

Professional Engineers (Assessment Entity) Approval 2024

Notifiable instrument NI2024–100

made under the

Professional Engineers Act 2023, s 32 (Approval for assessment entity to conduct assessment scheme)

1 Name of instrument

This instrument is the *Professional Engineers (Assessment Entity) Approval 2024*.

2 Commencement

This instrument commences on 6 March 2024.

3 Approval

- (1) I approve the entities listed in schedule 1 to conduct a scheme for an area of engineering (an *assessment scheme*).
- (2) The approved entities listed in schedule 1 are subject to the standard conditions of approval in schedule 2.

Ben Ponton
Director-General
Environment, Planning and Sustainable Development Directorate
26 February 2024

Schedule 1

Approved Assessment Entities for the ACT Professional Engineers Registration Scheme

The following entities are approved to deliver an assessment scheme under the *Professional Engineers Act 2023*:

Entity	Australian Institute of Refrigeration Airconditioning and Heating (Incorporated)
Business name	Australian Institute of Refrigeration Airconditioning and Heating
ABN	81004082928
Areas of engineering	Mechanical
Approval start date	6 March 2024
Approval end date	5 March 2029

Entity	Engineers Australia Pty Ltd
Business name	Engineers Australia
ABN	16342609323
Areas of Engineering	Civil, Structural, Fire Safety, Mechanical and Electrical
Approval start date	6 March 2024
Approval end date	5 March 2029

Entity	Institute of Public Works Engineering Australasia (NSW) Division Ltd
Business name	NSW & ACT Institute of Public Works Engineering Australasia
ACN	093 562 602
Areas of Engineering	Civil
Approval start date	6 March 2024
Approval end date	5 March 2029

Schedule 2

Standard Conditions of Approval

The following are standard conditions of approval to deliver an assessment scheme for the *Professional Engineers Act 2023*.

Failure by an approved assessment entity, or subcontractors of an approved assessment entity, to comply with any of the conditions of approval listed in this Schedule may give rise to grounds for revocation of the approval provided by this instrument.

An approved assessment entity must inform the Territory as soon as practicable if it is unable to comply with the terms of this approval as set out in this Schedule.

1. Assessment Scheme

- a) An approved assessment entity is approved to provide an assessment scheme for the purposes of the *Professional Engineers Act 2023* and must provide assessments in accordance with the requirements of the *Professional Engineers Act 2023*, the *Professional Engineers (Qualifications, Experience and Competencies) Determination* as amended from time to time and this instrument.
- b) Where an approved assessment entity has a membership scheme it must accept applications for assessment from both members and non-members.
- c) An approved assessment entity must not undertake an assessment on a person who is eligible for registration in the ACT under the *Mutual Recognition Act 1992* (Cth) or the *Trans-Tasman Mutual Recognition Act 1997* (Cth) unless requested by the Professional Engineers Registrar or the Territory. An approved assessment entity must direct applicants to the ACT Planning website for information on registration under the *Professional Engineers Act 2023* in those circumstances.
- d) An approved assessment entity must allow a person aggrieved by the outcome of an assessment to apply for a review of the assessment.

2. Assessments

- a) An approved assessment entity must assess an application for assessment within 90 days of receipt. An approved assessment entity must provide in their reports to the Territory details of any applications that exceed that period and the reason why they exceeded that period.
- b) An approved assessment entity must require a person applying for assessment to produce evidence of qualifications, experience and competencies and ability to carry

out professional engineering without supervision.

c) This evidence may include:

- i) the original or a certified copy or an original scan or photo of each document provided as evidence of their qualifications.
- ii) a curriculum vitae or career record evidencing their experience as a professional engineer.
- iii) the name and contact details of a person(s) who can confirm the experience claimed including, where possible, a person who supervised the applicant.
- iv) examples of work they have undertaken or a competency report to demonstrate they have the required Stage 2 elements of competency.
- v) the name and contact details of a person(s) who can confirm that they undertook the work themselves.
- vi) references attesting to their ability to carry out and take full professional responsibility for professional engineering services without supervision within the area of engineering for which they are being assessed.

d) This evidence is not required where the applicant:

- i. is registered in the category of professional engineer on the National Engineering Register (NER) hosted by Engineers Australia, or
- ii. is on the Australian Professional Engineers Register [APER] hosted by Professionals Australia, or
- iii. has been assessed in the last 12 months as being eligible to be registered on the NER or on the APER in the category of professional engineer; or
- iv. holds a Chartered credential issued by Engineers Australia in the area (s) of engineering for which registration is sought.

e) Unless section 2 (d) applies, an approved assessment entity must.

- i) Sight any documents provided by an applicant and ensure that where those are certified copies they are certified by an appropriately authorised person.

- ii) Verify the applicant's experience by contacting the referee (s).
- iii) Verify that the examples of work were undertaken by the applicant by contacting the referee(s) or verify the competency report by contacting the organisation issuing the competency report or by other suitable means.
- iv) Review the examples of work and test the applicant's knowledge and authorship of the work at interview.
- v) Assess whether the applicant has the required Stage 2 elements of competency.
- vi) Verify any references provided by an applicant by contacting the referees.

3. Assessment Report

- a) An approved assessment entity must provide an assessment report for the purposes of section 16 (2) (e) of the *Professional Engineers Act 2023* in the format advised by the Territory as acceptable to the Territory and in accordance with the *Professional Engineers (Qualifications, Experience and Competencies) Determination* as amended from time to time.
- b) What constitutes an assessment report for the purposes of section 16 (2) (e) of the *Professional Engineers Act 2023* is set out in the *Professional Engineers (Qualifications, Experience and Competency) Determination* as amended from time to time.
- c) An approved assessment entity is responsible for ensuring that they are kept informed of any changes to the *Professional Engineers (Qualifications, Experience and Competency) Determination* and are using the current version of the determination in undertaking assessments and preparing assessment reports.

4. Conflicts of interest

- a) An approved assessment entity must ensure that an assessor makes a written declaration in relation to the following prior to undertaking each assessment:
 - i. any actual, perceived or potential conflict of interest.
 - ii. any facts or circumstances that might give rise to a reasonable apprehension that they have a bias.

- b) An approved assessment entity must not appoint an assessor to conduct an assessment where they have declared an actual, perceived or potential conflict of interest or there would be a reasonable apprehension of bias.

5. Public information

- a) An approved assessment entity must publish on its website within 14 days of being notified that this approval instrument is on the ACT Legislation Register:
 - i. its approval under the Act and any conditions of approval; and
 - ii. its assessment scheme; and
 - iii. its complaint handling procedures; and
 - iv. its fees.

6. Advertising

- a) An approved assessment entity must not do anything that could reasonably lead the public to consider that it is the exclusive or primary assessment entity.
- b) An approved assessment entity must ensure that any marketing material does not use ACT Government branding to promote itself.
- c) An approved assessment entity must not permit its subcontractors to describe themselves as approved assessment entities.
- d) Nothing in this approval constitutes an approved assessment entity – or its employees, agents or subcontractors – as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose. An approved assessment entity must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

7. Fees

- a) Applicants are responsible for all costs associated with the assessment and fees are to be paid directly to the approved assessment entity engaged.
- b) An approved assessment entity must not require an applicant to be, or to become, a member of the approved assessment entity for an assessment to be undertaken but may provide a discounted fee to its members.
- c) Fees must not be varied (including reduced or increased) without prior written approval from the Territory.

- d) Applications by an approved assessment entity to vary fees will be assessed by the Territory against the following factors in addition to those considered when determining whether to approve an assessment entity:
 - i. increases in consumer price index;
 - ii. increases in costs associated with providing the assessment scheme; and
 - iii. when the last variation was approved and the nature of that variation.

8. Record keeping

- a) The approved assessment entity must keep sufficient records of its activities under its assessment scheme to enable its activities to be audited for compliance with the scheme. Sufficient records include, but are not limited to:
 - i. The number of applications per area of engineering.
 - ii. The number of applications for assessment against the additional requirements for provision of professional engineering services to or for the building and construction industry.
 - iii. The number of assessments issued based on existing accreditation or registration schemes.
 - iv. The number of applications where the applicant was found to not meet the required qualifications, experience, and competencies.
 - v. The number of applications in progress or on-hold.
 - vi. The number of applications that exceeded the 90-day assessment period and the reason why they exceeded that period.
 - vii. The number of successful and unsuccessful appeals of assessment outcomes.
 - viii. The time it takes to process an assessment.
 - ix. Details of complaints, time taken to process them and their outcomes.

9. Information Requests from the Territory

- a) An approved assessment entity must comply with any request for information from the Territory in relation to its approval or operation as an assessment entity under the *Professional Engineers Act 2023*.
- b) The Territory may seek information and/or records from an approved assessment entity in relation to compliance with the Act and the conditions of the approval at any time.

- c) A response to a request for information and/or records must be provided by an approved assessment entity within 14 days of receipt of the request from the Territory, unless agreed otherwise.

10. Scheme review

- a) An approved assessment entity must undertake a review of its administration of its assessment scheme every year and identify potential areas for improvement.
- b) The outcomes of this review must be reported to EPSDDBuildingReform@act.gov.au within 6 months after 30 June each year.
- c) The report must include:
 - i. The scope of the review.
 - ii. Details of the period the review was undertaken.
 - iii. The findings of the review.
 - iv. Any actions taken in response to the findings of the review.

11. Assessment audit program

- a) An approved assessment entity must undertake an assessment audit program each financial year.
- b) An assessment audit program must:
 - i. Include at least 15 per cent of the assessments conducted in that financial year, excluding assessments that take the form of:
 - i) A report that states that the individual is currently included on the National Engineering Register managed by Engineers Australia in the area (s) of engineering for which registration is sought or has been assessed as eligible for inclusion in the last 12 months.
 - ii) A report stating that the individual holds a Chartered credential issued by Engineers Australia in the area (s) of engineering for which registration is sought.
 - iii) A report that states that the individual is currently included on the Australian Professional Engineers Register [APER] hosted by Professionals Australia in the area (s) of engineering for which registration is sought or has been assessed

as eligible for inclusion in the last 12 months.

- ii. Assessments chosen must be based on a combination of risk and random selection.
 - iii. Be limited to the assessment against the *Professional Engineers (Qualifications, Experience and Competencies) Determination*.
 - iv. Be carried out by auditors who are appropriately trained in conducting audits.
 - v. Require an auditor to make a conflict-of-interest declaration prior to undertaking an audit and not be appointed to conduct an audit where a conflict of interest is declared.
 - vi. Include review rights for a person aggrieved by the outcome of an audit.
 - vii. Include processes for addressing any issues identified with the administration of the assessment scheme through an audit.
- c) An approved assessment entity must report the results of its audit program for the previous financial year to EPSDDBuildingReform@act.gov.au within three months after 30 June each year.
- d) The report must include:
- i. The number of audits conducted.
 - ii. The audit selection criteria and process.
 - iii. Results of the audits conducted including where an applicant was found to not have the required qualifications, experience and competencies including because of fraud, dishonesty, deception, or similar conduct or there are other concerns with the assessment.
- e) An approved assessment entity must notify EPSDDBuildingReform@act.gov.au within seven days if:
- i. A person selected for an audit refuses to participate in the audit for a period of more than 30 days after being requested to do so.
 - ii. A review of an audit identifies an error in an assessment.

12. Changes to information

- a) An approved assessment entity must notify the Territory in writing

EPSDDBuildingReform@act.gov.au of any changes to the information provided as part of the application for approval, its status as an eligible entity and/or the status of the assessment scheme as an eligible assessment scheme. This notification may trigger a variation or revocation of approval.

13. Variations to approval

- a) An approved assessment entity must make a written application to EPSDDBuildingReform@act.gov.au to vary their approval in accordance with section 33 of the *Professional Engineers Act 2023*.
- b) A written application for variation must include the following:
 - i. the reason for the request for variation; and
 - ii. when the variation is intended to commence from; and
 - iii. any other relevant information to assist the Territory in determining whether it is appropriate to vary the approval.
- c) Variation of any approval does not include amending the approval to authorise the assessment entity to conduct an assessment scheme for an additional area of engineering. If an approved assessment entity wishes to conduct an assessment scheme for an additional area of engineering, they must submit a new application in accordance with section 32 of the *Professional Engineers Act 2023* and requirements set by the Territory.

14. Revocation of approval

- a) The Territory may revoke an approval. Revocation must be undertaken in accordance with section 34 (2) of the *Professional Engineers Act 2023*.
- b) Section 34 (1) of the *Professional Engineers Act 2023* provides for an approved assessment entity to request to have their approval revoked. An approved assessment entity who wishes to have their approval revoked must do so in writing to EPSDDBuildingReform@act.gov.au and the request must include the following:
 - i. the reason for the request for revocation; and
 - ii. when the revocation is intended to commence from; and
 - iii. processes for any assessments not finalised prior to the proposed revocation date; and

- iv. any other relevant information to assist the Territory in determining whether it is appropriate to revoke the approval.

15. Cessation of approval

- a) Approval will cease on the approved assessment entity selling, transferring or assigning ownership of the entity to another person or legal entity (a change of ownership).
- b) When approval under this instrument ends, an approved assessment entity must immediately cease describing itself as an approved assessment entity for the ACT Professional Engineers Registration Scheme.
- c) When approval under this instrument ends, an approved assessment entity will be removed from the public list of approved assessment entities unless they have submitted an application to continue as an approved assessment entity.
- d) Approved assessment entities are responsible for ensuring that an application to continue as an approved assessment entity is made to EPSDDBuildingReform@act.gov.au at least 3 months prior to the end of the term of their approval in the form prescribed by the Territory.