



**ACT**  
Government

Environment and Planning

# Building in the ACT

A consumer guide to the building process



OCTOBER 2014



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## Foreword

Starting the process of building or renovating your home can be exciting and, at times, intimidating task. This guide is designed to inform you about some of the processes involved in building and renovating in the ACT.

As the Construction Occupations Registrar of the ACT, I am committed to providing information to members of the community about the processes and requirements of building in the ACT.

I trust this guide will provide you with an insight into building and construction in the ACT and will assist in you being able to achieve your desired outcomes with your building project.

If you would like more information, please visit our website at [www.planning.act.gov.au](http://www.planning.act.gov.au)

**David Middlemiss**

ACT Construction Occupations Registrar





# 1. Construction Occupations Registrar

## 1.1 Role of the Construction Occupations Registrar

The Construction Occupations Registrar (the Registrar) is a public servant who has relevant qualifications or experience in one or more of the following areas:

- Asbestos assessment
- Building
- Building assessment
- Building surveying
- Plumbing, draining, gasfitting
- Electrical
- Engineering
- Works assessment
- Administration of building or construction industry regulatory schemes.

The functions of the Registrar include:

- Keep registers under the *Construction Occupations (Licensing) Act 2004*
- Administer the operational laws, including the Building Act, Water and Sewerage Act, Electricity Safety Act
- Decide applications for licences
- Maintain the standard of construction occupations by acting on complaints and providing licensees with information about developments in the construction industry.

If you plan on undertaking building work that requires approval you should only engage an individual or company who holds an ACT builder's licence. The licensee is issued a licence card by the Registrar and you should ask to see the card and check the person you are dealing with and the name on the card are the same. Similarly, all licensed building surveyors (certifiers), electricians, plumbers and gasfitters, to name a few of the licensed occupations in the ACT, will also have a licence card issued by the Registrar.

Typically the front of a licence card looks like this. It is electronically signed by the Registrar on the back with the licensee's signature in the signature panel.

## 1.2 Classes of builder licence

The type of building work that can be undertaken by a builder depends on their class of licence. The scope of works for each class, excluding owner builder, is below in table 1. Some builders may also be subject to conditions, restrictions and endorsements as highlighted on their licence card.

Most residential dwellings are class 1 buildings that are two storeys in height or lower and can be undertake by a Class C licensed Builder.

You can see a list of licenced builders and their class of licence at [www.planning.act.au](http://www.planning.act.au).

Class	Scope of Work
Class D	a. Non-structural basic building work, other than specialist building work.
Class C	a. Building work (other than specialist building work or handling asbestos) in relation to a building that is 2 storeys or lower and is a class 1, class 2 or class 10a building; b. Building work (other than specialist building work or handling asbestos) 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.
Class B	a. Building work (other than specialist building work or handling asbestos) in relation to a building that is 3 storeys or lower; and b. Basic building work.
Class A	Building work other than specialist

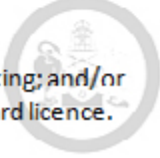


### 1.3 Construction occupations licensing

Under the *Construction Occupations (Licensing) Act 2004* all builders and building surveyors (building certifiers) must be licensed by the Registrar. Unlike some other Australian jurisdictions, the ACT does not currently licence architects, engineers or designers.

To obtain a licence individuals are required to demonstrate they have the relevant qualifications, experience and, in most cases, access to adequate financial resources in order to undertake the works authorised under the licence. The Registrar is responsible for assessing licence applications, issuing licences and ensuring licensees continue to meet the required laws relating to building and licensing in the ACT.

Construction Occupation Licence		
Issued under the ACT Construction Occupations (Licensing) Act 2004		
<b>Name: Entity Name</b>		
<b>Lic No: 201400000000 ACN: 000000000</b>		
OCCUPATION	CLASS	ISSUE PERIOD
Builder	Class C	10/10/14 – 10/10/15
<b><u>CONDITIONS, RESTRICTIONS &amp; ENDORSEMENTS:</u></b>		
<p>This section may:</p> <ul style="list-style-type: none"><li>• Restrict the type of work the licensee can undertake;</li><li>• Include conditions preventing the licensee from undertaking; and/or</li><li>• Endorse a licensee to undertake work outside the standard licence.</li></ul>		



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## Development applications and exempt development

### 1.4 Development applications

#### 1.4.1 What is a development application?

If you are building or undertaking renovations to your home you may need to submit a development application (DA) to the planning and land authority within the Environment and Planning Directorate (EPD) for approval. Often people are assisted in this process by industry professionals such as architects, designers, draftspersons, engineers and building certifiers.

DAs are lodged online using EPD's online eDevelopment system.

### 1.5 What developments require approval?

Some developments can be exempt from requiring development approval. New houses, additions and alterations to existing houses, and some smaller projects like pergolas, carports and fences can be exempt. Please see below under Exempt Development for further information.

How do I work out what I can do on my land?

All land in the ACT is zoned for different uses. To find out about how your land is zoned you can go to our online mapping tool ACTmapi. This tool can be found on the EPD website, [www.environment.act.gov.au](http://www.environment.act.gov.au).

Design and siting requirements for dwellings in the ACT are outlined in the Territory Plan, also on the EPD website.

### 1.6 How are DAs assessed?

Before DAs are assessed they undergo a completeness check. EPD staff check whether all the necessary information has been provided in your application. Working with an industry professional will help you understand what information is required to be submitted. You can also find information about DA lodgement requirements on the EPD website.

When all the necessary information has been lodged, EPD will advise you of the fee to be paid to lodge your DA. Once lodged, your DA is assessed against the relevant code of the Territory Plan, objectives of the zone the land is in, and the suitability of land for the development. As part of the DA process your application will be subject to a public notification period. The assessment takes into account all representations made during notification, advice from other entities like ActewAGL, a plan of management for any public land and the likely impact of the development, including any environmental impact.

### 1.7 Do I need to consult with my neighbours about my DA?

If your development is located in an established area we strongly encourage you to consult with your neighbours during the design stage to ensure the development proposal considers issues that might arise. Even though neighbour consultation is not a legal requirement where a DA is required, it is encouraged and should occur before a DA is lodged.







## 1.8 Will my DA require public notification?

All merit track development applications need to be publically notified. If your proposal requires minor notification, letters will be sent to the neighbours adjoining your property advising them of your application. If your proposal requires major notification, letters will be sent to the adjoining neighbours, a sign placed on the site and an advertisement placed in the newspaper.

EPD carries out this notification after a development application has been lodged.

## 1.9 What about entity referrals?

For some development applications you will be required to get approvals from other ACT agencies such as ActewAGL and the Territory and Municipal Services Directorate (TAMSD).

## 1.10 How long does it take for a decision to be made on my DA?

Processing time for an application depends on what track it is in and whether or not anyone comments during public notification of the DA.

The statutory timeframe for assessing code track applications is 20 working days. The timeframe for merit and impact tracks is 30 working days if no representations are received and 45 working days when representations are received.

## 1.11 What happens when a decision is made?

EPD notifies the applicant of its decisions in writing. People who make a representation are also notified of the decision on an application.

For more information on development applications please call the EPD Customer Service Centre on (02) 6207 1923 or email [EPDCustomerServices@act.gov.au](mailto:EPDCustomerServices@act.gov.au) or look on the EPD website.

## 1.12 Exempt development

Some dwellings and projects do not need to lodge an application for development approval if certain requirements are met. The requirements for exemptions vary according to the type of project.

A complete list of developments that are exempt from development approval and the relevant criteria and requirements can be found in Schedule 1 of the Planning and Development Regulation 2008. Below is a list of some kinds of development that may be exempt from needing development approval if they meet certain requirements.

- Aerials and antennas
- Single dwellings
- Carports, shade structures and pergolas
- Fences and freestanding walls
- Unroofed decks, patios and terraces
- Demolition
- Driveways
- External doors, walls and windows
- Garages, sheds, and gazebos
- Heating and cooling installation and solar PV installations
- Internal alterations
- Letterboxes and barbeques.

Licensed works assessors and most licensed building certifiers offer a service that determines whether your proposal is exempt from requiring development approval.

A building certifier must not issue a building approval without determining whether the proposal is exempt from requiring a development approval or the proposal has been issued with a development approval.

A works assessor or building certifier will be able to help you by:

- verifying that exempt developments meet the development exemption criteria and therefore do not require a development application, if an application for building approval shows building work that might be exempt from requiring a development approval
- verifying that site work, such as driveways and tree damage, and building work shown in a building approval application is either: exempt from requiring development approval, if the exemption requirements for the building work also require the site work to be exempt; or in accordance with a development approval.



## 2. Building approvals

When you are building, renovating, demolishing or landscaping you may need to get building approval as well as development approval.

### 2.1 What is the difference between development approval and building approval?

Development approval ensures the development is suitable for an area and conforms to any rules or regulations that may apply to a piece of land and complies with planning requirements for the development. Building approval ensures the proposed building will be safe and structurally sound and will provide the required levels of fire resistance, durability, amenity, access for people with disabilities and energy efficiency.

### 2.2 What is building approval?

Most new buildings and renovations have to get building approval. Buildings have to conform to building laws and the National Construction Code, Building Code of Australia unless exempted. Building certifiers, who are licensed building surveyors, issue building approvals. You need to get building approval, unless your proposal is exempt, before construction can begin. Details of types of building work that can be exempt from requiring a building approval can be found in Schedule 1 of the Building General Regulations 2004. Below is a list of some kinds of buildings that may be exempt from needing building approval if they meet certain criteria.

- Aerials and antennas
- Decks, carports, pergolas and the like
- Fences and freestanding walls
- Garages, sheds, and gazebos
- Internal alterations.

### 2.3 What are the steps for getting building approval?

Most people engage the services of a builder prior to engaging a building certifier. It is important – and a requirement under the Building Act – that you, as owner, appoint a building certifier. More information about the role of the building certifier can be found below under the heading ‘Your building certifier and the building process’. The steps below will guide you through the building approval process.

#### Step one

Appoint a licensed building surveyor as your certifier. You can find a list of building surveyors on the EPD website.

#### Step two

Apply for building approval and pay the relevant fees (your certifier will tell you what these are). You will find the form (C3 - Appointment of a certifier and application for building approval and building approval certificate) on the EPD website under forms.

#### Step three

Engage an appropriately licensed builder or in some cases you can apply to become an owner-builder. If you employ a builder, use a written contract and seek independent legal advice. Remember to check that your builder is licensed in the ACT and has a licence appropriate for undertaking the work.

#### Step four

The builder must then apply to your building certifier for a building commencement notice by completing the building commencement notice application form.





## 3. Your building certifier and the building process

### 3.1 What is the role of your building certifier?

In the ACT, building certifiers are licensed by the Construction Occupations Registrar. Building certifiers are to act independently and are appointed by the land owner(s). Their role is to ensure the building is constructed in accordance with the building laws and associated technical requirements including the National Construction Code, Building Code of Australia.

The building certifier is not a project manager and is not responsible for quality control or contract administration. The building certifier is responsible for assessing building plans to determine whether the proposal can be constructed in accordance with the approved plans and the applicable legislation and codes.

Some building certifiers offer services as a works assessor. A works assessor is a licensed entity who can determine whether your proposal requires a development approval or is exempt.

A list of licensed building certifiers can be found on the EPD website.

### 3.2 What class of licence does a building certifier need?

In general there are two main classes of building certifier licence:

1. A principal building surveyor may certify any building work.
2. A general building surveyor may certify a building up to three storeys and with a floor area up to 2000 square metres.

You can find a building certifier who has the right licence for the building project you are proposing from the list of building certifiers on EPD's website.

When considering who you will select as the building certifier on your project you should make sure they are:

- independent and do not have any financial, legal or other interest in the building work
- do not have any personal, professional, commercial or financial relationship with you or your builder
- not involved in the design or construction of the work being done.

### 3.3 What fees do I have to pay?

The fees paid to the building certifier are not regulated. Each individual building certifier determines their own fee for the services that are to be provided in relation to your project.

There are a number of ACT Government fees. Some building certifiers may collect this on your behalf or it could be included in your payment to the builder as part of your building contract. The fees are charged to the land owner and it is the responsibility of the owner and building certifier to ensure the fees are paid within 14 days of the date of the building approval.

The fees paid to the ACT Government for building approvals are:

- a building levy – 0.8% of the cost of building
- a training levy – if the work has a value greater than \$10,000, the levy is 0.2% of the value of the building work, including the first \$10,000.

Your certifier will calculate the building and training levies using the building cost guide.

You can pay these fees at the EPD Customer Service Centres in Dickson or Mitchell, by calling Canberra Connect on 13 33 81 or online via Canberra Connect at [www.canberraconnect.act.gov.au](http://www.canberraconnect.act.gov.au).

### 3.4 What inspections will my building certifier undertake?

One of the important functions undertaken by the building certifier during the construction phase is the inspection of the building work. The primary purpose of site inspections is to ensure the building work complies with the approved plans and associated legislation and standards, including the National Construction Code, Building Code of Australia.

The Building Act identifies a number of stages of building work where an inspection by the building certifier is required; this may require more than one inspection at each stage. You should expect the following stages of inspection to occur for the construction of a typical residential building as a minimum:

- The completion of excavation, placement of formwork and placement of steel reinforcing for the footings before any concrete for the footings is poured



- Completion of the structural framework before the placement of any internal lining
- Completion of placement of formwork, and placement of steel reinforcing, for any reinforced concrete member before any concrete for the member is poured
- Final inspection of the building works at completion.

Depending on the building work some building certifiers may require, or you may seek, additional inspections. When engaging a certifier, you should ask them to advise you of the stages of building work they will undertake an inspection and any associated additional costs.

It is the responsibility of the builder to advise the building certifier when each stage of building work is ready for inspection. Be sure to inform your builder if you have requested additional inspections to be undertaken by your building certifier and include them as part of your contract.

### 3.5 What about the quality of the building work?

It is the responsibility of the builder and owner, working together, to ensure the project is constructed to an acceptable standard. A building certifier is not responsible for checking all aspects of the quality of the work undertaken. Some building certifiers may provide additional services such as quality control for an additional fee. You should maintain communication with both your builder and building certifier in relation to the building works and raise any issues of concern with the relevant parties if and when they arise.

If you have specific requirements in relation to quality, finish and products, you should discuss this with your builder and include any relevant details in your contract. To be satisfied with the quality of work you should arrange with your builder to undertake inspections of the work.

### 3.6 What happens when my builder has completed the building work?

When the builder has finished the building work subject to building approval, the building certifier will undertake a final inspection. The inspection does not confirm all works that may be under your contract, for example landscaping, driveways, fences, window furnishings and the like which do not form part of the building approval. When the building certifier is satisfied the building work complies, or substantially complies, with the building approval and associated technical requirements, they will issue a certificate of completion and lodge any final certificates or paperwork with the Registrar.

If the building project includes electrical, plumbing or gas work, those licensees, who are often contracted by the builder, have the responsibility to ensure they lodge the paperwork with the Registrar. The works may then be inspected by ACT Government inspectors.

Once all inspections are cleared and tested by government and the certificate of completion is lodged by the building certifier, the land owner can make an application to the Registrar for a certificate of occupancy and use. For more information about the completion of works and certificate of occupancy see below under Completion – Occupation and Use of Buildings.



## 4. Choosing your builder

For works requiring a building approval, only a licensed ACT builder is authorised to undertake the building work. While a licence is an indication they have attained a level of competence from an educational and experience perspective, it is not an indication about their skills around contracting, communication or associated business practices.

When selecting your builder, you may wish to undertake some research and ask the builder for details of previous work and contact details of recent clients. Some questions you may wish to ask previous clients include:

- Did the builder provide documentation clearly detailing and pricing the work to be undertaken?
- Was the builder polite, responsive and did they provide good customer service?
- Did the builder keep you informed along the way?
- Did the builder maintain commitments made?
- Did the builder stick to the agreed costs and timing schedule?

Once you have decided the builder you wish to engage:

- always be clear about the type of products that will be used, for example:
  - » type of paint
  - » type of timber
  - » quality of inclusions
- determine whether the government, building certifier, land surveyor and other subcontractor fees are included in the agreed price
- get agreement in writing by way of a contract
- if you or your builder makes changes to the contract, get them in writing.





## 5. Building contracts, payment arrangements, statutory warranties and residential building insurance

### 5.1 The contract

Any contract for building work should be made in writing. It is important that you understand and are happy with all the details contained within your building contract. If you do not understand what is included under the contract or are unsure of your responsibilities under the contract, you should not sign it and you should take steps to obtain independent legal advice. Disputes about contracts are civil in nature and the Registrar has no power or role to play in the enforcement of contracts.

In general a contract should:

- be signed and dated by you and the builder
- contain your name as owner and the builder's name
- have the address where the work is to be carried out
- contain the builder's licence details
- state the start and completion dates
- state the payment arrangements
- have the plans, specifications and inclusions attached
- contain the statutory warranties
- display the total contract price and provisions relating to any contract variations.

It is in your best interest to ensure that the work that has been agreed to is stated fully in the contract. This will help prevent any misunderstandings and minimise the risk of potential disputes.

It is important to sign the contract with the licensed builder contracted to do the work, and not the company or any other person who contracted the builder. Be sure the name of the builder appears on the contract, the statutory warranty and insurance certificate or fidelity certificate.

### 5.2 Payment arrangements

The contract should detail the stage of completion when payment is required. Payment arrangements vary, a normal payment structure may look like this:

Stage of work	Payment % of contract price
1 On signing of contract	5%
2 Completion of base stage	10%
3 Completion to frame stage	15%
4 Completion to lock-up stage	35%
5 Completion to pre-paint stage	20%
6 Completion of all building work	15%

In the ACT, insurance or a fidelity certificate provides for a maximum cover of \$85,000. You should negotiate with your builder to make sure that no stage exceeds this amount, whilst still ensuring you are not overpaying for a stage. This may require the negotiation of additional stages.

It is important to never pay for a stage of building work before it is completed as this may expose you to financial risk if the builder goes into administration, fails to complete the job, or does not complete the job to the agreed specifications. You should also make sure that if your building certifier is inspecting a stage of building work, they are satisfied the work complies with approved plans and National Construction Code, Building Code of Australia, prior to payment.

### 5.3 Statutory warranty

In accordance with the provisions of the Building Act, every contract for the sale of a residential building, and every contract to carry out residential building work to which the builder is a party (excluding owner-builder licence holders) is taken to contain a warranty except if the building work is exempt from requiring building approval and/or the cost of works is less than \$12,000.





Under these provisions the builder warrants the following:

- That the residential building 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 or
  - » if the work involves or involved handling asbestos or disturbing friable asbestos – in accordance with approved plans that comply with the Building Act in relation to 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.
- If the owner of the land where the work is being or is to be carried out is not the builder, and the owner expressly makes 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 judgement – that 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.

The period for which statutory warranty operates is:

- six years after the completion day for the work for residential building work in relation to a structural element of a building and
- two years after the completion day for the work for residential building work in relation to a non-structural element of a building.

The completion day is taken to be the day the work is completed or the day the contract relating to the work ends, whichever is the later.

## 5.4 Residential building insurance

Prior to a building certifier being able to issue a commencement notice to allow building work to be undertaken on the land, they must be satisfied the application for a commencement notice contains:

- a residential building insurance policy for the work
- a certificate issued by an approved insurer (currently QBE Insurance) 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 an approved scheme (currently the Master Builders Association Fidelity Fund).

It is the responsibility of the builder to obtain the appropriate insurance. You should ensure that all details on the insurance policy, insurance certificate or fidelity certificate are complete and accurate. It is in your best interests to ensure that you have adequate coverage for the works being undertaken and that the builder listed on the commencement notice is listed in the policy and/or on the certificate.

In the event you need to make a claim against the insurance and there has been a misrepresentation or nondisclosure by the builder, the 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. The insurance granted insures the owner and the owner's successors in title should the building be sold or transferred to another party.



## 6. Building disputes

Disputes between builders, trade contractors, architects, designers and consumers may occur for a number of reasons, including:

- inaccurate or insufficient documentation
- poor communication
- poor quality of work
- delays in supply and construction
- lack of knowledge or experience in the building process.

Those engaging in the building process can help avoid disputes by ensuring that:

- those engaged in the process have the adequate licence, skills, knowledge and experience for the work to be undertaken
- all relevant details about the nature of the work, the timeframe for undertaking the work and the cost are explained and documented in writing for all parties
- any discussions about variations to the plans, inclusions, or other contract variations are explained and documented in writing for all parties
- all parties understand their role, responsibilities, rights and obligations, and that those are contained within the contract

- all parties are kept informed of progress throughout the project.

### 6.1 Dispute resolution

When negotiations between you and your builder break down and work is not completed, there are options and procedures available to assist in resolving your dispute. As soon as you identify an issue or have a concern, raise this with your builder in writing as soon as possible. Your builder should take steps to address the concerns you have raised, however if the issues are not resolved and are of a technical compliance nature you should talk to your building certifier and also consider making a complaint to the Registrar using the complaint form on the EPD website.

If the issues you have raised are of a contractual nature, including involving payments, quality of inclusions, communication breakdown etc. you may wish to go through a dispute resolution service or commence tribunal or court proceedings. Depending on the nature of the contractual concern, the Office of Regulatory Services (Fair Trading) may be able to assist. Find out more on their website [www.ors.act.gov.au](http://www.ors.act.gov.au).





## 7. Completion – occupation and use of buildings

Upon satisfactory completion of the building work your building certifier will issue a certificate of completion. As most projects include electrical and/or plumbing/gasfitting work, inspections of those installations may be undertaken by inspectors from the office of the Registrar. Once all relevant clearances have been received by the Registrar the homeowner will need to apply to the Registrar for a certificate of occupancy and use. If all clearances have been received and there are no outstanding issues, the Registrar will issue the certificate of occupancy and use in relation to the work.

### 7.1 What is a certificate of occupancy and use?

A certificate of occupancy and use is a certificate issued by the Registrar that indicates that, based on the information provided by the building certifier and results of any government inspections of the electrical, gas or plumbing work, the building is fit for use in the class which is stated on the certificate.

In the ACT it is illegal to occupy or use a building where the building has not received a certificate of occupancy and use. Penalties apply to both the people who occupy without a certificate of occupancy and those who have facilitated occupancy.

Once you have received your certificate of occupancy and use you are able occupy and use your new building.

## 8. Further information

Further information can be obtained from the EPD website. Copies of the relevant legislation can be found at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

### Contact Details

Environment and Planning Directorate  
Dame Pattie Menzies House  
16 Challis Street  
Dickson ACT 2602  
PH: 6207 1923  
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