



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 2019-197

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	Waived
6. Processing time (in working days)	14
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

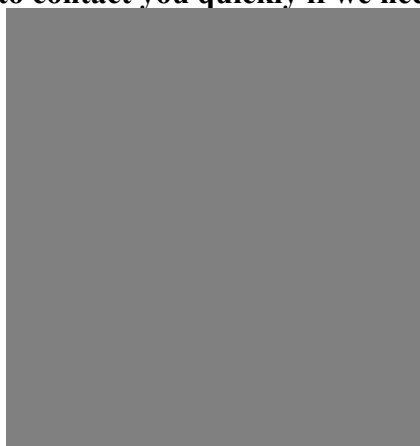
From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Monday, 26 August 2019 3:27:22 PM

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):

Copy of builders' licensing examination paper I undertook on 7/8/2019 Booklet of information that was issued to accompany the exam All correspondence sent to me since 1/8/2018 In relation to my license number [REDACTED] copies of any demerit points incurred, issues of non compliance, rectification orders, stop notices, complaints or any breaches of any relevant laws In relation to my partnership license number [REDACTED] for Remarkable Building copies of any demerit points incurred, issues of non compliance, rectification orders, stop notices, complaints or any breaches of any relevant laws

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 2019-197

[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 26 August 2019.

Specifically, you are seeking a *copy of builders' licensing examination paper undertaken on 7 August 2019. A copy of the booklet of information that was issued to accompany the exam. All correspondence sent to me since 1 August 2018 in relation to my license number [REDACTED]. Copies of any demerit points incurred, issues of non-compliance, rectification orders, stop notices, complaints, or any breaches of any relevant laws in relation to my partnership license number [REDACTED] for Remarkable Building. Copies of any demerit points incurred, issues of non-compliance, rectification orders, stop notices, complaints or any breaches of any relevant laws.*

On 28 August 2019 my office requested evidence of your identity in accordance with section 30(3) of the Act as the documents within the scope of your request contain personal information. A follow up email was sent to you on 3 September 2019. CMTEDD did not receive a response from you in relation to these requests.

Authority

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

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 23 September 2019.

Decision on access

Searches were completed for relevant documents and five documents were identified that fall within the scope of your request. No information was found in relation to demerit points, issues of non-compliance, rectification orders, stop notices, complaints or breaches of law for partnership license number 2017257C or builders licence number 20141136.

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 grant full access to one document, partial access to three documents and refuse access to one document as I consider them to contain, or be entirely composed of information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

Material considered

In reaching my access decision, I have taken the following into account:

- the Act, particularly section 17;
- the content of the documents that fall within the scope of your request; and
- the *Information Privacy Act 2014*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (Schedule 2.1)

(viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring non-disclosure (Schedule 2.2)

(ii) Prejudice the protection of an individual’s right to privacy or other right under the Human Rights Act 2004; and

(xvii) Prejudice the effectiveness of testing or auditing procedures.

Having considered the factors identified as relevant in this matter, I consider that the release of the information contained in the document could reveal the reason for a government decision by showing the marking for the exam, including the questions incorrectly answered and the correct answer for those questions.

As part of the public interest test set out in section 17, I am also required to consider the factors in favour of non-disclosure. The information requested contains personal information in relation to Mr Ben Ellis. As I have been unable to obtain evidence of identity in relation to this request, I must proceed as if an external party has applied for this information. In reviewing the information contained within the scope of this request, I consider it unreasonable to release the personal information and correspondence of external parties. These details have been provided by these individuals in order to comply with ACT Government requirements and include information about the outcome of testing undertaken by the ACT Government, and email addresses which are not publicly known. I am satisfied that the release of this information may prejudice the protection of these individuals' right to privacy or any other right under the *Human Rights Act 2004*. I am satisfied that this factor favouring non-disclosure should be afforded significant weight as it relates to the individuals' privacy.

I have also considered the impact releasing this information would have on the testing of builders in the ACT. The examination paper requested contains answers for a standard examination given to builders. The purpose of the examination is to determine whether builders have an adequate level of knowledge of the obligations of a building licensee and the ability to read and interpret relevant information to be able to meet their obligations. Additionally, the front page of the test informs examinees the contents of the examination paper are confidential, and by undertaking the exam they agree not to copy or discuss any part of the exam. For these reasons I consider the release of this information would prejudice the testing procedure by providing the correct answers to this exam.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information and the exam paper contained in the documents are not in the public interest to release. I have chosen to redact this specific information in the other documents in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because the total number folio's to be released to you is below the charging threshold of 50 pages.

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 three working days after the date of my decision. 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 (02) 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Daniel Riley

Information Officer

Information Access Team

Chief Minister, Treasury and Economic Development Directorate

13 September 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]	Copy of builders' licensing examination paper I undertook on 7/8/2019 Booklet of information that was issued to accompany the exam All correspondence sent to me since 1/8/2018 In relation to my license number [REDACTED] copies of any demerit points incurred, issues of non compliance, rectification orders, stop notices, complaints or any breaches of any relevant laws In relation to my partnership license number [REDACTED] for Remarkable Building copies of any demerit points incurred, issues of non compliance, rectification orders, stop notices, complaints or any breaches of any relevant laws.	CMTEDDFOI 2019-197

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-22	Builder Examination	7-Aug-2019	Exempt	Schedule 2 2.2(a)(xvii) – Prejudice the effectiveness of testing or auditing procedures	No
2	23-73	Email and attachment	24-Jul-2019	Partial release	Schedule 2 2.2(a)(ii) – Personal privacy	No
3	74-75	Email chain	4-Aug-2019	Full release	Duplicate attachment removed	No
4	76-77	Email	7-Aug-2019	Partial release	Schedule 2 2.2(a)(ii) – Personal privacy Duplicate attachment removed	No
5	78-80	Email chain and attachments	21-Aug-2019	Partial release	Schedule 2 2.2(a)(ii) – Personal privacy Duplicate attachment removed	No

Total No of Docs						
5						

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

Sch 2 2.2(a)(xvii)

From: "ACT Construction and Workplace Licensing"

Sent: 24/07/2019 4:19 AM

To: Sch 2 2.2(a)(ii)

Subject: 002/04 Examination Notice and Booking

Attachments: Class A, B, C Licence Exam - Study Notes.pdf

Dear Sch 2 2.2(a)(ii)

Notice of eligibility - builder licence examination

I am writing to you in relation to your construction occupation licence which expired on 23 December 2018. The Minister for Building Quality Improvement, Minister Ramsay announced building reforms in February 2019 which aims to improve the overall quality of building in the ACT. These reforms resulted in the introduction of builder licence exams for Class A, B and C builders licence holders in the ACT.

As a result to reinstate your expired licence, you are required to undertake an assessment set by the Registrar. The results of this assessment will be used by the Registrar to determine whether you are eligible to have the licence reissued. The assessment will be in the form of a written examination. You must achieve a pass mark of 80% or higher, to have the previous licence reinstated.

Below are details of your exam dates and times.

Date: 7 August 2019

Time: 3:00pm

Location: Cosmopolitan Centre (Woden Town Square) 21 Bowes Street, Woden - Level 5



Using the telephone in the level 5 foyer, please contact the Construction and Workplace Licensing Team on 78096 for a licensing officer to come and take you to the exam room.

You will be given 10 minutes reading time and 90 minutes (1.5 hours) to complete the exam.

Please bring photo identification with you on the day. The exam is closed book, however all materials required for its completion will be supplied including stationery and documents to assist you. **Study notes for the exam are attached to help you prepare.**

For further information you can visit the Access Canberra website via the following link [Builder Licence Exams](#).

Please note: All electronic devices will also need to be switched off during the exam.

If you are unable to attend this exam please notify CWPL on 02 6207 8096 or via email on cwpl@act.gov.au to discuss alternative days and times you may attend.

Kind regards

Construction and Workplace Licensing

Phone: 02 6207 8096 | Email cwpl@act.gov.au Access Canberra | ACT Government GPO Box 158, Canberra ACT 2601

| www.act.gov.au/accesscbr



ACT
Government

CLASS A, B, C LICENCE EXAM

STUDY NOTES

© Australian Capital Territory, Canberra 2019

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without written permission from: Director-General, Environment, Planning and Sustainable Development Directorate, ACT Government, GPO Box 158, Canberra ACT 2601. Telephone: 02 6207 1923 Website: www.environment.act.gov.au

ACCESSIBILITY

The ACT Government is committed to making its information, services, events and venues as accessible as possible.

If you have difficulty reading a standard printed document and would like to receive this publication in an alternative format, such as large print, please phone Access Canberra on 13 22 81 or email the Environment, Planning and Sustainable Development Directorate at epsddcomms@act.gov.au

If English is not your first language and you require a translating and interpreting service, please phone 13 14 50.

If you are deaf, or have a speech or hearing impairment, and need the teletypewriter service, please phone 13 36 77 and ask for Access Canberra on 13 22 81.

For speak and listen users, please phone 1300 555 727 and ask for Access Canberra on 13 22 81.

For more information on these services visit www.relayservice.com.au

Disclaimer

These study notes provide general information about the ACT construction licensing and building laws to guide the study of applicants for class A, B or C builder licences who are required to sit certain examinations as part of the assessment of their eligibility.

Information in this document is general in nature and must not be relied on or regarded as legal advice. No warranty of accuracy or reliability as to the information is given and no responsibility for loss arising in any way from or in connection with errors or omissions in any information provided (including responsibility to any person by reason of negligence) is accepted by the ACT Government, its employees or agents.

CONTENTS

INTRODUCTION	4	BUILDING LAWS AND UNDERTAKING BUILDING WORK	28
HOW TO USE THESE STUDY NOTES	5	ACT Building code	28
References and language	5	Building approvals	28
WHAT TO EXPECT IN THE EXAM	6	Commencement notices	30
Types of questions	7	Amendments to approvals after initial approval	31
What happens with the results?	7	Requirements for carrying out building work	32
IMPORTANT TERMS AND CONCEPTS	8	Stages of work	33
Meaning of certain terms	8	Stage inspections	35
Dictionary	8	Fundamentally noncompliant building work	36
ACT CONSTRUCTION LICENSING LAWS	9	Completion of building work	37
Operational Acts	9	Certificates of occupancy and building occupation	37
Offences for pretending to be licensed, unlicensed work and advertising	9	Stop notices	39
Administrative and regulatory officials	10	Penalties and offences – building laws	41
Complaints	11	STATUTORY WARRANTIES AND INSURANCE	43
BUILDER LICENCES AND SCOPE OF LICENSABLE BUILDING WORK	13	Prohibition on contracting out	46
What is a building?	13	Limitation of liability	46
What is building work?	14	FURTHER INFORMATION FOR LICENSEES	47
LICENSING – GENERAL OBLIGATIONS AND POWERS	17	Codes of practice	47
Licence registers and notification requirements for licensees	17	Building contracts	47
Licence conditions	18	DICTIONARY	48
Automatic licence suspensions	18		
Occupational discipline	19		
Rectification orders	22		
Demerit points	24		
Determinations about training – general	26		
Licence renewal	26		

INTRODUCTION

These study notes are for individual applicants for class A, class B or class C builders who are sitting a general licence examination declared for eligibility under section 13 of the Construction Occupations (Licensing) Regulation 2004. Qualifications Declarations can be found at <https://www.legislation.act.gov.au/sl/2004-36/> by clicking on the 'Instruments' tab. The notes also apply to applicants for a licence renewal that must sit the general examination.

This document will be revised from time to time. Applicants must make sure they are using the most recent version of the study notes.

APPLICATION TO OTHER SKILLS ASSESSMENTS

The Construction Occupations Registrar may require applicants to undertake other forms of assessment, including skills assessments under section 55A of the Construction Occupations (Licensing) Act 2004, and section 14 and 18B of the Construction Occupations (Licensing) Regulation 2004. These notes do not necessarily relate to other skills assessments and should not be used to guide preparation for other forms of assessment unless the Registrar has indicated they are relevant.

APPLICATION TO PEOPLE INTENDING TO BE A NOMINEE

The examinations relates to a licensee's role under their own licence, and do not include questions about carrying out work as a nominee.

Some individuals are, or may intend to be, appointed as a nominee for a licensed corporation or partnership. If you do intend to be appointed as a nominee it is important you understand the role, obligations and rights of a nominee before you accept, or continue, an appointment as a nominee. More information can be found in the Construction Occupations (Licensing) Act and Regulation, particularly Division 3.2 in the Act and Division 4.2 in the Regulation.

Work you undertake as a nominee may affect your individual licence and other licences you may hold or be involved with as a director or partner. Conversely, your compliance history as an individual may affect other related licences.

HOW TO USE THESE STUDY NOTES

These notes outline the ACT construction licensing and building regulatory systems, including obligations, rights and principles that licensees should be aware of.

The topics and information in these notes may be the subject of questions in the examination. You will need to set aside time to prepare for the exam, and may need to read these notes more than once. There are many good guides available online from education providers on how to study for an exam. A guide may be beneficial for you, especially if you have not taken an exam recently.

For important concepts or obligations, the provisions that are relevant to the exam have been included in these notes. However, the notes also include references to other relevant information in the licensing and building laws, such as examples and additional information that may help with understanding a concept or obligation.

The notes should be read in conjunction with the:

- > [Building Act 2004](#)
- > [Building \(General\) Regulation 2008](#)
- > [Construction Occupations \(Licensing\) Act 2004](#)
- > [Construction Occupations \(Licensing\) Regulation 2004](#)

All ACT laws are available at the ACT Legislation Register www.legislation.act.gov.au

Applicants should also be familiar with the structure and scope of the volumes of the Building Code of Australia (BCA) relevant to the licence class, different classes of building under the BCA and how the BCA works <https://ncc.abcb.gov.au/ncc-online/How-it-works>

The National Construction Code, including the BCA and Plumbing Code of Australia, is available from the Australian Building Codes Board for registered people. <https://ncc.abcb.gov.au/ncc-online/NCC>. Registration and access to the NCC are free.

It is expected that all licensed builders in the ACT are registered for the NCC.

REFERENCES AND LANGUAGE

These notes include references and signposts to the relevant ACT laws and sections of the Building Code of Australia for further reading. References include the document and relevant provision.

A small 's' means a section of the relevant law.

- > Licensing Act, s 35 which means section 35 in the Construction Occupations (Licensing) Act

Some general principles when reading laws:

- > A general reference to an Act (e.g. building work must comply with the Building Act), includes and regulations or other laws made under the Act.
- > Examples are part of the law. They are not exhaustive (that is, they don't cover every possible scenario) and may extend, but do not limit, the relevant provision.
- > Notes are explanatory and not part of the law.

The intent of some requirements have been described rather than copied directly from law, For some requirements, the language used is directly from the relevant law, so as not to change the meaning. While this may not be language you are used to, it is important for licensees to be able to read and understand relevant Territory laws.

WHAT TO EXPECT IN THE EXAM

The exam includes questions about a building licensee's obligations and rights under the ACT regulatory system, and questions on interpreting building laws, standards and other technical information that applies to building work.

The overall pass mark for the exam is 80%. However, the exam includes a section that includes mandatory questions you must answer correctly to pass the exam. This is similar to a driver licensing test.

The mandatory questions are about fundamental concepts for licensed builders, which are:

- > The scope of licence you have applied for and the work it authorises
- > When you are eligible, or no longer, eligible for a licence
- > When building approvals are required
- > Requirements for carrying out building work
- > Obligations for commencement notices and at inspection stages

Information on each of these is outlined in these study notes.

You may also be asked about other issues included in these notes, including the potential consequences of not complying with the Licensing and Building Acts, including types of regulatory actions, offences and penalties, statutory warranties, insurance, and how the building code is applied in the ACT.

You do not need to be able to quote directly from ACT laws or the building code, or memorise details of demerit schedules or exemptions. However, you will need to demonstrate you understand a licensed builder's regulatory responsibilities, can read and interpret relevant regulations and technical documents, and apply your knowledge to scenarios that may occur in undertaking building work.

You will need to prepare for the exam. These notes apply to questions about a builder's obligations and the regulatory system. Applicants may need to undertake additional preparation for the examination, including practice in applying these principles and obligations to real life scenarios, and reading and interpreting other technical documents such as codes, standards, plans and specifications, as well as scheduling and sequencing building work.

You do not need to sit a special course before you take the exam. Exam papers and questions are confidential. External training providers do not have access to the exam, or special knowledge about how to pass it. The Registrar has not endorsed or authorised any person to provide 'exam training'.

The exam is closed book. All materials required to answer technical questions are supplied with the paper.

The exams are designed to be fair and reasonable and don't contain trick questions. If an applicant has the right skills and knowledge they should pass the examination. If you don't prepare for the examination you should not expect to pass.

You may have, or have applied for, endorsements on your licence. The exam applies to the primary class of licence you have applied for. You should answer all questions as though you have, or are applying for, a licence with no conditions, restrictions or endorsements.

TYPES OF QUESTIONS

There are different types of questions in the exam. The exam is not only multiple choice. Many questions are based on scenarios. You will need to show you can apply your knowledge to specific situations.

Question types include:

- > Short response questions
- > Multiple choice questions where you must pick a single correct answer
- > Multiple choice questions where you must pick all correct options, or cross out all incorrect options.

In some questions, you will also be asked to explain why you selected a particular response.

Some questions have more than one part. Make sure you answer all parts of a question.

Read each question and what it is asking you carefully before you answer.

WHAT HAPPENS WITH THE RESULTS?

To be eligible for a licence, the Registrar must be satisfied the applicant has the skills and knowledge reasonably necessary to satisfactorily exercise the functions of the construction occupation or occupation class.

The examination is part of an assessment to determine whether you are eligible for the licence. However, it forms only one part of the assessment for eligibility. Even if an applicant passes the exam there are other reasons they may be refused a licence, including in relation to previous disciplinary action, rectification orders, licence suspensions or cancellations and conduct under a current licence or another related licence they have held or been a director or partner for in the ACT or another jurisdiction (see Licensing Act, s 19).

The Registrar may also issue a licence other than the one applied for if the applicant is eligible and agrees to it (Licensing Act, s19 (2)), or issue the licence for a shorter period (Licensing Act, s 19(5)), or issue the licence with conditions (Licensing Act, s 21)¹.

Applicants may make two attempts at passing an examination per application. A second attempt will not use the same examination paper and applicants should be prepared for new questions.

If you do not pass on either attempt you may be refused a licence.

An applicant who has refused a licence or been issued a shorter licence term or conditioned licence may apply to the ACT Civil and Administrative Tribunal (ACAT) for review of the decision.

Applicants will be given feedback on areas and concepts they may need to learn more about or skills they may need to improve.

Further information on where and how the exam will be administered will be provided by licensing staff when you are notified of the exam. Frequently asked questions can be found at https://www.accesscanberra.act.gov.au/app/answers/detail/a__id/4716#!tabs-1

¹ Note: If an application for occupational discipline in relation to an applicant or nominee of an applicant has been made by the Registrar, the Registrar need not decide whether to licence the applicant until the application has been dealt with by the ACAT, and any appeal or review arising from the occupational discipline, is finished (Act, 19 (6)).

IMPORTANT TERMS AND CONCEPTS

You may see these terms and concepts in various parts of the Act and throughout these notes.

ACAT means the ACT Civil and Administrative Tribunal

Building Act means the Building Act 2004

Building Regulation or **Building Reg** means the Building (General) Regulation 2008

Licensing Act, means the Construction Occupations (Licensing) Act 2004

Licensing Regulation, or **Licensing Reg**, means the Construction Occupations (Licensing) Regulation 2004

Corresponding law means a law in another state or territory that includes the same matters, or substantially the same, to the Licensing Act.

Penalty unit – in the ACT, penalty units are covered by the Legislation Act 2001. Currently, a penalty unit is \$150.00 for an offence committed by an individual and \$750.00 for an offence committed by a corporation. You do not need to know the value of penalty units but may be asked about approximate values of major offences under the relevant Acts. Current penalties may be shown in brackets with the penalty of an individual listed first, for example (\$7500; \$37,500).

Registrar means the Construction Occupations Registrar

Related licence means a licence under this Act or a corresponding law that is held by a related licensee.

Related licensee means—

- A. a corporation that is or has been a licensee under this Act or a corresponding law that the applicant or licensee is or was a director, partner or nominee for; or
- B. a partnership that is or has been a licensee under this Act or a corresponding law that the applicant or licensee is or was a partner or nominee for; or
- C. a director, partner or nominee of the applicant or licensee that is or has been a licensee under this Act or a corresponding law.

Strict liability offence – for a strict liability offences the prosecution is not required to prove fault (such as intention), only that the breach occurred. There are limited defences available for a strict liability offence, but there is a defence of reasonable mistake. Strict liability offences are often used when a person could reasonably have been expected to know of the relevant law. Associated monetary penalties are often low and these offences may also be associated with infringement notices.

MEANING OF CERTAIN TERMS

A term used in these notes has the same meaning as the term has in the Construction Occupations (Licensing) Act, the Building Act.

DICTIONARY

The dictionary at the end of these notes also includes important definitions from the Building Act, and the definition of bankrupt or personally insolvent.

ACT CONSTRUCTION LICENSING LAWS

The Construction Occupations (Licensing) Act regulates licensees undertaking construction services in the following occupations:

- > builder
- > building assessor
- > building surveyor
- > drainer
- > electrician
- > gasfitter
- > gas appliance worker
- > plumber
- > plumbing plan certifier
- > works assessor

For definitions of the work other occupations do see the Licensing Act, s 8A, 9, 10, 11, 12, 12A, 13, 14 and 14A.

The Licensing Act outlines a range of obligations and regulatory powers that apply to all licensees. Licensees need to be aware of, and meet, their obligations.

OPERATIONAL ACTS

All licensees must comply with relevant operational Acts. An operational Act includes provisions for doing or supervising construction services. For builders, the primary operational Act is the Building Act, which prescribes requirements for building work. However, other operational Acts may be relevant to a builder's work.

Each of the following is an operational Act (COL Act, s 16)

- > [Building Act 2004](#)
- > [Dangerous Substances Act 2004](#)
- > [Electricity Safety Act 1971](#)
- > [Gas Safety Act 2000](#)
- > [Planning and Development Act 2007](#)
- > [Unit Titles Act 2001](#)
- > [Utilities Act 2000](#)
- > [Water and Sewerage Act 2000](#)

OFFENCES FOR PRETENDING TO BE LICENSED, UNLICENSED WORK AND ADVERTISING

Most of the occupations regulated under the Licensing Act are regulated because of the potential risks to the public associated with the work, including risks to the life safety, health and wellbeing of building occupants. It is important that people do not hold themselves out to be licensed when they are not, or engage unlicensed people to undertake work that requires a licence.

It is also important for licensees who are responsible for supervising work to make sure that people they engage are working under their supervision. Licensees must not 'lend' their licence to other people who are not undertaking work under their supervision.

Pretending to be licensed

It is a strict liability offence to pretend to be licensed in a construction occupation or class (Licensing Act, s 81). The offence has a maximum penalty of 50 penalty units (\$7500; \$37,500). Pretending to be licensed also includes pretending to be licensed in an occupation or class other than one you may be licensed in, for example:

- > A Class C builder licensee pretending to be licensed as a Class B, or Class A builder.
- > A licensed builder pretending to be a licensed building assessor.
- > An infringement notice with a penalty of \$1 250 can also be issued for this offence.

Providing a service not under the supervision of a licensed person

For licensable building work, a person also commits an offence if they do not have a builder licence for the type of work they are undertaking and are not working under the supervision of an appropriately licensed builder. This includes work outside the scope of the supervising builder's licence; for example, the building work is specialist building work, and the builder is not endorsed for specialist building work.

This is a strict liability offence with a maximum penalty of 50 penalty units (see Licensing Act, s 84 and Licensing Reg, 35). An infringement notice with a penalty of \$1 250 can also be issued for this offence.

Allowing unlicensed people to provide a construction service

It is an offence to engage someone else, or allow an employee to provide a construction service for you, if the person is not licensed to provide the service and you are reckless about they are licensed to provide the service (Licensing Act, s 85). The offence carries a maximum penalty of 50 penalty units (\$7500, \$37,500).

This does not apply to workers who are lawfully undertaking work under the supervision of a licensee. (Licensing Reg, 35).

Advertising

It is an offence to advertise that you will provide a licensable construction service if the advertisement does not include your name as recorded on the licence, your licence number and the ACN for a corporation (Licensing Act, s 83). This includes promotional materials, vehicle signage and radio advertisements as well as formal documents such as letters, contracts and written advertising. The maximum penalty is 5 penalty units, and the offence is strict liability. An infringement notice with a penalty of \$125 can be issued for this offence.

ADMINISTRATIVE AND REGULATORY OFFICIALS

Who is the Construction Occupations Registrar?

The ACT Construction Occupations Registrar is a public servant appointed to:

- > To keep the registers under the Licensing Act.
- > To administer operational Acts (or relevant parts of operational Acts).
- > To decide applications in relation to licences.
- > To maintain the standard of construction occupations by acting on complaints made about construction practitioners, including by applying to the ACAT for occupational discipline if appropriate, and providing construction practitioners with information about developments in the construction industry.
- > To exercise any other function given to the Registrar under the Licensing Act or another Territory law.

The Registrar may delegate his or her functions to other public servants, appoint deputy registrars, building inspectors and compliance auditors.

Compliance auditors

Compliance auditors are public servants appointed by the Registrar under the Licensing ACT to audit the forms and other paperwork required to be provided by licensees (Licensing Act, s 77).

Compliance auditors have certain rights to enter and remain at premises used by licensed construction practitioners on production of their identity card (Licensing Act, s 78). They may do a range of things while on the premises including inspect or copy relevant documents and require the person apparently in charge of the premises to give them reasonable help to exercise a function.

Compliance auditors may also request in writing that a licensee provide documents that relate to the licensee's activities.

While nothing in the Licensing or Building Act removes rights not to self-incriminate and client legal privilege, there are offences for failing to take reasonable steps to comply with a request for assistance, or to produce documents or information when requested (Licensing Act, s 78 to 80 and s 80D to 80G).

Building inspectors

Building inspectors are appointed by the Registrar under the Building Act.

A building inspector may inspect building work for which a building approval has been issued to decide whether the building work is being, or has been, carried out in accordance with the Building Act (Building Act, s 130). The Registrar may also authorise a building inspector to carry out an inspection of building work for which there is no approval in certain circumstances, including opening or cutting into or pulling down of the building work (Building Act, s 131).

If, on inspection, it is found that there are grounds for the giving of a stop notice, the builder must bear the costs (the inspection costs) of any pulling down, opening or cutting into the building work carried out during the inspection.

However, if, on inspection, it is found that there are no grounds for the giving of a stop notice, the Territory must bear the inspection costs and the costs of making good any damage to the building work caused by the inspection.

Building inspectors have certain rights to enter premises used by licensed construction practitioners on production of their identity card. Building inspectors may also do 1 or more of the following in relation to the premises, anything on the premises, and the land around the premises (Building Act, s 143 and 134A):

- > inspect or examine,
- > inspect and copy, or take an extract from, any document at the premises,
- > take measurements or conduct tests,
- > take samples,
- > take photographs, films, audio, video or other recordings, and
- > take onto the premises any people, equipment or material the inspector reasonably needs to exercise the inspector's functions under this Act.

Building inspectors also have powers to seize things on the premises (which may mean restricting access to something), in certain circumstances (Building Act, s 134B). It is an offence to interfere with seized things without permission.

Building inspectors may also apply to a magistrate for a search warrant – related powers are in Division 7.4 of the Building Act. Applicants will not need to know the details relating to search warrants for the exam but should be aware that search warrants may be executed in relation to building work.

COMPLAINTS

The Registrar also investigates complaints made about licensees and former licensees (Licensing Act, Part 11), including matters reported by building certifiers under section 50 of the Building Act.

As a result of a complaint (Licensing Act, s 123) if the Registrar must—

- > is satisfied that a ground for occupational discipline exists in relation to the complaint—
 - do both of the following:
 - apply to the ACAT for an occupational discipline order in relation to the licensee;
 - tell the complainant in writing that the application has been made;
 - or

- take the following disciplinary action:
 - reprimand the licensee or former licensee;
 - require the licensee, or, if the licensee is a corporation or partnership, a nominee of the licensee, to complete a stated course of training to the satisfaction of the registrar or another stated person;
 - impose a condition on the licence, or amend an existing condition; or
- > if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - tell the complainant in writing that the registrar will take no further action on the complaint; and
 - take no further action on the complaint.

If appropriate, the Registrar may also refer the complaint to the planning and land authority.

Information sharing (Part 11A)

The Licensing Act allows the Registrar to share public safety information with other public safety agencies within and external to the Territory in certain circumstances.

Public safety information is 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 may include licence details or other information about building work you have undertaken if it is relevant to the risk to public safety.

BUILDER LICENCES AND SCOPE OF LICENSABLE BUILDING WORK

Under section 8 of the Licensing Act, a builder is an entity that provides, has provided or proposes to provide a building service.

A building service is the doing or supervising of building work. In the ACT, the licence relates to the ability of the licensee to undertake licensable work. It is not a licence for contracting for building work or other administrative roles. All builder licensees are expected to hold relevant qualifications and experience in doing and supervising building work on site, rather than design or office-based activities associated with building projects.

A builder licence does not authorise carrying out other types of licensable work or work that need authorisations under another law. For example, a licensed builder can't undertake electrical work without the appropriate class of electrical licence. For building work that involves asbestos removal, a builder must hold an asbestos removal licence issued under Work Health and Safety laws.

WHAT IS A BUILDING?

Section 7 of the Building Act outlines what is a building for the purposes of that Act. This is important because if a type of structure is not included in the definition of a building, it is not regulated by the Building Act. Only work on buildings regulated under the Building Act may require a builder licence.

The Building Act covers a wide range of structures, including non-habitable structures and certain fixtures and fittings, such as fences, retaining walls, swimming pools, ornamental ponds, masts, antennae, aerials, and advertising devices, notices or signs (Building Act, s 8).

However, there are important exclusions including:

- > a vehicle or craft that is not used or adapted for use as a class of building or structure classified under the building code,
- > a transportable building, mobile home, caravan or similar that is not used for long-term habitation, and is readily transportable without being disassembled or removed from associated components including a footing, pier, stump, rigid annexe or an attached building or similar,
- > paving, a driveway or a road, that is on the ground and not inside a building,
- > a surface-level carpark that is not inside a building,
- > a ground treatment,
- > vegetation,
- > ground excavations or fillings,
- > fittings, other than fittings included in a building to make the building comply with the building code, or that cause the building to not comply with the building code; or
- > fixtures that are not integral to the building, but are fixed to the building to prevent theft or for some other reason not related to the building.

Section 7 includes a range of examples of when fittings, fixtures and other structures may be not be included in the definition of a building.

A structure also does not include something that is part of a machine or mechanical plant unless it is part of something classified as a building or structure by the building code, or prescribed under the Regulation.

There are buildings that are exempt from the operation of the entire Act. Things exempt from the entire Act include some civil infrastructure such as bridges, dams, water or sewage treatment works and roads, as well as prefabricated playground equipment and bus shelters. Temporary non-residential buildings used during approved building work that will be removed when the building work is complete are also exempt (See Building Reg, Schedule 1, Part 1.2).

Other exemptions are discussed in the section on building approvals.

Something is not excluded from the definition of building only because it is temporary or novel, such as a building used in connection with a fair, circus, market, concert, or event.

WHAT IS BUILDING WORK?

Building work for the purposes of the Building Act is described in section 6 of that Act – it is a fundamental concept for all licensed builders to understand.

Building work means—

- > work in relation to the erection, alteration or demolition of a building, and includes disposal of waste materials generated —
 - by the alteration of a building other than a building excluded under the regulations; or
 - by the demolition of a building (but not part of the building); or
- > work in relation to repairs of a structural nature to a building.

Note: Building work for Part 6 of the Act (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates) does not include work in relation to the demolition of a whole building (see s 84).

When read in conjunction with the definition of a building, it can be seen that work in relation to erecting, altering and demolishing a building does not include things such as landscaping, paving, most civil works and work on excluded fixtures and fittings. It also does not include design or certification of a building.

Building work includes basic building work and specialist building work, described below.

Basic building work (section 10, Building Act)

Basic building work means the following building work:

- > erecting a prefabricated class 10a building;
- > erecting a class 10a outbuilding (small buildings defined in Building Reg, Schedule 1);
- > installing fireplaces or solid-fuel heaters;
- > non-structural work.

Basic building work does not include specialist building work.

non-structural work—

- > means work on a part of a building that does not, or is not intended to, carry a structural load imposed or transmitted by another part of a building; and
- > includes work on non-load bearing walls, doors, partitioning, reticulated pipework, ventilation ductwork and building fit-out items.

It does not include the following work:

- > work that may affect the structural integrity of a structural element of a building, or weaken or remove, completely or partly, the structural element, if the element is installed in a way that it carries, or can carry, a load of part of a building;
- work that involves the use of a structural element to carry, or to possibly carry, a structural load of part of a building, such as the installation of a new storey on a building or underpinning a subsiding building.

Specialist building work means (Building Act, s 9)

means—

- > the installation of a swimming pool, or
- > the demolition of a building.

Builder occupation classes

The construction occupation of builder is divided into the following classes (Licensing Act, s 15 and Licensing Reg, s 37 and in schedule 1, part 1.3, column 2)

Schedule 1 Classes of construction occupation licence and functions

(see pt 6)

Part 1.3 Builder

column 1 item	column 2 construction occupation class	column 3 construction work
1	class A	building work other than specialist building work
2	class B	(a) building work (other than specialist building work) in relation to a building that is 3 storeys or lower; and (b) basic building work
3	class C	(a) building work (other than specialist building work) in relation to a building that is 2 storeys or lower and is a class 1, class 2 or class 10a building; and (b) building work (other than specialist building work) in relation to a building that is a class 10b structure (other than a swimming pool or swimming pool fence) and is ancillary to a building mentioned in paragraph (a); and (c) basic building work
4	class D	non-structural basic building work, other than specialist building work
5	owner-builder	building work, other than specialist building work, in relation to a class 1, class 2 or class 10 building that is, or is to be, the licensee's main home or ancillary to it

It is important that all licence holders know what work is, and is not, authorised by their licence.

Building work that does not require a builder licence

Unless otherwise exempt all building work must be undertaken by a licensed builder, or under the supervision of a licenced builder.

The following is work excluded from the construction occupation of a builder (i.e. it does not require a builder licence), work in relation to—

- > A building exempted by the Minister under the Building Regulation, section 7 for the stated period mentioned in the exemption, subject to any condition mentioned in the exemption.
- > A building or building work mentioned in the Building Regulation, schedule 1, part 1.2 subject to any condition mentioned in that part, column 3.
- > A building or building work mentioned in the Building Regulation, schedule 1, part 1.3 subject to any condition mentioned in that part, column 4.

Who can hold a builder licence?

Individuals, and corporations and partnerships (Licensing Reg, s 15) may hold a builder licence. Corporations and partnerships may only be licensed if they have a nominee with a class of licence with the appropriate scope of work.

Eligibility to hold a licence

An individual is not eligible to be licensed if —

- > the application is for a licence that would allow the applicant to provide a construction service without supervision; and
- > the individual has been found guilty of an offence that involves fraud or dishonesty; and is punishable by imprisonment for at least 1 year (Licensing Reg, s 12).

For individual licensees, if the licensee becomes bankrupt or personally insolvent, the individual may provide a construction service only as a nominee or employee or another licensee (Licensing Reg, s 24).

Builder licence terms

Terms of builder licence are generally 1 year or 3 years. The licence term can't be longer than 3 years. The Registrar may grant a licence for a different period if necessary or desirable to protect the public (Licensing Act, s 19 and 25).

LICENSING – GENERAL OBLIGATIONS AND POWERS

LICENCE REGISTERS AND NOTIFICATION REQUIREMENTS FOR LICENSEES

Details – licence register

For an individual (Licensing Reg, s 9) the licence register, as well as the general details of the licence, the licence register must also contain the following:

- > the licensee's mobile telephone number
- > the licensee's business telephone number and email address
- > the licensee's fax number (if any).

The licence register will also include any home address that is required on application (Licensing Reg, s 5)

These are the contact details that will be used to notify and inform you of any actions or changes to laws that may affect your licence, or the work you do. It is important that licensees keep their contact details up to date.

For all changes to details held in the licence register that are not already a notification event (see below), the licensee must tell the Registrar in writing of any change in a detail relating to the licensee **within 2 weeks after the day of the change to which it relates happened, or the day the licensee became aware of the change (Licensing Reg, s 21).**

Notification requirements for licensees (Licensing Act, section 26B)

Notification events are particular events or circumstances that a licensee must provide written notice of to the Registrar within 24 hours after the event.

Failing to notify the Registrar if a licensee knows about a notification event is an offence with a maximum penalty of 100 penalty units (\$15,000; \$75,000).

Notification events for individual builder licensees are:

- > becoming bankrupt or personally insolvent;
- > being found guilty, whether in the ACT or anywhere else, of an offence that—
 - involves fraud, dishonesty or violence; and
 - is punishable by imprisonment for at least 1 year.

Other licence types and occupations may have alternative or additional notification events.

The Public Register

By law a range of information must be made available to the public and published at least weekly on a website, unless otherwise prevented by a direction or order from ACAT or a court, including:

- > information about licence suspensions, cancellations and disqualifications occupational discipline actions against the licensee in the last 10 years
- > rectification orders and contraventions of rectification orders in the licence register.

This is known as the Public Register. The Public Register does not include all of the information in the licence register, for example, it does not include licensees' personal contact information. However, people may apply for other information in the licence register, and the Registrar may provide it if appropriate to do so (Licensing Act, s 107, 107A).

LICENCE CONDITIONS

The regulations may prescribe conditions on a licence.

Unless prevented by a regulation, the Registrar may also put a condition on a licence, or amend or cancel a condition the Registrar has put on the licence, at any time by written notice given to the licensee, if satisfied that it is necessary or desirable to protect the public. (Licensing Act, s 21).

If the Registrar puts a condition on the licence, or amends or cancels the condition, the licensee may seek a review of the decision.

The ACAT or court may also impose a condition.

If an individual had their licence cancelled for at least a year or the Registrar believes they surrendered their licence in relation to occupational discipline, the Registrar may also condition the licence if necessary or desirable to protect the public (see Licensing Act, s 21A).

Conditions may include:

- > that the licensee must not be a nominee for a stated period;
- > that the licensee must not supervise trainees or other licensees;
- > that the licensee must be supervised by someone else.

Other conditions that may, or have been, applied to licences in the Territory include:

- > the licensee cannot take on new work until they have undertaken training;
- > the licensee cannot contract for new work until work on other projects is complete;
- > the licensee cannot be named as the licensee on a commencement notice for certain types of building work.

It is an offence to contravene a condition of the licence. The offence is a strict liability offence with a maximum penalty of 50 penalty units (Licensing Act, s 87). It is also a grounds for occupational discipline or a licence refusal.

AUTOMATIC LICENCE SUSPENSIONS

Suspension for loss of eligibility and public safety grounds

Once issued a licence, a licence holder must remain eligible to hold the licence during the licence period. There are two automatic suspension grounds that relate to individual licensees, outlined in sections 48 and 52A of the Licensing Act. There are other grounds relating to corporate and partnership licensee and nominees in Division 5.1, which are not relevant to the exam.

An individual's licence is automatically suspended if the individual provides, or proposes to provide, a construction service for a fee (other than as a nominee or employee of another licensee), and the individual becomes bankrupt or personally insolvent (Licensing Act, s 48). For nominees and employees who may be bankrupt or personally insolvent, the regulations condition the licence to only allow the individual to work as a nominee or employee.

An individual may also be subject to an automatic suspension on public safety grounds (Licensing Act, s 52A). The Registrar may suspend the licence if the licensee engages in conduct that the Registrar decides, on reasonable grounds, 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. During the suspension the Registrar may allow the licensed construction practitioner to undertake construction work, within the scope of their licence, necessary to comply with a rectification order.

End of automatic suspension

The Registrar may revoke an automatic suspension, if satisfied that the circumstance that caused the suspension will not put consumers of licensee's services at a greater risk than if the circumstance had not happened (Licensing Act, s 53).

If the Registrar is given notice of the suspension grounds for bankruptcy or personal insolvency, the suspension ends, on the earlier of—

- > the day the suspension is revoked under this section; or
- > 3 months after the day the Registrar is given notice of the suspension.

During this time the Registrar may apply to ACAT for occupational discipline including to further suspend or cancel the licence.

If the Registrar is not given notice of the suspension it continues as long as the cause of the suspension continues.

A suspension for public safety ends on the earlier of—

- > the day the suspension is revoked under this section; or
- > 3 months after the day the registrar is given notice of the suspension.

A suspension on a licence may be held over to a new licence if the suspended licence expires without being renewed (see Licensing Act, s 63).

OCCUPATIONAL DISCIPLINE

What is occupational discipline?

An occupational discipline is an action applied to a licence or licensee in response to a breach of relevant laws.

An occupational discipline can apply to former licensees if the grounds applied while they were licensed (Licensing Act, s 54 and 55).

The Act outlines grounds for occupational discipline (Licensing Act, s 55), being any of—

- > The licensee, or a director, partner, nominee or employee of the licensee, contravened, or is contravening, the Licensing Act or an operational Act (including a direction given to the licensee under an operational Act).
- > The licensee, knowingly or recklessly, gave someone information in relation to a construction service provided, or to be provided, by the licensee that was false or misleading in a material particular.
- > The licensee or a director, partner or nominee of the licensee, has been found guilty, whether in the Territory or anywhere else, of an offence that involves fraud, dishonesty or violence, and is punishable by imprisonment for at least 1 year.
- > If the licensee is an individual—the licensee executes a personal insolvency agreement.
- > If the licensee is a corporation, the licensee enters into a scheme of arrangement; or a receiver, manager, receiver and manager or administrator is appointed over the licensee or any of its assets.
- > If the licensee is a corporation or partnership and the licensee has, or had, no nominee.
- > The licensee's licence has been automatically suspended under division 5.1 (Automatic licence suspension) and the cause of the suspension still exists.
- > The licensee stops being eligible to hold a licence.

A contravention of the Act may also include a contravention of the Criminal Code in relation to criminal responsibility for a document or anything done under the Licensing Act or an operational Act. This may include something a licensee has failed to do.

Skills assessments in relation to occupational discipline (COL Act, s 55A)

If the Registrar believes on reasonable grounds that a ground for occupational discipline exists, or a licensee's licence is suspended on public safety grounds, the Registrar may require a licensee to undertake a skills assessment to assist in making a decision about occupational discipline.

The Registrar may, by written notice, require the licensee to be assessed to find out whether the licensee has a skill that is reasonably necessary to satisfactorily exercise the functions of the relevant licence class.

An assessment may consist of 1 or more of the following:

- > an assessment by a person who the Registrar is satisfied on reasonable grounds is competent to make the assessment;
- > an examination, which may have practical, written and oral aspects, by a registered training organisation that the Registrar is satisfied on reasonable grounds is competent to set and assess the examination;
- > an examination of a record of the licensee's experience provided by the licensee; or
- > the undertaking of a test, or a series of tests, approved by the Registrar.

If a licensee must undertake an assessment, the licensee must pay to the Territory the reasonable costs incurred by the Territory in arranging or carrying out an assessment.

If a licensee does not complete a required assessment it is a contravention of the Act and a grounds for refusing a licence renewal (Licensing Act, s 25).

Actions by Registrar

If the Registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the Registrar may take 1 or more of the following actions (Licensing Act, s 56)—

- > apply to the ACAT for an occupational discipline order in relation to the licensee;
- > reprimand the licensee;
- > require the licensee, or, if the licensee is a corporation or partnership, a nominee of the licensee, to complete a stated course of training to the satisfaction of the Registrar or another stated person;
- > impose a condition on the licence, or amend an existing condition.

Interim licence suspension (Licensing Act, s 59 - 61)

If the Registrar has applied to ACAT for an occupational discipline, the Registrar may by written notice, suspend the licensee's licence before the ACAT makes an occupational discipline order, if it is in the public interest to do so.

An interim suspension may be for two weeks or less but may be extended until the ACAT decides the application for occupational discipline if the Registrar is satisfied it is in the public interest.

The interim suspension takes effect as soon as the licensee receives the notice of suspension. The suspension ends if the Registrar revokes the suspension, or the ACAT decides the application for occupational discipline, whichever is earliest.

An interim licence suspension must be recorded in the licence register and may be disclosed on the Public Register (Licensing Act, s 107A, and s 110).

Occupational discipline order – ACAT

If the ACAT may make an occupational discipline order (ACT Civil and Administrative Tribunal Act 2008, s 65), in addition to the actions the Registrar may take, the ACAT may also:

- > cancel or suspend a single occupational class or each of the occupational classes for licensees with licences in more than one class (Licensing Act, s 58),
- > direct the Registrar to place a condition on, or remove or amend a condition on, a single occupational class or each of the occupational classes a licensee may hold (Licensing Act, s 58),
- > require the licensee to pay to the Territory a stated amount of not more than \$20 000 for an individual licensee; or \$100 000 for a corporation or partnership licensee (Licensing Act, s 58),
- > require the person to give a written undertaking (ACAT Act, s 66),
- > give the person a direction (ACAT Act, s 66),
- > cancel or suspend the person's licence (ACAT Act, s 66)
- > disqualify the person from applying for a licence of a stated kind indefinitely or for a stated period or until a stated thing happens (ACAT Act, s 66), and
- > if the person gained financial advantage from the action that is the ground for occupational discipline— require the person to pay to the Territory an amount assessed as the amount of financial advantage gained by the person. (ACAT Act, s 66).

Before making an occupational discipline order the ACAT must consider a range of factors set out in the Licensing Act, s 57 and ACAT Act, s65. These include the degree of responsibility of the licensee, the extent to which is necessary to discourage the licensee from doing or not doing something or protect the public from the licensee, the results of any skills assessment, any previous occupational discipline taken by the Registrar in relation to the matter, and the desirability of maintaining public confidence in the regulatory system set up by the licensing Act. You will not be asked about the range of considerations but should be aware of them if you become a licensee.

Occupational discipline – related licensees

The ACAT may also make an occupational discipline order against a related licensee if appropriate. An order could include any of the requirements listed above, including a suspension or cancellation.

This could mean that if a person holds an individual licence, another licence they are involved with as a nominee, director or partner may also be affected. As an example, this may happen if the grounds for occupational discipline also affect the ability for a person to carry out work competently under another licence (Licensing Act, s 58A), such as not being able to supervise work as an individual will also affect the licensee's ability to supervise work as a nominee.

Special considerations for builders licenses affected by occupational discipline (COL Act, s 62)

The Registrar must notify each building certifier in writing about the following actions taken in relation to a builder licence as soon as practicable:

- > the Registrar becomes aware that the licence has been automatically suspended under Division 5.1 of the Licensing Act,
- > the Registrar applies in interim suspension (Licensing Act, s 59),
- > a defined occupational discipline order that the licence is suspended or cancelled is made in relation to the licensee.

The Registrar must also notify each building certifier in writing if any action previously notified is reversed, stayed, varied or set aside.

RECTIFICATION ORDERS

The Registrar may make a rectification order against a licensee, including a former licensee, if they have provided a construction service that is not in accordance with the Licensing Act or an operational Act and the work requires rectification (Licensing Act, s 38).

Before making a rectification order, the Registrar must give a notice to the licensee and the land owner of the land at which the construction service was provided. This can be known as a notice of intention or a 'show cause' notice. The licensee and the land owner can make submissions to the Registrar about whether the order should be made within 5 working days of receiving the notice (Licensing Act, s 34).

After considering any submissions, the Registrar may make a rectification order if satisfied the licensee undertook the relevant work, the licensee contravened the Act or an operational Act, and it is appropriate to make the order (Licensing Act, s 35).

The Registrar must consider any injury, loss or damage caused, or that could have been caused, by the contravention (Licensing Act, 36). This includes reduction in safety, reliability, durability, soundness, functionality, accessibility, serviceability, service life, usability, usefulness, amenity, aesthetic quality, value or efficiency of the thing affected by contravention, or any adverse effect on the health of a user or occupier.

The Registrar must also consider how the proposed order may affect people affected by the contravention (Licensing Act, s 36).

The Registrar is not prevented from issuing a notice only because the Registrar, the planning and land authority, a certifier or another entity has given a certificate, or approval, or endorsement in relation to the relevant construction service (Licensing Act, s 33A). This means a rectification order may be made regardless of whether the building has passed an inspection by a building certifier or has a certificate of occupancy.

The Registrar may not make a rectification order in relation to a licensee if a submission is made that satisfies the Registrar that the act that caused the contravention happened, or ended, more than 10 years before the day the Registrar proposes to make the order (Licensing Act, s 35 (3)). It is the licensee's responsibility to demonstrate when the work was completed. The examples in the Act help explain how the 10 year period applies.

A rectification order may require the licensee to —

- > to take stated action to rectify work done as part of a construction service; or
- > to demolish a building or part of a building and provide a construction service under this Act or an operational Act; or
- > to start or finish stated work in relation to which a construction service has been, is being or was proposed to be provided;
- > give the Registrar written information such as a report, certification or test results, about the work required under the order (Licensing Act, s 38).

If the order requires the licensee to do something they are not licensed, authorised, qualified or appropriately skilled and experienced to do, the licensee must arrange and pay for a person who is to complete the work.

Land owners can't apply for a rectification order. The Registrar determines whether an order is made.

Details of the rectification order must be included in the register (see Licensing Act, s 108), and a copy of the rectification order must be given to the land owner (Licensing Act, s 38).

The licensee can seek a review of the decision to issue an order.

Rectification order inappropriate

After considering any submissions provided in response to the notice of intention, the Registrar may consider that an order should otherwise be made but it would not be appropriate to do so. This may be because the licensee is not able to do something in the way that would be required by the order, or because of the relationship between the licensee and the land owner.

In that case, another licensee may be authorised to enter the land where the rectification work was to be done and complete the work (Licensing Act, s 37). The other licensee cannot be authorised unless the review period has ended, and if a review was applied for, the review is complete.

The original licensee is liable for the reasonable cost incurred in doing anything in relation to rectifying the work. The cost is taken to be a debt owing to the Territory. Having a debt owing to the Territory in relation to rectification work can affect whether a licence is renewed.

Emergency rectification orders

The Registrar may make an emergency rectification order, without giving the licensee notice if the Registrar is satisfied that—

- > the licensee has provided a construction service other than in accordance with the Licensing Act or an operational Act; and
- > it is appropriate to make a rectification order; and
- > it is not appropriate to give notice because the need to act promptly to protect the health or safety of people, public or private property or the environment, outweighs the importance of giving the notice before making an order.

If the work ordered to be done is not done within the period stated in the order the Territory may authorise another licensee to enter the land to do the work and the original licensee will be liable for the reasonable cost incurred in doing the thing ordered. The cost becomes a debt owing to the Territory. Having a debt owing to the Territory in relation to rectification work can affect whether a licence is renewed.

If another licensee is authorised, neither the Territory nor the authorised licensee need give the land owner or original licensee further notice of when the work will be carried out (Licensing Act, s 39 and 42).

Failing to comply with rectification orders (including emergency rectification orders)

It is an offence to intentionally fail to comply with a rectification order. The maximum penalty is 2000 penalty units (Licensing Act, s 40). At the time of publication this was the equivalent of \$300,000 for an individual and \$1.5 million for a corporation or partnership.

The Registrar may also authorise another licensee to enter the land where the rectification work was to be done and complete the work (Licensing Act, s 41). The other licensee cannot be authorised unless the review period has ended, and if a review was applied for, the review is complete.

The original licensee is liable for the reasonable cost incurred in doing anything in relation to rectifying the work. The cost is taken to be a debt owing to the Territory.

It is also an offence to hinder or obstruct an authorised licensee in the exercise of an authorised action to rectify work. Maximum penalty: 50 penalty units. Strict liability applies to hindering or obstructing the authorised licensee.

Details of rectification orders and contraventions of rectification orders must be included in the licence register and may be disclosed on the public register (Licensing Act, s 107A-109).

DEMERIT POINTS

Demerit points are not occupational discipline or a formal action against the licensee. However, demerit points may be issued in conjunction with an occupational discipline or other formal action, such as issuing a rectification order.

Incurring enough points leads to a formal action. The Registrar does not need to wait until a licensee has reached a certain number of points before taking a formal action if appropriate.

Security and disclosure of information in demerit points register (Licensing Act, s 102)

Points are intended primarily as an education measure. As they are not a formal action, and are not subject to formal review, they are not publicly disclosed. The Registrar must ensure that information in the demerit points register is kept securely and may be disclosed only in accordance with this Act or another law in force in the ACT.

The Registrar must give information about a licensee's demerit points to the licensee on application.

What can demerit points be issued for?

Most, but not all, breaches of the Licensing Act and operational Acts may be subject to demerit points. Relevant breaches are defined in the Act as 'demerit grounds for occupational discipline' referred to in these notes as demerit grounds.

Demerit grounds include grounds for occupational discipline for which the ACAT may make an occupational discipline order, but do not include contraventions of the Licensing Act or an operational Act for which an infringement notice may be issued (Magistrates Court Act 1930, section 117). This means some offences for unlicensed work, advertising and providing site signs are not subject to demerit points.

Prescribed demerit points for certain breaches of the law for builders can be found in Licensing Reg, Schedule 2, Parts 2.1 and 2.8, and Schedule 3. For all other breaches the applicable number of points is one demerit point (Licensing Reg, s 43). Some breaches may attract 2 or 3 points. The highest number of points for a single breach is 4 points for a contravention of an emergency rectification order.

Demerit points can be recorded against former licensees if they were licensed when the demerit ground happened. If a licensee incurs demerit points while unlicensed and becomes licensed within 3 years after incurring them, for the purpose of working out the 3 year period in relation to the licensee the demerit points are taken to have been incurred when the licensee next becomes licensed (Licensing Act, s 90).

Important aspects of the demerit system

All references are to sections in the Licensing Act.

Recording and deleting demerit points

- > The Registrar must keep a demerit points register (s 91) which includes points and any information the Registrar considers appropriate (s 101).
- > If a demerit ground exists in relation to a licensee, the Registrar must record the number of demerit points prescribed under the regulations for the demerit in the demerit points register (s 91).
- > The demerit points are recorded against the licensee or former licensee for the relevant construction occupation (s 91).
- > A demerit point is taken to have been incurred by the licensee on the day when the registrar first becomes aware of the disciplinary incident (s 92).
- > If demerit points are taken into account for:
 - a notice of licence suspension under section 97;
 - a notice of licence disqualification under section 98; or
 - other action (disciplinary action) allowed to be taken under section 95 (2) (c)

- > the demerit points are deleted from the register at the beginning of the period of suspension or disqualification, or on the imposition of the disciplinary action, relating to the licence for the construction occupation (s 93).
- > For demerit points incurred but not taken into for a licence suspension or disqualification, the points are taken into account in relation to the licensee from the end of the period of licence suspension or licence disqualification applying under the notice.
- > For any other demerit points, the points are deleted three years after they were first recorded, and may not be taken into account for calculating the number of current demerit points once deleted.
- > The Registrar may still keep a record of deleted points (s 93).

Action on incurring demerit points

- > If the Registrar records a demerit point against a licensee for a construction occupation, and in the previous 3 years, the licensee has incurred at least 10 other demerit points for the construction occupation, the Registrar must tell the licensee in writing how many points the licensee has and the potential consequences of incurring demerit points, if the licensee has not been notified with 3 months prior to day the new demerit point is incurred (s 94).
- > If the notice is not given it does not affect the validity of any action the Registrar or a court may take in relation to the points (s 94).
- > **If a licensee has incurred 15 or more demerit points for a construction occupation within the previous 3 years**, the Registrar must consider the incidents for which the licensee incurred the demerit points and either (s 95)
 - serve a notice of licence suspension under section 97 on the licensee in relation to the licensee's licence in the construction occupation, starting at least 21 days after the day the notice is served on the licensee (s 97); or
 - serve a notice of licence disqualification under section 98 on the licensee in relation to the licensee's licence in the construction occupation, starting at least 21 days after the day the notice is served on the licensee (s 97); or
 - take any other action against the licensee that the ACAT could take or direct the Registrar to take and the Registrar considers appropriate.
- > In considering what action to take the Registrar must take into account the following (s 95):
 - the need to protect public safety;
 - the desirability of not allowing people to undertake work which they are financially unable to complete;
 - the regularity of the disciplinary incidents to which the demerit points relate;
 - the seriousness of the disciplinary incidents to which the demerit points relate;
 - the likelihood of further disciplinary incidents relating to the licensee.
- > The licensee's licence may be suspended or cancelled in relation to all construction occupations or occupation classes the breaches relate to (s 97 and 98).
- > If the licensee applies to the Registrar for a licence (including the renewal of a licence) for a construction occupation, and the licensee has incurred 15 or more demerit points for the construction occupation within the previous 3 years, the Registrar may refuse the licensee's application and serve a notice of licence disqualification on the licensee under section 98, if satisfied that the public would be at risk if the licensee were allowed to provide the construction services authorised by the licence (s 96).
- > The Registrar may give a notice of licence suspension or licence disqualification to a licensee in relation to demerit points without giving the licensee an opportunity to make representations why the notice should not be given (s 100).

DETERMINATIONS ABOUT TRAINING – GENERAL

The Registrar may determine a course of training for a construction occupation or occupation class if satisfied on reasonable grounds that the training is reasonably necessary for the development or enhancement of the skills or knowledge of licensees in that occupation or class (Licensing Act, s 104B).

A determination applies to all licensees in the occupation or class. The Registrar may require specific licensees to undertake training as an occupational discipline (Licensing Act, s 56).

A determination must state—

- > the reasons for determining the training; and
- > the consequences under this Act of failing to complete the training; and information about the training, including who must conduct the training; and
- > the latest date by which licensees must complete the training that the registrar considers on reasonable grounds is reasonable.

A licensee must comply with any determination that applies to a licensee (Licensing Act, Section 47A). Failing to comply with a determination is a ground for occupational discipline (see Licensing Act, s 55 (1) (a)) and may result in a refusal to renew a licence (see Licensing Act, s 25 (3)).

LICENCE RENEWAL

The Registrar must renew a licence on application if satisfied that the applicant —

- > would be eligible to be licensed if the application were for a new licence of the same kind; or
- > is eligible for renewal of the licence (Act, s 25 (2))

The Registrar may refuse to renew the licence if the licensee is not eligible or if the applicant, or a director or nominee of an applicant that is a corporation, or a partner or nominee of an applicant that is a partnership, or a related licensee of the applicant—

- > has contravened, or is contravening, a court order or an order made by ACAT relating to the applicant's licence or a related licence (including work done by the licensee or a related licensee); or
- > has contravened, or is contravening, the Licensing Act or a condition of the applicant's licence or a condition of a licence or a related licence; or
- > has contravened, or is contravening, a rectification order; including by failing to start or finish the work stated in the order; or
- > was required by the registrar under section 55A (Skill assessment of licensees) to be assessed and the applicant has not completed the assessment; or
- > has a debt owing to the Territory under section 37 (5), section 41 (5) or section 42 (3) in relation to rectification orders and rectification work and does not have, or is not complying with, a formal arrangement to pay the debt; or
- > is disqualified under a corresponding law from holding a licence (however described) or providing a construction service (however described) in the same, or substantially the same, construction occupation or occupation class applied for.

The Registrar may only refuse the licence on the above grounds if she or he believes on reasonable grounds that the refusal is necessary or desirable to protect the public.

The Registrar may also renew the licence for a shorter period than applied for (Licensing Act, s 25).

A licensee may also not be eligible if the licensee is suspended in one or more occupation classes (Licensing Reg, s 11).

Skills assessment – licence renewal

The Registrar may also require an applicant to undertake an assessment to find out if a licensee remains eligible and has the skills and knowledge reasonably necessary to satisfactorily exercise the licensee's functions (see Licensing Reg, section 14 and 18B).

A licence holder could be asked to sit an assessment if –

- > they are or were the subject of a rectification order issued during the term of the current licence period, or
- > they are or were the relevant nominee for a construction service provided by a corporation or partnership licence that is the subject of a rectification order issued during the term of the current licence period, or
- > in the 12 months prior to the licence expiry date, the Registrar identified a ground occupational discipline after investigation of a complaint or as a result of an audit or inspection of a licensee's work, or
- > in the 12 months prior to the licence expiry date, the registrar forms a belief on reasonable grounds the applicant may not have a skill or knowledge reasonably necessary to satisfactorily exercise the functions of the construction occupation or class of construction occupation under the licence, or
- > in the period starting 3 years before the expiry of the licence, and ending 3 months before the expiry of the licence they have not provided a construction service under the licence, or, for a nominee, they haven't undertaken work as a nominee.

The Registrar may also require a licensee to undertake the assessment to help determine if the licensee has, or has maintained, skills and knowledge reasonably necessary to satisfactorily exercise the functions authorised by the licence. An assessment may consist of 1 or more of the following (Licensing Reg, s 14 (3)).

- > an assessment by a person who the Registrar is satisfied is competent to make the assessment;
- > an examination, which may have practical, written and oral aspects, by a registered training organisation that the Registrar is satisfied is competent to set and assess the examination;
- > an examination of a record of the applicant's experience provided by the applicant;
- > the undertaking of a test, or a series of tests, approved by the Registrar.

An applicant is not eligible for a licence if they have not undertaken an assessment required by the Registrar (Licensing Reg, 14 (5)).

Could someone be required to sit the exam at every renewal?

If someone has no compliance issues during the licence period and sat and passed the exam at last renewal, and have no conditions on their licence to re-sit the exam, they will not be required to sit the exam again at the next renewal. The intention is that all licensees will have to sit the exam over time.

If a licensee has compliance issues, they could be required to sit an exam again.

Voluntary licence cancellation (section 26A)

The Registrar must cancel a licensee's licence if, amongst other things, the licensee asks, in writing, for the cancellation and the Registrar is satisfied that—

- > the licensee cannot exercise the licensee's functions because of mental or physical incapacity; or
- > another licensee is to take over the licensee's functions in relation to construction services that have not been completely provided; or
- > it is otherwise appropriate to approve the cancellation.

However, if a licensee cancels the licence to avoid an assessment or other action, they will need to sit an exam if they reapply, and may be refused a licence.

BUILDING LAWS AND UNDERTAKING BUILDING WORK

ACT BUILDING CODE

In the ACT the **building code** means—

- > the Building Code of Australia prepared and published by the Australian Building Codes Board (ABCB) as amended from time to time by the ABCB or the Australian Capital Territory Appendix to the Building Code of Australia (BCA); and
- > any document prescribed by regulation to be part of the building code.

The BCA includes the variations, additions and exclusions for the ACT contained in the code, including in an appendix to the code. The Minister may make a further Australian Capital Territory Appendix to the BCA. All ACT appendices can be found on the ACT Legislation Register.

The BCA is Volumes 1 and 2 of the National Construction Code. The BCA does not include the Guide to Volume One published by the ABCB, or any handbooks, advisory notes or other explanatory material published by the ABCB.

Date of effect and application in the ACT

The date that each version of the BCA comes into effect in the ACT can be found in the 'History of Amendments' or 'History of BCA Adoption' parts in the BCA itself. However, a different date of effect may be prescribed by regulation or in an amendment of the BCA made by an Australian Capital Territory Appendix to the Building Code of Australia.

The regulations may make provision in relation to the application of the building code. For how the building code is applied to alterations and additions and bushfire prone areas see the Building (General) Regulation.

Inconsistencies between the BCA and ACT Appendix

If there is an inconsistency between the BCA and an ACT Appendix or ACT-specific clause, the ACT Appendix or ACT-specific clause must be followed.

Interaction of the building code with the building approval

The building code prescribes minimum standards. A building approval or a requirement in the Building Act or regulations may indicate the building is to be built to a higher standard.

The licensed builder must build in accordance with the building approval and other relevant laws and not only comply with the minimum standards in the building code.

BUILDING APPROVALS

Purpose and scope of the building approval

The purpose of a building approval is to verify that the proposed building work will result in a building that is compliant with the Act, including the building code. Therefore, a building approval application must include information that demonstrates the proposed building will comply and can be constructed.

Who applies for the approval?

The owner of a parcel of land may, in writing, apply to the certifier for a building approval for building work to be carried out on the land (Building Act, s 26). If the owner is not the builder, the builder does not have an automatic right to choose or appoint the certifier. An owner must agree in writing to a builder as their agent in relation to appointing and liaising with the certifier.

Building approvals are not retrospective

As the approval relates to carrying out building work, an approval can be issued only before the building work starts. The Building Act does not provide for approval of building work after it is complete (retrospective approval). This includes performance solutions prepared after work has been completed not in accordance with the approved plans.

Building approvals relate only to the building work

The building approval relates only to the proposed building work, regardless of whether other things are shown in the plans, for example, completed structures, partially completed building work, landscaping and other non-building elements (Building Act, s 25C).

A building approval does not 'approve' exempt work even if it is included in the plans. It also does not approve work that is not building work or give an authorisation to undertake work without other required approvals or authorisations.

Building approvals don't authorise unlawful work

A building approval does not authorise the use of land for any purpose contrary to the lease for the land, or a development approval (Building Act, s 35), or another Territory law. The builder may need to obtain additional authorisations or approvals to carry out the work, including approvals to remove trees, use unleased Territory or neighbouring land, or undertake high risk work.

The building approval takes precedence over contract specifications for the building and work

Builders cannot contract out of their obligations in relation to approvals and requirements for carrying out building work. This means that builders must build in accordance with the building approval, even if the contract allows a builder to make decisions about substitutions and other matters that would be inconsistent with the approval. For example, if the building approval specifies a particular product must be used in the building work, the specified product must be used regardless of whether the contract allows for a substitution of the product.

Commencement notice may also be required

A building approval is not necessarily an authorisation to commence work. For work that requires a licensed builder, the land owner must appoint a licensed builder with the appropriate class of licence for the work. The builder must apply for, and be granted, a commencement notice for the work.

Period building approvals operate (Building Act, s 36)

A building approval operates until the end of the earliest of the following:

- > 3 years beginning on the day of its issue; or
- > any development period applying to the building work.

If the development period applying to the building work is extended, the certifier may extend the period of operation of the building approval to match the development period but can't extend the approval more than 3 years.

A building approval, or part of the building approval, does not operate while the approval or part is suspended.



Asbestos warnings on building approvals

If loose-fill asbestos was installed in a building each page of the building approval the building approval must be marked with an asbestos warning notice (Building Reg, s 18A)

The notice includes the international symbol for asbestos dust hazards.

The role of the building certifier in the building approval and regulatory process

The building certifier is appointed by the land owner to undertake certain functions in relation to building work, including to assess any application for a building approval.

A person with an interest in the building work can't be appointed as certifier for that work (Building Act, s 23). An interest includes that the person, or a person related to them, has a legal or equitable interest in the land where the building work will be carried out, has a financial interest in the construction or completion of the work, or intends to carry out any of the building work. If you are aware of any conflict of interest you should make the owner and potential certifier aware of the conflict as soon as possible.

The functions of a certifier are outlined in section 17A of the Building Act. You should be aware that as well as considering approval applications and conducting stage inspections, certifiers can also issue commencement notices, directions to licensees to make building work compliant, public safety directions and stop notices. They can also request tests and certificates and have obligations to tell the Registrar and the planning and land authority of suspected breaches of building and planning laws.

A licensed builder must comply with directions given to them by a certifier.

COMMENCEMENT NOTICES

- > If any building work associated with a building approval must be done by a licensed builder, the licensed builder engaged to do the work must apply to the certifier for a commencement notice for the work, or part of it before undertaking the work (Building Act, s 37, s 42).
- > The application must be in writing and signed by the owner of the parcel of land where the building work is to be done, or their agent.
- > There is an approved form for an application. If a form is approved it must be used.
- > If more than one builder is undertaking work relating to a building approval, two or more building commencement notices for the same building work may be in force at the same time (Building Act, s 41). Builders should be clear about the work they will be responsible for in their application for a commencement notice.

Application inclusions

If a sign about building work or development must be displayed on the parcel of land before the application is made, the licensed builder must state in the application that the builder—

- > erected the sign, and displayed the sign for the required period; or
- > is reasonably satisfied that the sign was erected by a licensed builder and displayed for the required period.

If the application is for insurable residential building work, the application must be accompanied by—

- > a residential building insurance policy for the work; or
- > a certificate issued by an approved insurer stating that the insurer has insured the work under a residential building insurance policy; or
- > a fidelity certificate for the work issued by the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes).

The certifier must issue a building commencement notice for the building work if satisfied on reasonable grounds that the builder's licence authorises the work in the building approval. The certifier must give a copy of the notice to the Registrar within 1 week after the day it was issued.

Automatic end of building commencement notices (Building Act, s 38)

A building commencement notice for building work ends if the building approval for the work ends.

For insurable residential building work the building commencement notice ends if the work is no longer insured under a valid residential building insurance policy; or a valid fidelity certificate is not in force for the work.

Cancellation of building commencement notice

The licensed builder mentioned in a building commencement notice may apply in writing to the Registrar, for cancellation of the building commencement notice, explaining why the commencement notice should be cancelled.

As part of the process the builder must give a copy of the application to the land owner and a notice that the owner has two weeks to make representations to the Registrar about whether the commencement notice should be cancelled.

If the representation time has ended without the owner of the land agreeing to the cancellation, the Registrar must consider any representation made by the owner within the representation time.

The Registrar may cancel the building commencement notice if satisfied that the builder mentioned in the notice cannot do the building work, or it is otherwise appropriate to cancel the notice. However, it is important to note that the Registrar cannot resolve contractual disputes.

AMENDMENTS TO APPROVALS AFTER INITIAL APPROVAL

If a building approval has been issued for building work, and the owner wishes to make changes that would result in a building not significantly different to a building built to the unamended plans, the land owner must apply in writing to their building certifier to approve the amended plans before the relevant work is carried out (Building Act, s 31 and s 32).

When a building is significantly different is detailed in section 30 of the Regulation as follows.

A building (the new building) built to amended plans is significantly different from a building (the old building) built to the unamended plans if—

- > the floor area, roof area or volume of the new building has changed by more than 1% from the old building; or
- > the new building is not the same class of building as the old building; or
- > if the old building had parts that are not of the same class of building—
 - the position of the parts in the new building has changed; or
 - the floor area, roof area or volume of the parts in the new building has changed by more than 1% from the old building; or
- > any dimension of the perimeter of the new building, including the perimeter of the building's footprint or an elevation, has changed by more than 1% from the old building; or
- > the number of storeys or buildings in the new building is different from the number in the old building.

If the building will be significantly different, the land owner will need to apply for a new approval. If a new approval is issued for the building work, the old approval ends (see Act, section 34).

If the amendment is not approved, the work cannot be undertaken. If the work has been started without approval, it must be rectified so it is in accordance with the approved plans.

Exemptions from requiring a building approval (Building Reg, s 6)

Some changes and building work may be exempt from requiring a building approval or other parts of the Act, including requiring warranties, insurance, stage inspections or a licensed builder. These are outlined in the Building Regulation, schedule 1, part 1.3. Exemptions apply mainly to certain class 10a outbuildings and structures (such as fences and small retaining walls), and minor internal and external alterations to buildings.

However, items in the schedule are only exempt subject to any related conditions in the schedule (e.g. that the work complies with the building code), and the general requirements outlined in section 6 of the Building Regulation. It is important that licensed builders are aware of the reasons building work may not be exempt even if listed in a schedule. The relevant considerations are copied below.

You will not need to memorise individual exemptions but should be familiar with the general requirements for exemptions, and be able to interpret when an exemption in a schedule may not apply because of the general requirements.

General requirements for exemptions

A building or building work mentioned in schedule 1, part 1.3 is not exempt if building work at the building may affect—

- > the structural integrity of any part of a building for which a certificate under the Act, part 5 (Building occupancy) has been issued; or
- > a fire-rated wall, ceiling or floor; or
- > a ventilation or air-handling system, fire protection system or other mechanical service; or
- > a fire-escape, emergency lift, stairway, exit or passageway to an exit; or
- > the natural light or ventilation available to a building for which a certificate under the Act, part 5 (Building occupancy) has been issued; or
- > the building in a way that reduces its compliance with the building code to a level that is less than the minimum requirements of the code (including if they were not required to be complied with at the time)
- > if the building is being substantially altered, and the building work is required to ensure the building alteration complies with the Act and the building code.

There are exclusions from the above for sampling asbestos but they will not form part of the examination.

REQUIREMENTS FOR CARRYING OUT BUILDING WORK

Section 42 of the Building Act is one of the most important sections of building law for anyone undertaking building work. It outlines requirements for carrying out building work. All licensed builders should be aware of their obligations under section 42 and the potential consequences for failing to carry out work in accordance with the section.

Section 42 states building work must not be carried out except in accordance with the following requirements:

- > the materials used in the building work must comply with the standards under the building code for the materials in buildings of the kind being built or altered;
- > the way the materials are used in the building work must comply with their acceptable use under the building code for buildings of the kind being built or altered;
- > the building work must be carried out in a proper and skilful way;
- > building work must be carried out—
 - in accordance with approved plans; or
 - if the building work involves handling asbestos or disturbing friable asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;
- > for building work required to be done only by a licensed builder—
 - the building work must be carried out by or under the supervision of the builder mentioned in the building commencement notice; and
 - the builder's licence must authorise the doing of the building work;
- > the building licensee in charge of the building work must take—
 - all the safety precautions stated in or with the application for the building approval; and
 - any other safety precaution that a certifier or building inspector may require the building licensee to take under section 46.

The Building Regulation further prescribes considerations that must be taken into account to decide whether building work is carried out in a proper and skilful way (Building Reg, s 31 and 32), which are:

- > whether the work uses a product or system in accordance with any accessible instructions, directions, guidelines or suggestions of the maker or seller of the product or system;
- > whether the work is in accordance with any relevant rules or guidelines published by Standards Australia;
- > whether, as part of the work, a product or system is being, or has been, used in a way that a reasonable person would expect is contrary to the intended use of the product or system;
- > whether, as part of the work, a product or system is being, or has been, used in a way that the maker has given written notice will void the maker's warranty;
- > whether a reasonable person doing the work would know or suspect on reasonable grounds that the use of a product or system in a particular way would cause more instability, or affect the durability or soundness of the product or system or of the building work than if the product or system were used appropriately;
- > how reasonable it is in all the circumstances for the user of a product or system to rely on the maker's statement that the product or system complies with a stated standard;
- > whether the building work contravenes the Act or another territory law;
- > whether the work has been carried out—
 - to meet or exceed the standards stated in the approved plans; or
 - if the approved plans do not vary reasonable minimum industry standards—to meet or exceed reasonable minimum industry standards.

If a matter is covered by the Guide to Standards and Tolerances 2007, it meets reasonable minimum industry standards if the matter is not a defect under the guide.

STAGES OF WORK

The Building Act and Regulation prescribe stages of building work at which the work must be inspected by the building certifier.

The stages of building work are (Building Reg, s 33)—

- > completion of excavation, placement of formwork and placement of steel reinforcing for the footings before any concrete for the footings is poured; and
- > for a class 1, class 10a or class 10b building—
 - completion of the structural framework before the placement of any internal lining; and
 - completion of placement of formwork, and placement of steel reinforcing, for any reinforced concrete member before any concrete for the member is poured; and
- > for a building other than a class 1, class 10a or class 10b building—
 - completion of any structural framework stated by the certifier in the relevant building approval, before the placement of any internal lining; and
 - completion of the placement of formwork and steel reinforcing for any reinforced concrete member stated by the certifier in the relevant building approval, before any concrete for the member is poured; and
- > completion of the building work approved in the relevant building approval.

Builder notification on reaching a stage

The licensed builder for the work must give the certifier a required written notice when building work reaches a stage of building work, that—

- > is dated on the day it is given; and
- > states the stage of building work that has been reached; and
- > includes a statement that—
 - the building work done for the stage was carried out in accordance with approved plans; and
 - if the building work involved handling asbestos or disturbing friable asbestos—the approved plans comply with this Act in relation to the asbestos.

A notice can be given electronically.

It is an offence for a builder to do building work beyond a stage if they have not given the required notice (Building Act, s 43). The offence is strict liability and has a maximum penalty of 50 penalty units.

Work beyond a stage must be authorised

The licensed builder in charge of building work (Building Act, s 44) commits an offence, if they do work beyond a stage without written notice from the certifier stating that the work may proceed beyond the stage, including that it may proceed subject to directions for achieving compliance.

The licensed builder also commits an offence if they do building work beyond a stage and receives a written notice from a certifier including directions for any non-compliant work to achieve compliance, or an inspection certificate from a certifier with conditions and, they do not comply with the direction or condition.

Both offences are strict liability offences with a maximum penalty of 50 penalty units.

If work has been carried out beyond a stage without notification to the certifier, the Registrar may give a notice requiring any plans or documents required at that stage to the builder, or the owner.

Building work above damp-proof course level

While not a prescribed inspection stage, a licensed builder in charge of building work must not do building work above damp-proof course level if they have not ensured:

- > the certifier receives—
 - a plan signed by a registered surveyor stating the position of the building in relation to the boundaries of the parcel of land where the building is to be erected and stating the level that the floor, or floors, of the building will have in relation to a level stated in the approved plans; or
 - for building work on an existing class 1, class 10a or class 10b building on the same parcel of land as the original building—the original survey plan.
- > the certifier is satisfied that the position of the building, and the level of the floor, or floors, are in accordance with—
 - the approved plans;
 - any condition of an advice, approval or consent from an entity required to be referred or consulted on the building approval application.

As for obligations associated with a stage inspection, not complying with either ensuring the certifier receives the information and is satisfied in relation to the position of the building before doing building work above damp-proof course level is a strict liability offence with a maximum penalty of 50 penalty units.

STAGE INSPECTIONS

The requirements for stage inspections are outlined primarily in section 44 of the Building Act. A summary is below.

- > When the certifier receives a notice from a builder that an inspection stage has been reached, the certifier must inspect the work as soon as practicable.
- > If the certifier is satisfied on reasonable grounds that building work complies with section 42 (Requirements for carrying out building work), they certify that the work complies and give the certificate to the building licensee in charge of the building work.
- > If the certifier is satisfied on reasonable grounds that the building work does not comply with section 42, they give the building licensee in charge of the building work written notice that—
 - the work does not comply with section 42; and
 - includes directions that are reasonable and appropriate for achieving compliance; and
 - states the date that the noncompliance came to the certifier's attention.
- > The notice or certificate must be given to the builder as soon as practicable after the inspection, but within 2 working days.

If the certifier has given the licensee a notice including a direction in relation to noncompliant work, the certifier must issue a subsequent certificate that the work complies with section 42 if satisfied on reasonable grounds that—

- > the licensee has done what is reasonable and appropriate to achieve compliance (even if what is done is not in accordance with the directions in the notice); and
- > the building work otherwise complies with section 42.

Tests and records of tests

At an inspection stage, a certifier give the building licensee in charge of the building work a written notice to conduct tests, on the materials used or to be used in the work, on the structure of the building, or in relation to anything else connected with the work (Building Act, s 44 (6)).

If a licensee is required to conduct a test, the licensee must, as soon as practicable after the test is completed, give the certifier the written results of the test.

A building licensee in charge of building work must also keep records of—

- A. any test borings, test loadings or other investigations made to work out the permissible loadings on piles used in the building work, pile-driving operations, calculations of allowable loadings and details of the location of the piles; and
- B. any test loadings and excavations made to work out the bearing capacity of the foundation for the building or proposed building, or building as proposed to be altered; and
- C. tests the certifier has requested in relation to a stage inspection.

A record must be—

- > kept until a certificate of occupancy for the building work is issued; and
- > given to the certifier when the certificate of occupancy is issued.

(see, Building Act, s 45)

Safety precaution directions

Under section 46 of the Building Act, a building certifier or building inspector can give a building licensee in charge of approved building work reasonable directions about safety precautions to protect the safety of people using a public street or place where, or near, building work is being carried out.

They may issue a notice if they have inspected the work and found that inadequate safety precautions in relation to the building work are being taken to protect the safety of people using the street or place.

The notice can be issued—

- > whether or not safety precautions were submitted to the certifier who issued the building approval; and
- > if safety precautions were submitted—whether or not those precautions are being complied with.

A building licensee in charge of the building work must comply with a direction.

FUNDAMENTALLY NONCOMPLIANT BUILDING WORK

Fundamentally non-compliant work is outlined in Building Regulation s 36 and schedule 3, Part 3.2 and is summarised below. If a certifier becomes aware of any fundamentally non-compliant work they must inform the Registrar, regardless of whether the builder fixes the non-compliance. Fundamental non-compliances may also result in a stop notice for the building work, or other regulatory action.

Non-compliances that are not in the list may still be serious and require rectification.

Fundamental non-compliances include:

- > the buildings set out, building external dimensions, a floor level, the set out or dimension of a room or the tolerance of a masonry component is more than 10 times the relevant defect tolerance for stated in the tolerances guide
- > the total floor area exceeds the total floor area shown on the approved plans that relate to the building work by more than 10%
- > the number of buildings, residences, units, storeys, rooms, external doors or windows is more than the number shown on the approved plans that relate to the building work
- > the top of the building is more than 500mm higher than shown on the approved plans that relate to the building work;
- > the vertical distance from the ground to any point on the building is more than 500mm greater than shown on the approved plans that relate to the building work;
- > a door or window is located in an external wall even though the approved plans that relate to the building work shows no part of a door or window to be located in the wall
- > a wall or roof encloses or partly encloses a building or space shown on the approved plans for the building work not to be enclosed or partly enclosed with the wall or roof
- > that an artificial pool required to have pool fencing or a barrier to restrict access of young children to the pool and immediate pool surrounds does not have the fence or barrier, and
- > the approved plans that relate to the building work do not show a use for a space in the building and the space is constructed in a way that it could be reasonably used for human occupation.

An element of building work on, or in relation to, a class 10a or class 10b building is fundamentally noncompliant if—

- > 1 or more elements not shown in the approved plans are added to the building; and
- > the building as altered by the work is a different type of building to the building shown in the plans.

COMPLETION OF BUILDING WORK

At the completion of building work (final stage) the certifier must inspect the work and confirm whether the work appears to have been completed and whether the work has been completed in accordance with the Act, or in accordance with, or substantially in accordance, with the approved plans (Building Act, s 48).

If the building work fails the inspection, the certifier can give notice on rectifying the work as they can at any other stage of the work.

If the certifier considers the work has been completed satisfactorily, he or she informs the Registrar within seven days and provides a range of documents (Building Act, s 48), including all plans and drawings, any structural engineers certificates and testing results, and any certificate or other document given or prepared by someone else that the certifier has relied on for the purpose of issuing or giving a relevant document, as well as the certifier's working papers and calculations that are relevant to the issuing or giving of a relevant document.

The certifier must also advise the Registrar if, in the certifier's view, the work has been completed in accordance, or substantially in accordance with the Act or approved plans, whether the Registrar would be justified in issuing a certificate of occupancy for the building.

If the certifier is of the view the work has not been completed in accordance with, or substantially in accordance with the Act or approved plans, the certifier must advise whether, in the certifier's view, the building is fit for occupation and use as a building of a particular class.

The Registrar may ask for further information for the certifier in relation to anything the Registrar considers is not dealt with, or not adequately dealt with, in the documents the certifier has provided.

Required approvals

At the completion of work other approvals may also be required including (Regulation 35):

- > Approvals by the chief planning executive relating to conditions relating to the building work in a development approval,
- > Approval by the emergency services commissioners of the installation of any fire appliances
- > Approval under the Scaffolding and Lifts Regulation 1950, section 21.

The Registrar will also check if electrical, plumbing and gasfitting work that requires an inspection has been inspected and passed, and for other work that the relevant licensees have lodged certificates of completion or compliance (Building Reg, Section 35A).

If the land owner has a deferral arrangement for a lease variation charge, may also need to make a payment to the Commissioner for revenue before a certificate of occupancy is issues (Building Reg, s 35B)

At any time before or after the completion of building work the certifier may require the owner of a parcel of land where building work is being, or has been, give the certifier a certificate by a professional engineer about the structural sufficiency, soundness and stability of the building as erected or altered for the purposes for which the building is to be occupied or used (Building Act, s 47).

CERTIFICATES OF OCCUPANCY AND BUILDING OCCUPATION

Certificates of occupancy and other certificates (see Act division 5.1, particularly section 69)

A certificate of occupancy relates to whether a building is fit to occupy. It is not a certificate of compliance with all relevant laws.

The giving of a certificate for a building or part of a building does not affect the liability of anyone to comply with the provisions of a Territory law (including the Building Act) in relation to the building or part of the building (Building Act, s 68). Occupational discipline, rectification orders and other actions may still be taken in relation to building work on a building that has been given a certificate of occupancy.

The Registrar may also reverse or change a decision to issue a certificate.

The Registrar must issue a certificate of occupancy for building work that involves the erection or alteration of a building if, on application by the owner of the parcel of land where the building work was carried out, the registrar is satisfied that—

- > the building work has been completed in accordance with the prescribed requirements for the building work under the Building Act; and
- > the building as erected or as altered is fit for occupation and use as a building of the class stated in the approved plans for that building work.

If the Registrar is not satisfied of the above, the Registrar may issue a certificate if otherwise satisfied the building as erected or as altered is fit for occupation and use as a building of the class stated in the approved plans (Building Act, s 69 (2) and (2B)).

To be satisfied the Registrar may require the applicant to provide advice from a licensed construction practitioner about the relevant work. If a certificate is issued for work that was not substantially in accordance with the Act, the certificate must state that the Registrar is not satisfied on reasonable grounds that the relevant building work on the building has been completed in accordance, or substantially in accordance, with the prescribed requirements for the building work.

The Registrar may consider any matter in deciding whether a building is fit for occupation or use.

The Building Act also provides for certificates for building work involving demolition (s 71), and for completion of work for the erection of a structure, including for structures that do not require a certificate of occupancy (s 72).

Occupation and use of buildings

It is an offence to occupy or use, or allow someone else to occupy or use, a building or part of a building for which the construction occupations registrar has not issued a certificate of occupancy (section 76) – maximum penalty: 50 penalty units, strict liability.

It is also an offence to occupy or use, or allow someone else to occupy or use, a building or part of a building as a class other than the class stated in the plans, or for buildings approved under previous building laws, a purpose other than stated in the plans (Section 77 and 78).

These offences do not include former Commonwealth buildings for which a certificate of regularisation has been issued.

The actions that can be taken by the Registrar if a person continues to occupy or allow occupation of a building are outlined in Act, section 79.

Copies of certificates of occupancy and regularisation

Copies of certificates of occupancy and certificate of regularisation must be kept by in the Registrar's office. Anyone may inspect a certificate at the construction occupations registrar's office during the hours the office is open for business (Building Act, section 80).

STOP NOTICES

The Registrar, a building inspector, or a building certifier for the relevant work may issue a stop notice (See Building Act, s 53) if the building work is being, or is to be, carried out—

- > without a building approval having been issued for the work; or
- > otherwise than in accordance with the approved plans for the building work; or
- > in accordance with a building approval that is, or part of which is, defective because it contains information that is false, misleading or inaccurate in a material respect; or conflicts with other information in the approval so that carrying out building work, or site work that materially affects the building work, in accordance with the approval or part is not
 - physically possible; or
 - is unlikely to be physically possible without amending the building approval; or
 - is likely to contravene this Act, another territory law or a condition of a consent that applies to the building work or a lease, licence, permit or other authority that applies to the land where the building work is being carried out; or
- > contrary to a provision of this Act relating to the building work; or
- > if the building work is being carried out on a parcel of land held under lease from the Commonwealth—contrary to a provision, covenant or condition of the lease; or
- > for building work forming part of a development requiring development approval—without development approval; or
- > for building work forming part of a development with development approval—contrary to the approval, or a condition of the approval; or
- > for building work for an exempt building—so that the building, or part of the building, is or will be on an easement.

Work does not need to be approved or started for a stop notice to be issued. For example, if a concrete truck is about to deliver concrete to a building site for which there needs to be an approved plan, a stop notice can be issued for the building work about to be done.

A stop notice may prohibit the carrying out of any further building work or particular building work.

Who can be issued a stop notice?

Stop notices may be given jointly or individually to—

- > the owner of the relevant parcel of land,
- > the person by whom the building work mentioned in the notice is being, or is to be, carried out or,
- > if the building work is being carried out by a partnership, any partner, or
- > any person carrying out building work mentioned in the notice (Building Act, s 59).

Stop notice suspends building approval

A stop notice in relation to building work under a building approval suspends the operation of the building approval in relation to the prohibited work. This means that if the stop notice prohibits the carrying out of any further building work, the approval is suspended in relation to all approved work.

What work can be done under a stop notice?

Building work to fix or reverse the building work that led to the stop notice, or that is necessary to ensure rectification is carried out safely is permitted under a stop notice (Building Act, s 54). For example, a stop notice is issued in relation to an extension on a house, which does not comply with the building code. The extension may be pulled down, but the rest of the house may not.

Further notices may be issued

Within seven days of issuing the original stop notice the Registrar may give a further notice stating the building work (including demolition) that is required to be carried out to ensure that the building work will be carried out in accordance with the approved plans and the provisions of this Act (Building Act, s 58).

The notice must also include the period the building work must be carried out by.

Any building work done by a person to comply with a notice under this section is taken not to contravene the stop notice.

Contravening a stop notice

It is an offence for a person to contravene a stop notice they have been given (Building Act, s 64). The offence is a strict liability offence, with a maximum penalty of 50 penalty units.

The Act provides a defence to a prosecution for an offence if the defendant proves that the defendant paid a reasonable amount to have the work done by someone else who was licensed to do the work; and believed on reasonable grounds that the other person would do the work.

When a stop notice is cancelled

A stop notice ends if it is cancelled or the grounds for giving the stop notice no longer exist. The Building Act, section 53 gives detailed examples of when the grounds for giving the stop notice no longer exist. If the stop notice ends, the suspension of any related building approval suspended because of the stop notice also ends.

Applying for cancellation of a stop notice

The owner of the parcel of land may apply in writing to the Registrar for cancellation of the stop notice, giving reasons why the notice should be cancelled (Building Act, section 55).

A person other than the owner of the parcel of land, including the builder, may apply in writing to the Registrar for cancellation of the stop notice, giving reasons why the notice should be cancelled (Building Act, s 56).

If they do, the Registrar must give the owner of the parcel of land a copy of the application, and give the owner 2 weeks to make written comments on the merits of the application; or tell the registrar in writing that the owner does not object to cancellation of the stop notice.

The Registrar may cancel all or part of the notice only after considering any written comments from the owner, including whether the owner has told the Registrar that the owner does not object to cancellation of the stop notice.

The Registrar may cancel the stop notice if satisfied that the cancellation will not endanger the public or people who will use the building on which the building work is being, or is to be, done or affect public confidence about the standard of building work in the ACT.

The cancellation of a stop notice ends the suspension of any building approval suspended because of the stop notice.

If a stop or further notice has been issued and the notice has not been complied with, the Registrar may, in writing, authorise a building inspector to—

- > enter premises where the building work mentioned in the notice has been, is being or should have been carried out; and
- > carry out the building work mentioned in the notice (Building Act, s 133).

The cost of completing the work is recoverable as a debt owing to the Territory from the person who was originally required to carry out the work under the notice.

PENALTIES AND OFFENCES – BUILDING LAWS

Other legislation applies in relation to offences against Building Act.

The Criminal Code, chapter 2 applies to all offences against the Acts and Regulations (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (e.g. conduct, intention, recklessness, and strict liability).

Major offences in the Building Act include penalties of different severity depending on whether the person committing the offence intended to commit the offence, or knew or was reckless about committing the offence as emphasised below.

Offences under section 49 for failing to comply with building code

1. A licensed builder commits an offence if they carry out building work either—

- **knows** the building work does not, or will not, result in a building that complies with the building code; or
- **is reckless about** whether the building work does or will result in a building that complies with the building code.

Maximum penalty: 500 penalty units (\$75,000; \$375,000), imprisonment for 5 years, or both.

2. A person, including a licensed builder, commits an offence if they carry out building work, and **intends or intended** to carry out the building work in a way that will not result in a building that complies with the building code.

Maximum penalty: 300 penalty units (\$45,000; \$225,000), imprisonment for 3 years or both.

3. A licensed builder commits an offence if they carry out building work and the building work does not, or will not, result in a building that complies with the building code.

Maximum penalty: 50 penalty units, strict liability.

For this offence (No. 3) building work is taken not to result in a building that complies with the building code if, for any provision of the building code with which the building must comply—

- > the building does not, or will not, comply with the deemed to satisfy provision of the building code; and
- > the approved plans for the building work do not state an alternative (performance) solution under the building code.

Although some provisions of the building code may not apply to the building work, every provision of the building code that does apply to the building work must be complied with.

Offences under sections 42A and 51 for carrying out building work in contravention of s 42

1. A licensed builder commits an offence if the builder carries out building work on a parcel of land; and the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42; and the builder either—

- **knew** that the building work was not carried out in compliance with section 42; or
- **was reckless about** whether the building work was carried out in compliance with section 42.

Maximum penalty: 300 penalty units (\$45,000; \$225,000), imprisonment for 3 years or both.

2. A person, including a licensed builder, commits an offence if the person carries out building work on a parcel of land; or is the owner of the parcel of land on which building work is carried out; and the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42; and

- if the person carried out the building work—**intended** to carry out the building work in a way that did not comply with the requirements under section 42.
- if the person is the owner of the parcel of land—**intended** to have the building work carried out in a way that did not comply with section 42.

Maximum penalty: 200 penalty units(\$30,000; \$150,000), imprisonment for 2 years or both.

3. A licensed builder commits an offence if the builder carries out building work on a parcel of land; and the carrying out of the building work fails to comply with 1 or more of the requirements for carrying out the building work under section 42.

Maximum penalty: 50 penalty units, strict liability.

For this offence, building work is taken to be carried out in compliance with section 42 (1) (d) if the builder had been issued with an exemption assessment B notice, stating that the building work was exempt from requiring building approval, not more than 3 months before the day the building work began.

4. Section 42A also includes offences in relation to contraventions for work that involves handling asbestos or disturbing friable asbestos failing to comply with 1 or more of the requirements for carrying out the building work under section 42, including
 - An offence for licensed builders, asbestos assessors and asbestos removalists that either **knew or were reckless** about whether the building work was carried out in compliance with section 42 - Maximum penalty: 500 penalty units, imprisonment for 5 years or both.
 - An offence for any person carrying out building work that **intended** to carry out the work in a way that would not comply with section 42 - Maximum penalty: 300 penalty units, imprisonment for 3 years or both.
 - An offence for the owner of the land where non-compliant work was carried out, if the owner **intended** to carry out the work in a way that would not comply with section 42 - Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

Other relevant offences

Offences applying to certifiers

While a certifier is not obliged to inspect or investigate work for compliance with other laws unless specifically required by the Building Act, builders should be aware that a certifier commits an offence if certain contraventions, or conduct, comes to the notice of the certifier; and the certifier does not tell the construction occupations registrar about the contravention or conduct (Building Act, s 50).

A certifier must tell the Registrar about any fundamentally noncompliant work not later than the next working day after the day the contravention comes to the certifier's attention.

The certifier must also notify work that is not compliant with section 42, other than fundamentally non-compliant work, if the builder has been given a notice to rectify the issue and does not achieve compliance within 14 days of being given the notice (Section 50).

The certifier must also tell the planning and land authority if the certifier suspects the site work (including the building work) does not comply with the approved building plans and the work does not have any required development approval (Section 50A) and there is no exemption assessment D notice issued not more than 3 months earlier.

A certifier also commits an offence if they issue a building approval or approves amended plans and the site work proposed in the approved plans does not have any required development approval (see Building Act, sections 50B and 50C).

STATUTORY WARRANTIES AND INSURANCE

Statutory warranties and residential building insurance requirements do not apply to building work (Building Act, s 87)—

- > carried out or to be carried out by or for the Territory or the Commonwealth, a Territory authority or an authority established under a Commonwealth Act; or
- > in relation to which an owner-builders licence has been granted; or
- > if the cost of the work is less than \$12,000 – for determining the cost of building work see section 86)

For the purposes of the warranty and insurance provisions, a building does not include paving or a structure that is a fence, retaining wall, outdoor swimming pool, outdoor ornamental pond, mast, antenna, aerial, advertising device, notice or sign. Work in relation to the demolition of a whole building is also not covered by the relevant provisions.

After amendments to the Building Act in 2016, a wider range of residential buildings are covered by statutory warranties than residential building insurance. **A building does not need to be an insurable residential building to be covered by the statutory warranty.**

IMPORTANT DEFINITIONS

residential building means—

- A. a building intended mainly for private residential use; or
- B. part of a building mentioned in paragraph (a) (whether or not the part is intended for private residential use) if the part provides structural support, or is a structurally integral adjunct, to the building.

Read the detailed examples in the Act (section 84) page 128.

residential building work means building work in relation to a residential building.

insurable residential building means a residential building—

- A. the residential parts of which (other than a part of the building that is a structurally integral adjunct to the building) are classified as a class 1 or class 2 residential building; and
- B. that has no more than 3 storeys at any point, excluding any storey used exclusively for parking.

Read the detailed examples in the Act (section 84) page 127.

insurable residential building work means residential building work in relation to an insurable residential building.

storey does not include a storey below the ground storey.

completion day, for residential building work, means the day the work is completed or the day the contract relating to the work ends, whichever is the later. For work on a building that has received a certificate of occupancy, the work is taken to have been completed no later than the day a certificate of occupancy (if any) is issued for the work (Building Act, s 86).

Statutory warranties

By force of section 88 in the Building Act, every contract for the sale of a residential building, and every contract to carry out residential building work to which a builder is a party, is taken to contain a warranty. Each of the owner's successors in title (future owners) succeeds to the rights of the owner in relation to the statutory warranties.

The builder warrants the following in relation to residential building work:

- > That the work has been or will be carried out in accordance with the Building Act.
- > That the work has been or will be carried out in a proper and skilful way and in accordance with the approved plans, including approved plans that comply with the Building Act in relation to handling asbestos.
- > That good and proper materials for the work have been or will be used in carrying out the work.
- > If the work has not been completed, and the contract does not state a date by which, or a period within which, the work is to be completed—that the work will be carried out with reasonable promptness.

When owner relying on builder's skill and judgement for a particular result

The owner of the land (where not the builder) may expressly make known to the builder, or an employee or agent of the builder, the particular purpose for which the work is required, or the result that the owner desires to be achieved by the work, so as to show that the owner is relying on the builder's skill and judgment.

In such cases, the builder also warrants the work and any material used in carrying out the work is, or will be, reasonably fit for the purpose or of such a nature and quality that they might reasonably be expected to achieve the result.

When do warranties end? (see Building Act, s 88 and Building Reg, s 38)

The period for the end of a warranty is—

- > for residential building work in relation to a **structural element** of a building—**6 years** after the completion day for the work.
- > for residential building work in relation to a **non-structural element** of a building—**2 years** after the completion day for the work.

A **structural element, of a building, means—**

- A. a load-bearing component of the building (whether internal or external) that is essential to the stability of the building or part of it (for example a foundation, floor, wall, roof, column or beam); or
- B. a component (including weatherproofing) forming part of the external walls or roof of the building.

A **non-structural element**, of a building, means a component of the building that is not a structural element.

Residential building work insurance

Before work starts on an **insurable residential building**, the builder must obtain and pay for a complying residential building insurance policy or fidelity certificate.

The ACT residential building insurance scheme is known as a 'last resort' insurance scheme. This means that a residential building work insurance policy may exclude claims other than those in circumstances in which the builder is insolvent, dead or has disappeared.

The requirements for a complying policy are outlined in section 90 of the Act. Some important features of the insurance are:

- > it must provide for a total amount of insurance cover of no less than \$85,000 per dwelling work relates to (Building Reg, s 39);
- > it must insure the successors in title as well as the original owner (noting an owner who is a developer who will retain four or more dwellings in the building does not need to be insured);
- > it insures not only against a breach of the statutory warranty but also:
 - against the risk of being unable to enforce or recover under the contract under which the work has been, is being or is to be carried out because of the insolvency, disappearance or death of the builder;
 - against the risk of loss resulting, because of the builder's negligence, from subsidence of the land.

If the building is not the land owner and the builder fails to complete the work because the builder becomes insolvent, and the owner has paid the builder part or all of the cost of the work may be able to receive a cost of the deposit up to \$10,000 in certain circumstances (See Building Act, s 93 and Reg, s 43)

The period of insurance is 5 years from the completion day (Building Reg, s 40). A claim may only be made within 90 days (Building Reg, s 41), or a longer period if the policy allows, after the claimant becomes aware of the existence of grounds for the claim.

insolvent—an individual builder is taken to be insolvent if the builder is bankrupt or personally insolvent (see the Dictionary).

Other things about residential building insurance a licensed builder should know

> **You can't limit, modify or negate the operation of the insurance**

The Building Act (S 91) voids any provision, stipulation, covenant or agreement in relation to a policy that negatives, limits or modifies the operation of the insurance, or purports to.

> An authorised insurer is not entitled to avoid liability under a complying residential building insurance policy only because the policy was obtained by misrepresentation or nondisclosure by the builder (Building Act, s 92).

> **Insurers can recover costs from the builder**

An authorised insurer may, in addition to any other right or remedy, recover from a builder a complying residential building insurance policy relates to so much of the following as the insurer has paid under or because of the policy:

- A. any judgment entered or obtained against the insurer; and
- B. any amounts paid by the insurer in payment, settlement or compromise of a claim or judgment against the builder or of a judgment entered or obtained against the insurer; and
- C. the costs of, and expenses reasonably incurred by, the insurer (Building Act, s 94).

Evidence of insurance

Other than the mandatory insurance described above, licensed builders do not require professional indemnity or product liability insurance to hold a licence. However, it is a good idea to carry insurance if it is available even if you do not need it, particularly if you are advising clients of how to achieve compliance with laws and selecting materials and products.

If residential building work insurance is required or if the licensee holds other insurance, before providing a construction service to a person (the client), a licensee must give the client evidence of what insurance the licensee holds in relation to the service (Licensing Act, s 47).

The licensee may ask the client to sign an acknowledgment that the client has been told about the licensee's insurance. If they do, the acknowledgment must state the time and date it was given, and the licensee must immediately give the client a copy of it.

If the licensee does not produce an acknowledgment and it is not proved that the licensee told the client about the insurance, the Registrar may assume that the client was not told about the insurance.

The licensee is taken to have given evidence of what insurance the licensee holds before providing a construction service to a person if the licensee advertised the insurance held at the time of providing the services in a way likely to come to the attention of the client, such as providing details prominently in advertising or documents for the work.

Evidence of insurance includes a fidelity certificate issued under the Building Act, section 84.

BUILDERS – CONTRACTUAL OBLIGATIONS AND LIABILITY

PROHIBITION ON CONTRACTING OUT

Section 25 of the Building Act prohibits ‘contracting out’ of requirements for building approvals, requirements for building work, stage inspections and other items in Part 3 of the Act such as keeping records of tests and complying with safety precautions.

Any provision in a contract is void if it limits or modifies Part 3 of the Act in relation to a building certifier or building work, or purports to modify or limit it.

LIMITATION OF LIABILITY

Part 9 of the Act, outlines limits to liability in relation to building actions, which are legal actions (including a counterclaim) for damages for loss or damage in relation to—

1. defective building work; or
2. defective construction work other than building work; or
3. the negligent exercise by a licensed construction practitioner of a function as a certifier, or the negligent failure to exercise such a function; but

Limitations in the Act do not apply to actions for damages for death or personal injury.

The provisions provide that a court that decides an award of damages in a building action must give judgment against each defendant to the action who is found to be jointly or severally liable for the damage for the proportion of the total amount of the damages that the court considers to be just, having regard to the extent of that defendant’s responsibility for the loss or damage.

The liability for damages of a person found to liable for damages in a building action is limited to the amount for which judgment is given against the person, even if another Act or a rule of law provides otherwise.

This means a person found to be liable for a proportionate part of damages in a building action is not liable to contribute to the damages apportioned to anyone else in the action or to indemnify any other person in relation to the damages.

Unless there is a shorter limitation under another Territory law, a building action may not be brought more than 10 years after certain circumstances outlined in section 142.

building, in relation to building work that consists of, or includes, the alteration of a building, means the building as altered.

Nothing else in the Building Act limits the liability a builder would have to anyone apart from the Act (Building Act, section 89).

FURTHER INFORMATION FOR LICENSEES

The following information is not assessable as part of the exam but is important for licensees and potential licensees to understand. The Licensing and Building Acts also outline other obligations that apply to building work.

CODES OF PRACTICE

The Minister may approve codes of practice for the Licensing and Building Acts (s 139B). A code of practice under the Building Act may set out practices, standards and other matters about building certification and building work. A code of practice for licensed builders is currently under development.

A licensee commits an offence if the licensee contravenes a code of practice applicable to the person. Compliance with a code of practice includes using any form of report, certificate or other document (if any) required by the code of practice (Licensing Reg, s 21A).

The offence is a strict liability offence with a maximum 50 penalty units (Licensing Act, s 87).

BUILDING CONTRACTS

The regulations may prescribe the following for a residential building work contract:

- > a standard condition.
- > the meaning of a term used in a residential building work contract (a prescribed term).
- > the documents (the required documents) that must be attached to a residential building work contract.
- > a prohibited condition for a residential building work contract.

A prohibited condition, that is included in a residential building work contract, is void.

See sections 89C, 89D and 89E. There are no current regulations made under these sections at the time of publication. However, the Improving the ACT Building Regulatory System reforms includes new regulations within the next year.

If regulations are made under these sections you must comply with them if you are entering into relevant residential building work contracts.

Reviewable decisions

Some decisions made under licensing and building laws can be reviewed by ACAT. For a list of reviewable decisions see the Licensing Reg, Schedule 4 and the Building Reg, Schedule 4.

An entity prescribed by regulation for the decision, or any other person whose interests are affected by the decision can apply to ACAT for a review of a reviewable decision.

A decision-maker for a reviewable decision must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see ACT Civil and Administrative Tribunal Act 2008, s 67A).

DICTIONARY

Definitions from the Building Act and Legislation Act (bankrupt and personally insolvent)

alteration, of a building, includes—

- a. demolition of part of the building; and
- b. an addition to the building.

approved plans—

- a. means plans that relate to building work for which a building approval is in effect; and
- b. includes amended plans.

bankrupt or personally insolvent—an individual is **bankrupt or personally insolvent** if the individual—

- a. under the Bankruptcy Act 1966 (Cwlth)—
 - (i) is bankrupt; or
 - (ii) is a party to a debt agreement as a debtor; or
 - (iii) is a party to a personal insolvency agreement as a debtor and the obligations created by the agreement remain undischarged; or
 - (iv) authorises a controlling trustee to control the individual's property, whether or not the individual has entered into a personal insolvency agreement as a debtor; or
- b. has a status under a law of a foreign country substantially similar to an individual mentioned in paragraph (a); or
- c. otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors.

builders licence means a licence issued under the Construction Occupations (Licensing) Act 2004 in the construction occupation of builder.

building—

- a. for Building Act—see section 7; but
- b. for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—see section 84.

building work—

- a. for Act—see section 6; but
- b. for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—see section 84.

certifier—

- a. for building work—means an entity appointed to act as certifier under section 19 (Appointment of certifiers—work not begun), section 19A (Appointment of certifiers—work begun) or government certifier under section 20 (Appointment of government certifiers) for the work; but
- a. for division 3.2 (Certifiers and government certifiers)—see section 17.

class, of building, means that class of building under the building code.

complying residential building work insurance, for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—see section 84.

cost, for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—see section 86.

development—see the Planning and Development Act 2007, section 7.

development approval means development approval under the Planning and Development Act 2007, chapter 7.

exemption assessment B notice—see section 14B.

An exemption assessment B notice states whether building work is exempt from requiring building approval.

exemption assessment D notice—see the Planning and Development Act 2007, section 138D.

An exemption assessment D notice states whether a development is exempt from requiring development approval.

information includes documents.

land includes—

- a. a place under, on or above the ground; and
- b. land that is the subject of a public unleased land permit under the Public Unleased Land Act 2013; and
- c. land, a building or a structure, the use of which is authorised by a licence under the Planning and Development Act 2007, part 9.11 (Licences for unleased land).

occupation class—see the Construction Occupations (Licensing) Act 2004, dictionary.

premises includes land or a structure and any part of an area of land or a structure.

site work—see Building Act section 7A.

site work notice, for division 3.3 (Building approvals)—see section 25AA.

specialist building work—see Building Act, section 9.

stage, of building work, means a stage prescribed under section 43 (1) (a) of the Building Act.

stop notice—see section 53 (2) of the Building Act.

storey—

- a. means a floor level within a building that—
 - (i) is between 2 other floor levels; or
 - (ii) has a floor level above or below it; but
- b. does not include a mezzanine level or a space that contains only 1 or more of the following:
 - (i) a lift shaft, stairway, meter room;
 - (ii) a bathroom, shower room, laundry, toilet or other sanitary compartment;
 - (iii) accommodation intended for up to 3 vehicles; and
- c. for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—does not include a storey below the ground storey (see section 84).

structure—see Building Act, section 8.

From:"ACT Construction and Workplace Licensing"
Sent:04/08/2019 10:48 PM
Subject:002/05 Examination Reminder
Attachments:Class A, B, C Licence Exam - Study Notes.pdf

This is a friendly reminder in relation to your upcoming builder's licensing examination.

Your examination is on **7 August 2019, at 3:00 pm.**

On the day of the exam please arrive at Cosmopolitan Centre (Woden Town Square), Level 5, 21 Bowes Street in Woden ACT by **2:45pm.**



Using the telephone in the level 5 foyer, please contact the Construction and Workplace Licensing Team on 78096 for a licensing officer to come and take you to the exam room.

You will be given 10 minutes reading time and 90 minutes (1.5 hours) to complete the exam.

Please bring photo identification with you on the day. The exam is closed book, however all materials required for its completion will be supplied including stationery and documents to assist you. Study notes for the exam are attached to help you prepare.

Please note: All electronic devices will also need to be switched off during the exam.

If you are unable to attend this exam please notify CWPL on 02 6207 8096 or via email on cwpl@act.gov.au to discuss alternative days and times you may attend.

Kind regards

Construction and Workplace Licensing
Phone: 02 6207 8096 | Email cwpl@act.gov.au Access Canberra | ACT Government GPO Box 158, Canberra ACT 2601
| www.act.gov.au/accesscbr

Adam Bruzga | Assessment Officer | Construction and Workplace Licensing
Phone: 02 6207 8096 | Email: cwpl@act.gov.au

Access Canberra | ACT Government

GPO Box 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR



From: "ACT Construction and Workplace Licensing"

Sent: 08/08/2019 1:55 AM

To: Sch 2 2.2(a)(ii)

Subject: Sch 2 2.2(a)(ii) - Notification of Examination Result-2019 [SEC=UNCLASSIFIED]

Attachments: Class A, B, C Licence Exam - Study Notes.pdf

Dear Sch 2 2.2(a)(ii)

I am writing to you in relation to the results of the written examination you undertook on the 7 August 2019.

Sch 2 2.2(a)(ii)

Below you will find the concepts within the examination you have been marked not yet competent in:

Sch 2 2.2(a)(ii)

Further information on the above concepts can be located in the attached study notes; the *Building Act 2004*; *Building (General) Regulation 2008*; *Construction Occupations (Licensing) Act 2004*; *Construction Occupations (Licensing) Regulation 2004* and the Building Code of Australia (BCA).

Should you wish to remain eligible to conduct licensed work in the ACT, you are required to undertake a second attempt set by the Registrar. Below are details of the next exam dates and times available to you:

Date: 14 August 2019

Time: 8:30am

Location: Dame Patties Menzies Building, ground floor north, 16 Challis Street Dickson

Date: 21 August 2019

Time: 3:00pm

Location: Level 5, Cosmopolitan Centre (Woden Town Square) 21 Bowes Street, Woden

Please email CWPL at cwpl@act.gov.au as soon as possible to secure a place in your preferred examination session.

Kind regards

Construction and Workplace Licensing

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

GPO Box 158, Canberra ACT 2601 | www.act.gov.au/accesscbr



Access Canberra | Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: "ACT Construction and Workplace Licensing"

Sent: 21/08/2019 3:30 AM

To: "Sch 2 2.2(a)(ii)"

Subject: Sch 2 2.2(a)(ii) -Notification of Examination Result-2019 [SEC=UNCLASSIFIED]

Attachments: Sch 2 2.2(a)(ii) Notification of Examination Result-2019 [SEC=UNCLASSIFIED]

Good afternoon Sch 2 2.2(a)(ii)

Please find attached email sent to you on 8 August 2019 in relation to your examination.

Below are details of the next exam dates and times available to you:

Date: 28 August 2019

Time: 8:30am

Location: Dame Patties Menzies Building, Ground Floor North Builder, 16 Challis Street Dickson

Date: 4 September 2019

Time: 3:00pm

Location: Level 5, Cosmopolitan Centre (Woden Town Square) 21 Bowes Street, Woden

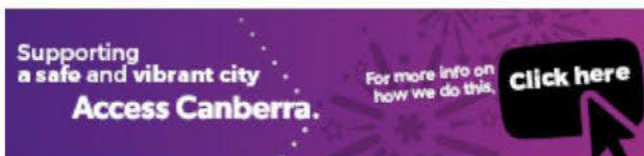
Please email CWPL at cwpl@act.gov.au as soon as possible to secure a place in your preferred examination session.

Kind regards

Construction and Workplace Licensing

Access Canberra | ACT Government

GPO Box 158, Canberra City ACT 2601 | www.act.gov.au/accessCBR



Access Canberra | Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Sch 2 2.2(a)(ii)

Sent: Wednesday, 21 August 2019 11:21 AM

To: ACT Construction and Workplace Licensing <cwpl@act.gov.au>

Subject: Sch 2 2.2(a)(ii)

Hi there I would appreciate some feedback on my exam results today as it has been two weeks since completing your test.

I would like to know asap as I have potential clients waiting to sign contracts and this could potentially hurt my income.

I paid my application fees and have no response from you as yet.

Hopefully I hear from you soon.

Thank you. Sch 2 2.2(a)(ii)

From: "ACT Construction and Workplace Licensing"

Sent: 08/08/2019 1:55 AM

To: Sch 2 2.2(a)(ii)

Subject: Sch 2 2.2(a)(ii) - Notification of Examination Result-2019 [SEC=UNCLASSIFIED]

Attachments: Class A, B, C Licence Exam - Study Notes.pdf

Dear Sch 2 2.2(a)(ii)

I am writing to you in relation to the results of the written examination you undertook on the 7 August 2019.

Sch 2 2.2(a)(ii)

Below you will find the concepts within the examination you have been marked not yet competent in:

Sch 2 2.2(a)(ii)

Further information on the above concepts can be located in the attached study notes; the *Building Act 2004*; *Building (General) Regulation 2008*; *Construction Occupations (Licensing) Act 2004*; *Construction Occupations (Licensing) Regulation 2004* and the Building Code of Australia (BCA).

Should you wish to remain eligible to conduct licensed work in the ACT, you are required to undertake a second attempt set by the Registrar. Below are details of the next exam dates and times available to you:

Date: 14 August 2019

Time: 8:30am

Location: Dame Patties Menzies Building, ground floor north, 16 Challis Street Dickson

Date: 21 August 2019

Time: 3:00pm

Location: Level 5, Cosmopolitan Centre (Woden Town Square) 21 Bowes Street, Woden

Please email CWPL at cwpl@act.gov.au as soon as possible to secure a place in your preferred examination session.

Kind regards

Construction and Workplace Licensing

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

GPO Box 158, Canberra ACT 2601 | www.act.gov.au/accesscbr



Access Canberra | Chief Minister, Treasury and Economic Development Directorate | ACT Government