

Australian Capital Territory

Construction Occupations (Licensing) (Qualifications—Builder and Building Surveyor Licences) Declaration 2019

Disallowable instrument DI2019-14

made under the

**Construction Occupations (Licensing) Regulation 2004, s 13 (Eligibility for licence—
suitability and financial requirements—Act, s 18 and s 24A)**

EXPLANATORY STATEMENT

Section 13 of the *Construction Occupations (Licensing) Regulation 2004* (the **Regulation**) permits the Minister to declare the qualifications and financial requirements necessary for an entity to be eligible to be licensed in a construction occupation or occupation class.

The purpose of this instrument is to declare the qualifications necessary for an individual to be eligible to be licensed in the construction occupations and associated occupation classes of builder and building surveyor. It prescribes qualifications for particular applicants for new licences. It does not prescribe general requirements for renewing licensees or financial requirements.

Written examination – class A, B and C builder licences

Since 1 May 2016, Class C licence applicants have been required to pass a written examination (NI2016—194).¹ This declaration includes a new requirement for applicants for Class A and Class B builder licences to undertake and pass a written examination set by the Construction Occupations Registrar.

The new examinations are part of the *Improving the ACT Building Regulatory System* reforms the ACT Government announced in June 2016. Reform 9 is to expand the written assessment prepared for a previous pilot for class C builder licensees to incorporate additional subjects and create assessments for A and B class licensees. A list of the reforms can be found at:

https://www.planning.act.gov.au/topics/current_projects/act_building_regulatory_system_review (link current at time of publication).

¹ Amendments to section 13 of the Regulation made by the [Building and Construction Legislation Amendment Act 2016](#) transferred the power to declare qualifications to the Minister. Prior to the amendments a declaration under section 13 was a notifiable instrument.

The methods in the instrument provide that to be eligible for a licence under the available methods, an applicant who has previously been refused a licence because they have not passed a written examination required for eligibility, must not make a new application within a prescribed period after the licence is refused. The prescribed period is six months after the first licence refusal, one year after the second refusal and two years after a third or subsequent refusal.

Similar periods are included for previous licensees who have not had their licenses renewed because they have not passed a required written examination.

These periods are included because results from the class C licence assessment demonstrated that applicants who made multiple attempts in a short period of time were not necessarily more likely to pass the exam. In most cases, the applicants were more likely to multiple attempts in a short period of time.

For fairness, the Construction Occupations Registrar allows applicants two attempts at the examination before a licence is refused. This practice will continue and apply to class A and B licensees. If an applicant cannot pass the examination on the second attempt when they are aware of the type of questions that will be asked and have experience taking the examination, they are likely to need further study and practice before they attempt the examination again. The ineligibility periods increase, as applicants that repeatedly fail the examination may need more extensive training than can be undertaken in a short period of time.

Expired licences

This instrument restricts pathways for people with previous licences to those whose licence was not, or is not the subject of cancellation, suspension or refusal to renew, or surrendered or lapsed to avoid occupational discipline or another regulatory action, including an assessment of eligibility, against the licensee (however described).

It also reduces the period a person can apply based on having held a licence previously is reduced from five years to one year for class A licences, two years for class B licences and three years for class C licences reflecting recent changes in qualifications for class A licences (see Reform 6) and the need for licensees to have current and relevant experience.

Building surveyor licences

The instrument also removes a pathway for principal building surveyors licences by registration as a principal certifier-building ACT on Engineers Australia's National Engineering Register. The registration is no longer offered. There are no other changes to qualifications for building surveyor licences in this instrument.

Fees

Revised fees associated with the examinations and reforms are in the new *Construction Occupations (Licensing) (Fees) Determination 2019*.

Revocation and commencement

The instrument revokes the *Construction Occupations (Licensing) (Mandatory Qualifications) Declaration 2018 (No 1)* (DI2017-282).

The instrument commences on the day after its notification date.

The declaration under section 13 of the Regulation is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to section 64 of the *Legislation Act 2001*.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* provides that if a proposed subordinate law or disallowable instrument (the proposed 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.

A RIS is not required for this instrument as it is not expected to impose appreciable costs on the community or part of the community. It introduces a requirement for applicants for class A and B builder licences to undertake and pass an examination set by the Construction Occupations Registrar.

The examination is consistent with the policy objectives of construction licensing laws, which exist to protect the public by allowing only those who are appropriately qualified to undertake licensable work. It achieves the policy objectives by assessing whether licensees understand their obligations and can competently carry out activities they will be responsible for as a licensee. Written examinations are a common form of assessment. Applicants for class A, B and C builder licences must hold appropriate academic qualifications, which generally include written examinations. Further, a licensee must be able to read legislation and technical standards and communicate in writing with other practitioners and their clients. A written examination is a reasonable and appropriate form of assessment.

Examinations may also be applied to determine whether a licensee remains eligible for a licence, either at renewal or if a grounds for occupational discipline exists (see Act, s 55A *Skills assessment of licensees* and s 14 and s 18B of the Regulation). The instrument provides for pathways for applicants who have previously held licences but been determined as ineligible.

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. There are no human rights impacts related to this instrument.

The instrument prescribes eligibility pathways for applicants that are appropriate for the public safety risks associated with the responsibilities of a builder licensee under the Act and the *Building Act 2004*. An applicant refused a licence for failing to pass the examination may seek a review of the decision at the ACT Civil and Administrative Tribunal, and is not excluded from participation in the building industry.