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

PROFESSIONAL ENGINEERS BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)**

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PROFESSIONAL ENGINEERS BILL 2022

This explanatory statement relates to the Professional Engineers Bill 2022 (the Bill) as presented to the ACT Legislative Assembly.

The statement is to be read in conjunction with the Bill. It is not a complete description but provides information about the intent of the provisions in the Bill.

It has been prepared to assist the reader. It does not form part of the Bill, has not been endorsed by the Assembly and is not to be taken as providing a definitive interpretation of the meaning of a provision.

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill:

- Establishes a registration scheme for professional engineers
- Provides for the monitoring and enforcement of compliance with the Bill
- Imposes obligations on people registered about the provision of professional engineering services

The objects of the Bill are to:

- Protect the public by ensuring professional engineering services are carried out by, or under the direction and oversight of, professional engineers
- Maintain public confidence in the standard of services provided by professional engineers in the ACT
- Uphold standards of practice for professional engineers in the ACT.

In developing the Bill, consideration was given to schemes enacted in other jurisdictions and the national registration framework for building practitioners developed by the Australian Building Codes Board (ABCB) at the request of Building Ministers in response to the Shergold-Weir Report (also known as the Building Confidence Report).

The Bill delivers the framework for the registration scheme for engineers in the ACT. The Bill will be supported by regulations and disallowable and notifiable instruments.

The Bill establishes eligibility criteria for registration, minimum continuing professional development requirements and provides a three-year registration term.

The Bill requires individuals providing professional engineering services in the ACT to be registered in one or more areas of engineering to be able to lawfully provide those

services in the ACT. It is intended that over time, other areas of engineering will be included in the scheme. A register of engineers will be established under the Bill.

The registration scheme being established will set standards of practice for professional engineers; promote ongoing professional development within the engineering profession; reduce the risk of loss and harm to the public from engineering services; and give consumers more confidence in engaging the services of a registered professional engineer.

The registration scheme will be administered by the Professional Engineers Registrar (the registrar), a regulatory position that will sit within Access Canberra. The Bill confers on the registrar a range of powers to enable the effective administration and enforcement of the scheme.

The Bill sets up the compliance and enforcement framework, including disciplinary action that can be taken. Disciplinary sanctions for engineers under the Bill are similar to those available under other licensing and/or registration schemes with an acknowledgement of the importance of mobility of labour across the country and the smaller scale of this registration scheme compared to other occupational registration schemes operating in the ACT. The Bill takes a streamlined approach to regulation, enforcement and compliance with administrative powers assigned to the registrar designed with public safety at the forefront.

Disciplinary matters will only be taken to the ACT Civil and Administrative Tribunal (ACAT) where an order for disqualification is sought by the registrar noting the implications for the individual of being registered under other schemes if disqualified under the ACT scheme or a monetary penalty is sought. These types of penalties are designed for those incidences where a significant risk exists or there has been repeated disregard for compliance with the regulatory settings.

CONSULTATION ON THE PROPOSED APPROACH

In developing the Bill, the Government consulted with the public, industry, key stakeholders and other jurisdictions in several ways over a period of 18 months.

Public consultation through the ACT Government's Yoursay portal was undertaken between 23 August 2022 and 20 September 2022 and included a consultation paper that contained discussion questions. In response to the consultation, 43 submissions were received. A listening report is available on the Yoursay webpage.

Extensive consultation has been undertaken with the peak engineering associations – Engineers Australia, Professionals Australia and Consult Australia.

Consultation with the community, industry and key stakeholders will continue throughout implementation of the scheme and will be key to the development of several instruments required to be made under the Bill, for example: a code of practice, continuing professional development requirements and qualifications, experience and competency requirements for registration in each area of engineering.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

An assessment of the Bill against section 28 of the HRA is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Rights engaged

The Bill engages the following sections of the HRA:

- Section 8 – Recognition and equality before the law (limited)
- Section 9 – Right to life (promoted)
- Section 12 – Privacy and reputation (limited)
- Section 16 – Freedom of expression (limited)
- Section 18 - Right to liberty and security of person (limited)
- Section 22 – Rights in criminal proceedings (limited)
- Section 27B – Right to work and other related work rights (limited)

Rights Promoted

Right to life

In some circumstances, the right to life requires the ACT Government to safeguard life where there may be a real and immediate risk to life. The Bill acknowledges that without a regulated and principled approach to engineering services, there may be outcomes that pose a risk to health and safety.

There are potential significant risks to health, safety and the economic wellbeing of individuals and the broader community resulting from the provision of engineering services where an individual attempts to undertake engineering work without the adequate qualifications, experience and/or competencies. These impacts can manifest through:

- Health:** Poorly designed or ‘sick’ buildings (poor air-conditioning, rising damp, low natural light levels). Beyond the building sector, health effects can include things such as contaminated drinking water and other environmental incidents.
- Safety:** through the structural failure of whole or part of buildings, structural failure of infrastructure (for example, bridges) or through the failure of hazardous services such as gas, electricity or mechanical works.
- Economic:** involving financial costs such as design and construction costs, litigation expenses, lost production and rectification costs.

Mandatory registration of professions allows for benchmarks to be set with regards to qualifications, experience, competencies, and ongoing obligations relating to conduct and Continuing Professional Development (CPD). Registration has many benefits including providing increased information about practitioners to the public, consumers and employers and importantly gives regulators the ability to determine who can provide certain services in the first place and to take appropriate action in instances of breaches of requirements which increases consumer protections.

The Bill allows for regulatory action to be taken against engineers who fail to comply with professional obligations, who carry out engineering services without the requisite registration, who contravene the Bill or a relevant law, and who give out false or misleading information about a service carried out. Offence provisions are also included to deter conduct of this nature. This creates a legal and administrative framework to protect the community by ensuring that infrastructure and buildings are engineered safely, by competent, skilled and qualified people.

The ACT's proposed approach is intended to be responsive to potential risks and associated harms to the community in the provision of engineering services both in and beyond the building sector.

Rights Limited

Recognition and equality before the law

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. In establishing the registration scheme in the Bill, the approach has been to limit any disproportionate impacts on any particular groups. However, in setting the eligibility criteria for registration it was necessary to include requirements that could put some members of the community at a disadvantage.

Nature of the right and the limitation (s28(a) and (c))

The Bill may limit the right to recognition and equality before the law. Not all differential treatment is protected under the right, but discrimination on the basis of a 'prohibited ground' engages and limits the right. An 'irrelevant criminal record' can be considered a prohibited ground.

The Bill includes eligibility criteria for registration as a professional engineer and renewal of registration which includes an assessment of whether the person is a suitable person to be registered based on an assessment of their suitability information.

Suitability information includes several considerations, including consideration of the conviction(s) or finding(s) of guilt of the applicant for:

- an indictable offence under a law of the Act or the Commonwealth; or

- an offence committed outside the ACT that would be an indictable offence against a law of the ACT if committed in the ACT; or
- an offence under a relevant law. A relevant law means a law of the Commonwealth, a State or the Northern Territory relating to the carrying out of an engineering service or a registration authorising an individual to carry out an engineering service

Suitability information of the type described may engage the right to equality if it permits the consideration of an irrelevant criminal record in determining a person's eligibility for registration.

Legitimate purpose (s28(b))

The legitimate purpose of considering a person's criminal record as part of the determination of their suitability to be registered as a professional engineer is to support the objective of the Bill which is to establish a registration scheme for professional engineering services which promotes:

- best practice in the provision of professional engineering services
- protection of consumers of professional engineering services
- protection of the community from poor engineering services

Rational connection between the limitation and the purpose (s28(d))

Eligibility criteria, including suitability assessments, supports these objectives. Consideration of previous criminal history in the Bill is targeted at serious offences and offences relating to the carrying out of professional engineering services. The offences included in the definition of *suitability information* are consistent with the purposes of establishing the registration scheme, namely to effectively regulate the engineering profession by ensuring that no unsuitable persons are granted registration or continue to hold registration.

Proportionality (s28 (e))

The matters which the registrar may consider when determining whether a person is suitable to be registered as a professional engineer includes the kind of offending which is consistent with criteria employed across several occupational licensing schemes in the ACT (for example, *Construction Occupations (Licensing) Act 2004*; *Architects Act 2004*) and other laws that impose specific obligations on persons providing professional engineering services (*Professional Engineers Registration Act 2019* (VIC), *Professional Engineers Act 2002* (QLD)).

The registrar has discretion in determining whether information obtained through disclosure of the applicant's suitability information makes them not suitable for registration. The registrar is not prohibited from registering a person who discloses suitability information which relates to criminal history.

A further safeguard is that an individual whose application for registration or renewal is refused may seek to have the decision reviewed internally and then seek ACAT review of the review decision.

Right to Privacy and Reputation

The right to privacy under section 12 of the HRA protects people in the ACT from ‘unlawful’ interference with their privacy. This means that no interference can take place except in cases authorised by law.

The right to privacy also protects against arbitrary interference relating to an individual, an individual’s family, home or correspondence, even when authorised by law. Such interference should be in accordance with the provisions, aims and objectives of the HRA and be reasonable in the particular circumstances. Arbitrary interference in someone’s private or family life is interference that may be lawful, but is unreasonable, unnecessary and the degree of interference is not proportionate to the need.

The protection of privacy is necessarily relative, and personal information should only be collected where it is in the interests of the community. The right to privacy is therefore not absolute and may be reasonably limited by laws which can be demonstrably justified in a free and democratic society.

Nature of the right and the limitation (s28(a) and (c))

The Bill may limit the right to privacy and reputation in several instances. The Bill engages the right to privacy at a broad level by establishing a registration scheme where none currently exists and will now require certain engineers to comply with Government checks to conduct their professional life.

Specific elements of the registration scheme that collect, use, store and/or disclose personal and sensitive information include:

1. Consideration of suitability information about an individual applying for registration or renewal
2. Consideration of professional qualifications, experience and competencies
3. Establishment of a register of professional engineers
4. Establishment of a public register of professional engineers that includes both current and former registered professional engineers
5. Providing authorised persons with power of entry to premises and power to obtain, inspect and copy documents
6. Providing the registrar with powers to access personal information to undertake assessment of complaints (clause 67) and regulatory action (clause 46)

7. Providing for the sharing of *public safety information* with a *public safety agency* (Part 10)

Part 4 of the Bill sets out the application process for obtaining registration as an engineer, as well as for the renewal of registration. An application for a registration or renewal must be accompanied by prescribed information including *suitability information*.

In addition to criminal history, *suitability information* includes information about whether the applicant has:

- engaged in non-compliance with this Bill or with an order made by a court or tribunal under a relevant law, where a relevant law means a law of the Commonwealth, a State or the Northern Territory relating to the carrying out of an engineering service or a registration authorising an individual to carry out an engineering service
- been the subject of civil proceedings relating to the carrying out of a professional engineering service or undertaking of an activity related to a professional engineering service or a registration under this Bill or a relevant law (a relevant law being a law for regulating professional engineering services in another jurisdiction)
- been refused an application for registration (however described) under this Bill or a relevant law
- been the subject of any regulatory action (however described) taken, or proposed to be taken, under this Bill or a relevant law
- had their registration suspended or cancelled under this Bill or a relevant law and the suspension or cancellation was a result of regulatory action
- been or is bankrupt or personally insolvent
- been an executive officer of a corporation that has been placed into administration, receivership or liquidation while they were an executive officer

Additional suitability information may be prescribed by regulation. This provides for the consideration of suitability information that may be required to support new areas of engineering added to the scheme.

Part 4 also provides the registrar with the power to seek additional information from an applicant that the registrar reasonably needs to decide an application for registration or renewal.

A Register of Professional Engineers must be kept by the registrar and include prescribed information. Prescribed information that will be made public (published) is limited to:

- The engineer's name
- Area (s) of engineering for which the engineer is registered
- The engineer's registration number
- The term of the engineer's registration
- Any conditions of the engineer's registration
- The status of the engineer's registration

The Register will include information about current and former registered professional engineers.

An aggrieved person may make a complaint about a professional engineer to the registrar and the information prescribed for inclusion in a complaint may include personal information or information that could cause harm to the professional engineer's reputation.

Legitimate purpose (s28(b))

The legitimate objective of this limitation, and the objective of the Bill, is to establish a registration scheme for professional engineering services which promotes:

- best practice in the provision of professional engineering services
- protection of consumers of professional engineering services
- protection of the community from poor engineering services

Rational connection between the limitation and the purpose (s28(d))

All provisions in the Bill that include the collection, use and disclosure of personal information are linked to the direct objectives of the Bill being the establishment of a registration scheme for professional engineers that promotes best practice in the provision of professional engineering services, protects consumers of professional engineering services and protects the community from poor engineering services.

Collecting suitability information, and a person's professional qualifications, experience and competencies, is necessary for the registrar to determine whether someone is eligible to be registered as professional engineer. The information sought is limited to information that is necessary for and relevant to the determination of applications, and any subsequent exercise of the information-gathering powers are a direct consequence of the application.

Establishing a register allows the details of professional engineers under the scheme to be recorded. Publishing details about a registered professional engineer and the status and details of their registration allows the public to access information required to make informed consumer choices.

Providing authorised persons with power of entry to premises and power to obtain, inspect and copy documents allows for the effective enforcement of the Bill,

particularly to support the consideration of disciplinary action or complaints made to the registrar.

The information sharing provisions in Part 10 are necessary to protect the community and consumers from the potential significant risks that can arise from the provision of engineering services by an individual without the adequate qualifications, experience and/or competencies.

Proportionality (s28 (e))

Disclosure of personal information provided in the Bill is limited to the minimal requirements needed to provide the public with information about registered engineers and to support enforcement and compliance activity.

Individuals seeking to participate in a regulated profession are informed about the regulatory settings that apply. Individuals applying for registration will have given their consent for their information to be checked or verified and through applying for registration accept that the obligations placed on them should registration be granted will require the collection, use, disclosure and storage of personal information.

The information that is required to be available on the public register of professional engineers is limited to the minimum information required to enable consumers to make informed decisions about whether to engage a particular professional engineer. The particulars which are to be included in the public register are prescribed in the Bill and will be included in information material about the scheme so this will be a known condition of any individual seeking to be registered as an engineer.

The collection and publication of information on the register is necessary for and tailored to ensure compliance with the registration scheme, promote transparency and protect consumers and accordingly does not constitute an arbitrary interference with privacy. The register will enable consumers to check details of the registered professional engineer, including conditions on the registration, as well as details of disciplinary action.

Information on the register in relation to former registered professional engineers will be removed 10 years after the day the former registered professional engineer's registration ends. This is consistent with the requirements for construction occupation licensees.

A further safeguard is that the registrar must not make information about a professional engineer or former professional engineer available to the public if requested by the professional engineer or former engineer and the registrar is satisfied that the publication of the information would, or could reasonably be expected to endanger the life or physical safety of any person; or jeopardise national security.

Powers of entry to premises and powers to obtain, inspect and copy documents are limited to authorised persons who are appointed by the registrar and these powers can only be exercised in respect to a purpose connected to the regulatory scheme established by the Act. These powers are a necessary feature of any compliance and enforcement regime and are consistent with those contained in other licensing schemes in the Act (for example, *Construction Occupations (Licensing) Act 2004*; *Architects Act 2004*) and other laws that impose specific obligations on persons providing professional engineering services (*Professional Engineers Registration Act 2019* (VIC), *Professional Engineers Act 2002* (QLD)). The powers contained in the Act for authorised persons, are only those considered necessary for the regulatory scheme established by the Act and as such are not as extensive as for other licensing schemes (for example, *Construction Occupations (Licensing) Act 2004*). These powers will be used in relation to investigations relating to disciplinary action and offences under the Act (for example, breaches of the code of practice).

Further specific safeguards include:

- that persons are not authorised to enter residential premises,
- authorised person may enter premises with the consent of the occupier,
- the power to require the occupier or anyone at the premises to give information, answer questions or produce documents or other things is limited to that which is reasonably necessary to exercise a function under the Bill,
- under the power to obtain, inspect and copy documents, the authorised person must specify in writing the documents or information sought, and the documents and information sought must be reasonably required by the authorised person for the Bill. The power is limited to the following, in terms of whom information or documents may be sought: a professional engineer, an employer or former employer of a professional engineer or an employee or former employee of a professional engineer.

Information sharing provisions in Division 10.1 of Part 10 are limited to *public safety information* and sharing of that information between public safety agencies. *Public safety information* is defined as information in relation to a situation that presents, or is likely to present, a risk of death or injury to a person, significant harm to the environment or significant damage to property, that is disclosed to, or obtained by, a public safety agency because the agency is, or has been, a public safety agency. This could include personal information. These information sharing provisions are intended to allow significant safety risks that come to the attention of the Professional Engineers registrar to be passed on to the *public safety agency* that has the appropriate and relevant functions and powers, to address the risk.

It is necessary for the Bill to include these information sharing provisions noting the potential significant risks to health, safety and the economic wellbeing of individuals and the broader community resulting from the provision of engineering services

where an individual attempts to undertake engineering work without the adequate qualifications, experience and/or competencies.

A safeguard to these information sharing provisions is that the Bill contains offence provisions (Division 10.2) that prohibit the use or divulging of *protected information*. *Protected information* includes but is not limited to *public safety information*.

It is not considered that there are any other means for undertaking effective enforcement and compliance activities to deliver the objectives of the Act.

Right to Freedom of expression

Section 16 of the HRA provides that everyone has the right to hold opinions without interference and the right to freedom of expression. The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, orally, in writing, in print, by way of art or in any other way a person chooses.

Nature of the right and the limitation (s28(a) and (c))

The Bill may limit the right to freedom of expression through the creation of offences for making false or misleading representations about registration.

The Bill makes it an offence to:

- make a false and misleading representation that the person is registered to carry out a professional engineering service; and
- the representation is false or misleading in a material particular; and
- the person is reckless about whether the representation is false or misleading.

The Bill makes it a strict liability offence to

- make a false and misleading representation that the person is registered to carry out a professional engineering service; and
- the representation is false or misleading in a material particular.

Legitimate purpose (s28(b))

The legitimate objective of these provisions, and the objective of the Bill, is to establish a registration scheme for professional engineering services which promotes:

- best practice in the provision of professional engineering services
- protection of consumers of professional engineering services
- protection of the community from poor engineering services

Rational connection between the limitation and the purpose (s28(d))

These offences are a consumer protection measure and are directly related to the objectives of the Bill. These provision aims to protect consumers from being misled as to the registration status and skills, qualifications and experience of a registered professional engineer and so is necessary for the protection of the public.

Proportionality (s28 (e))

These offences and the associated penalties are consistent with the ACT Government *Guide for Framing Offences* and are considered proportionate to the purpose of the Bill.

These offences are limited to false or misleading representations about material particulars related to the person's registration to carry out professional engineering services.

The scope of matters related to registration are clearly articulated in the Bill.

These offences do not prevent a registered engineer from expressing opinions about the scheme or about another person's engineering services.

Chapter 2 of the Criminal Code applies to all offences under this Act. There is a specific defence of mistake of fact for strict liability offences (section 23 Criminal Code 2002), which preserves the principle that a person is innocent until proven guilty, is available in response to the strict liability offences. Section 23 (3) of the Code makes it clear that other defences may also be available for strict liability offences, including the defence of intervening conduct or event (section 39), duress (section 40), sudden or extraordinary emergency (section 41), self-defence (section 42) or lawful authority (section 43).

It is not considered that there is a less restrictive means to achieve this consumer protection measure. The consequences of committing these offences could result in serious consequences for the community or the consumer through poor engineering, 'sick buildings', additional costs for engineering services or rectification work.

Right to liberty and security of person

Everyone has the right to liberty and security of person, in particular, no-one may be arbitrarily arrested or detained or deprived of their liberty except on the grounds and in accordance with the procedures established by law.

This right can be relevant any time a person is not free to leave a place by their own choice. This includes the detention of a person.

Nature of the right and the limitation (s28(a) and (c))

The Bill engages the right to liberty and security of person through the creation of two offences which have a potential penalty attached of a term of imprisonment of no

more than 6 months. These offences relate to when a person uses or divulges protected information.

Legitimate purpose (s28(b))

The legitimate objective of this limitation is as an important safeguard against personal information being inappropriately shared.

Rational connection between the limitation and the purpose (s28(d))

The offences are designed to protect those who provide *protected information* under the Act from having it unreasonably disclosed or used. Maximum penalties that include a term of imprisonment can deter people from divulging *protected information*.

Proportionality (s28 (e))

The term of imprisonment is a maximum penalty. The court will have discretion to consider all the circumstances of the case to determine whether a term of imprisonment or a court fine is most appropriate. Although a lesser term of imprisonment or none may be considered a less restrictive means to address this behaviour, this would be inconsistent with identical offences in other Territory law for similar regulatory frameworks. Accordingly, the proposed penalties are not considered excessive or disproportionate.

The ratio of 6 months imprisonment and/or 50 penalty units is also consistent with the ratio for maximum penalty units to imprisonment terms in the ACT Government's *Guide for Framing Offences*. The term of imprisonment is also discretionary and reasonable considering the offences are limited to using or divulging protected information in specified circumstances.

Safeguards in place for these offences include it does not apply where the information is used or divulged under law; in relation to the exercise of a function by a public official under this Act or another Territory law; in a court proceeding or with the person's consent.

The ACT Government is committed to having in place a robust and proportionate regulatory framework for professional engineers that contains offences and penalties that protect the information collected through various powers in the Act while enabling the information collected to be used for legitimate and reasonable purposes.

Rights in criminal proceedings

Nature of the right and the limitation (s28(a) and (c))

The Bill may limit rights in criminal proceedings as it creates several strict liability offences.

Section 22 (1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The Bill introduces new strict liability offences to support the effective operation of the scheme. Strict liability offences engage and may limit the right to be presumed innocent until proven guilty as they impose guilt without the need to prove the person's fault.

This Bill introduces several strict liability offences which will support the effective operation of the new registration scheme. These strict liability offences include:

- Failure to notify the registrar of a change in suitability information within 14 days of becoming aware of the change (clause 29) (maximum penalty: 20 penalty units)
- An authorised person does not return their identity card to the registrar in the required timeframe after the day they stop being an authorised person (clause 79) (maximum penalty: 1 penalty unit)
- Carrying out professional engineering services while not registered (clause 58 (2)) (maximum penalty: 50 penalty units)
- Making a false or misleading representation that the person is registered to carry out a professional engineering service and the representation is false or misleading in a material particular (clause 59) (maximum penalty: 50 penalty units).
- Failure to comply with a condition of registration (clause 60) (maximum penalty: 30 penalty units)
- Failure to comply with a requirement of an approved code of practice (clause 61 (2)) (maximum penalty: 30 penalty units)

Strict liability offences typically arise in a regulatory context where for reasons such as public safety and ensuring that regulatory schemes are complied with, criminal penalties are required. A defendant can reasonably be expected, because of their involvement with the regulated activity, to know what the requirements of the law are, and as such the mental, or fault, element can justifiably be excluded.

Legitimate purpose (s28(b))

The legitimate objective of this limitation, and the objective of the Bill, is to establish a registration scheme for professional engineering services which promotes:

- best practice in the provision of professional engineering services
- protection of consumers of professional engineering services
- protection of the community from poor engineering services

Rational connection between the limitation and the purpose (s28(d))

The intention of the strict liability offences introduced by this Bill is to support an effective regulatory scheme. The purpose of the specific penalties attributable to these offences is to provide an appropriate disincentive to individuals from undertaking the actions subject to the offence provisions. These strict liability offences are also part of a scalable offence structure which includes offences that include the fault element of recklessness.

As with many regulatory frameworks involving registration, the inclusion of a suite of strict liability offences is considered important in deterring non-compliance. This range of strict liability offences supports a regulatory framework that is intended to provide enhanced consumer protection outcomes for persons interacting with the professional engineering industry.

These strict liability offences are designed to support the effective operation of the new registration scheme as they target individuals engaging in behaviour that is not permitted. For a person to commit an offence under the Bill they would be required to be actively involved in the behaviour resulting in the offence and are on notice that the conduct they are engaging in is prohibited.

Proportionality (s28 (e))

The inclusion of strict liability offences in the Bill is necessary to deter individuals from engaging in activities that are inconsistent with the objects of the Bill and the obligations placed on professional engineers. There are no less restrictive means available to effectively achieve this purpose.

The risk of inadvertent breach of these provisions is low. Persons covered by regulatory frameworks are provided with adequate information about their obligations under those frameworks and the provisions explicitly state the conduct that is required to commit the offence. Appropriate regulatory actions are essential to building community confidence in the profession and the regulatory system.

There is a high expectation that registered professionals will exercise appropriate skill and care when providing professional services and it is important that this standard is enforced through appropriate penalties to protect the community and deter unsafe behaviours.

The offences and penalties are consistent with the ACT Government *Guide for Framing Offences* and are considered proportionate to the purpose of the Bill. The maximum penalties attached to the offences reflect the seriousness of the offence relative to other offences in the Bill and other offences of a similar nature. They also reflect the level of responsibility the person committing the offence has for the conduct that will result in the offence being committed and the potential serious

consequences that can arise for the community and consumers of professional engineering services where there is non-compliance with the provisions.

Penalties created for the strict liability offences will include infringement notice penalties. This will be established in a regulation under the *Magistrates Court Act 1930* (ACT). Infringement notices are an important component of an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

Any breaches of the offence framework will be managed through an 'engage, educate and enforce' compliance process. This provides a safeguard to ensure the limitation on rights is reasonable and proportionate. Should a breach occur, conduct that contravenes the legislative framework will be considered on a case-by-case basis and within its own context.

The strict liability offences introduced by this Bill are framed with clear criteria as to whether the offence has occurred. This means individuals can reasonably be aware they have an obligation under law.

An extensive communication and awareness campaign will be undertaken with the community and industry as part of implementation and commencement of the scheme.

The clear framing of offences, as well as strong communication around the obligations of individuals operating in the industry are important safeguards on individual rights and ensure the proportionality of introducing strict liability offences.

Chapter 2 of the Criminal Code applies to all offences under this Act. There is a specific defence of mistake of fact for strict liability offences (section 23 Criminal Code 2002), which preserves the principle that a person is innocent until proven guilty, is available in response to the strict liability offences. Section 23 (3) of the Code makes it clear that other defences may also be available for strict liability offences, including the defence of intervening conduct or event (section 39), duress (section 40), sudden or extraordinary emergency (section 41), self-defence (section 42) or lawful authority (section 43).

Abrogation against self-incrimination

Section 22 of the HRA may be further limited by clause 56, which provides that a person is not excused from answering a question, or providing information or a document or other thing under division 7.3, on the ground that the answer to the question, or the information, document or thing, may tend to incriminate the person or expose the person to a penalty. Because this works to compel a person to give evidence and answer questions that may incriminate them, this may engage and limit section 22 of the Human Rights Act.

Clause 56 has been included to support authorised persons to conduct their enforcement activities. These functions require the gathering of relevant information, even if that information may incriminate the person giving it.

A use immunity safeguard has been included. Clause 56 (2) prevents the admission as evidence in a civil or criminal proceeding of any information, document or other thing obtained, directly or indirectly, because of the giving of the answer or the production of the document or other thing. Information is only admissible as evidence in a proceeding for an offence arising out of the false or misleading nature of the answer, information, document or other thing. A further safeguard is that, before requiring a person to comply with a requirement to give information, answer questions or produce documents, the person must be warned about the effect of clause 56. It is not an offence for an individual to refuse to answer a question or provide information if that warning hasn't been given.

Right to work and other related work rights

Nature of the right and the limitation (s28(a) and (c))

The Bill introduces a registration scheme for engineers in the ACT. There is currently no requirement for engineers to be registered in the ACT. Part 4 requires individuals carrying out a professional engineering service need to be registered to carry out the service and must renew this registration every 3 years.

The introduction of a registration scheme engages the right to work (section 27B (1) of the HRA) and may limit this right by restricting access what was a self-regulated profession.

Key components of the registration scheme established by this Bill that engage the right to work are:

- Eligibility criteria for registration and renewal requires an individual to meet the required qualifications, experience and competencies and be suitable to be registered as a professional engineer.

The Bill prescribes what the registrar may take into account when determining whether an individual is suitable to be registered (their “suitability information”) (see assessment above regarding right to recognition and equality before the law).

- Renewal of registration is contingent on completion of continuing professional development and an individual remaining suitable to be registered.
- Ability of the registrar to impose conditions on registration.
- registrar powers in relation to regulatory action.

Under Part 6 of the Bill, the registrar has the power to:

- take disciplinary action which includes:

- imposing or amending a condition of the engineer's registration
- suspending the engineer's registration for either a fixed period or until a particular event happens
- cancelling the engineer's registration
- immediately suspending or cancelling an engineer's registration where a ground for disciplinary action exists and it is in the public interest to immediately suspend or cancel the professional engineer's registration.
- apply to ACAT for an order disqualifying a person from registration.

Once rolled out to a particular area of engineering, the registration scheme established by the Bill will prohibit any person from providing professional engineering services in that particular area of engineering unless they are either registered in the area, working under the direct supervision of a professional engineer registered in the area, or working in accordance with a prescriptive standard such as an Australian standard.

The ACT scheme will require any application for registration to include a report from an approved assessment entity about an applicant's qualifications, experience and competencies that are related to each area of engineering for which the applicant has applied for registration.

The Bill provides for the Minister, through a disallowable instrument, to set the qualifications, experience and competencies requirements for each area of engineering.

Additional eligibility requirements are proposed to apply to a professional engineer working in the building and construction industry.

Legitimate purpose (s28(b))

There are potential significant risks to health, safety and the economic wellbeing of individuals and the broader community resulting from the provision of engineering services where an individual attempts to undertake engineering work without the adequate qualifications, experience and/or competencies.

In developing this Bill, consideration of the significant impact poor engineering services can have on the community has been at the forefront. Requiring registration of professional engineers addresses community and national expectations around professional engineering services.

The objective of the scheme is to ensure that engineers that do not have the necessary qualifications, experience and competencies do not provide their services to the community thus providing confidence in the community in obtaining these services. It is a reasonable expectation of the community that professional engineers are subject to a level of accountability and regulatory oversight in providing professional engineering services.

The Bill promotes:

- best practice in the provision of professional engineering services,
- protection of consumers of professional engineering services,
- protection of the community from poor engineering services.

Rational connection between the limitation and the purpose (s28(d))

The registration scheme introduced by this Bill is rationally connected to the objective of increasing community confidence in professional engineers and the engineering services they provide. The new registration framework will assist in protecting the community from adverse outcomes associated with professional engineers who do not have appropriate qualifications, experience and competencies to carry out professional engineering services.

The Bill does this by creating a registration scheme with the following features:

- eligibility criteria for registration and renewal, which require the registrar to consider factors relevant to an engineer's ability to perform their work safely and competently,
- the completion of CPD units which ensure that skills and competencies of professional engineers are kept up to date with modernisations and developments in the sector,
- providing for the imposition of conditions on an engineer's registration allows the registrar to oversight the practice of professional engineering and correct unsafe practice,
- disciplinary and regulatory action against a professional engineer is an important measure to ensure behaviour that could potentially put the public at risk can be deterred and/or corrected.

Despite the fundamental role in the economy that engineers have, the often-complex nature of their work and the importance of their work in ensuring public safety, most engineers are not required to hold any kind of formal registration or licence. This stands in contrast to almost all other professionals in the ACT, including lawyers, architects and teachers.

Engineering services are purchased by governments, large and small businesses, and individual consumers. In the absence of any statutory requirements for licensing or registration, consumers are limited in their ability to measure the competency of an engineer they are seeking to engage.

Effective regulatory schemes need to support effective enforcement and compliance schemes which promote accountability in the industry while protecting consumers and the community. This requires the ability to take swift action when matters of non-compliance arise and for this action to be scalable to the seriousness of the non-compliance.

Proportionality (s28 (e))

The HRA permits reasonable and justifiable limits on human rights. Furthermore, section 27B (1) expressly provides that the practice of a trade, occupation or profession may be regulated by law.

The registration scheme has been designed to be the least restrictive approach to achieving the objective of the Bill, and with sufficient safeguards to ensure the limitation on the right to work can be considered reasonable and justifiable.

The Bill will initially apply to the following five areas of engineering: Civil; Structural; Mechanical; Electrical; and Fire Safety. Additional eligibility requirements are proposed to apply to a professional engineer working in the building and construction industry. These will be contained in the disallowable instrument issued by the Minister under the Bill and will cover knowledge of the National Construction Code (NCC), knowledge of the ACT's Building Regulatory system and a specified period of experience in the building and construction industry.

The scheme will apply to individuals providing professional engineering services (developing or overseeing the development of engineer designs) in the prescribed areas of engineering if the services are provided:

- a. in the ACT; and/or
- b. from a location outside the ACT, but the services are provided for projects in the ACT (for example, provided for a project or purpose in the ACT).

The scheme will only apply to engineers:

- a. who meet the required qualifications, experience and competencies for the area of engineering in which registration is sought; and
- b. are providing professional engineering services (as defined), as opposed to practitioners who are carrying out work in accordance with prescribed standards.

Engineers working under direct supervision of a registered professional engineer or only in accordance with prescriptive standards are not required to be registered. It is common practice within the industry for engineers to be supervised in their first years of working.

This will allow for engineers yet to meet qualifications, experience or competencies criteria to still practice but under the supervision of a registered engineer.

This means that for those currently providing professional engineering services in regulated areas of engineering who cannot meet the registration requirements, they must provide those services under the supervision of a registered professional engineer.

Commencement of the scheme will be designed to support the ongoing provision of services through ensuring that those currently working in the industry can continue to work in the industry while their application for registration is considered.

The disallowable instrument issued by the Minister under the Bill setting qualifications, experience and competencies will also include alternative pathways for applicants who do not meet all the qualifications, experience and competencies but may be assessed by an assessment entity as having the skills, knowledge and competency to provide professional engineering services in the area(s) of engineering for which registration is sought.

Consultation highlighted that any alternative pathways to registration need to balance the need to recognise alternative qualifications for those already working in the industry or in specific fields of engineering while not diminishing the value of engineering qualifications in the community.

The scheme has been designed to support those already working in the industry to continue to do so.

Specific safeguards in the scheme relating to registration include:

- *suitability information* does not automatically exclude an applicant from registration. The registrar is given broad discretion to satisfy themselves of a person's suitability to be registered. The registrar can request further information under section 20 to help inform this decision.
- If the criteria for eligibility are met, the registrar must register the individual.
- A decision to refuse to register a professional engineer, or to refuse to renew their registration, can be internally reviewed by an applicant for registration.
- Before imposing conditions on registration, the registrar must give the engineer written notice, including reasons for the proposed condition. The engineer is given the opportunity to respond to the notice, and this response must be considered by the registrar. A decision to impose a condition on registration is internally reviewable by a professional engineer.
- The ACAT can also confirm, vary or set aside these internally reviewable decisions.

Under the scheme, if you are registered in another jurisdiction, you will be able to operate in the ACT under that registration without needing to be separately registered in the ACT. This will be through the automatic mutual recognition (AMR) scheme that has been gradually implemented across several States and Territories since July 2021.

The objective of the AMR scheme is to create a more mobile labour force by allowing workers who hold an occupational registration in one Australian State or Territory to work in another Australian State or Territory without needing to pay additional fees or

apply for a separate registration. This process gives workers what is called Automatic Deemed Registration (ADR). To be eligible for AMR, individuals must hold and maintain a registration or licence in their home state or territory (i.e. their primary place of residence or work) that covers the activity that they intend to carry out in another Australian State or Territory.

In implementing the scheme, the ACT Government will also consider arrangements for those wishing to transfer their registration from another jurisdiction to the ACT.

The engineering profession is increasingly globalised. Many of Australia's trading partners have recognised this and have begun to establish engineering registration schemes as an important tool to help promote exports of their engineers' services. A government-backed registration scheme will help give ACT engineers the edge they need to compete in this global marketplace by giving prospective purchasers of their services the assurance that the engineer they engage is suitably qualified and experienced, and will comply with well-recognised and internationally understood professional benchmarks.

This Bill provides regulatory powers to suspend or cancel a registration and for the registrar to apply to ACAT for an order disqualifying a person from registration. The Bill establishes the grounds on which the registrar can take those regulatory actions and the processes that are to be followed to provide procedural fairness (for example, providing show cause notices prior to taking any regulatory action). Immediate regulatory action can only be taken in circumstances where it is in the public interest to do. For example, where there is risk of harm. Where there is immediate risk of safety to any person, the registrar may inform the engineer of the immediate suspension initially orally and then follow it up with a written notice. Decisions by the registrar to suspend or cancel a registration are ACAT reviewable.

Where regulatory action is necessary, the mechanism chosen will be dependent on the specific circumstances of the grounds for regulatory action.

Procedural fairness safeguards are provided throughout Part 6 of the Bill and decisions relating to disciplinary action and/or immediate suspension or cancellation of a registration are reviewable by ACAT.

To ensure procedural fairness, a professional engineer must be given a show cause notice if the registrar proposes to take disciplinary action which states the grounds on which the registrar considers disciplinary action can be taken; details of the proposed disciplinary action and provide the professional engineer with 28 days to respond to the notice. The registrar must consider any response to the notice in making their decision to take disciplinary action. In addition, suspension or cancellation of a professional engineer's registration must not take place until at least 14 days after the notice of disciplinary action is given to the engineer.

Immediate suspension or cancellation powers are limited to when the registrar is satisfied that a ground for disciplinary action exists, and it is in the public interest to

immediately suspend or cancel the professional engineer's registration. Notice must be provided in writing unless the registrar believes there is an immediate risk to the safety of any person.

Immediate suspension ends on either:

- the date stated in the immediate action notice
- a specified particular event happens
- disciplinary action is taken and the disciplinary action takes effect
- where a decision to not take disciplinary action, the earliest of when the engineer receives written notice of that decision or 90 days has lapsed since the immediate action notice was provided

Non-compliance with the regulatory framework established by the Bill will be managed through an 'engage, educate and enforce' compliance process. This provides a safeguard to ensure the limitation on rights is reasonable and proportionate. Conduct that contravenes the legislative framework will be considered on a case-by-case basis and within its own context to determine the appropriate compliance and enforcement response.

There is a high expectation that registered professionals will exercise appropriate skill and care when providing professional services and it is important that this standard is enforced through appropriate penalties to protect the community and deter unsafe behaviours.

Persons covered by regulatory frameworks are provided with adequate information about their obligations under those frameworks. Appropriate regulatory actions are essential to building community confidence in the profession and the regulatory system.

Climate Change Implications

There are no climate change implications from the Bill.

Professional Engineers Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Professional Engineers Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

PART 1 PRELIMINARY

Part 1 deals with formal matters including commencement.

Clause 1 Name of Act

This clause provides that the name of the Act is the *Professional Engineers Act 2022*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on a day fixed by the Minister by written notice.

Section 81 of the *Legislation Act 2001* (the Legislation Act) allows for appointments and statutory instruments to be made in the period between notification and commencement. Statutory instruments and appointments relating to key elements of the scheme (for example: areas of engineering; qualifications, experience, and competencies; continuing professional development; appointment of the registrar and approval of assessment entities); need to be in place before the scheme can formally commence. In addition, registration for areas of engineering will be introduced in a phased manner to manage demands on the scheme and provide a more manageable and responsive scheme. Phasing periods will be finalised in consultation with directorates, assessment entities and peak bodies.

Clause 3 Dictionary

This clause states that the dictionary at the end of the Bill is, once enacted, part of the Act.

Clause 4 Notes

This clause states that a note included in this Act is explanatory and does not form part of the Act.

Clause 5 Offences against Act—application of Criminal Code etc

This clause provides that the Criminal Code, chapter 2 applies in relation to all offences against the Act. The Legislation Act, section 133 applies in relation to the meaning of penalty units expressed in the Act.

PART 2 OBJECTS AND IMPORTANT CONCEPTS

Part 2 sets out the objects of the Act and defines key terms.

Clause 6 Objects of Act

This clause sets out the objects of the Act.

The objects reflect the important role that engineering services have in the community and seek to provide the public with confidence in the engineering services they receive, whether directly from a professional engineer or through services provided under the direction and oversight of the professional engineer.

The objects will be achieved through:

- a. establishing a registration scheme for professional engineers;
- b. providing for monitoring and enforcement of compliance with the Act; and
- c. imposing obligations on people about the practice of engineering (registered professional engineers and those that employ them).

Clause 7 Meaning of *professional engineer*

This clause defines ***professional engineer*** for the Act.

Clause 8 Meaning of *professional engineering service*

This clause defines ***professional engineering service*** for the Act. A professional engineering service does not include an engineering service that is provided only in accordance with a prescriptive standard. The definition is consistent with that used in other jurisdictions.

Clause 9 Meaning of *area of engineering*

This clause defines ***area of engineering*** for the Act. The Act will initially apply to the following five areas of engineering: Civil; Structural; Mechanical; Electrical; and Fire Safety.

This clause provides for other areas of engineering to be prescribed by regulation. This allows for the easy expansion of the scheme to cover additional areas of engineering. This is consistent with the approach taken in other jurisdictions. Any future additions will be subject to separate policy and legislation development and consultation.

This clause also provides the Minister with the power to make guidelines describing the scope of an area of engineering. The Minister's determination will be in the form of a notifiable instrument. Based on the experience in other jurisdictions and industry consultation, guidance material will be key to assisting individuals to determine whether the work they are carrying out constitutes professional engineering services for the purposes of the Act.

PART 3 REGISTRAR AND DEPUTY REGISTRARS

Part 3 establishes the administration arrangements for the operation of the scheme.

Clause 10 Appointment of Australian Capital Territory Professional Engineers Registrar

This clause provides for the appointment of an Australian Capital Territory Professional Engineers Registrar (the registrar) by the director-general. The appointee will be a public servant and will be appointed for a term not longer than 5 years. Appointment will be in the form of a notifiable instrument.

Clause 11 Delegation by registrar

This clause provides for the delegation of the functions of the registrar under this Act or another territory law to a public servant.

Clause 12 Appointment of deputy registrars

This clause provides that the registrar may appoint a public servant as a deputy registrar. The appointee will be for a term not longer than 5 years and will be in the form of a notifiable instrument.

Clause 13 Functions of deputy registrars

This clause provides the functions that can be exercised by a deputy registrar (excluding the power to delegate a function), and the process by which the registrar may limit the functions a deputy registrar may exercise and/or direct a deputy registrar, as to how a function is to be exercised. If the registrar directs a deputy registrar as to how a function is to be exercised, the deputy registrar must only exercise the function in accordance with that direction.

PART 4 REGISTRATION OF PROFESSIONAL ENGINEERS

Part 4 establishes the registration process for professional engineers.

Clause 14 Requirement to be registered

This clause provides that an individual must not carry out a professional engineering service unless they are registered to carry out the service. However, an individual carrying out a professional engineering service under the direction and oversight of a professional engineer, who is responsible for the service, is not required to be registered.

Engineers working under direct supervision of a registered professional engineer, or only in accordance with prescriptive standards, are not required to be registered. It is common practice within the industry for engineers to be supervised in their first years of working.

This will allow for junior engineers who are yet to meet qualifications, experience, or competencies criteria to still practice, but under the supervision and direction of a registered engineer.

This means that for those currently providing professional engineering services in regulated areas of engineering who cannot meet the registration requirements, they must provide those services under the supervision and direction of a registered professional engineer who is responsible for the service.

Clause 15 Meaning of *suitability information*—pt 4

This clause defines ***suitability information*** for the purposes of this Part of the Act. Suitability information is used by the registrar in determining a person's eligibility for registration and renewal and is relevant to decisions on regulatory action under Part 6 of the Act.

Clause 16 Applications for registration

This clause provides that an individual may apply for registration as a professional engineer in one or more areas of engineering, and sets out what must be included in an application for registration. The registrar has the power to consider an application for registration that does not comply with the requirements in clause 16 (2).

Clause 17 Eligibility for registration

This clause contains the eligibility criteria for registration as a professional engineer in an area of engineering. To be eligible for registration the applicant must:

- a. be an individual
- b. have the required qualifications, experience, and competencies
- c. satisfy the registrar that they are suitable to be registered as a professional engineer
- d. not be disqualified from applying for registration under this Act or a relevant law
- e. not have had their registration cancelled under this Act or a relevant law in the previous 5 years
- f. meet any other eligibility requirements prescribed by regulation.

Clause 18 Applications for renewal

This clause provides that an individual may apply for renewal of their registration as a professional engineer in one or more areas of engineering and sets out what must be included in an application for renewal. The registrar has the power to consider an application for registration that does not comply with the requirements in clause 18 (2) or (3).

An application for renewal must be made no earlier than three months before the current registration expires, and no later than six months after the current registration expired. An application for renewal made six months after the current registration expired will need to be re-made as a new application for registration.

Clause 19 Eligibility for registration renewal

This clause provides the eligibility criteria for registration renewal. A professional engineer is eligible to have their registration renewed if they:

- a. have undertaken continuing professional development as required by the Determination made under clause 84
- b. continue to be a suitable person to be registered as a professional engineer
- c. meet any other eligibility requirements prescribed by regulation.

Clause 20 Registrar may request more information

This clause provides the registrar with the power to require an applicant for registration or renewal, to give the registrar information that the registrar reasonably needs to decide the application. For example, the registrar could use this power to request a new assessment report from an assessment entity regarding the applicant's qualifications, experience and competencies.

A request must be in writing and if an applicant refuses to comply with a request, the registrar may refuse to consider the application further.

Clause 21 Change of information must be provided

This clause provides that if information provided in an application for registration or renewal changes before the application is decided, the applicant must give the registrar written notice of the changes. Changes during the period of registration are covered by clause 29.

Clause 22 Deciding applications

This clause provides that if an individual makes an application for registration or renewal, and the individual is eligible for registration, the registrar must register the individual or renew their registration. The registrar must refuse to register an individual or renew their registration if they are not eligible.

In addition, this clause provides that:

- an individual may be registered in more than 1 area of engineering
- renewal registration begins on the day after the registration being renewed ends
- a registration that is suspended may be renewed but the renewed registration will be suspended until the suspension ends.

Clause 23 Continuation of registration until application for renewal decided

This clause provides that once an application for renewal is made, the engineer's existing registration continues in force until the application is decided, even if this means the term of registration will be more than the maximum term stated in clause 25.

Clause 24 Registration conditions

This clause provides that a professional engineer's registration is subject to any conditions the registrar considers appropriate and/or any conditions prescribed by regulation. To ensure procedural fairness, a professional engineer must be given written notice by the registrar of the condition proposed to be imposed, the reasons why the condition is proposed, and provide the professional engineer with 28 days to respond to the notice. The registrar must consider any response to the notice.

Clause 25 Registration term

This clause provides that the term of registration begins on the day stated in the registration certificate and ends 3 years after or a shorter period if one is prescribed by regulation. If a registration is cancelled under division 6.1, division 6.2 or clause 44, the registration ends the day the cancellation takes effect.

Clause 26 Registration certificates

This clause requires the registrar to provide a registration certificate when registering an individual as a professional engineer, renewing a registration, or varying a registration. It states the information that must be included in a registration certificate. The registrar has the power to include any other information in a registration certificate they consider relevant.

Clause 27 Obligations

This clause sets out the obligations a registered professional engineer is expected to meet. Non-compliance can be grounds for regulatory action under Part 6, or be an offence under Part 8.

Clause 28 Variation of registration

This clause provides for the variation of a registration either at the request of the registered professional engineer, or on the registrar's own initiative.

To ensure procedural fairness, a professional engineer must be given written notice by the registrar of the proposal to vary the registration on their own initiative and provide the professional engineer with 28 days to respond to the notice. The registrar must consider any response to the notice in making their decision to vary the registration.

Written notice is to be provided if a decision is made to vary a registration. Varying a registration does not include adding a new area of engineering. To be granted registration for an additional area of engineering, a new application for registration is required in accordance with clause 16.

Clause 29 Notifying registrar about change of information

This clause provides that a registered professional engineer must notify the registrar of the following notification events:

- a. change of name
- b. change of contact details
- c. change to the engineer's suitability information
- d. any other event or circumstance prescribed by regulation.

Notification must be given to the registrar in writing, within 14 days of the registered professional engineer becoming aware of the notification event.

Failure to notify of a change to the engineer's suitability information or other event or circumstances prescribed by regulation will be a strict liability offence with a maximum penalty of 20 penalty units.

Clause 30 Registrar must keep professional engineers register

This clause provides that the registrar must keep a register of professional engineers (the engineers register) and prescribes the details that must be kept on the register. The register may also contain any other details the registrar considers appropriate. Information about former registered professional engineers must be kept on the register for 10 years after the day their registration ended. The registrar may correct any mistake, error or omission in the engineers register.

Clause 31 Publication of certain information in engineers register

This clause provides that the registrar must make certain information about a professional engineer in the engineers register available to the public. Information that will be made public includes:

- a. the engineer's name
- b. the area of engineering for which the engineer is registered
- c. the engineer's registration number
- d. the term of the engineer's registration
- e. any conditions on the engineer's registration
- f. the status of the engineer's registration

Information about a former registered engineer may be made available to the public.

The registrar must not make information about a professional engineer or former professional engineer available to the public if requested by the professional engineer or former engineer, and the registrar is satisfied that the publication of the information would, or could reasonably be expected to endanger the life or physical safety of any person; or jeopardise national security.

PART 5 ASSESSMENT ENTITIES

Part 5 establishes assessment entities. Assessment entities are an integral part of professional engineer registration schemes.

Clause 32 Approval for assessment entity to conduct assessment scheme

This clause provides for approval of an entity to conduct an assessment scheme (assessment entity). Assessment entities will be approved by the director-general of the ACT Government Directorate responsible for the scheme (currently the Environment, Planning and Sustainable Development Directorate). Approval will be in the form of a notifiable instrument. Clause 32 (2) provides that conditions of approval can be made either through regulation or via notifiable instrument.

To be eligible for approval as an assessment entity, the entity must be an ***eligible entity*** and the proposed assessment scheme must be an ***eligible assessment scheme***.

Clause 32 (4) sets out the eligibility criteria for being an ***eligible entity*** and provides for additional criteria to be prescribed by regulation. This clause provides for recognition of entities approved to conduct an assessment scheme that is the same or similar to the proposed assessment scheme under a relevant law of another jurisdiction.

Clause 32 (5) sets out the eligibility criteria for an ***eligible assessment scheme*** and provides for additional criteria to be prescribed by regulation.

Clause 33 Variation of approval

This clause provides for the variation of an approval either at the written request of the assessment entity or on the director-general's own initiative.

To ensure procedural fairness, an assessment entity must be given written notice by the director-general of any proposal to vary the approval on their own initiative and provide the assessment entity with 28 days to respond to the notice. The director-general must consider any response to the notice in making their decision to vary the approval or not. A variation to an approval must be in the form of a notifiable instrument.

Varying an approval does not include authorising the assessment to conduct an assessment scheme in a new area of engineering. To be granted approval for a new area of engineering, a new application for approval is required.

Clause 34 Revocation of approval

This clause provides for the revocation of approval of an assessment entity either at the written request of the assessment entity or on the director-general's own initiative. Revocation is in the form of a notifiable instrument.

If the revocation is at the request of the assessment entity, revocation will not come into effect until at least 90 days after the day the revocation is notified or if a later date is stated in the revocation, that date. This is consistent with schemes in other jurisdictions and ensures that there is no negative impact to the scheme and individuals seeking registration as a result of an assessment entity no longer being approved.

If the revocation is at the director-general's own initiative, the director-general must be satisfied that a specified ground applies, give the entity written notice, which includes 28 days for a response, and consider any response. Revocation through this process will take effect on the day stated in the revocation.

PART 6 REGULATORY ACTION—PROFESSIONAL ENGINEERS

Part 6 provides for when and how regulatory action can be taken in relation to a registered professional engineer.

Clause 35 Definitions—div 6.1

This clause defines ***disciplinary action***, ***ground for disciplinary action***, ***professional engineer***, ***proposed disciplinary action*** and ***show cause notice*** for this part.

Disciplinary action, against a professional engineer, under this section means any of the following:

- reprimanding the engineer (for example, issue a formal warning which is recorded on the public register)
- directing the engineer to undergo an assessment of their required qualifications, experience and competencies
- directing the engineer to undertake stated training
- imposing or amending a condition of the engineer's registration
- suspending the engineer's registration for either a fixed period, or until a particular event happens

- cancelling the engineer's registration.

Clause 36 Grounds for disciplinary action

This clause sets out what constitutes a ***ground for disciplinary action*** against a professional engineer.

Clause 37 Notice of proposed disciplinary action

This clause provides that where the registrar is satisfied that a ground for disciplinary action exists, in relation to a professional engineer, and the registrar proposes to take disciplinary action, the registrar must give the engineer a written show cause notice. The clause sets out the requirements for the information that must be included in the show cause notice.

In accordance with administrative law principles, the registrar must be satisfied on reasonable grounds that a ground for disciplinary action exists before taking any disciplinary action.

Clause 38 Taking disciplinary action

This clause provides that the registrar may only take the proposed disciplinary action against a professional engineer if a show cause notice has been issued under clause 37, the registrar has considered any submissions in response to the show cause notice, and is satisfied that it is appropriate to take the proposed disciplinary action against the engineer.

Where the registrar decides to take the proposed disciplinary action, the registrar must give the professional engineer a written notice of disciplinary action.

Clause 39 Not taking disciplinary action

This clause sets out the obligations on the registrar following the issuing of a show cause notice and receipt of a submission in response, should the registrar decide not to take the proposed disciplinary action.

Clause 40 Effect of suspension

This clause provides that if the registration of an engineer is suspended under division 6.1, the individual is taken not to be a professional engineer during the period of suspension.

Clause 41 Immediate suspension or cancellation

This clause provides the registrar with the power to immediately suspend or cancel a professional engineer's registration, where a ground for disciplinary action (excluding a failure to comply with a disciplinary action taken under division 6.1) exists and it is in the public interest to immediately suspend or cancel the professional engineer's registration.

This clause sets out the contents of the immediate action notice, the registrar must give to a professional engineer, in writing, if the registrar immediately suspends or cancels a registration. This notice may be given orally if the registrar believes there is an immediate risk to the safety of any person.

This clause sets out when suspension or cancellation takes effect and when a suspension ends.

Clause 42 Effect of immediate suspension

This clause provides that if the registration of an engineer is suspended under clause 41, the individual is taken not to be a professional engineer during the period of suspension.

Clause 43 Revoking immediate suspension or cancellation

This clause allows for revocation of an immediate suspension or cancellation by the registrar on written application by the person whose registration is suspended or cancelled or on their own initiative. An application must be made no later than 14 days after the day the person is given the immediate action notice. Written notice must be provided if the registrar decides to revoke an immediate suspension or cancellation.

Clause 44 Voluntary cancellation of registration

This clause provides that the registrar must cancel the registration of a professional engineer at the request of the engineer if satisfied it is appropriate to cancel the registration. Circumstances where cancelling the registration may not be appropriate include if a complaint has been received about the engineer or where disciplinary action is being considered.

Clause 45 Application to disqualify person from applying for registration

This clause applies where the registrar has suspended or cancelled the registration of a professional engineer under division 6.1. The registrar may apply to ACAT for:

- a. An order cancelling a suspending registration as part of an application for an order disqualifying the person.
- b. An order disqualifying the person from applying for registration as a professional engineer (for a set period of time of no more than 5 years or until a stated event happens).
- c. An order requiring the person to pay the Territory a stated amount of not more than \$20,000. Any order of a money amount may be recoverable as a debt payable to the Territory.
- d. Any other order the ACAT considers appropriate.

In making any order, ACAT must consider any matter prescribed by regulation.

Clause 46 Registrar may consult people before exercising functions

This clause provides the registrar with the power to consult any person the registrar considers appropriate in exercising functions under this Part. To support this consultation the registrar is authorised to disclose information that relates to the exercise of the function.

PART 7 ENFORCEMENT

Part 7 sets out the enforcement powers required to support the registration scheme established by the Act and provides for the appointment of authorised persons and their powers of entry and to obtain, inspect and copy documents.

Clause 47 Definitions—pt 7

This clause defines *at premises*, *occupier* and *premises* for this part.

Clause 48 Appointment of authorised people

This clause provides that the registrar may appoint a public servant as an authorised person for the Act.

Clause 49 Identity cards

This clause provides for the identification of authorised persons, by way of an identity card. This clause lists the requirements of the information this card must contain to ensure accurate identification and validity.

The clause establishes an offence of failing to return the identity card within seven days after the person stops being an authorised person. This offence does not apply if the authorised person's identity card is lost, stolen or destroyed by someone else. The maximum penalty for this offence is 1 penalty unit. An offence against this section is a strict liability offence.

Clause 50 Authorised person must show identity card on exercising power of entry

This clause provides that if an authorised person exercises a power that affects an individual, the authorised person must first show an identity card to that individual.

This clause provides that if an authorised person exercises a power that affects a person other than an individual, the authorised person must first show an identity card to an individual that the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

Clause 51 Power to enter premises

This clause establishes that an authorised person may enter premises and the conditions under which this may occur.

An authorised person may enter:

- a. public premises or premises open to the public
- b. premises with the occupier's consent
- c. adjacent land to seek the occupier's consent in order to effectively conduct their duties.

Entry is to be without payment of an entry fee or other charge. An authorised person may not enter parts of the premises that are being used only for residential purposes.

An authorised person may enter the premises with ***necessary assistance***. ***Necessary assistance*** includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out their function.

Clause 52 Production of identity card

This clause provides that an authorised person, and any other person accompanying the authorised person who is not a police officer, may not remain at the premises entered if the authorised person does not produce their identity card when asked by the occupier.

Clause 53 Consent to entry

This clause provides that when seeking consent to enter the premises, an authorised person must produce their identity card and inform the occupier of the purpose of the entry and reason for and identity of any other person accompanying them; that anything found under this part may be used in evidence in court; and that consent may be refused.

The authorised person must ask the occupier to sign a written acknowledgement of their consent to enter and must provide a copy to the occupier as soon as practicable. This ensures informed consent. If consent is questioned a court must find that the occupier did not consent to entry under this part.

Clause 54 General powers on entry to premises

This clause outlines the actions that an authorised person who enters a premises can do in relation to the premises or anything at the premises.

This clause establishes an offence for failing to take reasonable steps to comply with a requirement to provide reasonable help to facilitate actions in clause 54 (1) (d), (e) or (f). The maximum penalty for this offence is 50 penalty units.

Clause 55 Power to obtain, inspect and copy documents

This clause provides an authorised person may, in writing, require specified persons to give them information or produce documents or anything else that the person has or has access to, that are reasonably required by the authorised person for the Act. Specified persons include a professional engineer, an employer or former employer of a registered engineer or an employee or former employee of a professional engineer.

This clause establishes an offence for failing to take reasonable steps to comply with a requirement made of the person under this clause. The maximum penalty for this offence is 50 penalty units.

Clause 56 Abrogation of privilege against self-incrimination

This clause provides that a person is not excused from answering a question, providing information or a document or other thing, under division 7.3 on the ground that the answer to this question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

However, the clause also provides that any information obtained, directly or indirectly, because of the giving of the answer or production of the document under this Act, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

Clause 57 Warning to be given

This clause provides that before requiring a person to comply with a requirement under clause 54 (1) (d) or (e) or clause 55, an authorised person must warn the person that failure to comply constitutes an offence and the effect of clause 56.

This clause provides that it is not an offence for an individual to refuse to answer a question put by an authorised person or provide information or a document under clause 54 (1) (d) or (e) or clause 55, on the ground that the answer to the question, or the information or document, might tend to incriminate the individual, unless the individual was first given the warning contained in subsection (1) of this clause.

This clause provides that nothing in this clause prevents an authorised person from obtaining and using evidence given to the authorised person voluntarily by any person.

PART 8 OFFENCES

Part 8 contains the offence provisions for the Act. The offences and associated penalties have been developed in accordance with the ACT Government's *Guide for Framing Offences*.

Clause 58 Providing professional engineering service without registration

This clause establishes that it is an offence for a person who is not registered to carry out a professional engineering service, other than under the direction and oversight of a professional engineer who is responsible for the service, to carry out a professional engineering service and be reckless about whether they are registered to carry out the professional engineering service. The maximum penalty for this offence is 100 penalty units.

This clause establishes that it is a strict liability offence for a person to carry out a professional engineering service, other than under the direction and oversight of a professional engineer who is responsible for the service, if the person is not registered to carry out the professional engineering service. The maximum penalty for this offence is 50 penalty units.

These offences do not apply if the person is not required to be registered under clause 14 (2). That is the person is an individual who is carrying out a professional engineering service under the direction and oversight of a professional engineer who is responsible for the service.

Clause 59 False or misleading representation about registration

This clause establishes that it is an offence to make a false or misleading representation that the person is registered to carry out a professional engineering service and that representation is false or misleading in a material particular and the person is reckless about whether the representation is false and misleading. The maximum penalty for this offence is 50 penalty units.

This clause establishes it is a strict liability offence to make a false or misleading representation that the person is registered to carry out a professional engineering service and that representation is false or misleading in a material respect. The maximum penalty for this offence is 30 penalty units.

An example of a false or misleading representation is a person who advertises professional engineering services while not registered (includes advertising in an area of engineering for which the person is not registered).

Clause 60 Failure to comply with condition of registration

This clause establishes that it is a strict liability offence for a professional engineer to fail to comply with a condition of registration. The maximum penalty for this offence is 30 penalty units.

Clause 61 Failure to comply with approved code of practice

This clause establishes that it is an offence for a professional engineer to fail to comply with a requirement of an approved code of practice and be reckless about

whether the conduct complies with the approved code of practice. The maximum penalty for this offence is 50 penalty units.

This clause makes it a strict liability offence for a professional engineer to fail to comply with a requirement of an approved code of practice. The maximum penalty for this offence is 30 penalty units.

Clause 62 Allowing unregistered people to provide professional engineering service

This clause establishes that it is offence to engage or allow another person (including an employee) to carry out professional engineering services when they are not registered to carry out the professional engineering services being carried out and the person is reckless about whether the worker is registered to carry out the professional engineering services being carried out. The maximum penalty for this offence is 50 penalty units.

This clause sets out that where the person engaging or allowing another person to carry out professional engineering services is a partnership, each member of the partnership commits the offence. The maximum penalty for each member is 50 penalty units. It is a defence where the partner can prove they did not know about the contravention involved in the offence and either took reasonable precautions and exercised appropriate diligence to avoid the contravention or was not in a position to influence the partnership in relation to the conduct involved in the contravention.

This provision aligns with similar provisions in the *Construction Occupations (Licensing) Act 2004*.

PART 9 COMPLAINTS ABOUT PROFESSIONAL ENGINEERS

Part 9 establishes when a complaint can be made about a professional engineer under the Act and the processes for making and responding to a complaint.

Clause 63 Definitions—pt 9

This clause defines ***aggrieved person***, ***complainant***, ***professional engineer*** and ***respondent*** for this part.

Clause 64 When may someone complain about a professional engineer?

This clause establishes the circumstances in which a person may complain to the registrar about a professional engineer. The circumstances are limited to those where the registrar has a regulatory role to perform.

Clause 65 Making a complaint on behalf of another person

This clause establishes who can make a complaint on behalf of an aggrieved person.

Clause 66 Form and contents of complaint

This clause provides the form that a complaint must take and the information that must be included. The registrar may accept a complaint for consideration that does not comply with the form and content requirements in subsection (1) of this clause. In circumstances where the registrar accepts a complaint for consideration that is not in writing, the registrar must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

Clause 67 Withdrawal of complaint

This clause provides that a complainant may withdraw a complaint at any time by giving written notice to the registrar and sets out the obligations on the registrar when a complaint is withdrawn by a complainant.

Clause 68 Notifying professional engineer about complaint

This clause requires the registrar to provide written notice to the respondent (the professional engineer) to whom the complaint relates as soon as practicable after accepting a complaint for consideration. The written notice must state that a complaint has been made and include details of the complaint.

Clause 69 Consideration of complaint

This clause requires the registrar to take reasonable steps to consider each complaint accepted for consideration. The registrar's consideration of a complaint may be conducted in any way the registrar decides, unless otherwise expressly provided in the Act.

Clause 70 Registrar may request information or statement

This clause provides that the registrar may, at any time, ask a complainant or respondent to give the registrar information or a statement about the complaint and sets out the form and content of such a request. The registrar may extend the initial timeframe for responding to such a request before or after the period for a response ends. Failure to respond to a request does not prevent the complaint continuing to be considered and action being taken by the registrar in response to the complaint.

Clause 71 No further action

This clause requires the registrar not to take further action on a complaint if satisfied that the complaint lacks substance or is frivolous, vexatious or was made other than in good faith or the complaint has been adequately dealt with.

Clause 72 Notice of outcome of complaint consideration

This clause requires the registrar to, upon finalising a complaint under Part 9, give the complainant and the respondent a written notice that includes information about the outcome of the complaint.

This clause requires that if after finalising a complaint, the registrar is satisfied that a ground for disciplinary action exists, the registrar must consider taking disciplinary action under division 6.1 of the Act.

Clause 73 Immunity from liability

This clause provides that the making of a complaint is not a breach of confidence, breach of professional etiquette or ethics or a breach of a rule of professional conduct and civil or criminal liability is not incurred only because of the making of a complaint.

PART 10 INFORMATION SHARING

Part 10 provides for the sharing of public safety information and protected information.

Clause 74 Definitions—div 10.1

This clause defines *law of another jurisdiction*, *non-territory agency*, *public safety agency*, *public safety information* and *operational Act* used in division 10.1.

Clause 75 Sharing public safety information—territory agencies

This clause establishes the practices for the sharing of public safety information by a public safety agency to another public safety agency.

Clause 76 Sharing public safety information—non-territory agencies

This clause establishes the practices for sharing of public safety information by a public safety agency with a non-territory agency.

Clause 77 Offences—use or divulge protected information

This clause establishes that it is an offence to use protected information about someone else and be reckless about whether the information is protected information. The maximum penalty for this offence is 50 penalty units, imprisonment for 6 months or both.

This clause establishes that it is an offence to do something that divulges protected information about someone else and be reckless about whether the information is protected information and whether doing the thing would result in the information

being divulged to someone else. The maximum penalty for this offence is 50 penalty units, imprisonment for 6 months or both.

These offences do not apply in the circumstances prescribed, for example, the information is used or divulged with the person's consent or in accordance with another Territory law.

This clause provides that a public official need not divulge protected information to a court or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law in force in the Territory.

The terms ***court***, ***divulge***, ***produce***, ***protected information*** and ***use*** are defined to provide a consistent meaning in this section.

PART 11 NOTIFICATION AND REVIEW OF DECISIONS

Clause 78 Definitions—pt 11

This clause defines the terms ***ACAT reviewable decision***, ***affected person***, ***decision-maker***, ***internally reviewable decision***, ***internal review notice***, and ***reconsideration application*** used in this part.

Clause 79 Applications for reconsideration

This clause provides for affected persons (persons listed in schedule 1, part 1.1, column 4) to apply for reconsideration of a decision and the timeframe for making an application and formalities required.

Clause 80 Reconsideration on internally reviewable decisions

This clause empowers the decision-maker to reconsider a decision and sets out the process for making such a reconsideration including that the decision-maker must be a different person to the person who made the internally reviewable decision. Failure to make a decision within the statutory time period (being 30 days) is taken to be a confirmation of the decision under reconsideration.

Clause 81 Reviewable decision notice

This clause provides that if a decision-maker makes an ACAT reviewable decision, the decision-maker must give a reviewable decision notice to the registrar and each affected person mentioned in schedule 1, part 1.2, column 4 in relation to the decision.

Clause 82 Applications for review of ACAT reviewable decisions

This clause provides that an affected person mentioned may apply to the ACAT for a review of an ACAT reviewable decision.

PART 12 MISCELLANEOUS

Clause 83 Qualification, experience and competencies for professional engineers

This clause requires the Minister to determine the qualifications, experience and competencies that an individual must have to be eligible to be a professional engineer. A determination is in the form of a disallowable instrument.

An approved assessment entity will assess whether an applicant meets the necessary qualifications, experience and competencies contained in the determination in the areas(s) of engineering for which an application for registration has been made. The registrar will be responsible for checking achievement of other eligibility criteria for registration and for ultimately granting registration.

Clause 84 Continuing professional development for professional engineers

This clause provides that the Minister may determine continuing professional development requirements for professional engineers. A determination is in the form of a disallowable instrument.

The determination will establish matters such as required hours, areas and types of activities. It will not approve providers or stipulate specific courses that must be undertaken to meet the requirements.

Clause 85 Codes of practice

This clause allows for the Minister to approve a code of practice for professional engineers or an area of engineering or a professional engineering service. An approved code of practice is a disallowable instrument.

Clause 86 Protection of public officials from liability

This clause provides that a public official, is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act, or in the reasonable belief that the conduct was in the exercise of a function under this Act or another Territory law.

The clause confirms that any civil liability that would, apart from subsection (1) of this clause, attach to an official, attaches instead to the Territory.

Clause 87 Incorporating, applying or adopting documents in regulations and certain instruments

This clause provides that a regulation made under this Act, or an instrument made under clauses 84 or 85 of this Act may incorporate, apply or adopt (with or without change or modification) a law or an Australian Standard as in force from time to time

or another instrument as in force from time to time. This provision enables relevant instruments in other jurisdictions under similar laws or issued by professional engineering bodies to be incorporated, applied or adopted in the ACT which supports consistent regulation across Australia and acknowledges the significant work already undertaken by professional engineering services to support the continued development of the industry.

Clause 88 Determination of fees

This clause provides that the Minister may determine fees for the Act and that a determination is a disallowable instrument.

Clause 89 Regulation-making power

This clause provides the Executive with the power to make regulations for this Act, including to create offences and fix penalties of no more than 30 penalty units.

PART 13 CONSEQUENTIAL AMENDMENTS

Clause 90 Consequential amendments

This clause provides that the Act amends the legislation mentioned in schedule 2.

SCHEDULE 1 REVIEWABLE DECISIONS

Reviewable decisions relate to Part 11 notification and review decisions.

PART 1.1 Internally reviewable decisions

This schedule provides a list of internally reviewable decisions. Internally reviewable decisions outlined in the schedule relate to:

- applications for registration
- applications for renewal
- imposition of conditions on a registration
- variations to a registration
- refusal to cancel registration of a professional engineer at the engineer's request

Column 4 of this schedule provides the affected person who can apply for the review of each item listed in Column 2.

PART 1.2 ACAT reviewable decisions

This schedule provides a list of ACAT reviewable decisions. ACAT reviewable decisions outlined in the schedule relate to:

- approval of assessment entities

- decisions of the registrar to take disciplinary action
- immediate suspension or cancellation of a registration
- confirming, varying or setting aside internally reviewable decisions

Column 4 of this schedule provides the affected person who can apply for the review of each item listed in Column 2.

SCHEDULE 1 REVIEWABLE DECISIONS

Part 2.1 Building Act 2004

Item 2.1 Section 47 (1)

This item omits the word ‘professional’ and is consequential on the amendments at item 2.2.

Item 2.2 Section 47 (2)

This item clarifies that an engineer’s certificate must be provided by an engineer in the field for which the engineer is giving a certificate and if the engineer is required to be registered as a professional engineer under the *Professional Engineers Act 2022*, a registered engineer. For example, an engineer giving a certificate about a structural matter must be a structural engineer and a registered engineer in the area of structural engineering.

Item 2.3 New section 47 (5)

This item inserts a definition ***professional engineer*** in section 47 and is consequential on the amendments at item 2.2.

Part 2.2 Construction Occupations (Licensing) Act 2004

Item 2.4 Section 123AA, definition of *public safety agency*, new paragraph (fa)

This item includes the registrar under the *Professional Engineers Act 2022* as a ***public safety agency*** for Part 11AA.

DICTIONARY

The dictionary defines terms used in the Act.