

# CONSTRUCTION OCCUPATIONS LICENSING

## Guide for Nominees of a corporation or partnership

### **What it means to be a nominee for a corporation or partnership in the ACT – your roles and obligations under ACT legislation**

The [Construction Occupations \(Licensing\) Act 2004](#) (COLA) and [Construction Occupations \(Licensing\) Regulation 2004](#) (COLR) define the roles and responsibilities of a nominee for a corporation or partnership.

Under the legislation the corporation or partnership and the licensed nominee both have responsibilities in relation to any failure to adequately supervise construction services, and failure to ensure the construction services comply with the COLA and relevant operational Acts such as the Building Act or Electricity Safety Act. This includes any regulations or codes of practice for the construction services.

### **What is the corporation or partnership responsible for?**

Corporations and partnerships are not only responsible for maintaining their eligibility to hold a licence and reporting administrative matters, such as a change of corporation director or contact details to the Construction Occupations Registrar (Registrar). The entity must also appoint an individual licence holder as a nominee for each construction service the entity provides for example; builder; plumber; gasfitter; electrician.

### **What are my roles as a licensed nominee?**

As a corporation or partnership's nominee, it is your role to:

- » supervise the relevant construction services you have been engaged for, and
- » ensure the construction work complies with the COLA and relevant operational Acts, including any applicable codes of practice.

Failure to adequately supervise a construction service or ensure that works comply with the COLA or the operational Acts is a criminal offence.

A licensed corporation or partnership also commits an offence if their licensed nominee fails to adequately supervise the relevant construction services or the relevant construction services fail to comply with the COLA and the operational Acts.

### **What do I do if the relevant construction services which I am supervising are not compliant?**

As the licensed nominee, as soon as you become aware that the construction services which you are supervising do not meet the legislated requirements, it is your responsibility to take the necessary steps to address the matter.

This may include describing in writing to the licensed corporation or partnership the non-compliance and how it needs to be addressed (the mandatory requirement). A copy of the correspondence (the mandatory requirement) should be provided to the Registrar.

If you have taken the above steps, and the licensed corporation or partnership has not complied with the mandatory requirement, the offence for failing to supervise or ensure compliance does not apply to you.

If you don't take the above steps, action may be taken against you for the failure to comply.

### **Do I have to be on site every day?**

The COLA stipulates that as the licensed nominee, you must be able to exercise the functions of a nominee on a daily basis.

While this does not mean you must be constantly present during the construction work, you must be available to attend locations where the construction services you are responsible for supervising will be carried out and put in place adequate arrangements for the oversight of the work when you are not present.

Furthermore, if you are undertaking work under your own licence or already a nominee for other licensees, you may not be able to exercise the function of a nominee on a daily basis for one or more of the corporations or partnerships.

If you are not able to adequately supervise the work, you are not eligible to be the licensed nominee.

You should carefully consider all your commitments before accepting an appointment as a nominee.

### **What if there is more than one nominee?**

A corporation or partnership can appoint more than one nominee who will be responsible for their particular licensed construction services.

A licensed nominee can only carry out the functions in relation to the construction services their appointment is for. Under the COLA, corporations and partnerships must have a written record the construction services each licensed nominee will be responsible for supervising. As a licensed nominee, you are encouraged to keep records of the construction services which you are to supervise.

Between all of the licensed nominees, they must be able to adequately supervise all of the construction services to be provided.

### **What happens if I am unable to supervise a construction service due to illness or being on holidays?**

As the appointed nominee, you need to work with your nominating corporation or partnership to ensure that any construction work that needs to be carried out in your absence is carried out by another appointed nominee appropriate construction occupation.

There are provisions in the COLA that automatically suspends a corporation or partnership's licence for not having a nominee that can adequately supervise the construction services a nominee was appointed for.

### **What are my other responsibilities as a nominee?**

You stop being the nominee when you are no longer eligible to be a nominee.

As a nominee, you will need to maintain your eligibility to hold a construction occupation licence to continue being a nominee.

A nominee for a corporation must be a director or an employee of the corporation. If you stop being a director or an employee, you are no longer eligible to be the corporation's nominee.

A nominee for a partnership must be a partner or a nominee of a corporation that is a partner in the partnership. If you are no longer a partner in the partnership, or a nominee for the corporation, you are no longer eligible to be a nominee.

You must also ensure any conditions placed on your license *after* your appointment as a licensed nominee do not prevent you from being eligible to be a nominee, such as a condition that you can't supervise work or must be supervised by someone else.

If you are the only nominee for a particular construction service for a licensed corporation or partnership, the corporation or partnership licence will be automatically suspended if you are no longer eligible to be the nominee.

### **Can I be appointed as a nominee without my knowledge?**

No. You can not be appointed as a licensed nominee for a corporation or partnership without your knowledge - you must agree to the appointment in writing and sign the appropriate forms.

### **Can I resign from being a licensed nominee?**

Yes, you can resign from being a licensed nominee for a corporation or partnership, but only with the Registrar's approval.

The Registrar must be satisfied that one of four criteria has been met in order to approve a licensed nominee's resignation

1. The corporation or partnership has refused to comply with a mandatory requirement in relation to work failing to comply with relevant laws;
2. You are no longer fit to perform the functions of a nominee due to a mental or physical incapacity;
3. Another nominee has been arranged to take over your functions;
4. It is otherwise appropriate to approve the resignation.

### **Can a corporation or partnership revoke my appointment as a licensed nominee?**

Yes, a corporation or partnership can revoke your appointment as a nominee, but only with the Registrar's approval if:

1. You are no longer fit to perform the functions of a nominee due to a mental or physical incapacity;
2. Another nominee has been arranged to take over your functions;
3. It is otherwise appropriate to approve the resignation.

The corporation or partnership must also notify the Registrar if your employment as the licensed nominee has ended.

### **How long does my appointment as a nominee last?**

Unless you resign as the licensed nominee for the corporation or partnership, or are no longer eligible to be the nominee, you will remain appointed for the length of the corporation or partnership licence, which can be up to three years.

This applies even if you were engaged as the nominee on a specific project.

If the corporation or partnership is renewing their licence and you do not want to continue as the nominee, you must advise the corporation or partnership.

### **How can I check if I am still appointed as a nominee or find more information?**

**Phone:** 02 6207 8096

**Email:** [cwpl@act.gov.au](mailto:cwpl@act.gov.au)

**www:** [www.planning.act.gov.au/build-buy-renovate/contact-us](http://www.planning.act.gov.au/build-buy-renovate/contact-us)