



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 licensed corporation or partnership and the licensed nominee both have responsibilities in relation to supervising construction services, and ensuring 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.

This guide aims to assist you in understanding your role and meeting your legal obligations as set out in the COLA and the COLR.

What is the corporation or partnership responsible for?

Corporations and partnerships are 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.

Under the COLA, to be eligible to hold a licence, the corporation or partnership must have a written record of policies and procedures for effectively managing and supervising the nominee as well as the corporation's or partnership's obligations.

These policies and procedures must also include arrangements for communicating regularly between the nominee and the corporation or partnership in relation to the construction services they are providing. It is important the nominee check these requirements are in place, and they

are aware of them, prior to taking on their role.

What are my roles as a licensed nominee?

As a nominee, it is your role to:

- supervise the relevant construction services you have been engaged for,
- ensure that the relevant construction services comply with the COLA and operational acts and
- ensure oversight of the relevant construction services and where necessary, to direct their performance to ensure the services comply with the COLA and operational acts.

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

A licensed corporation or partnership also commits an offence if their licensed nominee fails to adequately supervise the relevant construction services.

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 can include describing the non-compliance in writing to the licensed corporation or partnership and how it needs to be addressed. 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 may not apply to you.

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 on site every day during the construction work, there is an expectation you will attend the site regularly and frequently, particularly during critical stages of construction. This needs to ensure oversight of the construction services and where needed, to give directions to ensure the works comply with COLA and the operational acts.

You must put in place adequate arrangements for the oversight and reporting of the work when you are not present and be available to attend locations where the construction services you are responsible for supervising will be carried out.

Furthermore, if you are undertaking work under your own license or already a nominee for other licensees, you will need to consider carefully how you will exercise the functions of a nominee on a daily basis for multiple construction sites.

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 licensed construction services.

However, a licensed nominee can only carry out the functions in relation to the construction services their appointment is for, and you are encouraged to keep records of the construction services which you are to supervise. The corporation or partnership policies and procedures document would be the appropriate means identify and address these arrangements.

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 with the appropriate construction occupation license.

If this is likely to be required, the corporation or partnership's written record of policies and procedures would be an appropriate means identify and address these arrangements.

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 will need to maintain your eligibility to hold, and ensure renewal of, your construction occupation license to continue being 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 cannot 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

www: www.accesscanberra.act.gov.au/business-and-work/building-and-construction