existing competencies from courses accredited under the Australian Qualifications Framework could be used as training modules and external training providers could be authorised to offer the training.

The Registrar would be obliged to give a reasonable time for undertaking a course of training. A training requirement would be determined in a disallowable instrument. If the training does impose an appreciable cost, in accordance with the Legislation Act, a regulatory impact statement will be required.

Grounds for refusing a new licence or renewal

Section 19 of the Act prescribes when a licence must be issued and when the registrar must refuse to issue a licence. Under section 19 (4), if an application for occupational discipline in relation to an applicant or nominee of an applicant has been made by the Registrar under division 5.2 (Occupational discipline—licensees), the Registrar need not decide whether to licence the applicant until the application has been dealt with by the ACAT, and any appeal or review arising from the occupational discipline, is finished. However, despite the possibility that a person or people associated with the person may have suspended or cancelled licences, or outstanding rectification work and debts to the Territory, the Registrar does not have clear grounds to refuse to issue the licence in other circumstances.

Licences are renewed in accordance with section 25, which requires only that the person would be eligible to be licensed if the application were for a new licence of the same kind. If the person was subject to application for occupational discipline and was applying for a new licence, a delay in making a decision is permitted. However, section 25 does not allow the same deliberations in relation to the renewal of a licence, meaning that the Registrar has a

more limited capacity to take an appropriate course of action at the time of renewal, compared with at the time of a new application.

In Territory legislation for other occupations, such as real estate agents, clear grounds for refusing a renewal that also relate to the licensee's behaviour while operating as a licensee are provided. For example under subsection 36 (3) of the *Agents Act 2003* the Commissioner for Fair Trading must renew an agent's licence if satisfied that the applicant—

- (a) is eligible to be licensed under section 24 (Eligibility for licences); and
- (b) has complied with the requirements (if any) prescribed by regulation.

The prescribed requirement is that the applicant has not contravened any condition imposed on the licence under the Act. Eligibility criteria also include that a person is disqualified if, amongst other things, the person:

- is licensed and has contravened, or is contravening, an order of the ACAT;
- is a licensed agent who is applying for a licence or the renewal of a licence and has contravened, or is contravening, a condition of the person's licence; or
- has contravened, or is contravening, a provision of the Act prescribed by regulation as a disqualifying breach.

It could be argued that the consumer protection risks related to construction work, which often also involves the purchase of housing and other constructions, are equal to those associated with real estate work. The health and safety risks of non-compliant work are greater in the majority of construction occupations. Provisions commensurate with those for other occupations assist the Registrar to exercise discretion to protect the public when a person breaching the conditions of their licence or contravening an Act applies for renewal. Provisions may also help to prevent a practice known as “phoenixing”, which means that directors from one company set up another company and apply for a licence to be able to keep operating even if the first company is subject to disciplinary action or litigation.

New provisions also allow the Registrar to grant a licence for less than the maximum period permissible if he or she believes it is necessary or desirable to protect the public.

A decision not to issue or renew a licence under the new provisions will be a reviewable decision.

Section 19 – applications

This Bill will amend Section 19 of the Act to include new provisions that if the Registrar is satisfied that it is necessary or desirable to protect the public, the Registrar may refuse to issue a licence to an applicant if any of:

- the applicant, or
- if the applicant is a company, a nominee or director of the applicant, or
- if the applicant is a partnership, a nominee or partner of the applicant;

is, or was, a licensee or was a director or nominee of a licensed entity under the Act or a corresponding law that is currently disqualified from being authorised to provide a construction service or subject to occupational discipline (however described). It also allows the Registrar to consider situations where a person may have surrendered a licence in another

jurisdiction to avoid disciplinary action. This is necessary because under some corresponding law, disciplinary action can only be taken against current licensees.

Section 25 – renewals

This Bill will also insert new provisions that if the Registrar is satisfied that it is necessary or desirable to protect the public the Registrar may refuse to renew a licence if the person:

- (a) has contravened, or is contravening, a court order or an order of the ACAT relating to applicant's licence, including work done by the licensee;
- (b) has contravened, or is contravening, the Act or a condition of the person's licence;
- (c) has contravened, or is contravening, a rectification order issued under the Act;
- (d) has not completed a course of training required by the Registrar under new part 55A;
- (e) has debt owing to the Territory in relation to a rectification order and does not have, or is not complying with a formal arrangement to pay the debt; or
- (f) is disqualified under a corresponding law from holding an authority (however described) to carry out work in the construction occupation or occupation class.

Rectification orders

Part 4 of the COLA provides for rectification orders and other obligations on licensees. Rectification orders work with the occupational discipline and demerit point systems, and provide an important and practical mechanism for correcting work that does not comply with minimum standards for health, safety, environment protection or amenity of occupants.

The stated action or rectification work does not necessarily have to include that the work must be done to an initial specification or plan. Standards for building and plumbing are performance-based standards and many prescriptive standards used for other work offer multiple solutions for compliance. Although an order could include a requirement to build to the original plan or specification, the aim of issuing a rectification order is to have work comply with the relevant performance standard, which may allow for a variety of options. This Bill includes a new example under section 38 (1) to clarify that the stated action under a rectification order may include that work is to comply with a performance requirement rather than strict accordance with a prescriptive solution or approved plans in the case where they exist.

There are three main pathways for work to be rectified under this part.

- After issuing a notice of intention to make a rectification order (s 34), the Registrar considers it is appropriate and issues an order to the entity given the notice (s 38). Section 38 (2) allows for situations where it may be appropriate to issue a rectification order to the entity but that entity may not be licensed to complete some work or take stated action. This is not intended to mean that where a licence is not required to do the work e.g. provide a structural engineering report that an entity can carry out those activities in the rectification if they are not qualified or otherwise capable of doing so. Considering the broad range of tasks that may be required to rectify work, including engineering analysis or and other work that does not require a licence but does require particular skills or qualifications, this would be too narrow in application.

- After issuing a notice of intention to make rectification order (s 34) the Registrar considers it is not appropriate to issue an order to the entity given the notice, but that rectification work is required, so gives an authorisation another licensee to take that action or do the work stated in the notice (s 37). It is not intended that the person who is given the original notice must be given a chance to rectify the work for this section to operate. This is because there may be reasons the person cannot return to the site, including that the relationship between the owner and the entity makes this inappropriate or that the person can no longer undertake or supervise the work.
- An emergency rectification order is given to a licensee or former licensee (s39). A notice under s34 is not required for an emergency rectification order.

This Bill inserts provisions in section 34 that provide that a notice for an intention to make a rectification order makes it clear that section 37 can be exercised without first issuing the entity (as defined in s34) a rectification order under s38. As noted above it is not intended that in every circumstance the entity to which a notice was given under section 34 be given a chance to rectify, or arrange for the rectification of, any work as it may be inappropriate for the person to do so.

It is expected that part of the rectification process will be to have work certified or verified by a person that is qualified to do so. This is not currently explicit in section 38, which provides for actions to rectify work and provide construction services. This Bill inserts a new provision in section 38 that clarifies that a stated action may include providing, and paying for, written information about a stated matter. This is supported by new examples.

A rectification order need not be issued to a licensee, or could be issued to a licensee that is not licensed, qualified or skilled to carry out the entire scope of works that forms the stated action for the order. At present section 38 (2) provides that if the entity is not licensed to do something required to be done under the order, the entity must arrange, and pay for, the thing to be done. In addition, there may be work associated with a rectification order that does not require a licence, but specialised skills or qualifications. This Bill inserts provisions to clarify that where the entity is not licensed, qualified, authorised, or does not hold relevant skills or experience required to do something required to be done, that the entity must arrange and pay for the thing to be done.

Information gathering powers

For information gathering powers to be effective, they must respond to the changes in how information is stored, transferred and used. Current powers under the *Construction Occupations (Licensing) Act 2004* need modernising to take into account why information may be required, who may hold it and in what way the information is best obtained.

Information gathering under the Act is constrained to the powers of compliance auditors to enter premises and access documents on the premises. Construction practitioners operate from a variety of workplaces and record information electronically in ways that may not be able to be accessed at premises. Practitioners may work from a vehicle, or store documents that relate to the licensee's activities in portable devices that are moved from location to location with the licensee.

If licensees operate from residential premises then different consents must be obtained to inspect their documents than for those that operate from non-residential premises. The current provisions relating to access to residential premises can be used to avoid having to provide certain documents. This prevents the regulator from being able to reasonably access information that would normally be available to the agency if the licensee had a business premises.

In most cases, it is obtaining a document that is of importance, not specifically obtaining access to premises. Therefore, this Bill decouples information provision from the need to enter premises and provides for two information gathering processes in addition to the existing processes in section 80 for accessing documents on premises. The Bill introduces:

1. A new process for compliance auditors to require licensees to produce documents; and
2. A new part that allows the Registrar similar powers to the planning and land authority under section 395 Information Requirements of the *Planning and Development Act 2007*.

The Bill also modernises the existing section 80 provisions by introducing a formal consent to entry process, expanding powers on premises to allow access to all relevant electronic devices rather than only computers, and requiring anyone at the premises to give the compliance auditor reasonable help to exercise a function under that section. Under section 80 (3) (d) (ii) of the Act, compliance auditors are able to require a person to give them access to a computer on the premises in which information relevant to the licensee's activities is stored. The new provisions expand that to electronic devices that are not computers, reflecting the shift in methods of storage to other devices, such as memory cards, that do not fall strictly within the definition of computer. This is consistent with the intent of the provisions.

Compliance auditors – production of documents

The proposed new power is intended primarily for auditing purposes. Compliance auditors are responsible for auditing the forms and other paperwork required to be provided by licensees for this Act and the operational Acts. The new power allows a compliance auditor to ask a licensee to produce a document that relates to the licensee's activities. A request must be by written notice and contain information about what documents are required and the consequences of not complying. This reduces the need for the compliance auditor to enter premises to inspect documents.

Sections 170 and 171 of the Legislation Act require that provisions must be interpreted to preserve the common law privileges against self-incrimination and exposure to the imposition of a civil penalty, as well as preserving client legal privilege.

Registrar – information requirements

The new power in this Bill operates if the Registrar suspects on reasonable grounds that a person has information reasonably required by the Registrar for the administration or enforcement of this Act or has possession or control of a document containing the required information. The existing powers apply only to licensees, whereas the new power allows the Registrar to request documents from any person.

These provisions are similar to existing provisions in the *Planning and Development Act 2007*. Like development, which may involve many parties, it is not only licensees that may hold documents that relate to construction services. Other practitioners that are not regulated licensees, such as engineers, architects or building designers, and lessees for the land on which work is being carried out may hold critical information required to determine compliance with the Act.

As for new powers for compliance auditors, section 170 and 171 of the Legislation Act protect against self-incrimination and preserve client legal privilege. In addition, new section 80E (4) provides that a person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the Registrar in accordance with an information requirement.

Conditions after cancellation of a licence

Other than voluntary cancellations, licences are generally only cancelled to protect the public. A licensee that has their licence cancelled for an extended period would most likely have posed a significant risk to public health and safety or consumer protection. When a person returns to an occupation after a lengthy cancellation, it may be appropriate for the protection of the public to restrict the licensee from operating without supervision, or from supervising others. This may be due to the nature of the breaches leading to the cancellation, or because the licensee has not been operating over a period where new standards and training requirements were placed on active licensees.

The registrar could place a condition on the licence under the current legislation but the Act is generally silent on the types of decision the Registrar may make under the provisions, especially in relation to applicants that have been subject to major disciplinary action. A decision by the Registrar to condition a licence is a reviewable decision.

A number of jurisdictions allow for a licensee to be subject to particular conditions or restrictions if the licence has been cancelled.

This Bill inserts a new regulation that stipulates that if an individual is applying for a licence in a construction occupation, and the person previously held a licence for the same or a similar occupation under COLA or the law of another state or territory, and the licence was cancelled for longer than one year, the registrar may condition the new licence, including, but not limited to one or more of the following:

That the licence holder;

1. is not eligible to be a nominee for a stated period of time;
2. must not supervise trainees or other licensees; or
3. must work under the supervision of another entity.

This section does not apply to voluntary cancellations for reasons other than occupational discipline.

Codes of Practice

Section 104A provides that the Registrar may, in writing, approve codes of practice for a construction service, a class of construction occupation or a construction service. Subsection 104 (2) provides that a code of practice may consist of a code, standard rule, specification or provision and may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time. An approved code of practice is a notifiable instrument.

Construction occupations are generally subject to technical codes and standards such as those published by Standards Australia Ltd and the Australian Building Codes Board. In addition, these codes cross-reference other codes and standards for completeness. At any given time one or more of these standards may be subject to republication for minor amendments or changes. The majority of codes made for construction occupations will need to refer to documents that are subject to copyright and not able to be republished on the Legislation Register by the ACT Government. These may be adopted either as in force from time to time or at a point in time depending on what is appropriate.

Section 47 (5) of the Legislation Act requires that if a law of another jurisdiction or an instrument is applied as in force at a particular time, the text of the law or instrument (as in force at that time) is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.

Section 47 (6) requires that if a law of another jurisdiction or an instrument is applied as in force from time to time, the text of each of the following is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument:

- (a) the law or instrument as in force at the time the relevant instrument is made;
- (b) each subsequent amendment of the law or instrument;
- (c) if the law or instrument is repealed and remade (with or without changes)—the law or instrument as remade and each subsequent amendment of the law or instrument;
- (d) if a provision of the law or instrument is omitted and remade (with or without changes) in another law or instrument—the provision as remade and each subsequent amendment of the provision.

As the codes are notifiable instruments, sections 47 (5) and 47 (6) cannot be disapplied under section 47 (7). Therefore, any Australian or International Standards, the National Construction Code and other instruments must be made as notifiable instruments. This would also mean that any standards or other documents called up in those instruments would need to be made notifiable instruments and so on. If this does not occur, the instrument effectively becomes unenforceable.

Given that the Registrar and the ACT Government cannot breach copyright and it is impractical to republish the text of a lengthy chain of technical standards, this Bill disapplies section 47 (5) and 47 (6). This is necessary to make enforceable codes.

Retrospectivity of provisions

This Bill includes provisions in section 104B to apply the new sections relating to the Legislation Act to instruments already made under that section. Retrospectivity is necessary and not expected to be prejudicial because—

- construction practitioners to which the instruments apply expect continuity of the provisions that prescribe how to carry out eligible activities; and
- people receiving construction services will have an expectation that any activity, including the performance of a product and any safety standards, will meet the prescribed requirements and if it does not, that it would be rectified to the relevant standard.

The retrospective application will not operate to the disadvantage of a person by adversely affecting the person's rights, or imposing liabilities on the person. Rather, the provisions provide for the minimum standards for relevant construction services. At the time of introduction, codes of practice are in force for works assessors and building assessors. These codes have been uniformly applied since their date of introduction.

It would be inequitable for practitioners complying with the relevant standards for the provisions to be unenforceable for other practitioners that do not comply.

The provisions in the existing codes for works assessors form the basis for applications for unit titles. Unit titles assessments are made by the Environment and Sustainable Development Directorate based on information gathering and documented in accordance with the codes of practice. Failure to have the provisions apply to existing instruments may compromise consumer protection and also jeopardise the ability to consistently and fairly apply unit titles legislation.

Contacting licensees

Licensee must provide certain contact information and update that information when it changes. This is not only so the Registrar can issue formal correspondence, but so the Registrar can communicate with licensees, including to issuing renewal notices or alerts and reminders about regulation changes.

At present, providing some information such as email and mobile phone numbers are optional. This means that the bulk of communication with licensees is by letter. While this will remain for items requiring formal correspondence, other information can be issued more efficiently by electronic mail or messaging.

Very few licensees have not nominated an email or mobile telephone number. Given the nature of construction work, contact through portable means is generally favoured. Contact through landlines and standard post can result in significant delays in contacting licensees. This can cause significant problems when there is a matter of life safety or health.

This Bill introduces a requirement for practitioners to provide and maintain a valid mobile phone number and email address. The number need not be a personal number but could be for a work phone that the licensee can be contacted on. Landline and fax numbers need only be supplied where an applicant has them.

Contact information is recorded in the register of licensees that the Registrar is required by law to keep. In the interests of privacy, this register is not published and information about licensees available on government websites does not include telephone numbers or email addresses.

A transition period is required to allow existing licensees to provide this information within 6 months from the date of commencement, either through the form to renew that licence or separately, and for the register to be updated accordingly.

The regulatory impact of these provisions is considered in the *Regulatory Impact Statement for the Construction and Energy Efficiency Legislation Amendment Bill 2013* that accompanies the Bill.

Services that may be provided without a licence - notification

Under subsection 35 (1) (b) of the COLR, trainees may undertake electrical wiring, gasfitting, plumbing or sanitary drainage services without a licence if the work is done under the supervision of a licensed individual, or the nominee of a licensed corporation or partnership, authorised by the licence to provide the service.

The exemption is intended to recognise that another licensee will be responsible for the trainee at all times and therefore a licence for the person undergoing training is not required. However, trainees are found frequently working unsupervised. It can be difficult to determine who is responsible for the trainee, and how many other trainees that person is supervising. In addition, trainees have been identified as undertaking work outside of their training arrangements.

Monitoring adherence to the rules of training and apprenticeships is not the responsibility of the Environment and Sustainable Development Directorate (ESDD) or the Registrar. However, as the regulator, ESDD must ensure that the requirements for electrical work and licensing are complied with, including that trainees are adequately supervised. If the ACT is to make lasting improvements in the quality of construction work then compliance and good practice must be embedded in the training that people receive.

Records kept by national training regulators can be unreliable and this means that significant time can be spent trying to determine if a legitimate training arrangement exists. This Bill makes that the current exemption from licensing conditional on the employer or training provider that is providing or managing the training notifying the Registrar of the training arrangements and the details of the trainee.

The commencement date for the provisions allows for a period in which employers with existing training arrangements can provide this information before the requirement comes into effect.

Qualifications for individuals

The Registrar may prescribe mandatory qualifications for licence classes in accordance with section 13 of the Regulation. A qualification can be a formal qualification or involve demonstrated skill or experience. The Registrar may also prescribe qualifications from particular training providers.

Section 14 of the Regulation allows the Registrar to set a skills assessment if not satisfied that an applicant has a qualification required to be eligible for the licence applied for. However, if the person holds a prescribed qualification, the Registrar cannot require further assessment, even if the Registrar has concerns about a person's competency.

This Bill inserts new provisions to allow the Registrar to request a skills assessment for an applicant if they have a qualification required to be eligible if the Registrar is satisfied it is necessary or desirable to protect the public. This allows the Registrar to apply an additional assessment in cases where a person has been refused a licence in another jurisdiction or a training provider is suspected of not complying with national rules or issuing qualifications to a person or people that are not competent. Problems with licensee competency will generally be identified through auditing or inspections of practitioners' work undertaken by ESDD.

The Registrar would refer potential non-compliance to the Education and Training Directorate, and national training regulators such as the Australian Skills Quality Authority for further investigation.

Given the potential health and life safety ramifications of issuing a licence to a person in high risk occupations such as asbestos assessment, asbestos removal, building, electrical work, gasfitting and plumbing it is considered that these powers are appropriate to protect the public and other workers. It gives the Registrar an additional option and means that a refusal need not be made to an applicant who is able to demonstrate sufficient skill, even if a training provider has been deregistered. Requiring a regulation 14 assessment and refusing to grant a licence are both reviewable decisions and open to scrutiny by the ACAT.

This provision would not affect applications made under mutual recognition but could lead to greater protections against people gaining substandard training in other jurisdictions and applying to the ACT for a licence.

Subsection 13 (2) requires that the Registrar consults with the advisory board for the occupation or class before making a declaration in relation to a construction occupation or occupation class. Advisory boards assist the Registrar in carrying out his or her statutory functions, but do not determine qualifications or provide binding advice. There are circumstances where consulting with a board may be unnecessary or inappropriate. For example, legislation requires consultation even for correction of errors, and minor amendments such as revising course numbers or names as required. In other situations amendments to qualifications may be part of legislative reforms agreed to by the Assembly.

In addition, if the declaration is in relation to sensitive or commercial in-confidence nature, or if it is necessary to expedite a change to the qualifications for matters of public health and safety, it may not be appropriate for the Registrar to consult with the relevant board. It is the first obligation of the Registrar to protect the public from incompetent and potentially dangerous practices that can be caused by inadequate training.

This Bill includes new provisions in section 13 that the Registrar need not consult with the advisory board for the occupation or class if:

- (a) The declaration makes minor amendments of a technical nature; or
- (b) The declaration is being made to give effect to a decision of the Legislative Assembly; or

- (c) It would require the disclosure to the Advisory Board of information of a confidential or sensitive nature and the Registrar considers that disclosure inappropriate; or
- (d) It is necessary to act promptly to protect the health and safety of people, property or the environment.

This is reasonable as the Registrar is responsible for determining qualifications and is responsible for assessing licensees against those qualifications to provide protection to the public from unsafe or incompetent practice.

Electricity Safety Act 1971

Section 34 is about the reporting requirements to the Registrar in the case of a serious electrical accident. Failure of an electricity distributor to report a serious electrical accident that happens in relation to the distributor's electricity network or in the distributor's distribution area, to the Registrar is an offence. This Bill amends sections 34 (3) of the *Electricity Safety Act 1971* to clarify that the section does not apply if an electricity distributor had reasonable grounds to believe that the Registrar had been told about the accident, rather than the relevant distributor as the current provision states. It is clear that the provisions were not intended that the distributor need only make sure that it is aware of the accident.

This Bill also amends the definition of regulatory authority, to remove the need to amend the Act or make a new regulation to account for machinery of government changes to regulatory authorities in other jurisdictions.

Energy Efficiency (Cost of Living) Improvement Act 2012

This Bill amends section 10 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* to make the process for determining eligible activities under the Act effective and ensure that any resultant instrument is enforceable. Provisions will disapply section 47 (5) to (7) of the Legislation Act to notifiable instruments made by the Minister.

Section 10 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* provides that the Minister may determine eligible activities for the Act. A determination is a notifiable instrument. A determination of an eligible activity must include the following:

- (a) a description of the activity;
- (b) the minimum specifications for the performance of the activity;
- (c) the abatement factor for the activity; and
- (d) the time at which the activity is taken to be completed.

Minimum specifications for the performance of an activity will include product specifications, installation standards and other technical requirements. Activities for the scheme included a large number of activities that involve, or are associated with, building, plumbing, gasfitting, or electrical work. The primary source for technical and product specifications are Australian and International Standards and other copyrighted documents

such as the National Construction Code, which includes the Building Code of Australia and the Plumbing Code of Australia.

Section 47 of the Legislation Act requires that if a document is adopted in force at a particular time, or from time to time, these instruments must also be notified. This would also include any standards referenced by initial standards and so on. If notifiable instruments are not made, this effectively makes the instrument unenforceable. In addition to the notification of all relevant instruments not being legally possible, it is not practically possible. The current instrument relies on approximately 20 such instruments, which in turn reference numerous instruments and so on.

Retrospectivity of provisions

This Bill includes provisions in section 10 to apply the new sections relating to the Legislation Act to instruments already made under that section. Retrospectivity is necessary and not expected to be prejudicial because—

- electricity retailers to which the instruments apply expect continuity of the provisions that prescribe how to carry out eligible activities; and
- people receiving eligible activities will have an expectation that any activity, including the performance of a product and any safety standards, will meet the prescribed requirements and if it does not, that it would be rectified to the relevant standard.

The retrospective application will not operate to the disadvantage of a person by adversely affecting the person's rights, or imposing liabilities on the person. Rather, the provisions provide for the minimum standards for all retailers in the Scheme that offer eligible activities. These standards have been in place since September 2012, before the commencement of the first compliance period on 1 January 2013.

It would be inequitable for retailers complying with the relevant standards for the provisions to be unenforceable for other retailers that do not comply. In addition, the provisions provide the benchmark for determining the efficient cost for the relevant activities, and therefore the cost of compliance for smaller retailers that may choose to pay an energy savings contribution rather than offer activities. This cost is based on expected compliance with standards. If a retailer offering activities can reduce their costs in a compliance period by not complying with minimum standards, this places other retailers at a disadvantage as their payment will be based on the cost of full compliance.

Failure to have the provisions apply to existing instruments may compromise consumer protection and also jeopardise the greenhouse gas abatement achieved under the Act. While some allowance for activities that may not be fully compliant is inherent in the calculations of abatement for each activity, the achievement of abatement is based on a high degree of compliance with the referenced standards.

Water and Sewerage Act 2000 and Water and Sewerage Regulation 2001

This Bill proposed amends the *Water and Sewerage Act 2000* and the *Water and Sewerage Regulation 2001* to:

- provide for processes relating to:
 - directions to owner about defective work;
 - making the ACT plumbing code under the Act;
- restructure standards relating to water heaters;
- assist with interpretation by clarifying definitions of certain types of plumbing work; and
- updating references to technical standards and licensing arrangements.

Plumbing standards and the Plumbing Code of Australia

Until 2005, consecutive versions of the current Australian/New Zealand Standard 3500 (AS/NZS 3500, the standard) were the primary standards for plumbing and drainage work in the ACT. The standard includes methods of designing and installing plumbing work to meet health, safety and environmental standards. The standard also includes testing methods for installations to show that the work has been completed and achieves the required level of performance.

Section 46 provides that the Minister may declare a document to be the ACT plumbing code. This document need not be AS/NZS 3500, despite the references to this standard included in provisions about the compliance of work and the demerit point grounds for drainers, plumbers and plumbing plan certifiers.

The ACT adopted the Plumbing Code of Australia (the PCA) by instrument in 2005. The PCA is a performance based code. The performance provisions can generally be met by following relevant provision of AS/NZS 3500, but allow alternative solutions to the prescriptive requirements in that standard. This means that strict compliance with AS/NZS 3500 is not required to meet the performance provisions of the PCA. However, the PCA does not include test methods for work and therefore, the test methods in the standard are relied on to test all solutions for efficacy. This effectively means that work should meet the plumbing code (in this case the PCA and any ACT appendices, and not necessarily AS/NZS 3500) but be tested in accordance with AS/NZS 3500.

MP52 is the *Manual for authorisation procedures for plumbing and drainage products* and provides for product compliance and approval processes for certain plumbing products. Although this document is still referenced in some jurisdictions, the product approval processes for plumbing products were incorporated into the PCA as Section G.

This Bill amends references to Australian Standard 3500 to firstly reference to current version of the standard only as called up in the PCA, and secondly, to substitute references to the plumbing code where required. It also removes references to MP52 and replaces these with references to section G of the PCA or the plumbing code as appropriate.

The PCA forms volume 3 of the National Construction Code (NCC). Volumes 1 and 2 of the NCC are the Building Code of Australia. At present there are different provisions in the Building Act and the Water and Sewerage Act in relation to making the ACT building code and the ACT plumbing code respectively. The process in the Building Act, as amended in

accordance with this Bill, provides a clearer procedure for making a declaration. This Bill amends the Water and Sewerage Act to allow the PCA and any ACT-specific amendments to be made in the same manner as the ACT building code.

Section 45A and 46

In the Water and Sewerage Act, a new section 45A introduced in the *Water and Sewerage (Energy Efficient Hot-Water Systems) Legislation Amendment Act 2009* has the effect of permanently amending the ACT plumbing code, even if provisions placed in regulation are later repealed or placed in a technical standard such as an ACT Appendix to the code. As the relevant provisions are already included in the published appendices to the PCA and it is preferable that all technical standards should move into the body of the plumbing code, this provision is no longer required. This Bill omits sections 45A and 46. The standards made for water heaters will continue to have effect as part of the ACT appendices to the PCA.

Regulatory Impact Analysis

Section 34 of the Legislation Act requires that if a proposed subordinate law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the administering Minister) must arrange for a regulatory impact statement to be prepared for the proposed law.

Amendments to the *Architects Regulation 2004*, *Building (General) Regulation 2004* and the *Water and Sewerage Regulation 2001* are not likely to impose appreciable costs on the community, or a part of the community, and do not require a regulatory impact statement.

Amendments to the *Building (General) Regulation 2004* that require additional identification of alternative solutions are not likely to impose an appreciable cost as the code already requires a minimum level of documentation for such solutions. Additional identification of alternative solutions on plans should not require extensive new documentation or changes to existing practices.

Amendments to the *Water and Sewerage Regulation 2001* largely reflect the previous change from Australian Standard 3500 to the Plumbing Code of Australia (PCA) in 2005 as the primary technical standard for plumbing and drainage work. The PCA is a performance-based code and can reduce costs to practitioners, designers and owners by allowing alternative solutions rather than strict adherence to the prescriptive requirements of a standard.

The National Plumbing Regulators Forum (NPRF), a co-operative arrangement between State and Territory plumbing regulators developed the PCA in early 2002. The PCA was published in 2004, and adopted in the ACT as a regulatory document in 2005.

In 2009, the Council of Australian Governments (COAG) agreed that all jurisdictions would adopt the PCA and the Building Code of Australia and the PCA would be incorporated into a new National Construction Code (NCC). A regulatory impact that addressed adoption of the performance-based PCA and the creation of the NCC was prepared for COAG and can be found at http://www.coag.gov.au/sites/default/files/NCC_regulation_impact_statement.pdf. Section 36 (1) (h) allows that if an assessment of the benefits and costs has already been made relating to a matter involving the adoption of an Australian or international protocol,

standard, code, or intergovernmental agreement or instrument, and the assessment is relevant to the ACT that no regulatory impact statement is required.

Other amendments are of a minor nature. Where definitions are amended, these do not change the intent or the policy on which they are based.

Amendments to the *Construction Occupations (Licensing) Act 2004* and the *Construction Occupations (Licensing) Act 2004* that have an appreciable cost are discussed in the regulatory impact statement for the Bill. While notification requirements for services performed by trainees under supervision will affect trainees, their employers and registered training organisations, the notification should take a maximum of 5 minutes to complete per trainee and there will be no fee for making a notification. Recording notifications will have minimal cost to the regulator.

The process for requiring skills assessments with occupational discipline grounds exists, offers a lower cost option that progressing straight to disciplinary action. Skills assessments are likely to reduce costs to the Government and licensees of protracted or misdirected action based on incomplete information about the cause of a breach.

Offences

The Bill includes new offences in relation to information gathering and production of documents. The amendments in the Bill are intended to improve the operation of construction legislation and give the regulator sufficient options to administer the Act. New provisions for production of documents (new sections 80B and 80E) and amendment to the existing provisions in section 80 of the Act are likely to have minimal effectiveness without associated offences and penalties. Therefore, the new provisions are accompanied by new offences that carry a maximum penalty of 50 penalty points.

A penalty is warranted for four reasons when considering the Territory's Guide for Framing Offences:

1. At its highest function, the construction services covered by the Act are regulated for life and health safety matters, including handling of asbestos, fire prevention and protection, and structural integrity of buildings;
2. The prevalence of failing to comply with existing requirements in section 80 is relatively high in the regulation of the construction sector;
3. The consequences of not obtaining relevant information within a meaningful time can be high: for example, structural and fire engineering matters that can cause injury or death; and
4. Failing to comply is an obstruction of the investigation process and the enforcement of the relevant Acts.

By proposed subsection 80C (2), each partner in a partnership commits an offence if the partnership is a licensee, and the partners, or any of them, fail to comply with a notice given to the partnership under section 80B. It is a defence to a prosecution under subsection 80C (2) if a partner proves the existence of certain facts. The partner would carry a legal burden of proof; that is, would need to prove that these facts existed on the balance of probabilities.

These provisions relate to documents that directly relate to a licensee's activities. Partnerships are able to hold licenses to undertake regulated work. If a licence is issued to a partnership, the licence is issued to the entity as a collection of individuals that have established a business relationship and jointly chosen to be actors in a regulated field.

The licence is issued in the understanding that partners are individually and collectively responsible for the work carried out under the licence and for keeping any required documents. If certain partners choose to undertake a limited role in the provision of the construction service, this is a matter for those partners. The licence does not limit the liability of individual partners under the licence depending on the individual business structure of each partnership.

As such, it is reasonable that a higher burden of proof should apply to partners included in the licence if they wish to claim that they did not know about any notices issued to the partnership and were not in a position to influence the partnership as a licensed entity they are part of.

The penalty for each offence is commensurate with other information gathering provisions in operational Acts under the Construction Occupations (Licensing) Act. For example section 40 of the Electricity Safety Act, section 39 of the Gas Safety Act, and section 21 of the Water and Sewerage Act all have maximum penalties of 50 penalty units and imprisonment for 6 months for failing to comply with a requirement to provide a document. Section 395 of the Planning and Development Act, on which new part 6A is based, has a higher penalty of 100 penalty points.

Rectification orders – Construction Occupations (Licensing) Act 2004 (COLA)

Part 4 of the COLA provides for rectification orders and other obligations on licensees. Rectification orders work with the occupational discipline and demerit point systems, and provide an important and practical mechanism for correcting work that does not comply with legislation, including minimum standards for health, safety, environment protection or amenity of occupants.

After issuing a notice of intention to make a rectification order (s 34), if the Registrar considers it is appropriate an order is issued to the entity given the notice under s 38.

It is expected that part of the rectification process will be to have work certified or verified by a person that is qualified to do so. This is not currently explicit in section 38, which provides for actions to rectify work and provide construction services. This Bill inserts a new provision in section 38 that clarifies; a stated action may include providing, and paying for, written information about a stated matter. This is supported by new examples.

Under the existing section 40 it is an offence to intentionally not comply with a rectification order. This will include a failure to provide written information.

The Standing Committee on Justice and Community Safety (the Committee) in its Legislative Scrutiny role (Scrutiny Report 9) asked whether the legislation should be further amended to permit a person to advance a "reasonable excuse" defence for failing to provide the specified written information.

The offence provided at section 40 is not for any failure of a person to comply with a rectification order, it is for a person that *intentionally* fails to comply with a rectification order. Given that the offence introduces a mental element, there is no defence for failing to take any of the stated actions that may already be included in a rectification order in the current provisions.

Written information, such as certification, engineering reports and the like, can be critical in determining whether an order has been complied with. Therefore, a defence of reasonable excuse has not been included for intentional failure to provide written information required as part of a rectification order.

Sections 170 and 171 of the *Legislation Act* require that provisions must be interpreted to preserve the common law privileges against self-incrimination and exposure to the imposition of a civil penalty, as well as preserving client legal privilege.

Human Rights Implications

Right to privacy

This bill may engage the right to privacy. This limitation is addressed below.

Section 12 of the Human Rights Act states that:

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The following provisions of the bill may engage the right to privacy:

- Clause 41 – which expands the existing ability for compliance auditors to, on entry to premises, access computers on which documents relating to a licensee’s activities are stored, to an ability to access any electronic device on which documents relating to a licensee’s activities are stored.
- Clauses 50, 53, 54, 55 – which provide that a mobile telephone number and email address must be provided for applicants that are individuals and for nominees of corporations and partnerships, who are also individuals.
- Clauses 59, 60 and 61– which provide that a business address, mobile telephone number and email addresses must be recorded by the Construction Occupations Registrar on a register, which can be made available to the public

Importance and purpose of limitation

The construction industry is regulated primarily because of the capacity of construction work to impact the life safety, health and amenity of workers, the public and the eventual occupants and users of buildings and other structures. Regulation of the industry is in response to the high risks associated with the work. The ability to contact licensees and to access information relating to their activities is integral to the effectiveness of regulation for the industry.

Nature and extent of the limitation

The extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy. It is generally agreed that there is a diminished expectation of privacy during the course of regulated activities (*R v Jarvis* [2002] 3 SCR 757). As stated in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 “The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should ... be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.”

Participants in the construction industry have a clear understanding that this is, and has long been, a regulated industry. In relation to access to electronic devices and the recording of contact information, applicants and licensees are aware that the Registrar has an obligation to enforce construction occupations legislation and to protect the public. This currently includes collection of information and the power for compliance auditors to access computers on premises.

Section 12 of the Human Rights Act includes a qualifier that privacy is not to be interfered with ‘unlawfully or arbitrarily’. The impacts on privacy in this instance are not arbitrary as the bill clearly defines the type of information that must be provided, and the circumstances in which electronic devices may be accessed, including the consent to enter any residential premises must be obtained. That is, the impact is necessary to administer the legislation.

Relationship between the limitation and its purpose

The collection of personal information is related to a business context and is in place to ensure that the Registrar can contact licensees as required to enforce legislation or to make licensees aware of their obligation to prevent unintentional non-compliance with new law. The provision of contact information will apply to all licensees. Personal contact details do not need to be provided if the applicant or nominee has a telephone, email or business address that are not used for work or as a primary contact.

It is an existing requirement that any details provided must be included in the register, which can be made available to the public. The majority of licensees already have the information the new provisions will require in the register. The full register must be requested and personal details of licensees are not published by the Registrar.

Replacing the existing ability to access computers with an ability to access any electronic device is necessary to keep pace with the large range of devices that information may be stored on, and is consistent with the intent of the provisions. A device can only be accessed if it stores information relevant to the licensee’s activities. This does not include devices that are not used for the licensee’s regulated activities or for storing relevant documents.

Accessing electronic devices is exercised in limited circumstances. If a document can be obtained on request, or by exercising new powers included in this Bill, it will not generally be necessary to access either the premises or any electronic devices on the premises to obtain it.

Any less restrictive means available to achieve the purpose

There is no other, less restrictive way to achieve the required purpose. There are no other means available for accessing the telephone numbers and email addresses of licensees, or for obtaining documents from a licensee if it is necessary for the Registrar to meet his obligations to administer and enforce the Act and the information is not provided on request.

Presumption of innocence

This bill may engage the right to the presumption of innocence. This limitation is addressed below.

Section 22 (1) of the Human Rights Act states that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Provisions in clause 44 of the bill may engage the right to the presumption of innocence. The clause provides for new information gathering powers for documents that relate to a licensee's activities and a corresponding offence for licensees that fail to provide documents to the Registrar after they are requested by written notice. A partner may claim a defence only if the partner did not know about the failure to comply and either; the partner took reasonable precautions and exercised appropriate diligence to avoid the failure to comply; or the partner was not in a position to influence the partnership in relation to the failure to comply. The partner has a legal burden of proof in relation to the defence.

Importance and purpose of limitation

The construction industry is regulated primarily because of the capacity of construction work to impact the life safety, health and amenity of workers, the public and the eventual occupants and users of buildings and other structures. Regulation of the industry is in response to the high risks associated with the work. A licensee takes on certain responsibilities in relation to licensable work, including to keep certain documents and to comply with the Construction Occupations (Licensing) Act (COLA) and its operational Acts.

Section 77 (1) of the COLA provides that a compliance auditor is responsible for auditing the forms and other paperwork required to be provided by licensees for this Act and the operational Acts. To adequately carry out this function, a compliance auditor must be able to access the relevant documents.

Nature and extent of the limitation

The extent to which the presumption of innocence is limited and whether such interference is permissible depends on the context for any limitation. Documents that a compliance auditor can request are restricted to those that relate to a licensee's activities. As noted in the Explanatory Statement for the Bill *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 recognises that "The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should ... be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere."

Participants in the construction industry have a clear understanding that this is, and has long been, a regulated industry. In relation to access documents that relate to a licensee the Registrar has an obligation to enforce construction occupations legislation and to protect the

public. This includes collection of documents and the power for compliance auditors to audit forms and paperwork.

It should be noted that a lodgement obligation exists for many documents; therefore the power would generally be used to seek documents already provided as part of a statutory obligation.

Relationship between the limitation and its purpose

The collection of documents is related to a business context and is in place to ensure that the Registrar can obtain relevant documents as required to audit licensees and to administer the COLA. The offence applies to all licensees.

Any less restrictive means available to achieve the purpose

Other, less restrictive ways are not likely to achieve the required purpose. The prevalence of failing to comply with existing requirements in section 80 is relatively high in the regulation of the construction sector.

There are limited other means available for the Registrar to meet his obligations to administer and enforce the Act if the information is not provided on request. Failing to comply is an obstruction of the audit process and the enforcement of the relevant Acts.

As a partner working under a partnership licence, there is an expectation that each partner contributes to the compliance of the construction service provided by the licensee. The provisions do not impinge on the protections against self-incrimination.

There are no strict liability offences in the Bill.

Clause Notes

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Construction and Energy Efficiency Legislation Amendment Act 2013*.

Clause 2 Commencement

This clause provides for the commencement of the Act.

The following provisions commence on 1 September 2013:

- (a) parts 2 and 3;
- (b) section 9;
- (c) part 5 (other than section 26);
- (d) part 10 (other than sections 79 to 82 and sections 89 and 90);
- (e) part 11 (other than sections 98 to 100);
- (f) schedule 1.

Section 67 commences on 1 December 2013.

The remaining provisions will commence on the day after the Act's notification day.

Clause 3 Legislation Amended

This clause provides that the legislation mentioned in the clause is amended by the Act. A note to the section mentions amendments to the *Construction Occupations (Licensing) Regulation 2004*. These are consequential amendments.

Part 2 Architects Act 2004

Clause 4 Section 8 (2) (a) (i)

This clause amends section 8 (2) (a) (i) to recognise qualifications declared by the Registrar for eligibility for registration as an architect, and replaces a requirement for qualifications to be prescribed by regulation. This allows more efficient and timely updating of qualifications.

Clause 5 Section 8 (4) and (5)

This clause inserts new provisions to support the amendment to section 8 (2) (a) (i). New section 8 (4) provides that the Registrar may declare a qualification for section 8 (2) (a) (i) after consultation with the Architects Board.

New s 8 (5) provides that the Registrar must consult with the Architects Board before he or she makes a declaration. The current provisions do not require that the Architects Board is consulted before a regulation is made.

A declaration made by the Registrar is a notifiable instrument. This is consistent with an accreditation made by the Architects Board under this section.

Clause 6 New section 90A

This clause inserts a new section 90A relating to the making of instruments to declare qualifications or accredit courses for registration as an architect under section 8. This will allow adoption of laws of another jurisdiction or accreditation schemes external to the ACT Government in an instrument without having to also notify those laws or instruments.

Subsection 2 allows for a declaration or and accreditation to apply, adopt or incorporate the law of another jurisdiction or an instrument as in force from time to time.

Subsection 3 provides that the Legislation Act section 47 (5) or (6) does not apply to any law or of another jurisdiction or an instrument applied, adopted or incorporated in an instrument. This is important as many instruments may be subject to copyright and may also refer to a number of documents that cannot reasonably be reproduced in a notifiable instrument made on the ACT Legislation Register. These provisions do not prevent publication of instruments where this is possible.

Part 3 Architects Regulation 2004

Clause 7 Section 4

Clause 7 omits section 4 of the regulation. This is required as the provision refers to the qualifications prescribed by regulation. As qualifications will now be declared by the Registrar under s 8 (2) (a) (i) of the Act, this section is not necessary.

Clause 8 Schedule 1

This clause omits the schedule of prescribed qualifications. A notifiable instrument declaring qualifications will be made by the Registrar to commence with the new provisions.

Part 4 Building Act 2004

Clause 9 Section 43 (3) (a)

Section 43 provides for stages of building work. Section 43 (3) provides that a building licensee in charge of building work that has reached a stage must not do building work beyond the stage (other than further building work exempted under subsection (1) (b)) unless; the licensee has given to the certifier notice that the stage has been reached; and the certifier has inspected the building work and given written permission for the work to proceed.

The current provisions relating to notification of completion of a stage of building work before it is inspected do not prescribe the form of the notification. This clause will introduce a requirement for a notification to:

- a. be in writing;
- b. be dated with the date the notice is given; and
- c. include statements that the stage has been reached and the building work has been carried out in accordance the approved plans, including any plans for handling asbestos and disturbing friable asbestos.

This is important to provide a consistent basis for notifications and allow for the verification and audit of notifications.

A notification can take an electronic form if the certifier agrees the form, noting that it will be the certifier that must provide the notification to the Registrar as required by either section 44 (7) or section 48. Under section 8 (c) of the *Electronic Transactions Act 2001*, the person to whom the information is required to be given must consent to the information being given by means of an electronic communication.

Clause 10 Section 44 (2), new notes

At the completion of a prescribed stage of building work, a certifier must inspect for compliance with section 42 of the Act. This clause directs a person to an important concept in section 42, which is that work must be completed in accordance with approved plans. This is a critical part of the approval system, and is intended to ensure that changes made to a design or building work after it is approved do not bring the work out of compliance with the Act, including technical standards, or other laws of the Territory.

The second note in this clause highlights the potential for a form to be approved for stage inspections.

Clause 11 New section 44 (7)

This clause inserts a new section 44 (7) that provides that a regulation may prescribe when a certifier must give the Registrar:

- certificates issued for the building work;
- notices given to the certifier by the building licensee under 43 (3) (a);
- notices given to the building licensee by the certifier in relation to work that does not comply with section 42 or to test anything in connection with the work;
- other relevant documents, including working papers and calculations, for the purpose of giving a relevant certificate.

It is important for the ongoing monitoring of building work and for identifying compliance issues before they escalate into problems requiring extensive or expensive rectification that the regulator to have timely access to information held by building certifiers and generated throughout the construction process. Building surveyors are unique amongst construction licensees in that they perform a statutory role on behalf of government, including to issue building approvals and conduct inspections.

Results and reports relating to stage inspections form part of the documentation that must be lodged with the Registrar under section 48 of the Act on completion of building work. However, as building projects may last a number of years, this does not readily allow tracking of the progress of building projects or onsite building audits to be targeted to stages of work that have been completed. It should also be noted that the Registrar also has an obligation to regulate building surveyors as licensees under the *Construction Occupations (Licensing) Act 2004*.

The policy intent is that each stage inspection will have a timeframe attached for lodgement and an approved form of notification. Documentation could be restricted only to information about non-compliant work, or only the relevant the stage inspection certificate, or could include certification provided by the builder and all other documents relating to the work. This will be determined based on which stage has been reached and what information is reasonably required by the Registrar.

This clause also inserts a note in relation to the new provision that explains that if a timeframe for giving documents is not prescribed under this section, relevant documents must still be lodged with the registrar on completion of work under section 48.

Clause 12 Section 48 (3) (f)

This clause amends section 48 (3) (f) so that information already required to be given to the Registrar under new section 44 (7) in relation to stage inspections does not have to be given again at the completion of work.

Clause 13 Section 48 (3) (n)

This clause amends section 48 (3) (n) so that information already required to be given to the Registrar under new section 44 (7) in relation to stage inspections does not have to be given again at the completion of work.

Clause 14 Section 69 (1), new note

Section 69 provides for a number of ways to apply for a certificate of occupancy or use for a building. Partial certificates of occupancy can be issued when a part of a building is completed. This clause inserts a new note under section 69 (1) to alert people to the process available for certifying part of a building under section 69 (3). This is important as for safety reasons certain requirements relating to a partially completed building must be met. These differ slightly than the requirements for a fully completed building.

Clause 15 Section 136 (1), new notes

This clause inserts new notes to clarify where the adoption dates for amended versions of the BCA can be found.

The adoption date for the ACT can be found in the History of Amendments, or History of BCA Adoption section in the volumes of the BCA. The adoption date of the BCA is generally 1 May each year. However, it is possible that other adoption dates may be applied to all or specific performance requirements on the BCA.

Note 1 highlights that the adoption date in the BCA may be amended by either a regulation or in the ACT Appendix to the BCA. Note 2 directs people to new section 136A for provisions relating to making regulations for the building code.

Clause 16 New section 136 (1A)

The BCA is a nationally-subscribed document developed and published by the ABCB. At times, the ACT may introduce its own requirements in conjunction with the published BCA. These requirements may add to or vary the national code and may be located in the body of the code with the provisions that apply to, or in appendices to the code. Each state and territory and the Commonwealth have an appendix to the code printed as part of the document that includes specific provisions for that jurisdiction.

This clause inserts a new section to remove any doubt that for the purposes of the Act, the BCA does not only include the standard provisions in the main body of the code, but also the variations, additions and exclusions specifically for the ACT contained in the code, including in an appendix to the code.

Clause 17 Section 136 (4), new example and note

This clause inserts a new example and a new note in section 136 (4) that explain how different adoption dates for specific provisions of the BCA may operate.

Clause 18 New section 136A

A regulation for the building code is likely to rely on instruments such as the BCA and Australian Standards, which are subject to copyright. A regulation may also refer to the law of another jurisdiction. It would not be practical, or in some cases, legal to notify these instruments as required by the Legislation Act.

This clause allows such instruments to be adopted as in force from time to time without requiring these instruments to be notified by disapplying the Legislation Act, section 47 (5) or (6) if required.

Clause 19 Section 137

Section 137 obliges the planning and land authority to publish a notice of the publication of each edition of the BCA and each amendment of it by the ABCB. Information on the publication and availability of new versions of the BCA is announced publicly and included on the ABCB website.

This clause substitutes a requirement for the Registrar to publish a notice on the notification for each new ACT Appendix made by the Minister under section 136 (2). The notice must contain information on where to access or obtain a copy of the instrument. The ACT Appendix will be notified and available on the Legislation Register.

This will alert practitioners and other interested parties that a new ACT-specific instrument has been made, which amends the building code including any printed ACT appendices in the code.

Clause 20 Dictionary, definition of owner, paragraph (b) (ii)

The definition of owner – section (b) (ii) in the Dictionary refers to a proprietor of a unit in a units plan but does not specifically link the units plan to the land where building work is proposed. This clause amends the definition to clarify the link to the land.

Part 5 Building (General) Regulation 2004

Clause 21 New section 11 (1) (d)

This clause outlines the minimum requirements for identification of alternative solutions in the application for a building approval. As the BCA is a performance-based code, it allows compliance with performance provisions to be demonstrated in ways other than meeting a prescriptive standard. However, an alternative solution is not necessarily a solution that has been tested and therefore can carry a higher degree of risk. Alternative solutions must be documented and show how the relevant performance requirements are met. It is particularly important to identify alternative solutions for building maintenance and the ongoing safety of occupants.

Clause 22 New section 11 (3)

This clause inserts a new definition of performance requirement for section 11. This relocates the provisions from section 12 as these requirements become a general requirement for all applications for approvals. Each application that includes the use of an alternative solution will need to contain identification of alternative solutions under the building code in new section 11 (d).

Clause 23 Section 12 (2) (j) and (3), definition of *performance requirement*

This clause omits the definition of performance requirement in section 12 (2) (j) and (3). This definition is relocated to section 11 (3).

Clause 24 New section 16 (2) (h)

Although it is expected that plans will contain sufficient information for a building certifier to make an assessment of compliance with the Act, and for a builder to construct to the plan, no specific requirements exist for identifying alternative solutions. This clause provides for alternative solutions to be identified on plans so that the building certifier, builder, and current and subsequent owners are aware of an alternative solution and do not operate or alter the building as though it complied with other prescribed compliance methods in the code.

Clause 25 Section 16 (3), new definition of *performance requirement*

This clause inserts a new definition of performance requirement for section 16. This relates to new provisions for general requirements for plans under new section 16 (2) (h).

Clause 26 Schedule 1, part 1.2, item 15, column 2, paragraph (e)

This clause substitutes two separate clauses for the current exemption provision for the provider of an electricity supply or telephone service. The new provisions clarify that the exemption applies only insofar as the pole or mast is part of the network regulated under the relevant Act and used to provide the service. Other structures the entity may own that are not

part of the regulated network are not exempt from the operation of the Act. This is consistent with the intent of the provisions.

Part 6 Construction Occupations (Licensing) Act 2004

Clause 27 New section 19 (3A) and (3B)

This clause inserts new grounds for the Registrar to refuse to issue a licence if he or she believes it is necessary or desirable to protect the public. The Registrar may refuse to issue a licence if the applicant, a director, partner or nominee is prohibited from providing a construction service under this Act or a corresponding law. The Registrar may also take into consideration if a person is subject to occupational discipline or if they have surrendered a licence as a result of occupational discipline.

This is important to the effective operation of the licensing system, which primarily acts as a protection mechanism for the public. Protection of the public may be compromised if the Registrar is obliged only to consider a person's qualifications rather than their behaviour as a current or former licensee. This also recognises that licensees may move between jurisdictions and seek to establish themselves in a new jurisdiction after being disqualified in another.

Decisions made in consideration of these clauses are reviewable under the existing reviewable decision schedule in the Regulation.

Clause 28 New section 21A

This clause inserts provisions in relation conditioning a licence after a person has had a licence cancelled for at least one year, or surrendered a licence in circumstances relating to an occupational discipline.

Licences are generally only suspended or cancelled to protect the public. A licensee that has had their licence cancelled for an extended period would most likely pose a significant risk to public health and safety or consumer protection. In considering an application for a licence made by a person returning to the occupation after a lengthy cancellation, the Registrar may consider that restricting the licensee from operating without supervision, or from supervising others, is in the public interest. This may be due to the nature of the breaches leading to the cancellation, or because the licensee has not been operating over a period where new standards and training requirements were placed on active licensees.

The Registrar could place a condition on the licence under the current legislation but the Act is generally silent on the types of decision the Registrar may make under the provisions, especially in relation to applicants that have been subject to major disciplinary action. A decision by the Registrar to condition a licence is a reviewable decision.

A number of jurisdictions allow for a licensee to be subject to particular conditions or restrictions if the licence has been cancelled. This section would not apply to voluntary cancellations for reasons other than in relation to occupational discipline. It is important to include voluntary surrender of licence as this can be by arrangement with the regulator as an alternative to disciplinary action, or by decision of the licensee. In the former case, the understanding is usually that the action is revived if the person reapplies/continues to operate.

In the latter case, this would prevent a regulator from taking action if the law does not allow action against a former licensee, which is the case for a number of corresponding laws in other jurisdictions.

Clause 29 New section 25 (2A) and (2B)

This clause inserts provisions that allow the Registrar to refuse to renew a licence in certain circumstances, if the Registrar believes it is necessary or desirable to protect the public.

This is important as the Registrar should not be obliged to renew the licence of a person that has failed to comply with the obligations of that licence, and this has resulted in serious consequences. These provisions complement existing powers in section 19 that provide that the Registrar need not decide whether to licence the applicant until the application has been dealt with by the ACAT, and any appeal or review arising from the occupational discipline, is finished.

Relying solely on the disciplinary system to regulate licensees is inefficient and costly and leaves the Registrar in an untenable position if he or she is aware that the licensee has breached their obligations and this has not been remedied, or that the licensee is likely to cause further damage.

The decision to refuse to issue the licence under new section 25 (2A) is a reviewable decision.

This clause also allows the Registrar to issue a licence term less than the maximum term if this is necessary or desirable to protect the public. Section 24 of the Act provides that the regulations may prescribe the maximum period for which a licence is issued or renewed. Section 7 (1) of the Regulation provides the general maximum term as 3 years for licences other than those specifically tied to insurance in which case the maximum is 1 year.

There is no explicit power to restrict the term of the licence. In cases that a licence may be issued for 3 years and criteria in new sections 19 (3A) and 25 (2A) apply but it is not necessarily appropriate not to issue or renew the licence, it may be appropriate to issue the licence for a shorter term. For example a licensee has just been issued with a rectification order for work worth \$750,000 that is likely to take up to 12 months. His licence is due for renewal. He applies for 3 years but, given the circumstances, the Registrar may be unwilling to offer a licence for the full 3 years but would renew it for another term that allows the licensee to comply with the order. A decision on renewing beyond the term granted would then be subject to the new considerations above, including that the rectification order has been complied with.

A decision to grant a shorter term is a reviewable decision included in the current schedule for decisions under 19 (1).

Clause 30 New section 34 (2) (d)

This clause inserts provisions in relation to a notice of an intention to make a rectification order. The provisions introduce additional information that is included in the notice the Registrar may give the entity, and the land owner in relation to whose land the construction service was provided. The Registrar must state that:

- (i) the Registrar will not make a rectification order if the Registrar is not satisfied that it is appropriate to make a rectification order in relation to the entity, because of the relationship between the entity and the land owner; and
- (ii) if the Registrar does not make a rectification order the Territory may authorise someone else to do the things stated in this notice, and the entity will have to pay for the things to be done.

This is important so that people are not in any doubt that the Registrar may decide not to first issue the entity (as defined in s34) a rectification order under s38 before exercising section 37. It is not intended that in every circumstance the entity to which a notice was given under section 34 be given a chance to rectify, or arrange for the rectification of, any work as it may be inappropriate for the person to do so.

Clause 31 Section 38 (1) (a)

Clause 31 clarifies that a stated action for a rectification order may include a requirement for the entity to provide written information. This could include an independent report, certification or other information relating to the order. The information would be arranged and paid for by the entity that was issued the rectification order in accordance with 38 (2). This is necessary as it expected that part of the rectification process will be to have work certified or verified by a person that is qualified to do so.

Clause 32 Section 38 (1), new examples

This clause inserts new examples for stated action generally and of written information. The general example highlights that the action may be to comply with a performance requirement of a particular standard rather than a prescriptive requirement or a particular plan.

Examples of written information show that there are a variety of documents that could be part of rectification work and of verifying that the order has been complied with, including that the completed work complies with the Act, an operational Act or a relevant code or standard.

Clause 33 Section 38 (2)

This clause amends existing section 38 (2) to provide for situations where the entity is not licensed, qualified or otherwise capable to do something required to be done and includes examples.

This amendment is important as there is a wide variety of work that may need to be carried out under a rectification order. Not all of this work is necessarily licensable but may require particular skills and qualifications to complete competently. The intention of the existing provisions is not that where a licence or other authorisation is not required that any entity can complete the work if they are not capable of doing the work to the required standard.

Clause 34 New section 47A

This clause inserts a requirement to for licensees to comply with a determination about training that applies to their licence made under new section 55A. A new note alerts readers of the legislation to the potential consequences of failing to comply.

Clause 35 Section 55 (1) (a), new examples

This clause inserts new examples of contravening an Act or an operational Act that can result in disciplinary action. There can be an assumption that contraventions mainly relate to breaching operational Acts, particularly the technical standards under those Acts. The example is intended to draw attention to the fact that there are a number of obligations on licensees in COLA itself.

Clause 36 New section 55A

This clause inserts a new section 55A, that provides the Registrar to require a skills assessment of a licensee, if a ground for occupation discipline exists and an assessment would assist the Registrar to exercise functions in relation to occupational discipline and automatic suspensions.

This is important as it can be difficult to determine an appropriate course of action if it is not clear what the underlying cause of the grounds for occupational discipline is. For example, it may be of little use to require a person to undertake training when that person has undertaken work that is not compliant not because of a failure in competency, but for other reasons. This is beneficial for the licensee, the Registrar, the ACAT and any court as it allows a more considered evaluation of what occupational discipline may be required, and whether an automatic suspension on public safety grounds can be lifted.

The provisions require that the Registrar must provide a notice to the licensee and allow representations in relation to the assessment (see Clause 71, new section 45 of the Regulation).

If the Registrar is satisfied that an assessment is required, the licensee must pay reasonable costs to the Territory incurred in arranging or carrying out an assessment, noting that where the Registrar does not set the assessment there may be additional costs imposed by the assessing body.

Any decision to take occupational discipline as a result of failing to complete the assessment, in relation to the initial occupational discipline grounds, or after considering the results of the assessment, is subject to a show cause process and is reviewable. In addition, a decision not to lift an automatic suspension under section 53 of the Act is reviewable.

Clause 37 New section 57 (2) (h)

This clause inserts a new section in 57 (2) that requires the ACAT to have regard to the results of a skills assessment a licensee has completed in accordance with new section 55A considering an application for an occupational discipline order in relation to a licensee. This is necessary so that the results of the assessment are taken into account when a subsequent decision is made on the ground for occupational discipline that triggered the requirement for the licensee to be assessed. This further reinforces that the provisions are intended to assist with fair and appropriate occupational discipline.

Clause 38 Section 80 heading

This clause substitutes a new heading for section 80. That section relates only to functions that relate to entry to premises. New powers of compliance auditors are included in the Bill.

Clause 39 New section 80 (1)

This clause omits a reference to residential premises in section 80 (1). Relevant provisions are relocated to new section 80 (1A) to complement the new consent to entry process in clause 44.

Clause 40 New section 80 (1A)

This clause inserts a new provision in section 80 that relates to requiring consent to enter residential premises. This complements new consent to entry processes in the part.

Clause 41 Section 80 (3) (d)

Clause 41 substitutes a reference to a computer with a reference to any electronic device. This is necessary to keep pace with the large range of devices that information may be stored on, and is consistent with the intent of the provisions. It should be noted that the device can only be accessed if it stores information relevant to the licensee's activities. This does not include personal devices that are not used for the licensee's activities or for storing documents.

Clause 42 New section 80 (3) (e)

This clause inserts a new provision that allows a compliance auditor to require the occupier, person apparently in charge of the premises or anyone at the premises to give the compliance auditor reasonable help to exercise a function under section 80. This provision complements existing subsection (4), which requires the occupier or person in charge of the premises to give the compliance auditor all reasonable facilities and assistance the compliance auditor needs for the effective exercise of his or her functions under the section.

Clause 43 New section 80 (3A)

This clause inserts a new obligation for a person must take reasonable steps to comply with a requirement made of the person under subsection (3) (c), (d) or (e). This includes to:

- require anyone on the premises to give the compliance auditor information about a document that relates to the licensee's activities;
- require a person apparently in charge of the premises to produce a document that relates to the licensee's activities; or to give the compliance auditor access to an electronic device in the premises in which information relevant to the licensee's activities is stored; or to print information.

This is important as many licenses may work for businesses with administrative staff or colleagues that may be able to provide documents or help a compliance auditor locate and copy them.

Clause 44 New sections 80A and 80 B

Clause 44 includes a new section 80B that provides a formal consent to entry process. This is important as it provides clear guidance to compliance auditors about obtaining consent and contains protections for occupiers if that process is not followed.

This clause also includes new provisions for compliance auditors to request licensees to produce documents relating to the licensee's activities. This is necessary to remove a requirement to access premises for a compliance auditor to inspect or take a copy of a document. The compliance auditor must ask by written notice, which contains information

on when and where the licensee must produce the document and what the consequences are of failing to comply with the notice. Licensees are not obliged to incriminate themselves.

This clause also includes a new section which contains offences for individuals and partners for failing to comply with a maximum penalty of 50 penalty points. This is considered a reasonable penalty considering the life safety implications of construction work. There is a defence to a prosecution for a partner in certain circumstances, which is appropriate if the partner was not able to compel the partnership to comply.

Clause 45 New part 6A

This clause introduces a new part for information requirements. These provisions allow the Registrar to request information from any person. This is necessary because there are a number of other parties that are involved in obtaining or providing construction services, including other practitioners that are not required to be licensed, lessees and building occupants.

The Registrar must suspect on reasonable grounds that the person has the information that is reasonably required in a document and follow a notification process.

An offence with a maximum penalty of 50 penalty points is included at new section 80G. This does not affect the right not to self-incriminate, or the protection of client legal privilege. In addition, new section 80E (4) provides that civil or criminal penalties are not incurred only because the person complies with an information requirement.

Clause 46 Codes of practice Section 104A (2), note

This clause omits a note for 104A (2). Clause 47 inserts new provisions for section 104A in relation to the adoption of laws and instruments and this note is no longer required.

Clause 47 New section 104A (4) to (8)

This clause includes additional provisions for section 104B that clarify the application of sections 47 (5) and (6) of the Legislation Act to a notifiable instrument made under this section. New section 104B (4) provides that sections 47 (5) and (6) do not apply to codes of practice for section 104B.

Section 104B (6) applies the provisions to instruments already made by the Registrar. This is important for continuity and the integrity of the construction services carried out under the Act by licensees.

Section 104B (8) provides that a repeal of new section 10 (7) will not end the effect of the transitional laws, which expire a year after commencement. This means that the retrospective application of the provisions to instruments already made at the time of commencement will not end on repeal of the section.

Clause 48 New section 104B

This clause introduces provisions that give effect to policy to target training for licensees that develops or enhances the skills or knowledge of licensees. This is important as legislation, standards, practices and materials frequently change in the relevant industries. A person that

gains a qualification will need to undertake further training to respond to such changes and carry out a construction service throughout his or her career.

These provisions allow the Registrar to determine training that is reasonably necessary and to make this determination in an instrument that applies to all relevant licensees. As a disallowable instrument, the determination is open to the scrutiny of the Legislative Assembly.

Clause 49 Deputy registrars
Section 106 (2)

This clause extends the time period for which a deputy registrar can be appointed.

The Registrar may appoint a public servant as a deputy registrar for each occupation in accordance with section 106. An appointment must not be longer than 2 years. In general, the position rather than an individual is appointed as each the positions have defined roles in relation to administering the COLA and its operational Acts. Many officers appointed as deputy registrars will also hold delegations under COLA and/or its operational Acts, and be appointed as compliance auditors (for a period of up to 5 years) as well as being a deputy registrar. The majority of delegations and appointments under operational Acts do not have finite appointment periods.

The Registrar is appointed under section 103 for a period of not longer than 3 years. It is intended to establish a process where the review and renewal of appointments of deputy registrar is undertaken directly after the appointment of the new Registrar. This is not possible with a 2 year period for deputy registrar appointments.

Clause 50 New part 18

This clause provides transitional provisions for licensees to provide information required under amendments to section 5 of the Regulation. A licensee must provide the information within 6 months of the provisions commencing and can provide this information as part of a licence renewal form provided in that time, or separately. Although the section expires 1 year after commencement, the repeal does not end the effect of the law.

Clause 51 Dictionary, note 2

This clause includes the terms ‘document’ and ‘State’ as terms defined in the Legislation Act.

Clause 52 Dictionary, new definitions

This clause includes new definitions for the Act.

A definition of *corresponding law* is necessary for the operation of new provisions for applications and renewals that allow consideration of disciplinary action under similar licensing laws of other states and the Northern Territory in making a decision.

A definition of *information requirement* is necessary for the operation of new provisions for information requirements in new Part 6A.

A definition of *occupier* is required for new provisions relating to consent to entry to residential premises and production of information and documents.

Part 7 Construction Occupations (Licensing) Regulation 2004

Clause 53 Licence applications—Act, s 17 (3) New section 5 (d) (iv)

This clause inserts a provision that requires an individual applicant to provide a mobile phone number in a licence application. This reflects a new administrative approach to communicating with licensees based on new forms of communication being ubiquitous.

Clause 54 Section 5 (e) (iv)

This clause inserts a provision that requires an applicant that is a partnership to provide the name, business address, email address and mobile phone number for each nominee in a licence application. A landline telephone and fax number need only be provided if the nominee has them.

As it is likely that most nominees will be on site for the majority of their time, it is more expedient to contact licensees by mobile phone or email. Business addresses are required for formal notifications.

Clause 55 Section 5 (f) (ii)

This clause inserts a provision that requires an applicant that is a corporation to the name, business address, email address and mobile phone number for each nominee in a licence application. A landline telephone and fax number need only be provided if the nominee has them.

As it is likely that most nominees will be on site for the majority of their time, rather than in the corporation's office it is more expedient to contact a nominee by mobile phone or email. Business addresses are required for formal notifications.

Clause 56 Section 5 (g)

This clause amends section 5 (g) to clarify that a valid business address and email address must be provided, but a fax number need only be provided if the applicant has one.

Clause 57 New section 7 (1) (f)

This clause inserts a maximum term of a licence for an asbestos removalist. This aligns with the current administrative practice relating to licenses and the general policy that where a licence does not require insurance and is constrained to a maximum licence period of a year, it will have a maximum term of 3 years.

Clause 58 Section 8 (2)

This clause clarifies that the term of licence for a new or renewed licence for prescribe occupations is the same.

Clause 59 New section 9 (1) (b)

This clause amends section 9 (1) (b) to reflect the changes to section 5 for licensees. The provision requires recording of licensee information that must be provided in an application in the register of licensees. This is necessary as this information is the primary contact information for the licensee and for the particulars in the registrar that must be updated in accordance with section 21 *Change of register information* of the Regulation.

Clause 60 New section 9 (1) (ca)

This clause amends section 9 (1) (ca) to reflect the changes to section 5 for individual licensees. The provision requires recording of licensee information that must be provided in an application in the register of licensees. This is necessary as this information is the primary contact information for the licensee and for the particulars in the registrar that must be updated in accordance with section 21 *Change of register information* of the Regulation.

Clause 61 Section 9 (1) (d)

This clause amends section 9 (1) (d) to reflect the changes to section 5 for partnerships, corporations and their nominees. The provision requires recording of licensee information that must be provided in an application in the register of licensees. This is necessary as this information is the primary contact information for the licensee and for the particulars in the registrar that must be updated in accordance with section 21 *Change of register information* of the Regulation.

Clause 62 New section 13 (2A)

This clause amends section 13 to provide for circumstances that the Registrar may make a determination or qualifications without consulting the advisory board for the relevant occupation.

This is necessary to prevent unnecessary delays to correcting errors or responding to matters of public safety. It also avoids the need for further consultation where proposed qualifications are agreed as part of a decision of the Legislative Assembly. This could include as part of a bill or reform agreed by the Assembly. These provisions do not prevent the Registrar consulting with the advisory board if he or she wishes to.

Clause 63 New section 13 (4) to (6)

This clause includes additional provisions for section 13 that provide for instrument and other laws to be adopted in a determination of qualifications made by the Registrar. It also provides that sections 47 (5) and (6) do not apply to instruments and laws adopted.

This is necessary as other instruments may be subject to copyright or other constraints that mean they are not able to be notified by the Registrar.

Clause 64 Section 14 (1)

This clause inserts new provisions to allow the Registrar to request a skills assessment for an applicant if they have a qualification required to be eligible if the Registrar satisfied it is necessary or desirable to protect the public.

Section 14 of the Regulation allows the Registrar to set a skills assessment if not satisfied that an applicant has a qualification required to be eligible for the licence applied for. However, if the person holds a prescribed qualification, the Registrar cannot require further assessment, even if the Registrar has concerns about a person's competency.

The new provisions allow the Registrar to apply an additional assessment in cases where a person has been refused a licence in another jurisdiction or a training provider is suspected of not complying with national rules or issuing qualifications to a person or people that are not competent.

Given the potential health and life safety ramifications of issuing a licence to a person in high risk occupations such as asbestos assessment, asbestos removal, building, electrical work, gasfitting and plumbing it is considered that these powers are appropriate to protect the public and other workers.

Requiring a regulation 14 assessment and refusing to grant a licence are both reviewable decisions and open to scrutiny by the ACAT.

Clause 65 Section 19 (d), note

This clause inserts a new example that highlights the need for a nominee to demonstrate that they are able to exercise the functions of a nominee, including supervising work.

Clause 66 New section 19 (f)

This clause inserts new provisions in relation to when a person is not eligible to be a nominee.

A nominee for a company or partnership takes on an important role in the licensing system. Under section 31 of the Act, a nominee is responsible for the supervision of the construction services provided by the company or partnership, and for ensuring that the work complies with the Act and relevant operational Acts. If a person applying to be a nominee is not able to exercise the functions of a nominee on a daily basis, he or she will not be eligible to be the nominee for the relevant business as provided for in subsection 19 (d). A refusal to issue a licence is a reviewable decision.

In many cases people applying to be nominees are not aware of the nature of the supervision requirements and may be available only sporadically to supervise work. There may also be occasions where a condition is placed on a person's licence to prevent them from undertaking the role of a nominee.

If the licence of a nominee is conditioned after being confirmed as the nominee in such a way to prevent the person carry out the function, they will no longer be able be a nominee.

Clause 67 New section 35 (2A)

This clause outlines the minimum information that must form the notification to the Registrar of a training arrangement, so that the trainee can enjoy the exemption from holding a licence contained in section 35.

If this information is not provided, it will be considered that the trainee is unlicensed for the purposes of the Act and therefore subject to penalties under section 81 of the Act for providing a construction service without a licence. Supervisors and employers may also be liable for penalties under section 85 of the Act for allowing an unlicensed person to provide a construction service.

Clause 68 Section 35 (3), new definition of relevant person

This clause inserts a new definition of relevant person for new section 35 (2A). In the majority of instances there will be a training contract in place, and so the relevant person that would need to notify a training arrangement will be the employer, being the person that has the training contract with the trainee. In limited circumstances, some training in an accredited course may be given by a training provider without a training contract being in place. In such cases the registered training organisation will be responsible for notifying the training arrangement in place.

Clause 69 Section 43 (3)

This clause removes a reference to a demerit disciplinary notice. There is no notice for demerit points defined in the Act.

Clause 70 New section 43 (4)

The demerit point system described in Part 8 of COLA is an alternative to occupational discipline and intended to operate so that the registrar can allocate points to breaches of the Act or operational Acts and monitor a licensee's compliance history. The demerit point system is an educational tool. Given the complexities of most construction work and associated standards, there is a myriad individual breaches that can occur.

Other than failing to comply with emergency rectification orders, which attracts four points, each demerit point ground is allocated 1, 2 or 3 points. At present all demerit point breaches for each occupation are prescribed in terms of occupational discipline grounds for section 55 and contained in schedules to the Regulation. To list each relevant breach would not be possible without extensive schedules, and so a limited section of breaches has been included for each occupation.

However, since it is difficult for this to be exhaustive, there are occasions where issuing demerit point would be appropriate, but is not possible under the present grounds. Including all breaches in a generic grounds (for example, work failing to comply with the Water and Sewerage Act) would not necessarily solve the issue as doing so loses the ability to delineate breaches based on their relative seriousness. In the previous example, failing to lodge a self-certification form for minor works would have to be allocated the same points as serious safety breaches such as contaminating the water supply, meaning the points will be either set too high for minor breaches or too low for serious breaches.

To keep the demerit point schedules manageable, the schedule will be amended to prescribe only those breaches that will incur more than one demerit point. All other breaches will attract a single point. This is consistent with occupational discipline grounds, which includes any contravention of the COLA or an operational Act.

This clause includes a new provision in Part 8 that provides that if a demerit ground for occupational discipline is not mentioned in section 43 (3), which refers to the demerit point schedules, the demerit points for the ground is one. This acts as a default one point allocation for all contraventions of the Act or an operational Act (s55) not specifically mentioned in the Regulation, and is important for the effective operational of the demerit point system.

Clause 71 New section 45

This clause inserts a new section 45 that provides requirements for notifications requesting a licensee undergo a skills assessment.

This section includes the minimum information requirements and allows the licensee to make written representations about the reasons for the assessment, the proposed assessment, and the latest date the assessment can be completed or the results given to the Registrar.

This allows the licensee to provide additional information to the Registrar, which the Registrar must consider in deciding whether to enforce the requirement, to modify the assessment or to withdraw the requirement altogether.

Withdrawing the notice does not affect the original disciplinary grounds.

**Clause 72 Plumbers
Schedule 1, part 1.8, item 2, column 3**

This clause clarifies that the scope of water supply plumbing does not include backflow prevention device test work. That work is an additional skill that is not part of standard water supply plumbing training and is subject to an endorsement on a plumber licence, which is issued under section 31 of the Construction Occupations (Licensing) Regulation.

**Clause 73 Reviewable decisions
Schedule 4, new item 5A**

Clause 73 inserts a new reviewable decision in relation to new provisions in section 21A that provide for the Registrar to condition a licence if a person has returned to an occupation or occupation class after a period of disqualification or cancellation relating to occupational discipline of longer than a year. This is consistent with existing reviewable decisions for issuing or conditioning licences in the Act.

Clause 74 Schedule 4, item 8, column 2

Clause 74 amends item 8, column to so that if a decision is made to refuse to renew a licence under new section 25 (2A) it is renewable. This is consistent with existing reviewable decisions for refusing to renew licences in the Act.

Part 8 Electricity Safety Act 1971

Clause 75 Section 34 (3)

This clause omits a reference to a relevant distributor and substitutes a reference to construction occupations registrar.

Section 34 is about the reporting requirements to the Registrar in the case of a serious electrical accident, therefore subsection 34 (3) is amended to provide that the section does not apply if the defendant had reasonable grounds to believe that the construction occupations registrar had been told about the accident, rather than the relevant distributor had been told.

Clause 76 Dictionary, definition of *regulatory authority*

This clause amends the definition of *regulatory authority*.

Part 3 *Prescribed articles of electrical equipment* provides for regulation of prescribed articles of electrical equipment. The processes and rules for product approvals for electrical equipment are consistent between states and territories. The product approval process relies on cooperation between relevant regulatory authorities to make sure that unsafe products are not sold or installed in one jurisdiction after they have lost an approval or accreditation, however described, in another.

Subsection 17 (2) provides that if the Registrar cancels, or suspends the registration of a declaration of compliance for electrical equipment that the Registrar must give written notifications of that fact and of the reason for the suspension or cancellation to each regulatory authority for a State or another Territory.

In addition, section 24 provides that in any proceedings for an offence against Part 3 a certificate purporting to be signed by or for a regulatory authority for a State or another Territory to the effect that at a particular time a declaration of compliance was or was not registered under this Act or the corresponding law of that State or Territory can be used as evidence of the facts stated in the certificate.

The current definition of a regulatory authority lists each of the authorities in other jurisdictions or requires a regulation to be made to list them. To change an authority requires an amendment to the Act or a new regulation. This is unwieldy given regular machinery of government changes across jurisdictions and the number of different entities that carry out similar functions in relation to approvals for articles of electrical equipment.

To improve the operation of the provisions, the definition will recognise entities that carry out functions similar to the functions that the Registrar carries out for Part 3 under a law of the State that corresponds, or substantially corresponds, to that part. This will not require each entity to be identified in the Act.

Additional entities may be added by regulation if required.

Part 9 Energy Efficiency (Cost of Living) Improvement Act 2012

Clause 77 New sections 10 (6) to (11)

This clause includes additional provisions for section 10 that clarify the application of sections 47 (5), (6), and (7) of the Legislation Act to a notifiable instrument made under this section. New section 10 (7) provides that sections 47 (5) and (6) do not apply to instruments for section 10.

Section 10 (9) applies the provisions to instruments already made by the Minister. This is important for continuity and the integrity of the activities carried out under the Act by electricity retailers.

Section 10 (10) provides that a repeal of new 10 (9) section will not end the effect of the transitional laws, which expire a year after commencement. This means that the retrospective application of the provisions to instruments already made at the time of commencement will not end on repeal of the section.

Part 10 Water and Sewerage Act 2000

Clause 78 Section 8 (2) (e)

This clause substitutes a new provision that requires proposed work must comply with the plumbing code instead of AS 3500 before a plan approval can be issued.

Clause 79 New section 22 (2A) and (2B)

Section 22 applies if work has not been done in accordance with an inspector's direction under section 32 (4). In certain circumstances, the Registrar may, in writing, direct the owner to do the work to which the inspector's direction under that section relates in the way, and within the time, mentioned in the Registrar's direction.

This clause inserts new provisions 2A and 2B that clarify that if the owner is not licensed, authorised or qualified to do the thing the owner is directed to do, which may include to provide written evidence, the owner must arrange, and pay for, the thing to be done by someone who is.

This is important as complying with the direction may require undertaking licensable work, or work of a complex nature that requires particular qualifications to be done safely or accurately.

Clause 80 Section 32 (4)

This clause inserts a clarification that a stated action may include providing written evidence. Section 32 (4) provides that an inspector who exercises a power under subsection (1) and finds any part of the plumbing, or the sanitary drainage system, that does not comply with, or has not been tested in accordance with, the Act, or is in bad order and condition, or requires cleaning or alteration or should be filled up, may give a written direction to the owner of the premises, or the person who did the work, to take stated action to ensure that the system, or the doing of related work, complies with the Act.

If a test or other work is performed, written evidence of this may be required to verify that either the work has been completed, or that the plumbing or sanitary drainage system is now compliant or functional as required by the direction. Standard testing requirements apply to work carried out under the Water and Sewerage Act. If a person that does not have the correct licence or skills to carry out the stated action, it is reasonable to request written evidence of completion of any work. This may include invoices, reports or other documents from a third party about the completion or compliance of the work.

Clause 81 Section 32 (4), new examples

This clause inserts new examples for section 32 (4) in relation to what may constitute written evidence for the purposes of a written direction issued under the section. It includes certification from a plumbing plan certifier, and reports from a person who did a test or can attest to work complying with a relevant standard. This may be in relation to the impact on a water network caused by non-compliant work.

Clause 82 Section 32 (5)

If an inspector finds that work does not comply, has not been tested in accordance with the Act or is in bad order, section 32 (4) allows an inspector to give a direction to the owner of a premises, or a person who did work, to take stated action to ensure that the system, or the doing of related work, complies with the Act.

The person who did work, or an owner of a premises, may not be able legally carry out any direction to make the installation safe and compliant if the person does not hold the appropriate class of licence to do. Similarly, certain skills and qualifications may be required to undertake a stated action. For example, a licensed plumber or owner may be directed to provide a written report on the compliance of a system that could only reasonably be prepared by a hydraulic engineer. Hydraulic engineering is not licensable work in the Territory; however it requires particular skills and qualifications. In certain circumstances drains may be cleared by a person that is not licensed, but this must be undertaken skilfully so that the drain or other connected systems are not damaged.

To clarify the responsibilities of the person that does not possess a relevant licence, qualification or skills to take a stated action this clause inserts new provisions that if the entity is not licensed, authorised or qualified, or is not appropriately experienced and skilled to do something required to be done under the direction, the entity must arrange, and pay for, the thing to be done by a person that is. This is important so that stated directions are complied with safely and competently, without causing damage or breaching a law of the Territory or another jurisdiction.

Clause 83 New part 6

This clause inserts a new Part 6 to provide for the plumbing code. The provisions match those for the building code made under section 136 of the Building Act 2004 and reflects the shift from AS 3500 to the Plumbing Code of Australia as the primary technical standard for plumbing and drainage work. The existing provisions allow the Minister to declare a document to be the ACT plumbing code for the Act by notifiable instrument. No other guidance or requirements in relation to the code are in force.

This does not provide a clear description of what the plumbing code is in the Act and means that there is a reliance on the previous standard for defining performance requirements as making an ACT plumbing code is optional.

This clause defines the plumbing code to be:

- the Plumbing Code of Australia prepared and published by the Australian Building Codes Board and amended from time to time by the ABCB, including any variations additions and exclusions for the ACT in the code, and
- a document prescribed by regulation.

The PCA can be amended by an ACT Appendix to the PCA made by the Minister. The appendix is a disallowable instrument.

Regulations may also make provisions in relation to the application of the plumbing code.

Defining the plumbing code this way in the Act provides greater certainty to the industry of what the plumbing code is, and allows it to be consistently adopted for the purposes of demerit point grounds and standards for work. This means there is no longer a need to directly reference AS 3500 unless for specific use, such as testing of work.

Clause 84 Sections 45A and 46

This clause omits sections 45A and 46. This is necessary because of the new provisions for the plumbing code in new section 6. The plumbing code includes amendments made by the ACT Appendix, which is where relevant technical provisions for the greenhouse intensity of water heaters have been relocated.

Clause 85 Part 5A (as amended)

Clause 37 renumbers part 5A to Part 7. This is because of the insertion of Part 6 for provisions for the plumbing code.

Clause 86 Dictionary, definitions of *ACT plumbing code* and *Australian Standard 3500*

This clause omits the definitions of *ACT plumbing code* and *Australian Standard 3500*. A new definition of plumbing code is included in clause 40.

Clause 87 Dictionary, definition of *fire sprinkler work*

This clause substitutes a reference to the plumbing code for a reference to Australian Standard 3500. Fire sprinkler work must be carried out in accordance with the plumbing code.

Clause 88 Dictionary, definition of *plumbing code*

This clause inserts a new definition of *plumbing code* for the Act. This refers to new section 44C, which defines the plumbing code.

Clause 89 Dictionary, definition of *sanitary drain*, paragraph (b) (ii)

This clause amends the definition for *sanitary drain* to clarify that the provisions are intended to exclude work on a licensed sewerage network only. A failure in a sanitary drain can lead to contamination of the water supply or land, health problems for members of the public and damage to property and the environment.

Where an installation is regulated under Part 5 of the *Utilities Act 2000*, work must comply with particular technical and safety standards and so it is appropriate for this work not to be regulated under the Water and Sewerage Act as well as the Utilities Act. If work is not regulated under network technical standards, the definition was intended to provide a safeguard to make sure that all installations meet standards for safety and performance of the system.

This amendment is to ensure that relevant standards are met by all sanitary drainage installations in the Territory.

Clause 90 Dictionary, definition of *water service*, paragraph (c) (ii)

This clause amends the definition of *water service* to clarify that the provisions are intended to exclude work on a licensed sewerage network only. As for clause 41 above, a failure in a water service can lead to contamination of the water supply or land, health problems for members of the public and damage to property.

This amendment is to ensure that relevant standards are met by all water services in the Territory, by clarifying that requirement for such services to be installed either in accordance with technical standards under Part 5 of the Utilities Act, or with the requirements of the Water and Sewerage Act.

It allows that work on a water network undertaken by a person other than the water network if there is an arrangement with the responsible utility for the network to do the work. This is consistent with practices for infrastructure in new developments. The responsible utility will need to make sure that work complies with relevant utilities technical codes.

Part 11 Water and Sewerage Regulation 2001

Clauses 91 and 102 Section 6 and Section 18 headings

These clauses substitute new headings for section 6 and section 18. This reflects the change from Australian Standard 3500 to the plumbing code as the primary technical standard for sanitary plumbing, sanitary drainage and water supply work under the Water and Sewerage Act.

Clauses 92, 94, 96, 97, 101, 103, 104, 106, 107 and 108

These clauses omit references or provisions that include a reference to Australian Standard 3500 (AS 3500) separately or in conjunction with MP52, and substitute references to the plumbing code. The plumbing code has replaced AS 3500 as the primary technical standard for sanitary plumbing, sanitary drainage and water supply work in the ACT.

Sections amended are:

- Section 6 (1)
- Section 6 (3) (a)
- Section 9 (4)
- Section 10 (2)
- Section 16D
- Section 18 (1) (a)
- Section 18 (2) (a)
- Section 20 (4)
- Section 21
- Section 22 (3)

Clause 93 Section 6 (2)

Clause 45 substitutes a reference to the plumbing code for a reference to MP52. The manual MP52, which outlines requirements for the approval of plumbing products, has been superseded by Part G of the plumbing code.

Clause 95 Section 9 (1)

This clause replaces a reference to Australian Standard 3500 with a reference to AS/NZS 3500. The requirements for testing sanitary plumbing and drains are contained in this standard and provide consistent parameters for conducting a test.

Clause 98 Requirements for toilets Section 16 (1)

This clause substitutes a reference to the new defined term dual-flush reduced volume cistern in section 16 (2).

Clauses 99 and 100 Section 16 (2), definition of dual-flush 6/3L cistern

Regulation 16 is intended to provide for maximum flow rates for toilets rather than prescribe a particular flow rate. Subsection 16 (1) (a) and 16 (1) (d) require that cisterns installed must be dual-flush 6/3L cisterns. There are now toilets with 4.5/3 flushes, which may have cisterns of lesser capacity. It is not intended that these would be prevented from being installed under the regulation. Dual flush 6/3L cistern is a defined term in the section.

This clause amends the defined term for, and definition of, dual flush 6/3L cistern. A dual flush reduced volume cistern now means a cistern that has the capacity to:

- a. give an effective full-flush not exceeding 7L and for test purposes 6L; and
- b. give an effective half-flush not exceeding 4L and for test 3L.

Clause 105 Section 20 (1)

This clause replaces a reference to Australian Standard 3500 with a reference to AS/NZS 3500. The requirements for testing sanitary plumbing and drains are contained in this standard and provide consistent parameters for conducting a test.

Clause 109 Section 22 (7), definition of *suitably qualified person*

Backflow prevention work is specialised work to prevent contamination of the water supply from water that contains pathogens and other pollutants flowing or being drawn back through fixtures, fittings and pipework. People doing this work must hold a plumbers licence with a backflow prevention device test work endorsement.

The licensing and endorsement requirements for backflow prevention work are contained in section 31 of the Construction Occupations (Licensing) Regulation 2004. Subsection (1) of the regulation provides that Registrar may, on application, endorse a plumbers licence to authorise the licensee to do backflow prevention device test work if satisfied that the licensee can competently do the work.

The mandatory qualifications for plumbers licences and endorsements are prescribed by the Registrar in a notifiable instrument.

As the requirements for backflow prevention pre-date the COLA, there are some residual provisions in the Regulation need to be removed and updated so that the requirements align across both pieces of legislation, and licensing requirements are contained only in the licensing legislation.

This clause revises the definition of *suitably qualified person* in subsection 22 (7) to mean a person who:

- a) holds a current plumbers licence issued under the *Construction Occupations (Licensing) Act 2004*; and
- b) holds an endorsement for backflow prevention device test work.

Clause 110 Section 28 (application of the plumbing code – hot water system standard)

This clause omits section 28. This is necessary because of the new provisions for the plumbing code in new section 6, and omitting s 45A and 46 from the Act. Relevant technical provisions for the greenhouse intensity of water heaters have been relocated to the ACT appendices to the Plumbing Code of Australia.

Clause 111 Schedule 2 Hot water system standard

This clause omits Schedule 2 to the Regulation, which contains the *Hot water system standard*. Relevant technical provisions for the greenhouse intensity of water heaters have been relocated to the ACT appendices to the Plumbing Code of Australia.

Clause 112 Dictionary, note 4

This clause omits a reference to Australian Standard 3500 as a defined term in the Water and Sewerage Act.

Clause 113 Dictionary, new definition of AS/NZS 3500

This clause inserts a new definition of AS/NZS 3500 in the Dictionary. Previous versions of the standards are no longer used and this definition is consistent with current drafting practice.

Clause 114 Dictionary, definitions of *building*, *class* and *hot-water system standard*

This clause omits definitions of *building*, *class* and *hot-water system standard*. These definitions relate to provisions in Schedule 2 that will be omitted by clause 62. Relevant technical provisions and definitions for the greenhouse intensity of water heaters have been relocated to the ACT appendices to the Plumbing Code of Australia.

Schedule 1 Consequential Amendments – Construction Occupations (Licensing) Regulation 2004

Part 1.1 Schedule 2, part 2.1, item 2.1.32, columns 2 and 3

This part makes a consequential amendment to item 2.1.32 that reflects the new requirement to give a written notice of reaching a stage of building work under section 43 (3).

Parts 1.2 to 1.4 Demerit points schedule 2, part 2.3 drainers

These parts replace references to:

- Provisions in AS 3500 in demerit point grounds and the short description of demerit grounds for drainers with the corresponding performance provisions in the plumbing code. No changes to the demerit points for the grounds are made;
- AS 3500 with AS/NZS 3500 where a reference to that standard is still appropriate, specifically for testing of installations and work; and
- AS 3500 with the plumbing code to reflect the change in primary technical standards in the Act and Regulation.

Parts 1.5 to 1.11 Demerit points schedule 2, part 2.6 plumbers

These parts replace references to:

- Provisions in AS 3500 in demerit point grounds and the short description of demerit grounds for plumbers with the corresponding performance provisions in the plumbing code. No changes to the demerit points for the grounds are made;
- MP52 with the plumbing code, Part G. This part supersedes MP52 for requirements for plumbing product approvals;
- AS 3500 with AS/NZS 3500 where a reference to that standard is still appropriate, specifically for testing of installations and work; and
- AS 3500 with the plumbing code to reflect the change in primary technical standards in the Act and Regulation.

Parts 1.12 Demerit points schedule 2, part 2.7 plumbing plan certifiers

This part replaces a reference to AS 3500 in item 2.7.2 with a reference to the plumbing code to reflect the change in primary technical standards in the Act and Regulation. From the commencement of the provisions work must be certified to meet the plumbing code instead of AS 3500.