



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2019-075

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	12
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [REDACTED]
Subject: Freedom of Information request
Date: Monday, 1 April 2019 10:53:20 AM

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:
First Name:
Last Name:
Business/Organisation:
Address:
Suburb:
Postcode:
State/Territory:
Phone/mobile:
Email address:

A large grey rectangular box redacting the contact details provided in the form.

Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

All information relating to, whether directly or indirectly, up to, including and subsequent to, the application of Mr Stefan Dimitrijevic to the Construction Occupations Registrar (ACT) for Mutual Recognition of a Builder's Licence and all information related to the matter in the Administrative Appeals Tribunal of Dimitrijevic and Construction Occupations Registrar (ACT) 2018/1257. We are also seeking all information subsequent to the handing down of the decision in the above matter before the AAT.

I do not want to access the following documents in relation to my request::

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2019-075

[Redacted]

via email:

[Redacted]

Dear [Redacted]

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 1 April 2019, in which you sought access to:

- All information relating to, whether directly or indirectly, up to, including and subsequent to, the application of Mr Stefan Dimitrijevič to the Construction Occupations Registrar (ACT) for Mutual Recognition of a Builder's Licence and all information related to the matter in the Administrative Appeals Tribunal of Dimitrijevič and Construction Occupations Registrar (ACT) 2018/1257.

Following a telephone conversation with Mr Dimitrijevič on 16 April 2019, the scope was refined to:

- A copy of documents subsequent to the hearing in the Administrative Appeals Tribunal (AAT) in relation to Stefan Dimitrijevič.

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance of section 40 of the Act, CMTEDD was required to provide a decision on your access application by 2 May 2019.

Decision on access

Searches were completed for relevant documents and 7 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant full access to all relevant documents. The documents released to you are provided as **Attachment B** to this letter.

Charges

Processing charges are not applicable for this request because the number of pages released is 50 pages or less.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 26 April 2019. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

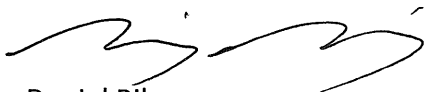
ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

17 April 2019



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
[REDACTED]	A copy of documents subsequent to the hearing in the Administrative Appeals Tribunal (AAT) in relation to Stefan Dimitrijevič.	2019-075

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	Email chain	05-Mar-2019	Full release	N/A	Yes
2	4-5	Letter as attachment to above email	05-Mar-2019	Full release	N/A	Yes
3	7-18	Report as attachment to above email	05-Mar-2019	Full release	N/A	Yes
4	19	Email	05-Apr-2019	Full release	N/A	Yes
5	20-22	Letter as attachment to above email	05-Apr-2019	Full release	N/A	Yes
6	23-24	Email chain	11-Apr-2019	Full release	N/A	Yes
7	25-28	Letter as attachment to above email	11-Apr-2019	Full release	N/A	Yes

**Total No
of Docs**

7

From: "Collins, Alexandra" <Alexandra.Collins@act.gov.au>

Sent: 05/03/2019 8:48 AM

To: "Radic, Kym" <Kym.Radic@act.gov.au>

Subject: FW: 2018/1257 - RE Dimitrijevic and Construction Occupations Registrar (ACT) [SEC=UNCLASSIFIED]

Attachments: 1613h1h3ezv4iae17-2018_1257-20190129-9nrlrb.pdf, 160yc1h5a2zkiae17-2018 1257 Dimitrijevic ACT SEALED.pdf

Hi Kym

Attached is a copy of the Tribunal's decision.

Kind regards

Alex

ACT GOVERNMENT SOLICITOR
(see confidentiality notice below)

Alexandra Collins | Principal Solicitor | ACT Government Solicitor

☎ 02 620 54313 | 📠 02 620 70650 | DX 5602 Canberra | 📮 PO Box 260 Civic Square ACT 2608

www.actgs.act.gov.au

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From: Hancock, Nathan

Sent: Tuesday, 29 January 2019 4:20 PM

To: Green, Ben <Ben.Green@act.gov.au>; Mundy, Stephanie <Stephanie.Mundy@act.gov.au>; Collins, Alexandra <Alexandra.Collins@act.gov.au>

Cc: Tomlins, Lisa <Lisa.Tomlins@act.gov.au>; Stitt, Kylie <Kylie.Stitt@act.gov.au>

Subject: FW: 2018/1257 - RE Dimitrijevic and Construction Occupations Registrar (ACT) [SEC=UNCLASSIFIED]

ACT GOVERNMENT SOLICITOR
(see confidentiality notice below)

Dear Colleagues,

Please find attached the decision in the above matter by the Administrative Appeals Tribunal.

In short, the Tribunal has set aside the decision to refuse the application by Mr Dimitreвич and remitted the matter back to the Registrar to decide, with a direction "that it give effect to the *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009*" (at [43]).

You will recall that the matter revolved around the meaning of a condition "only valid for work as a nominee" and whether, or to what extent, it affected the question of equivalence between two licences: *Queensland Builder – Open Licence - Site Supervisor* and *ACT Builders Licence Class A – BCA – All Classes*. We said that the holder of the Queensland licence may be entitled under mutual recognition to an ACT licence, but was only authorised to work as a nominee of a company or partnership which otherwise engaged a builder to perform building work in the ACT.

They would not be authorised to perform the building work themselves or, in practice, to sign off on the building work performed by others.

Essentially, the Tribunal was interested in the argument we pressed about the need for clarification as to the meaning of the condition, but considered that the application was not the proper vehicle to have that decided. All we had done was to refuse the registration and, in order for a court or tribunal to express a view about the meaning of such a condition, it would need to be reviewing a decision to grant a registration (and the subsidiary question of what any condition, imposed in the terms of the declaration or in more particular terms tailored to the facts, might mean).

The following paragraphs express that conclusion (at [29]-[31]):

There is weight in the respondent's argument that the licences are not in fact equivalent, and that the applicant does not have the experience and expertise required for the licence he would be granted in the ACT given the definition of "nominee" in the ACT Act.

The decision under review, however, is a decision to refuse the application's registration in the ACT. It is not a decision regarding the interpretation of any conditions placed on a registration as this registration has been refused. To this extent, the Registrar seeks review of a decision that has not yet been made.

The Registrar concedes that the decision it made was incorrect. It is not necessary or appropriate for the Tribunal to enter into a process of either clarifying or adding to a condition that the Minister sees fit to impose. If the Registrar seeks to impose additional conditions, the Minister may be approached to amend or rescind the Declaration by notice in the Gazette in accordance with s 32(2) of the Act

Significantly, there has been no order for costs against the Registrar, on the basis that it did not act unreasonably in forming its view or seeking to have the matter resolved in the Tribunal.

Regards

Nathan Hancock | Special Counsel – Human Rights

☎ 02 620 53261 | 📠 02 620 70630 | DX 5602 Canberra | PO Box 260 Civic Square ACT 2608

www.actgs.act.gov.au

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-----Original Message-----

From: Adelaide Registry [<mailto:adelaide.registry@aat.gov.au>]

Sent: Tuesday, 29 January 2019 3:33 PM

To: Hancock, Nathan <Nathan.Hancock@act.gov.au>

Cc: Stitt, Kylie <Kylie.Stitt@act.gov.au>

Subject: 2018/1257 - RE Dimitrijevic and Construction Occupations Registrar (ACT) [SEC=UNCLASSIFIED]

Dear Sir/Madam

Please find attached a copy of a Decision that the Tribunal has made in this application, together with a copy of a covering letter accompanying the Decision.

The attached letter provides important information about appeal rights and time limits. Please read the letter carefully. If you experience problems opening the document, please contact us immediately by email, or call 1800 228 333.

Please note that generally AAT decisions are made publicly available.

Yours sincerely

///

Hannah Bradbrook
TRIBUNAL OFFICER
Registry

Administrative Appeals Tribunal
Tel 08 8128 8000 Fax 08 8128 8099

Email adelaide.registry@aat.gov.au

Level 2, 1 King William Street, Adelaide SA 5000 GPO Box 9955 Adelaide SA 5001

www.aat.gov.au

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Administrative Appeals Tribunal

General Division

Our Ref: 2018/1257 (CSO 6)

29 January 2019

Construction Occupations Registrar (ACT)
C/- ACT Government Solicitor
DX 5602
CANBERRA

Dear Sir/Madam

APPLICANT: Stefan Dimitrijevic
RESPONDENT: Construction Occupations Registrar (ACT)

We have made a decision in this application under section 43 of the *Administrative Appeals Tribunal Act 1975* (AAT Act). We have sent you a copy of our decision with this letter.

We have set aside the decision we were asked to review because we do not think it was correct and we are sending it back to the respondent to make a new one.

Can I appeal this decision?

If you think the decision is wrong, you might be able to appeal to the Federal Court of Australia. There is a time limit for appealing to the Federal Court. If you received this letter by email, the appeal period starts to run from the date of the email. If you are considering an appeal, obtain legal advice without delay.

A fee must usually be paid when lodging an appeal in the Federal Court, and other fees might be payable during the course of the appeal. However, some people are exempt from paying fees.

You need to be aware that, if your application is unsuccessful, it is likely that you will be ordered to pay the court fees and legal costs of the other party. Legal costs include the amount that a person pays a lawyer for legal advice and representation.

For further information on applying to the Federal Court, including information about forms, court fees and costs, please see the Court's website at www.fedcourt.gov.au or contact the Federal Court registry in your State. The contact details of the Court's registry in your State are:

Federal Court of Australia
GPO BOX 1350
Adelaide 5000
PH: 08 8219 1000

Do you want to know more?

If you want more information or assistance, call us on **1800 228 333***.

Yours sincerely

[Sgnd]

Hannah Bradbrook
Tribunal Officer

* You will be connected to the AAT office in your capital city. Residents of northern NSW (postcodes 2460–2490) will be connected to the Brisbane office and residents of the Northern Territory will be connected to the Adelaide office. Local call charge from fixed phone lines; calls from mobiles may cost more.



Administrative
Appeals Tribunal

**DECISION AND
REASONS FOR DECISION**

Division: GENERAL DIVISION

File Number: **2018/1257**

Re: **Stefan Dimitrijevic**

APPLICANT

And **Construction Occupations Registrar (ACT)**

RESPONDENT

DECISION

Tribunal: **Member K Millar**

Date: **29 January 2019**

Place: **Adelaide**

The decision under review is set aside and remitted to the respondent for reconsideration in accordance with the direction that it give effect to the *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009*.

.....[Sgnd].....

Member K Millar

Catchwords

MUTUAL RECOGNITION OF OCCUPATIONS – Building and Construction – Equivalence of occupations – Whether Tribunal has power to consider equivalence of occupations or impose conditions on a licence where there is a declaration by Ministers – Costs – Whether respondent has acted unreasonably – Decision under review set aside.

Legislation

Administrative Appeals Tribunal Act 1975 (Cth)

Construction Occupations (Licensing) Act 2004 (ACT)

Legislation Act 2003 (Cth)

Mutual Recognition Act 1992 (Cth)

Mutual Recognition (Australian Capital Territory) Act 1992 (ACT)

Cases

Lawrence v Coal Mining Qualifications Board (NSW) [2004] FCA 30 (30 January 2004)

Sande v Registrar, Supreme Court of Queensland (1995) 134 ALR 560

Wright v Nurses Board of the Australian Capital Territory [1996] AATA 196

Secondary Materials

Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009

REASONS FOR DECISION

Member K Millar

29 January 2019

BACKGROUND

1. The applicant holds a Builder – Open - Site Supervisor licence issued by the Queensland Building and Construction Commission. He has sought registration in a number of jurisdictions as builder under the *Mutual Recognition Act 1992* (Cth) (the Act).
2. This matter relates to his registration in the Australian Capital Territory (ACT). The applicant's registration was refused because a delegate of the Construction Occupations Registrar (Registrar) found there was no equivalent licence in the ACT. The applicant has applied for a review of this decision.
3. Ultimately, because the Minister has declared that the licence held by the applicant is equivalent to a Builders Licence Class A licence in the ACT,¹ subject to a limitation, and a declaration by the Minister is binding on this Tribunal, the applicant is successful. This is despite cogent arguments by the Registrar that the occupations are not, in fact, equivalent.

JURISDICTION

4. The Act applies to participating jurisdictions.² A participating jurisdiction is defined in as a jurisdiction that has an Act that gives the Commonwealth power to enact the Act or adopts the Act,³ and under the *Mutual Recognition (Australian Capital Territory) Act 1992* the Act applies to the ACT.

¹ All classes only valid for work as a nominee (*Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009*, cl 6 and Schedule 25, item 11).

² *Mutual Recognition Act 1992* (Cth) s 5.

³ *Ibid* s 43.

5. An application can be made to this Tribunal for a review of a decision of a local registration authority.⁴
6. A 'local registration authority' is as a person or authority in the State having the function of registering persons in connection with their carrying on that occupation in the State.⁵ A 'State' includes the ACT, and the Registrar is responsible for the registration of builders in the ACT.

LEGISLATION

7. A person who is registered in one State may lodge a written notice with the local registration authority of a second State seeking registration for the equivalent occupation.⁶ The notice must meet the requirements set out in s 19(2). The local registration authority must grant registration unless it postpones or refuses to grant registration.⁷
8. As it applies in this case, the local registration authority may refuse to grant registration if the authority decides that the occupation is not an equivalent occupation and equivalence cannot be achieved by imposing conditions.⁸
9. Division 4 of Part 3 of the Act sets out how to decide if occupations are equivalent.
10. An occupation in one state is taken to be equivalent to an occupation in another state if the activities authorised to be carried out under each registration are substantially the same, whether or not this is achieved by the imposition of conditions.⁹ It allows for conditions to be imposed on registration so as to achieve equivalence between occupations in different States. Of particular significance on this case is that s 29(3) states these provisions have effect subject to any relevant declarations in force under this Division. Section 30 states that the Part is to be given effect in accordance with relevant declarations made under the Division regarding equivalent occupation, and further states

⁴ Ibid s 34.

⁵ Ibid s 4.

⁶ Ibid s19(1).

⁷ Ibid s 21.

⁸ Ibid s 23(1)(c).

⁹ Ibid s 29.

that if a declaration made by the Tribunal and a declaration made by Ministers is inconsistent, the ministerial declaration prevails.

11. Ministers from two or more states or territories may jointly declare by notice in the *Gazette* that specified occupations are equivalent, and may specify conditions that will achieve equivalence.¹⁰ A declaration may be rescinded or amended the same way.¹¹ The appropriate local registration authority is to give effect to the declaration.¹²
12. A declaration has been made about builders in the *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009* (the Declaration).
13. Clauses 6 and 7 of the Declaration state:

6. EQUIVALENT OCCUPATIONS SHOTFIRERS AND PYROTECHNICIANS, PEST AND WEED CONTROLLERS, BUILDING OCCUPATIONS, BUILDERS (2006 UPDATE)

- (1) *The occupation which may be carried on only by a person granted a registration, in the jurisdiction, described in Column A of the Schedule (first jurisdiction) is equivalent to the occupation which may be carried on only by a person granted a registration, in a jurisdiction, described in the same row of the Schedule (second jurisdiction), subject to any conditions, limitations or restrictions indicated in the Schedule.*

7. DECLARATION NOT TO LIMIT POWERS OF A REGISTRATION AUTHORITY

- (1) *Nothing in this Part is intended to affect the powers, under the Mutual Recognition Act 1992, of a registration authority in a second jurisdiction to impose conditions on a registration, provided that the conditions imposed do not relate to the activities authorised to be carried out under the registration unless such conditions applied to the person's registration in the first jurisdiction.*

14. The notes that follow cl 7 are:

Notes:

¹⁰ Ibid s 32(1).

¹¹ Ibid s 32(2).

¹² Ibid s 32(4).

The table at the attached Schedule depicts the registration outcome for any person already licensed in an occupation in a particular jurisdiction (column A of each row) should they seek to be licensed in an occupation in a second jurisdiction (potentially in any other column in the same row). Registration shall be granted by the second jurisdiction in the terms specified provided the applicant is already registered in the equivalent occupation in the first jurisdiction.

If a licence is not included in the declaration, or if the licence outcome depicted on the Schedule is the statement 'No equivalent declared', the decision on licence recognition will be made by the relevant registration authority in accordance with the other provisions of the Mutual Recognition Act 1992.

15. The Declaration sets out equivalent occupations for builders at Schedule 25. Item 11 of Schedule 25 addresses a person who holds a Queensland Builder – Open Licence - Site Supervisor. Column H specifies that this is equivalent to an ACT Builders Licence Class A – BCA – All Classes. It has the condition 'only valid for work as a nominee.'

RELEVANT CASELAW

16. Justice Nicholson of the Federal Court in *Lawrence v Coal Mining Qualifications Board (NSW)* stated:¹³

*In the course of oral submission it was submitted for the appellant that ... the Tribunal was obliged not only to consider the Ministerial declaration but also examine the evidentiary matrix concerning the activities in his particular occupation in order to form its view about equivalence. ... **When a Ministerial declaration is made there is no purpose in a tribunal acting pursuant to s 31 to carry out a review on the issue of equivalence. (emphasis added)***

...

.... The making of a Ministerial declaration pursuant to s 32 renders otiose the same issue of equivalence arising in s 31.

17. The Registrar relies on *Sande v Registrar, Supreme Court of Queensland*, in which was said that the Act:¹⁴

¹³ [2004] FCA 37 (30 January 2004) [40] – [41].

... should be applied in a practical, commonsense sense way, regard being had to the substance of the matter and to the substantial equivalence of occupations. The spirit of the legislation is to eliminate such occupational problems between the states.

18. *Sande* has limited application in this case as these remarks were in the context of an assessment of the equivalence of occupations. In this case there is a Declaration in force in relation to the occupation and, as noted in *Lawrence*, there is no purpose in the Tribunal carrying out a review of equivalence of the occupations.

APPLICANT'S ARGUMENTS

19. The applicant states that his application was submitted in the correct form, and that should the Tribunal assess the equivalence of the occupation it will be acting beyond the power conferred on it as the Declaration will prevail regardless of any such assessment.
20. The applicant identifies a number of appeal grounds that relate to errors that he identifies in the decision. However, as the Tribunal conducts a merits review *de novo*, it is not concerned with identifying errors in the decision but rather looks at the decision afresh.

RESPONDENT'S ARGUMENTS

21. The Registrar acknowledges it acted beyond power and the better or preferable decision is for the registration to be granted.¹⁵
22. It is argued that granting registration in the form allowed by the Declaration is problematic because the licence that would be granted would allow the applicant to do work the Registrar states he is not qualified to do. In particular:

¹⁴ (1996) 134 ALR 560, 565.

¹⁵ Respondent's Statement of Facts, Issues and Contentions [95].

- (a) The Site Supervisor licence issued in Queensland does not allow the applicant to undertake building work. It is a class of licence that allows supervision of building work that is carried out by others;
 - (b) The ACT does not have an equivalent licence, or indeed an equivalent licensing scheme. The ACT does not license trades such as plumbers or electricians where these trades are supervised by a licensed individual;
 - (c) The applicant does not have the minimum level of study required for the licence, and has only completed units towards the minimum level of study. To register as Class A Builder in the ACT a person must have tertiary qualifications in building and not less than two years full time building work experience, with at least one year of experience after achieving the relevant qualification;
 - (d) The *Construction Occupations (Licensing) Act 2004* (ACT) (the ACT Act), in particular s 28 of that Act, assumes that a 'nominee' is licensed in the relevant construction occupation; and
 - (e) The applicant would not be able to undertake building work in Queensland with his current licence, but the licence issued under the Declaration would allow him to have an effectively unrestricted building licence in the ACT.
23. The respondent argues that the condition imposed in the Declaration that the licence of '*only valid for work as a nominee*' is liable to create confusion within the building industry and result in a potential public safety risk. The technical aspects of registration were supported by a statutory declaration and oral evidence from the Registrar in the ACT.
24. The Registrar submits there are two ways in which this condition could be interpreted, and as a result the Tribunal should give meaning to the condition. It invites the Tribunal to make an order to specify the meaning and suggests additional conditions that could be imposed to achieve this clarity. It is submitted that this is required for the resolution of ambiguity and is not an attempt to evaluate equivalence under s 31(1) of the Act, which would be inconsistent with *Lawrence*.

CONSIDERATION

25. Under the Act, a notice in the required form may only result in one of three outcomes: the person is registered in the equivalent occupation in the second State; the grant of registration is postponed; or, the registration is refused. In this case the registration was refused.
26. The Act provides three grounds for refusing a registration. As it is not contended that the applicant provided misleading information or has not provided the required information, the only ground on which the applicant's registration could be refused is that the occupation in which registration is sought is not an equivalent occupation.
27. Division 4 of Part 3 sets out how to determine if an occupation is equivalent to another occupation. A declaration by a Minister is to be given effect by the local registration authority. A declaration by ministers prevails over any declaration made by the Tribunal.
28. There is a relevant declaration that sets out the equivalent occupation. In this case a Builder – Open (Site Supervisor) is declared to be equivalent to a Builders Licence Class A BCA – All classes - only for work as a nominee. The condition '*only for work as a nominee*' is imposed by the Declaration.
29. There is weight in the respondent's argument that the licences are not in fact equivalent, and that the applicant does not have the experience and expertise required for the licence he would be granted in the ACT given the definition of "nominee" in the ACT Act.
30. The decision under review, however, is a decision to refuse the application's registration in the ACT. It is not a decision regarding the interpretation of any conditions placed on a registration as this registration has been refused. To this extent, the Registrar seeks review of a decision that has not yet been made.
31. The Registrar concedes that the decision it made was incorrect. It is not necessary or appropriate for the Tribunal to enter into a process of either clarifying or adding to a condition that the Minister sees fit to impose. If the Registrar seeks to impose additional conditions, the Minister may be approached to amend or rescind the Declaration by notice in the *Gazette* in accordance with s 32(2) of the Act.

32. The Tribunal finds that the Declaration sets out the equivalence of occupations, and that a Builder – Open (Site Supervisor) is declared to be equivalent to a Builders Licence Class A BCA – All classes - only for work as a nominee.
33. It follows that the Registrar incorrectly refused the registration of the applicant. As the equivalence of occupations is a matter for the Ministers as specified in the Declaration, and the Registrar has foreshadowed changes to the Declaration, the appropriate course is to set aside the decision and return it for reconsideration in accordance with the Declaration.

COSTS

34. The applicant seeks costs against the Registrar. The Tribunal may order a party in proceedings before it to pay costs under s 35 of the Act if the party has acted unreasonably.
35. In *Wright v Nurses Board of the Australian Capital Territory*¹⁶ costs were awarded under the Act in circumstances where the applicant was refused registration as a mental health nurse on the purported basis that the applicant had not completed specialist training required of mental health nurses. At the hearing the respondent conceded that a registered nurse was equivalent to a mental health nurse, but disputed that the applicant's profession was an 'occupation' as defined by the Act and argued that therefore it was not covered by the ambit of the Act. It was found the case the applicant came to the Tribunal to meet was conceded at hearing, but he was then faced with a technical argument which was not previously put to him.
36. The applicant submits the circumstances are similar in his case as the Registrar has conceded that the decision to refuse his registration was incorrect and the correct and preferable decision is to grant his registration. The Registrar states the issue of registration was conceded early in the process and the model litigant rules have been followed. They deny they have changed their position and submit *Wright* can be distinguished because in that matter the respondent changed position at the hearing.

¹⁶ [1996] AATA 196.

37. The applicant states that the Registrar changed the reasons for its decision on eight occasions. He states that in an email dated 5 January 2018 he was advised to withdraw his application, then on 15 February 2018 he received a refusal to issue the registration. On the same day he said there was a notice of a decision under s 22(1)(b) of the Act but this provision does not concern refusal. On 15 February 2018, he received a refusal stating his registration was refused under s 23(1)(c).
38. I do not consider one enquiry as to whether he wished to withdraw his application, or the communication of this outcome on several occasions unreasonable. In this case, the Registrar has acted consistently with the assessment that the activities authorised under the licence held by the applicant are not equivalent to the activities authorised by the licence in the ACT. This assessment is not without merit. The qualifications required for a Class A Builder in the ACT, being tertiary qualifications and at least two years of experience, and the qualifications held by the applicant being four units of competency towards an incomplete Advanced Diploma of Building and Construction (Management) are significantly different. The Registrar submits that the limitation “only valid for work as a nominee” does not practically restrict the type of building work the applicant could undertake.
39. The Registrar is a specialist in construction occupations, and has an interest in public safety of building work, where the risks to public safety if work is not adequately performed are high. Where public safety may be at risk, an examination of a person’s qualifications and active questioning of the equivalence of occupations is not unreasonable.
40. The applicant also submits that the Registrar acted unreasonably, and with a disregard in the disparity between the applicant’s and the Registrar’s financial resources by pursuing this matter to hearing. He submits this matter should have been determined on the papers without the need for a hearing. The circumstances in which a hearing can be dispensed with are set out in s 34J of the AAT Act and require a determination by the Tribunal that the issues can be adequately determined on the papers as well as the consent of the parties. In this case, the Tribunal did not make a determination that the review of the decision can adequately be determined on the papers, and the question of whether the parties consented to a hearing on the papers did not arise. This submission has no merit.



41. While the Registrar has ultimately been unsuccessful, the case was conducted in a manner consistent with the Registrar's assessment that the applicant did not have equivalent qualifications to undertake building work.
42. In these circumstances, I do not consider the Registrar has acted unreasonably, and decline to make an order for costs.

DECISION

43. The decision under review is set aside and remitted to the Registrar for reconsideration in accordance with the direction that it give effect to the *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009*.

I certify that the preceding forty three (43) paragraphs are a true copy of the reasons for the decision herein of Member K Millar.

.....[Sgnd].....

Administrative Assistant Legal
Dated: 29 January 2019

Date of hearing: **3 September 2018**

Solicitor for the Applicant: **Ms S Heidenreich**

Advocate for the Respondent: **Ms K Musgrove**

Solicitors for the Respondent: **ACT Government Solicitor**

From: "ACT Construction and Workplace Licensing"

Sent: 05/04/2019 3:35 AM

To: [REDACTED]

Bcc: "Penfold, Tyler" <Tyler.Penfold@act.gov.au>; "Green, Ben" <Ben.Green@act.gov.au>

Subject: Notice of decision - Stefan Dimitrijevič [SEC=UNCLASSIFIED]

Attachments: Dimitrijevič and Construction Occupations Registrar (ACT)- Notice of Decision-2019.pdf

Good Afternoon Mr Dimitrijevič,

Please find attached a notice of decision in relation to your application for Mutual Recognition.

Kind Regards

Kym Radic | Assistant Manager, Construction and Workplace Licensing

Phone: 02 6207 8096 | Email: cwpl@act.gov.au

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Notice of decision

Under Part 3 of the *Mutual Recognition Act 1992*

Construction Occupations Licence

DATE OF DECISION: 5 April 2019

REFERENCE NUMBER: 201855

Dear Mr Dimitrijevic,

I refer to your application dated 17 January 2018 for equivalent occupation registration and the Administrative Appeals Tribunal's (**Tribunal**) orders dated 29 January 2019 (see *Stephen Dimitrijevic and Construction Occupations Registrar (ACT)* [2019] AATA 183).

As you are aware, the Tribunal set aside the Construction Occupations Registrar's (**Registrar**) decision to refuse your licence application and remitted it to the Registrar for reconsideration in accordance with the direction that the Registrar gives effect to the *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009*.

Having regard to your registration as a Builder-Open (Site Supervisor) in Queensland, section 20 of the *Mutual Recognition Act 1992 (Cth)* (**Mutual Recognition Act**) and Row 11 of Schedule 25 of the Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 (Cth) (**Declaration**), I am satisfied that you are eligible to be granted a Class A Builders Licence for work in the ACT as a nominee only.

Pursuant to sections 19(1) and 21 of the *Construction Occupations (Licensing) Act 2004 (COL Act)*, I issue you with a Class A Builders Licence with the condition 'Only Valid for Work as a Nominee' to be recorded on the face of the licence. I also make the following annotations to appear on your licence to reflect the entitlement under the Mutual Recognition Act and Declaration:

- *the holder is not authorised to provide building services in any licence class;*
- *the holder is authorised to supervise building services that are provided for or on behalf of the partnership or corporation by individuals who hold a licence in the appropriate class for those construction services;*
- *the holder is required to ensure that those building services comply with the Construction Occupations (Licensing) Act 2004 and related operational Acts*

Please see PART 1 below for further information about how to pay for your licence or appeal the decision. The issue of the licence does not take effect until the licence term fee has been paid. Payment of the fee is agreement that you have accepted the licence offered.

Yours sincerely

Ben Green
Construction Occupations Registrar

CONTACT OFFICER

Kym Radic
Phone: (02) 6207 8096
Email: cwpl@act.gov.au

PART 1 ADMINISTRATIVE INFORMATION

PAYMENT AMOUNT

Builder

Licence Fee (term 3 years) \$850.00

Licence Fee (term 1 year) \$314.00

Should you wish to accept this offer, please use the form located at [Construction and Workplace Licensing Acceptance of Offer](#) to accept and make payment for the licence offered. Please use reference number 201855 when accepting the offer.

REVIEW BY THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

This decision is reviewable by the Administrative Appeals Tribunal (AAT) (see section 34 of the *Mutual Recognition Act 1992*).

CONTACT DETAILS

The review authority is the Administrative Appeals Tribunal.

Location:

Administrative Appeals Tribunal
Level 8, 14 Moore Street
CANBERRA CITY ACT 2601

Contact details:

Website: www.aat.gov.au

Email: canberra.registry@aat.gov.au

Telephone: (02) 6243 4611

Facsimile: (02) 6243 4600

Post: GPO Box 9955, CANBERRA, ACT, 2601

POWERS OF THE AAT

Merits review of an administrative decision involves considering afresh the facts, law and policy relating to that decision. The Tribunal considers the material before it and decides what is the correct - or, in a discretionary area, the preferable - decision. It will affirm, vary or set aside the decision under review.

Section 33 of the Administrative Appeals Tribunal Act requires that proceedings of the Tribunal be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence and can inform itself in any manner it considers appropriate.

APPLICATIONS TO THE AAT

To apply for a review, obtain an application form from the AAT.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from receiving this Notice of decision. The time limit can be extended in some circumstances. Check with the AAT for more details.

FEES

Applications to the AAT incur a standard application fee, which can be reduced in certain circumstances. The Tribunal Registry will advise of the current fee.

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TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
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From: "Green, Ben" <Ben.Green@act.gov.au>

Sent: 11/04/2019 4:51 PM

To: [REDACTED]

Cc: "ACT Construction and Workplace Licensing" <cwpl@act.gov.au>; "Hancock, Nathan" <Nathan.Hancock@act.gov.au>

Subject: RE: 2018/1257 - RE Dimitrijevic and Construction Occupations Registrar (ACT) – failure to give effect to decision [SEC=UNCLASSIFIED]

Attachments: Dimitrijevic and Construction Occupations Registrar (ACT)- Reasons forpdf

Dear Mr Dimitrijevic

I refer to your email below. I apologise for the delay in giving effect to the Tribunal's orders.

The correspondence dated 5 April 2019 that you refer to in your email below is the notice of decision which gives effect to the Tribunal's orders. The correspondence is a record of the decision that I made on that date.

The effect of the decision made on 5 April 2018 is that you have been granted a class A builders licence pursuant to the *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 (Declaration)*. Your licence contains the condition prescribed by the Declaration and the annotations that were recorded in the notice of decision. While a decision has been made to grant your licence, it does not come into effect until you pay the licence fee relevant for this type of licence. The notice contains information as to how payment may be made.

As you are aware, you may seek review of the decision dated 5 April 2019 in the Administrative Appeals Tribunal. To assist you in deciding whether to exercise such review rights, I attach a copy of the reasons for the decision.

Regards

Ben Green | Executive Branch Manager Construction and Utilities
Construction Occupations Registrar | Registrar of Architects
Access Canberra | ACT Government
GPO Box 158 Canberra ACT 2601 | www.act.gov.au/accesscbr

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From: Stefan Dimitrijevic [REDACTED]

Sent: Thursday, 11 April 2019 12:14 PM

To: ACT Construction and Workplace Licensing <cwpl@act.gov.au>; Hancock, Nathan <Nathan.Hancock@act.gov.au>

Subject: RE: 2018/1257 - RE Dimitrijevic and Construction Occupations Registrar (ACT) – failure to give effect to decision

Mr Green,

RE: 2018/1257 - RE Dimitrijevic and Construction Occupations Registrar (ACT) – failure to give effect to decision

The decision in the above matter was handed down some 73 days ago without action from you.

Your conduct and apparent contempt for the Tribunal has now been escalated with the Ombudsman and the Attorney General of the Territory.

I will also look forward to having this matter investigated by the newly formed ACT Integrity Commission after its inception in the coming weeks.

On 27 February 2019 I wrote by email to your legal counsel Mr Hancock regarding your failure to carry the decision of her honour Member Kate Millar into effect. Mr Hancock advised that the correspondence had been received by you. No response has been provided by you in relation to this email.

On 19 March 2019 I again wrote to your legal counsel Mr Hancock raising concerns regarding a lack of response and a failure by you to give effect to the decision of the AAT.

On 1 April 2019 I emailed your department directly requesting the decision of the AAT be given immediate effect.

Your absurd correspondence and "offer" of 5 April 2019 is simply a continuation of your contempt and disregard for the AAT and the decision of her honour Member Kate Millar. It is also an attempt by you to circumvent the rule of law and the administration of justice.

You are hereby advised to give effect to the decision of Member Kate Millar of the AAT in the above matter by issuing the licence in the terms specified in the Ministerial Declaration in Row 11 of Schedule 25 of the Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 by no later than close of business **Wednesday 17 April 2019**.

You are also **hereby advised** of my intention to bring proceedings against you in the Federal Court without further notice if the AAT's decision is not given effect by the said date and costs will be sought on an indemnity basis.

Stefan Dimitrijevic

PART 1

REASONS FOR THE DECISION

1. Mr Dimitrijevič, the applicant, holds a Queensland Builder – Open (Site Supervisor) Licence issued under *Queensland Building and Construction Commission Act 1991*.

Mutual Recognition Act

2. Section 19 of the Mutual Recognition Act allows a person registered in one state (the first state) to lodge a notice with the local registration authority of another state (the second state) seeking registration in an equivalent occupation in accordance with the mutual recognition principle.
3. Section 20 of that Act states that a person who lodges such an application is entitled to registration in the equivalent occupation as if the law of the second state expressly provided that registration in the first state was a sufficient ground of entitlement.
4. Section 32 of that Act allows the Ministers of two or more states to declare that two occupations are equivalent and, in so doing, to specify or describe conditions that will achieve equivalence. It also requires the authority to give effect to the declaration in exercising its statutory functions.

Construction Occupations Licensing Law

5. Section 15 of the Construction Occupations (Licensing) Act 2004 (**COL Act**) permits a regulation to divide a construction occupation into classes.
6. Section 19 of that Act provides for the grant of a licence in a construction occupation or class.
7. Sections 36 and 37, and Part 1.3 of Schedule 1, of the Construction Occupations (Licensing) Regulation 2004 (**COL Regulation**) divide the builder's occupation into the following classes:
 - a. Class A: building work other than specialist building work;
 - b. Class B: Class A building work in relation to a building 3 stories or lower;
 - c. Class C: Class A building work in relation to a class 1, class 2, or class 10a building that is 2 stories or lower or and most class 10b structures; and
 - d. Class D: non-structural basic building work other than specialist building work.
8. Section 36 of the COL Regulation provides that a licence in a relevant class authorises the licensee to 'provide each service' that is identified in the relevant schedule in the stated circumstances.
9. Section 21 of the Act permits a regulation to prescribe the conditions which attach to a licence. I read that provision and the terms of any regulation made under that provision as being subject to my obligation in section 32 of the Mutual Recognition Act to give effect to the Declaration.
10. Section 31(1) confers the following functions on the nominee of a corporation or partnership:
 - a. to supervise the construction services of the corporation or partnership for which the nominee is responsible (s 31(1)(a));
 - b. to ensure that the relevant construction services comply with this Act and the operational Acts (s 31(1)(b)).

The Declaration

11. Row 11 of Schedule 25 of the Declaration identifies the following as "equivalent occupations":

- a. Queensland: 'Builder – Open Licence- Site Supervisor' (Column A); and
 - b. Australian Capital Territory: 'Builders Licence Class A BCA – All classes. Only valid for work as a nominee' (Column H).
12. As it is a condition that is specified or described in the Declaration, the words "only valid for work as a nominee" must be imposed by me as a condition upon the licence granted under the COL Act.
13. As that occupation does not correspond directly to any class prescribed in the COL Regulation and as the functions of a nominee do not correspond to any services identified in the COL Regulation, I am satisfied that I must annotate the licence in order that I may give effect to the Declaration.

Other Considerations

14. In deciding that I should annotate the licence, I gave particular consideration to the scope of work permitted under a Site Supervisor Licence. While the Site Supervisor Licence (Qld) allows the applicant to supervise building work, it does not permit him to be the responsible party for the work. By contrast, for all builders' licences under ACT Legislation, the licensee has a responsibility whether they are a nominee or not.
15. If the licence were to be granted to the applicant in the form of the Declaration, I consider it is entirely possible that a corporation could appoint the applicant as a nominee with the expectation that he has the skills, knowledge and experience to undertake not only the supervision of work but the doing of building work in his own right. Based on evidence provided to date I am not satisfied that the applicant does not have the requisite education or experience to undertake building work in his own right. I note that the applicant relies entirely on his eligibility under mutual recognition and has not sought to be registered as builder relying on any other qualification that he may have relevant to the services in that construction occupation.
16. If a licence were to be granted to the applicant without providing clarity around defining what services he may provide, or what activities he may engage in, as a nominee, it could put the community, sub-trades, land owners, other licensees, the integrity of the builder licensing systems in the ACT, the building certification system and building suppliers, at risk from both a financial and public safety and work health and safety perspective.

Conclusion

17. Based on these considerations, and in accordance with the Mutual Recognition Act, Construction Occupations Licensing Law and the Tribunal Orders , I have decided to grant a Builder Class A Licence with the following annotations:
- *the holder is not authorised to provide building services in any licence class;*
 - *the holder is authorised to supervise building services that are provided for or on behalf of the partnership or corporation by individuals who hold a licence in the appropriate class for those construction services;*
 - *the holder is required to ensure that those building services comply with the Construction Occupations (Licencing) Act 2004 and related operational Acts*



Ben Green
Construction Occupations Registrar
11 April 2019

PART 2

ADMINISTRATIVE INFORMATION

PAYMENT AMOUNT

Builder

Licence Fee (term 3 years) \$850.00

Licence Fee (term 1 year) \$314.00

Should you wish to accept this offer, please use the form located at [Construction and Workplace Licensing Acceptance of Offer](#) to accept and make payment for the licence offered. Please use reference number 201855 when accepting the offer.

REVIEW BY THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

This decision is reviewable by the Administrative Appeals Tribunal (AAT) (see section 34 of the *Mutual Recognition Act 1992*).

CONTACT DETAILS

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Level 8, 14 Moore Street
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Contact details:

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Email: canberra.registry@aat.gov.au

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Facsimile: (02) 6243 4600

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