NORTHERN TERRITORY OF AUSTRALIA

OCCUPATIONAL LICENSING (NATIONAL UNIFORM LEGISLATION) ACT 2011

As in force at 1 August 2012

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 August 2012. Any amendments that commence after that date are not included.

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OCCUPATIONAL LICENSING (NATIONAL UNIFORM LEGISLATION) ACT 2011

An Act to provide for a national law to regulate the licensing of certain occupations, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Occupational Licensing (National Uniform Legislation) Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Interpretation

(1) For the purposes of this Act, the ***local application provisions of this Act*** are the provisions of this Act other than the Occupational Licensing National Law set out in the Appendix to this Act.

(2) In the local application provisions of this Act:

Occupational Licensing National Law (NT) means the provisions applying in this jurisdiction because of section 4.

(3) Terms used in the local application provisions of this Act and also in the Occupational Licensing National Law set out in the Appendix to this Act have the same meanings in those provisions as they have in that Law.

Part 2 Adoption of National Law

Division 1 Provisions for adoption of National Law

4 Adoption of Occupational Licensing National Law set out in the Appendix

The Occupational Licensing National Law set out in the Appendix to this Act:

(a) applies as a law of this jurisdiction; and

(b) as so applying may be referred to as the *Occupational Licensing National Law (NT)*; and

(c) so applies as if it were part of this Act.

5 Uniform adoption of nationally approved amendments to Occupational Licensing National Law

(1) The Administrator may, by regulation, amend the Appendix to this Act to give effect in this jurisdiction to any nationally approved amendment.

(2) This section does not limit section 14.

(3) In this section:

amend includes insert, omit and repeal a provision.

nationally approved amendment means an amendment of the Occupational Licensing National Law that is of a kind that has been approved by the relevant Ministers of the participating jurisdictions.

6 Disallowing national regulations and other matters

(1) The purpose of this section is to provide for matters relevant to Part 9, Division 6 of the *Occupational Licensing National Law (NT)*.

(2) Section 63(9) and (10) of the *Interpretation Act* is a law of this jurisdiction relevant to the disallowance of regulations of the Territory and applies to national regulations as if they were subordinate legislation.

(3) If, as mentioned in section 164(3) of the *Occupational Licensing National Law (NT)*, national regulations are disallowed by the Legislative Assembly, section 63(9) and (10) of the *Interpretation Act* applies to the disallowance.

(4) If a resolution as mentioned in section 63(9) of the *Interpretation Act* is expressed to take effect on a day after the day of the resolution, the resolution may be amended or revoked by the Legislative Assembly before the disallowance takes effect.

(5) Regulations made under section 14 may provide for appropriate arrangements because national regulations are disallowed as mentioned in subsection (3) or as mentioned in section 164(5) of the *Occupational Licensing National Law (NT)*.

(6) In addition to section 164(1) of the *Occupational Licensing National Law (NT),* the Minister must table a copy of national regulations in the Legislative Assembly within 3 sitting days after the national regulations are made but a failure to do so does not affect the making of the national regulations.

(7) To avoid doubt, it is declared that this section does not limit section 164(5) of the *Occupational Licensing National Law (NT)*.

(8) In this section:

national regulations includes a provision of the national regulations.

7 Exclusion of legislation of this jurisdiction

(1) Each of the following Acts of this jurisdiction do not apply to the *Occupational Licensing National Law (NT)* or to instruments made under that Law except to the extent that functions under the Act are being exercised under the Law by a Territory entity:

(a) *Audit Act*;

(b) *Financial Management Act*;

(c) *Ombudsman Act*;

(d) *Procurement Act*;

(e) *Public Information Act 2010*;

(f) *Public Interest Disclosure Act*;

(g) *Public Sector Employment and Management Act*.

(2) Also, the *Information Act* does not apply to the *Occupational Licensing National Law (NT)* or to instruments made under that Law except to the extent that functions under the Act are being exercised under the Law by a Territory entity and do not relate to national registers kept under that Law.

(3) Even though the *Interpretation Act* applies to this Act, it does not apply to the *Occupational Licensing National Law (NT)* or to instruments made under that Law other than as provided for in section 6 or as prescribed by regulation for this subsection.

(4) In this section:

Territory entity, in relation to the exercise of functions, includes persons exercising functions for a Territory entity including, for example, public sector employees employed by or in the entity.

Division 2 Provisions for interpretation of National Law as adopted

8 Interpretation provisions for Occupational Licensing National Law (NT)

In the *Occupational Licensing National Law (NT)*:

magistrate, in relation to the Territory, means the Chief Magistrate, a Deputy Magistrate, a Stipendiary Magistrate, a Special Magistrate or a Relieving Magistrate appointed under the Magistrates Act.

this jurisdiction means the Territory.

9 Relevant tribunal or court

For the definition ***relevant tribunal or court*** in section 4 of the *Occupational Licensing National Law (NT)*, each of the following is declared to be a relevant tribunal or court for this jurisdiction for the purposes of that Law:

(a) the Supreme Court;

(b) the Local Court;

(c) the court of summary jurisdiction.

10 References to the State

In sections 8 and 97(3) of the *Occupational Licensing National Law (NT)*, a reference to the State is a reference to the Territory.

11 References to Parliament, Legislature or House of Parliament

In the *Occupational Licensing National Law (NT)*, a reference to any of the following is a reference to the Legislative Assembly of the Territory:

(a) the Legislature of this jurisdiction;

(b) the Parliament of this jurisdiction;

(c) a House of the Parliament, each House of the Parliament or at least one House of the Parliament of this jurisdiction.

Part 3 Miscellaneous matters

12 Acquisition on just terms

If the operation of the *Occupational Licensing National Law (NT)* would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

(a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and

(b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

Note for section 12

A person may receive compensation under section 83 of the Occupational Licensing National Law (NT) and therefore may not be entitled to receive compensation under this section.

13 Penalty at end of provision

In the *Occupational Licensing National Law (NT)*, a penalty specified at the end of a provision indicates that a contravention of the provision is punishable on conviction by a penalty not more than a specified penalty.

14 Regulations

The Administrator may make regulations for this Act.

Appendix Occupational Licensing National Law

section 4

Part 1 Preliminary

1 Short title

This Law may be cited as the Occupational Licensing National Law.

2 Commencement

This Law commences in a participating jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

3 Objectives

The objectives of the national licensing system are as follows:

(a) to ensure that licences issued by the Licensing Authority allow licensees to operate in all participating jurisdictions;

(b) to ensure that licensing arrangements are effective and proportionate to ensure consumer protection and worker and public health and safety while ensuring economic efficiency and equity of access;

(c) to facilitate a consistent skill and knowledge base for licensed occupations;

(d) to ensure effective coordination exists between the Licensing Authority and jurisdictional regulators;

(e) to promote national consistency in:

(i) licensing structures and policy across comparable occupations; and

(ii) regulation affecting the requirements relating to the conduct of licensees; and

(iii) the approach to disciplinary arrangements for licensees;

(f) to provide flexibility to deal with issues specific to particular jurisdictions or occupations;

(g) to provide the public with access to information about licensees.

4 Definitions

In this Law:

Advisory Committee means an Occupational Licence Advisory Committee established under section 132.

approved form means a form that, under section 154, has been approved by the Licensing Authority and notified on its website.

authorised officer means an authorised officer appointed under section 125 by the Licensing Authority.

Authority Fund means the National Occupational Licensing Authority Fund established by section 142.

chief executive officer means the chief executive officer of the Licensing Authority appointed under section 119.

COAG means the Council of Australian Governments.

COAG agreement means the Intergovernmental Agreement for a National Licensing System for Specified Occupations signed by COAG on 30 April 2009.

criminal history, of a person, includes the following:

(a) convictions of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

(b) pleas of guilty or findings of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence;

(c) charges made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

(d) the person's history in relation to traffic offences, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.

disciplinary action, see section 47.

disciplinary body means:

(a) the Licensing Authority; or

(b) a tribunal or court of a participating jurisdiction; or

(c) another person or body declared by or under an Act of a participating jurisdiction to be a disciplinary body for the purposes of this Law.

entity includes a person and an unincorporated body.

First Minister's Department means the department of government of a participating jurisdiction that is administered by the Premier or Chief Minister of that jurisdiction.

former licensee means a person who was, but is no longer, a licensee.

immediate suspension ground means a ground referred to in section 49 for the immediate suspension of a licence.

jurisdictional regulator means an entity that is prescribed by the national regulations as being a jurisdictional regulator for a licensed occupation.

jurisdictional regulator members, see section 103(3)(b).

licence means a licence, registration or accreditation granted under this Law authorising a person to carry out a licensed occupation.

licensed occupation means any of the following occupations:

(a) airconditioning and refrigeration;

(b) electrical;

(c) plumbing and gasfitting;

(d) property-related occupations;

(e) any other occupation prescribed by the national regulations as being a licensed occupation.

Licensing Authority means the National Occupational Licensing Authority established by section 97.

Licensing Board means the National Occupational Licensing Board established by section 103.

Ministerial Council means the Ministerial Council nominated by COAG and published on the COAG website as being the Ministerial Council for the purposes of this Law.

national licensing system means the system established under this Law for the national licensing of persons working in licensed occupations.

national regulations means the regulations made under section 160.

nominee means an individual nominated by an applicant for a licence or a licensee as being the nominee for the licence.

participating jurisdiction means a State or Territory in which:

(a) this Law applies as a Law of the State or Territory; or

(b) a law that substantially corresponds to the provisions of this Law has been enacted.

participation day, in relation to a participating jurisdiction, means the day on which the jurisdiction becomes a participating jurisdiction.

place includes land or premises but does not include a vehicle.

premises includes a caravan being used as residential premises.

prescribed work means work that under the national regulations is within the scope of work that may only be carried out under the authority of a licence.

primary jurisdiction means:

(a) for an applicant for a licence or a licensee who is an individual (other than an individual acting in the individual's capacity as a member of a partnership), the jurisdiction in which the individual's principal place of residence is located; or

(b) for an applicant for a licence or a licensee that is a body corporate or an individual acting in the individual's capacity as a member of a partnership, the jurisdiction in which the body corporate's or partnership's principal place of business is located.

relevant place means a place at which prescribed work has been, is being or is about to be, carried out.

relevant tribunal or court, for a participating jurisdiction, means a tribunal or court that has been declared by a law of that jurisdiction to be the relevant tribunal or court for that jurisdiction for the purposes of this Law.

State or Territory entity means:

(a) an entity, or the chief executive of an entity or department of government, of a participating jurisdiction to whom the Licensing Authority has delegated any of its functions; or

(b) an entity to which a function delegated by the Licensing Authority has been subdelegated.

vehicle includes:

(a) a group of vehicles, known as a combination, that consists of a motor vehicle connected to 1 or more vehicles; and

(b) a caravan being towed by a motor vehicle; and

(c) a train, tram or vessel; and

(d) a crane or earthmoving machinery; and

(e) any other type of transport, machine or equipment prescribed by the national regulations.

5 Interpretation generally

Schedule 1 applies in relation to this Law.

6 Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.

(2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(3) An entity established by this Law may exercise its functions in relation to:

(a) one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

(4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

7 Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following:

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

8 Law binds the State

(1) This Law binds the State.

(2) In this section:

State means the Crown in right of this jurisdiction, and includes:

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 2 Licensing

Division 1 Licensed occupations and scope of work

9 Offence for individual to carry out prescribed work unless licensed or exempt

(1) An individual must not carry out, or enter into a contract to carry out, prescribed work unless the individual:

(a) holds a licence to carry out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence to carry out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence to carry out the prescribed work.

Penalty:

(a) for an offence involving a specified licensed occupation:

(i) for a first or second offence – $50 000; or

(ii) for a third or subsequent offence – $50 000 or 12 months imprisonment or both; or

(b) for any other offence – $50 000.

(2) In this section:

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

10 Offence for body corporate or partnership to enter into contract for prescribed work unless licensed or exempt

(1) A body corporate or a partnership must not enter into a contract to carry out prescribed work unless the body corporate or the partnership:

(a) holds a licence authorising the body corporate or partnership to carry on a business that involves carrying out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence authorising the body corporate or partnership to carry on a business that involves carrying out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence authorising the body corporate or partnership to carry on a business that involves carrying out the prescribed work.

Penalty: $250 000.

(2) A body corporate or a partnership that enters into a contract to carry out prescribed work must not engage an individual to carry out the prescribed work unless the individual:

(a) holds a licence to carry out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence to carry out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence to carry out the prescribed work.

Penalty: $250 000.

(3) A reference in this section to a partnership means the individuals who are members of the partnership.

11 Offence to advertise or offer to do prescribed work unless licensed or exempt

(1) A person must not advertise that the person is able to carry out, or offer to carry out, prescribed work unless the person:

(a) holds a licence to carry out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence to carry out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence to carry out the prescribed work.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation:

(i) for a first or second offence – $50 000; or

(ii) for a third or subsequent offence – $50 000 or 12 months imprisonment or both; or

(b) for an individual for any other offence – $50 000; or

(c) for a body corporate – $250 000.

(2) It is a defence to a prosecution for an offence against subsection (1)(a) if the defendant proves that:

(a) at the time the advertisement was placed the person (the relevant person) the subject of the advertisement was licensed to carry out the prescribed work referred to in the advertisement; and

(b) the defendant took all reasonable action to prevent the advertisement, or to stop it from continuing, once the relevant person ceased being licensed to carry out the work.

(3) A person does not commit an offence against subsection (1) merely because the person, as part of the person's business, prints or publishes an advertisement for another person.

(4) A reference in this section to carrying out prescribed work includes carrying on a business that involves carrying out prescribed work.

(5) In this section:

advertise includes tout or solicit.

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

12 Offence to hold out unlicensed person as being licensed

(1) A person must not hold out that the person is licensed:

(a) to carry out a licensed occupation unless the person holds a licence for the licensed occupation; or

(b) to carry out prescribed work unless the person holds a licence to carry out the prescribed work.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation:

(i) for a first or second offence – $50 000; or

(ii) for a third or subsequent offence – $50 000 or 12 months imprisonment or both; or

(b) for an individual for any other offence – $50 000; or

(c) for a body corporate – $250 000.

(2) A person must not hold out that another person (the ***second person***) is licensed:

(a) to carry out a licensed occupation unless the second person holds a licence for the licensed occupation; or

(b) to carry out prescribed work unless the second person holds a licence to carry out the prescribed work.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation:

(i) for a first or second offence – $50 000; or

(ii) for a third or subsequent offence – $50 000 or 12 months imprisonment or both; or

(b) for an individual for any other offence – $50 000; or

(c) for a body corporate – $250 000.

(3) A reference in this section to carrying out prescribed work includes carrying on a business that involves carrying out prescribed work.

(4) In this section:

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

13 Injunction stopping person from engaging in conduct in contravention of Law or national regulations

(1) If a person has engaged in, is engaging in or is proposing to engage in conduct in a participating jurisdiction that constituted, constitutes or would constitute a contravention of this Law or the national regulations, the Licensing Authority may apply to the relevant tribunal or court for that participating jurisdiction for an injunction in relation to the conduct.

(2) If the relevant tribunal or court is satisfied the person has engaged in, is engaging in or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention of this Law or the national regulations, the relevant tribunal or court may grant an injunction restraining the person from engaging in the conduct.

(3) The relevant tribunal or court may grant the injunction on the terms the tribunal or court considers appropriate.

(4) Without limiting subsection (3), the injunction may state that it applies not only in the participating jurisdiction in which it is made but in other participating jurisdictions.

Note for subsection 4

See section 7 which provides for the extraterritorial operation of this Law.

(5) The relevant tribunal or court may grant an interim injunction until the application is finally decided.

14 Licensee must not lend or otherwise allow use of licence by another person

(1) A licensee must not:

(a) lend the licensee's licence to another person; or

(b) otherwise allow another person to use the licensee's licence or licence number.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation:

(i) for a first or second offence – $50 000; or

(ii) for a third or subsequent offence – $50 000 or 12 months imprisonment or both; or

(b) for an individual for any other offence – $50 000; or

(c) for a body corporate – $250 000.

(2) In this section:

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

Division 2 Application for licence

15 Who may apply for a licence

(1) An application for a licence for a licensed occupation may be made by a person who is a member of a prescribed class of persons for the occupation.

(2) For the purposes of subsection (1), the national regulations may provide that applications for licences for a licensed occupation may be made by any of the following:

(a) individuals;

(b) individuals acting in their capacity as members of a partnership;

(c) bodies corporate.

(3) An application for a licence cannot be made by a trust.

16 Application for licence

(1) An application for a licence must be:

(a) made to the Licensing Authority; and

(b) in the approved form; and

(c) accompanied by the prescribed fee payable to the prescribed person; and

(d) accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires.

(2) Without limiting subsection (1)(b), a form approved by the Licensing Authority for the purposes of that paragraph must require an applicant:

(a) to provide a declaration about the applicant's primary jurisdiction; and

(b) if the applicant is a body corporate, to nominate an adult as the nominee for the proposed licence.

(3) An individual may be nominated as the nominee for the proposed licence only if the individual:

(a) holds a licence personally for the licensed occupation; and

(b) is a director or employee of the body corporate as provided by the national regulations.

(4) The national regulations may prescribe further requirements in relation to the nominees for licences.

17 Licensing Authority may require further information or document

(1) Before deciding an application for a licence, the Licensing Authority may, by written notice given to the applicant, require the applicant to give the Authority, within a reasonable time stated in the notice, further information or a document the Authority reasonably requires to decide the application.

(2) The Licensing Authority may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the written notice.

Division 3 Eligibility for licence

18 Eligibility for licence

(1) A person is eligible for a licence for a licensed occupation if:

(a) the person or, if the person is a body corporate, the person's nominee, has the prescribed qualifications, skills, knowledge and experience for the licence; and

(b) the person and, if the person is a body corporate, the person's nominee, satisfy the prescribed personal probity requirements for the licence; and

(c) the person satisfies the prescribed financial probity requirements for the licence; and

(d) the person and, if the person is a body corporate, the person's nominee, are not excluded persons for the licence; and

(e) the person or, if the person is a body corporate, the person's nominee, satisfies any other requirements prescribed by the national regulations for the licence.

Note for section 18

Section 24 of Schedule 1 provides that a regulation may:

(a) apply generally to all persons, matters or things or be limited in its application to particular persons, matters or things or classes of persons, matters or things; or

(b) apply generally or be limited in its application; or

(c) apply differently according to different specified factors.

Accordingly, the national regulations may prescribe different eligibility requirements for different licensed occupations or different types of licences for the same licensed occupation.

(2) For the purposes of subsection (1), if an individual in the individual's capacity as a member of a partnership would not be eligible for a licence for a licensed occupation but the individuals who are members of the partnership would jointly be eligible for the licence, the individuals are, in their capacity as members of the partnership, taken to be eligible for the licence.

19 Personal probity

(1) For the purposes of section 18(1)(b), the national regulations may provide for:

(a) the personal probity requirements a person must satisfy to be eligible for a licence; and

(b) the personal probity requirements a person must satisfy to be eligible to be a nominee for a licensee that is a body corporate.

(2) Without limiting subsection (1), the national regulations may provide for requirements in relation to the following for persons who are applicants for licences, licensees, nominees or relevant persons for a body corporate that is an applicant or licensee:

(a) matters relating to the criminal history of the persons, to the extent there is a connection between the criminal history of the persons and the inherent requirements of the occupation for which the persons are applicants, licensees, nominees or relevant persons;

Note for subsection (2)(a)

Matters relating to the criminal history of persons will be subject to legislation of participating jurisdictions that prohibits, or does not require, the disclosure of spent convictions.

(b) matters relating to the conduct of persons in carrying out business including, for example, matters relating to duties as a director of a corporation or the imposition of civil penalties or orders in relation to carrying out business;

(c) security clearances to be held by the persons, to the extent that it is an inherent requirement of the occupation for which the persons are applicants, licensees, nominees or relevant persons.

(3) In this section:

relevant person, for a body corporate, means a person who:

(a) will have authority or influence in the conduct of the business of the body corporate; and

(b) is prescribed by the national regulations as being a relevant person for the body corporate.

20 Financial probity

(1) For the purposes of section 18(1)(c), the national regulations may provide for the financial probity requirements a person must satisfy to be eligible for a licence.

(2) Without limiting subsection (1), the national regulations may provide:

(a) for the financial requirements a person must satisfy to be eligible for a licence; or

(b) a person who is an applicant or a licensee is not eligible for a licence if:

(i) the person is bankrupt, insolvent, compounds with creditors, enters into a compromise or scheme of arrangement with creditors or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(ii) the person fails to pay a penalty, fine or other amount ordered by a court or tribunal to be paid or required to be paid under this Law.

21 Excluded person

(1) For the purposes of section 18(1)(d), a person is an excluded person for a licence for a licensed occupation if:

(a) the person is prohibited by an order of a disciplinary body from carrying out work that is within the scope of the licence; or

(b) the person's licence under this Law to carry out the licensed occupation has been cancelled by a disciplinary body and any period ordered by the disciplinary body during which the person is disqualified from applying for a new licence has not ended; or

(c) the person's licence under a corresponding prior Act to carry out the licensed occupation was cancelled as a result of disciplinary action taken by a corresponding disciplinary body and:

(i) any period ordered by the disciplinary body during which the person is disqualified from applying for a new licence has not ended; or

(ii) if the disciplinary body did not disqualify the person from applying for a new licence, a period of 2 years from the day the cancellation occurred has not ended; or

(d) the person's application for a licence for the licensed occupation under this Law or a corresponding prior Act within the previous 2 years has been refused on the basis that the person provided information or a document in relation to the application that was false or misleading; or

(e) a business partner or other close associate of the person is a person whose licence under this Law to carry out the licensed occupation has been cancelled by a disciplinary body and any period ordered by the disciplinary body during which the person is disqualified from applying for a new licence has not ended; or

(f) a business partner or other close associate of the person is a person whose licence under a corresponding prior Act to carry out the licensed occupation was cancelled by a court, tribunal or other entity and:

(i) any period ordered by the court, tribunal or other entity during which the person is disqualified from applying for a new licence has not ended; or

(ii) if the court, tribunal or other entity did not disqualify the person from applying for a new licence, a period of 2 years from the day the cancellation occurred has not ended; or

(g) the person is an excluded person under the national regulations; or

(h) the person has, within the previous 5 years, been convicted of an offence under section 9, 10, 11 or 12 or a provision of a corresponding prior Act that corresponds to section 9, 10, 11 or 12.

(2) In this section:

close associate, of a person, means a person who exercises a significant influence over the person or the operation or management of the person's business.

corresponding disciplinary body means an entity that has been declared by a law of a participating jurisdiction to be a corresponding disciplinary body for the purposes of this section.

corresponding prior Act means a law of participating jurisdiction that:

(a) was in force before the day on which the jurisdiction became a participating jurisdiction; and

(b) has been declared by a law of that jurisdiction to be a corresponding prior Act for the purposes of this section.

licence, in relation to a corresponding prior Act, means a licence, registration, approval, certificate or other form of authorisation required under the corresponding prior Act to carry out a licensed occupation.

Division 4 Decision about application for licence

22 Decision about application

After considering an application for a licence, the Licensing Authority must decide to:

(a) grant the licence to the applicant if the applicant is eligible for the licence; or

(b) refuse to grant the licence to the applicant if the applicant is not eligible for the licence.

23 Notice of decision to be given to applicant

(1) Within 28 days after making the decision to grant or refuse to grant a licence to the applicant, the Licensing Authority must:

(a) give the applicant written notice of its decision; and

(b) if the decision was to grant the licence, give the applicant a licence.

(2) If the Licensing Authority decides not to grant the licence, the notice must state:

(a) the reasons for the decision; and

(b) that the applicant may apply for a review of the decision; and

(c) how an application for review may be made and the period within which the application must be made.

24 Failure to decide application

If the Licensing Authority fails to decide an application for a licence within 120 days after its receipt, or the longer period agreed between the Authority and the applicant, the failure by the Authority to make a decision is taken to be a decision to refuse to grant a licence to the applicant.

Division 5 Licences

25 Form of licence

A licence is to be in the approved form.

26 Period of licence

A licence may be granted for the period, not more than 5 years, prescribed by the national regulations.

27 Conditions

A licence is subject to the following conditions:

(a) any conditions prescribed by the national regulations for a licence of that category;

(b) any conditions imposed on the licence by a disciplinary body.

28 Change in details or circumstances

A licensee must, as soon as practicable but not later than 14 days after any of the following changes occurs, give the Licensing Authority written notice of the change and any evidence providing proof of the change required by the Authority, unless the licensee has a reasonable excuse:

(a) if the licensee is an individual, a change in the licensee's principal place of residence;

(b) if the licensee is a body corporate or an individual acting in the individual's capacity as a member of a partnership, a change in the body corporate's or partnership's principal place of business;

(c) a change in the licensee's criminal history prescribed by the national regulations;

(d) any other change prescribed by the national regulations.

Penalty:

(a) for an individual – $10 000; or

(b) for a body corporate – $50 000.

29 Return of licence

(1) If a person is given written notice by the Licensing Authority that the person's licence has been suspended, cancelled or revoked and the licence is for a specified licensed occupation, the person must return the person's licence to the Authority within 7 days after receiving the notice, unless the person has a reasonable excuse.

Penalty:

(a) for an individual – $5 000; or

(b) for a body corporate – $25 000.

(2) The Licensing Authority must, immediately after the suspension of a licensee's licence ends, return the licence to the licensee.

(3) In this section:

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

30 Licence not transferrable

(1) A licence may not be transferred.

(2) A licence is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

Division 6 Renewal, restoration, variation and surrender of licences

Subdivision1 Renewal of licences

31 Application for renewal of licence

(1) A licensee may, before the licensee's licence expires, apply to renew the licence.

(2) An application for the renewal of a licence must:

(a) be made to the Licensing Authority; and

(b) be in the approved form; and

(c) be accompanied by the prescribed fee payable to the prescribed person; and

(d) be accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires; and

(e) comply with any other requirement prescribed by the national regulations, including any requirement about when the application must be made.

32 Licensing Authority may require further information or document

(1) Before deciding an application for renewal of a licence, the Licensing Authority may, by written notice given to the applicant, require the applicant to give the Authority, within a reasonable time stated in the notice, further information or a document the Authority reasonably requires to decide the application.

(2) The Licensing Authority may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the written notice.

33 Eligibility for renewal of licence

Divisions 3 and 4 apply to the renewal of a licence, with any changes prescribed by the national regulations, as if the application for the renewal of the licence were an application for the grant of a licence.

34 Licence continues in force until application decided

If a person applies under section 31 to renew the person's licence, the licence is taken to continue in force from the day it would, apart from this section, have ended until:

(a) if the Licensing Authority decides to renew the licence, the day the new licence is given to the person; or

(b) if the Licensing Authority decides to refuse to renew the licence, the day the person is given notice of the decision.

Subdivision 2 Restoration of licences

35 Application for restoration of licence

(1) If a person's licence has expired and the licence is for a specified licensed occupation, the person may apply for the restoration of the licence within 3 months after the expiry.

(2) However, an application for the restoration of a licence may not be made:

(a) during any period in which the licence is suspended; or

(b) if the licence has been cancelled.

(3) An application for the restoration of a licence must:

(a) be made to the Licensing Authority; and

(b) be in the approved form; and

(c) be accompanied by the prescribed fee payable to the prescribed person; and

(d) be accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires; and

(e) comply with any other requirement prescribed by the national regulations.

(4) In this section:

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

36 Licensing Authority may require further information or document

(1) Before deciding an application for restoration of a licence, the Licensing Authority may, by written notice given to the applicant, require the applicant to give the Authority, within a reasonable time stated in the notice, further information or a document the Authority reasonably requires to decide the application.

(2) The Licensing Authority may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the written notice.

37 Eligibility for restoration of licence

Divisions 3 and 4 apply to the restoration of a licence, with any changes prescribed by the national regulations, as if the application for the restoration of the licence were an application for the grant of a licence.

38 Licence continues in force until application decided

If a person applies under section 35 to restore an expired licence, the licence is taken to have continued in force from the day it would, apart from this section, have ended until:

(a) if the Licensing Authority decides to restore the licence, the day the new licence is given to the person; or

(b) if the Licensing Authority decides to refuse to restore the licence, the day the person is given notice of the decision.

39 Period of restored licence

If the Licensing Authority decides to restore a person's licence, the licence is taken to have commenced immediately after the person's previous licence expired.

Subdivision 3 Variation of licences on application of licensees

40 Application for variation of licence

(1) A licensee may apply to vary the licensee's licence.

(2) An application for the variation of a licence must:

(a) be made to the Licensing Authority; and

(b) be in the approved form; and

(c) be accompanied by the prescribed fee payable to the prescribed person; and

(d) be accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires; and

(e) comply with any other requirement prescribed by the national regulations.

41 Eligibility for variation of licence

Divisions 3 and 4 apply to the variation of a licence, with any changes prescribed by the national regulations, as if the application for the variation of the licence were an application for the grant of a licence.

Subdivision 4 Variation of licences on initiative of Licensing Authority

42 Varying licence on Licensing Authority's initiative

(1) This section applies if the Licensing Authority reasonably believes it is necessary to vary a licensee's licence.

(2) The Licensing Authority must give the licensee a written notice stating:

(a) that the Authority proposes to vary the licence; and

(b) how the Authority proposes to vary the licence; and

(c) the reason for the proposed variation; and

(d) that the licensee may, within 28 days after receipt of the notice, make a written submission to the Authority about the proposed variation.

(3) The licensee may make a written submission about the proposed variation as stated in the notice.

(4) The Licensing Authority must consider a submission made under subsection (3) and decide whether or not to vary the licence.

(5) The Licensing Authority's decision must be made:

(a) within 28 days after receiving the licensee's submission; or

(b) if the licensee does not make a submission, within 28 days after the last day on which the licensee may make a submission.

(6) As soon as practicable after making its decision, the Licensing Authority must give written notice of the decision to the licensee.

(7) If the Licensing Authority decides to vary the licence, the notice must state:

(a) the decision made by the Authority; and

(b) that the licensee may apply for a review of the decision; and

(c) how an application for a review must be made and the period within which the application must be made.

Subdivision 5 Surrender of licences

43 Surrender of licence

(1) A licensee may surrender the licensee's licence.

(2) In surrendering a licence, the licensee must comply with any requirements prescribed by the national regulations.

Subdivision 6 Revocation of licences

44 Revocation of licence

(1) The Licensing Authority may decide to revoke a person's licence if the Authority reasonably believes the licence was issued in error.

(2) The Licensing Authority may decide to revoke a licence under this section only if the decision is made not more than 28 days after the Authority becomes aware of the ground that forms the basis for believing the licence was issued in error.

(3) If the Licensing Authority decides to revoke a licence, it must give a notice to the licensee stating:

(a) the decision made by the Authority; and

(b) that the person may apply for a review of the decision; and

(c) how an application for a review must be made and the period within which the application must be made.

(4) The decision takes effect on:

(a) the day the notice is given to the person; or

(b) the later day stated in the notice.

Subdivision 7 Replacement of licence

45 Replacement of licence

(1) A licensee may apply to the Licensing Authority for the replacement of the licensee's licence if it has been lost, stolen, destroyed or damaged.

(2) The application must be:

(a) in the approved form; and

(b) accompanied by the prescribed fee payable to the prescribed person.

(3) The Licensing Authority must issue a replacement licence to the licensee.

Part 3 Disciplinary proceedings and action

Division 1 Preliminary

46 Part applicable to former licensees

(1) Disciplinary proceedings may be taken under this Part in relation to a former licensee's behaviour while a licensee as if the former licensee were still a licensee.

(2) However, disciplinary proceedings may be taken against a former licensee only in relation to behaviour that occurred not more than 6 years before the day the disciplinary proceedings start.

(3) For the purposes of subsection (1), this Part (other than Division 3) applies, with any necessary changes, as if a reference to a licensee included a former licensee.

47 Meaning of *disciplinary action*

(1) ***Disciplinary action***, in relation to a licensee, means one or more of the following:

(a) reprimand the licensee;

(b) direct the licensee to do or not to do something;

(c) require the licensee to give the Licensing Authority an undertaking;

(d) impose a condition on the licensee's licence;

(e) impose demerit points on the licensee as provided for in the national regulations;

(f) require the licensee to pay to the Licensing Authority a penalty of not more than the prescribed amount;

(g) suspend the licensee's licence for a stated period;

(h) cancel the licensee's licence and disqualify the person from applying for a specified licence for a period of not more than 5 years;

(i) cancel the licensee's licence and disqualify the person from applying for a specified licence for life.

(2) ***Disciplinary action***, in relation to a former licensee, means:

(a) direct the former licensee to do or not to do something; or

(b) require the former licensee to pay to the Licensing Authority a penalty of not more than the prescribed amount; or

(c) disqualify the former licensee from applying for a specified licence for a period of not more than 5 years; or

(d) disqualify the former licensee from applying for a specified licence for life.

(3) The disciplinary action referred to in subsection (1) or (2) is listed in a hierarchy from the least serious action that may be taken to the most serious action.

Division 2 Grounds for disciplinary action

48 Grounds for disciplinary action

(1) Each of the following is a ground for which disciplinary action may be taken against a licensee:

(a) the licensee has contravened this Law or the national regulations;

(b) the licensee has contravened:

(i) a prescribed Act or regulation of the Commonwealth or a State or Territory; or

(ii) a prescribed provision of an Act or regulation of the Commonwealth or a State or Territory;

(c) the licensee is no longer eligible for a licence or the particular licence held by the licensee;

(d) the licensee has not completed the prescribed skills maintenance requirements or prescribed training requirements;

(e) the licensee has not paid a fee or other amount required to be paid under:

(i) this Law; or

(ii) a prescribed Act of the Commonwealth or a State or Territory;

(f) the licensee has not complied with an order made by a disciplinary body in relation to the licensee's licensed occupation;

(g) the licensee has not complied with a direction given by a disciplinary body to do or not to do something;

(h) the licensee has not complied with a direction given by the Licensing Authority to the licensee under section 101;

(i) the licensee's licence was obtained on the basis of information or a document that was false or misleading;

(j) the licensee has contravened a condition of the licensee's licence or an undertaking given by the licensee to the Licensing Authority;

(k) the licensee has failed to maintain insurance the licensee is required by the national regulations to maintain;

(l) an immediate suspension ground exists in relation to the licensee.

(2) However, disciplinary action may not be taken against a licensee on a ground referred to in subsection (1) if the ground is prescribed under the national regulations as being a ground for which the licensee's licence is automatically suspended or cancelled.

Division 3 Immediate suspension

49 Grounds for immediate suspension

(1) A ground for the immediate suspension of a licensee's licence exists if:

(a) the licensee is bankrupt or insolvent; or

(b) the licensee has contravened a relevant law; or

(c) the licensee has misappropriated funds held on trust by the licensee; or

(d) the licensee has been charged with or convicted of an offence that, under the national regulations, would make the person ineligible to hold a licence.

(2) Subsection (1)(a) applies only in relation to a licensee who is a member of a prescribed class of licensees.

(3) In this section:

bankrupt or ***insolvent***, in relation to a licensee, means the licensee:

(a) has become bankrupt or insolvent; or

(b) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) has compounded with creditors or made an assignment of remuneration for the benefit of creditors; or

(d) has entered into a compromise or scheme of management with creditors.

convicted, of an offence, includes a plea of guilty or a finding of guilty and includes whether or not a conviction is recorded.

relevant law means an Act, regulation, code of practice or standard that is prescribed by the national regulations.

50 Immediate suspension of licence

(1) The Licensing Authority may, by written notice given to a licensee, immediately suspend the licensee's licence if the Authority reasonably believes:

(a) an immediate suspension ground exists in relation to the licensee; and

(b) it is necessary in the public interest to immediately suspend the licensee's licence.

(2) The written notice must state the following:

(a) the decision;

(b) the reasons for the decision;

(c) the period of the suspension;

(d) that the licensee may apply to the Licensing Authority for a review of the decision within 14 days;

(e) the way the licensee may apply for the review of the decision.

(3) The suspension:

(a) takes effect when the notice is given to the licensee; and

(b) continues until the earlier of the following days:

(i) the day the suspension is revoked by the Licensing Authority;

(ii) the day the suspension is revoked on appeal under Division 3 of Part 5.

Division 4 Show cause process

51 Application of Division

The Licensing Authority may start disciplinary proceedings against a licensee under this Division only if an Act of the participating jurisdiction in which the conduct that provides the grounds for the disciplinary proceedings occurred has declared that this Division applies to licensees carrying out the licensed occupation for which the licensee is licensed.

52 Show cause notice

(1) If the Licensing Authority reasonably believes a ground for taking disciplinary action against a licensee exists, the Authority must give the licensee a notice under this section (a ***show cause notice***).

(2) The show cause notice must state the following:

(a) that the Licensing Authority proposes to take disciplinary action (the ***proposed action***);

(b) the licence in relation to which the proposed action is to be taken;

(c) the ground for the proposed action;

(d) an outline of the facts and circumstances forming the basis for the ground;

(e) an invitation to the licensee to show within a stated period (the ***show cause period***) why the proposed action should not be taken.

(3) The show cause period must be a period ending at least 14 days after the show cause notice is given to the licensee.

53 Representations about show cause notice

(1) The licensee may:

(a) make written representations about the show cause notice to the Licensing Authority within the show cause period; or

(b) make oral representations about the show cause notice to the Licensing Authority at the time within the show cause period, and at the place, agreed by the Licensing Authority and the licensee.

(2) The Licensing Authority must keep a record of oral representations made to it under subsection (1)(b).

54 Decision about whether to take disciplinary action

Within 28 days after the show cause period ends, the Licensing Authority must decide whether a ground exists to take disciplinary action against the licensee.

55 Ending show cause process without further action

If the Licensing Authority no longer believes a ground exists to take disciplinary action against the licensee, the Authority:

(a) must not take further action about the show cause notice; and

(b) must, as soon as practicable after making its decision, give notice to the licensee that no further action will be taken about the show cause notice.

56 Taking disciplinary action after show cause notice

(1) If the Licensing Authority still believes a ground exists to take disciplinary action against the licensee, the Authority may:

(a) take the proposed action; or

(b) take one or more disciplinary actions that, in accordance with the hierarchy specified in section 47, are less serious than the proposed action.

(2) In making its decision about what disciplinary action should be taken, the Licensing Authority must have regard to the following:

(a) the licensee's licensing history;

(b) whether the ground for the disciplinary action is that the licensee has contravened:

(i) this Law or the national regulations; or

(ii) another Act or regulation;

(c) if the ground for disciplinary action is a contravention referred to in paragraph (b), the severity of the contravention and the period for which the contravention continued.

(3) The Licensing Authority may not take action referred to in section 47(1)(f) with respect to a ground for disciplinary action if the licensee has already been fined by a court or a tribunal with respect to the same behaviour.

(4) The Licensing Authority must, as soon as practicable after making its decision, give a written notice about the decision to the licensee.

(5) The written notice must state the following:

(a) the decision;

(b) the reasons for the decision;

(c) that the licensee may apply for a review of the decision within 28 days;

(d) the way the licensee may apply for the review of the decision.

(6) The decision takes effect on:

(a) the day the notice is given to the licensee; or

(b) the later day stated in the notice.

Division 5 Disciplinary proceedings before tribunal or court

57 Application of Division

The Licensing Authority may start disciplinary proceedings against a licensee under this Division only if an Act of the participating jurisdiction in which the conduct that provides the grounds for the disciplinary proceedings occurred has declared that this Division applies to licensees carrying out the licensed occupation for which the licensee is licensed.

58 Application to relevant tribunal or court

If the Licensing Authority reasonably believes a ground for taking disciplinary action against a licensee exists, the Authority may apply to the relevant tribunal or court for the participating jurisdiction.

59 Decision by relevant tribunal or court

(1) After hearing the matter about the licensee, the relevant tribunal or court must decide:

(a) the licensee has no case to answer; or

(b) that a ground exists to take disciplinary action against the licensee.

(2) If the relevant tribunal or court decides that a ground exists to take disciplinary action against the licensee, the tribunal or court may decide to take one or more disciplinary actions against the licensee.

(3) However, the relevant tribunal or court may not take action referred to in section 47(1)(f) with respect to a ground for disciplinary action if the licensee has already been fined by a court or a tribunal with respect to the same behaviour.

60 Licensing Authority to give effect to decision of relevant tribunal or court

The Licensing Authority must give effect to a decision of the relevant tribunal or court, unless the decision is stayed on appeal.

Part 4 Monitoring and enforcement

Division 1 Power to obtain information

61 Powers of authorised officers

(1) This section applies if an authorised officer reasonably believes:

(a) an offence against this Law or a prescribed Act has been committed; and

(b) a person may be able to give information about the offence.

(2) The authorised officer may, by written notice given to a person, require the person to:

(a) give stated information to the authorised officer within a stated reasonable time and in a stated reasonable way; or

(b) attend before the authorised officer at a stated reasonable time and a stated reasonable place to answer questions or produce documents.

62 Offence for failing to produce information or attend before authorised officer

(1) A person required to give stated information to an authorised officer under section 61(2)(a) must not fail, without reasonable excuse, to give the information as required by the notice.

Penalty:

(a) for an individual – $10 000; or

(b) for a body corporate – $50 000.

(2) A person given a notice to attend before an authorised officer under section 61(2)(b) must not fail, without reasonable excuse, to:

(a) attend as required by the notice; and

(b) continue to attend as required by the authorised officer until excused from further attendance; and

(c) answer a question the person is required to answer by the authorised officer; and

(d) produce a document the person is required to produce by the notice.

Penalty:

(a) for an individual – $10 000; or

(b) for a body corporate – $50 000.

(3) For the purposes of subsections (1) and (2), it is a reasonable excuse for an individual to fail to give stated information, answer a question or produce a document, if giving the information, answering the question or producing the document might tend to incriminate the individual.

63 Power to require licensee to produce documents

(1) An authorised officer may require a licensee to make available, or produce, for inspection by the authorised officer at a reasonable time and place nominated by the authorised officer, a document to which the licensee has access and that the licensee is required to keep under this Law or a prescribed Act or that otherwise relates to the licensee's obligations under this Law or a prescribed Act.

(2) A licensee required to make available or produce a document under subsection (1) must not fail, without reasonable excuse, to comply with the requirement.

Penalty:

(a) for an individual – $10 000; or

(b) for a body corporate – $50 000.

64 Inspection of documents

(1) If a document is produced to an authorised officer under section 61 or 63, the authorised officer may:

(a) inspect the document; and

(b) make a copy of, or take an extract from, the document; and

(c) keep the document while it is necessary for an investigation

(2) If the authorised officer keeps the document, the authorised officer must:

(a) give the person who produced the document a receipt for the document; and

(b) permit a person otherwise entitled to possession of the document to inspect, make a copy of, or take an extract from, the document at the reasonable time and place decided by the authorised officer.

Division 2 Power to enter places

65 Entering places

(1) An authorised officer may enter and inspect a place for the purpose of investigating:

(a) whether this Law or a prescribed Act is being complied with; or

(b) whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act.

(2) An authorised officer may only enter and inspect a place:

(a) if the place is a relevant place:

(i) with the consent of the occupier or person in control of the place; or

(ii) during times prescribed work is being carried out at the place; or

(iii) if it is a public place and the entry is made when it is open to the public; or

(iv) if the entry is authorised by a warrant; or

(b) if the place is not a relevant place, if the entry is authorised by a warrant.

(3) For the purpose of asking the occupier or person in control of a relevant place for consent to enter, an authorised officer may, without the consent of the occupier or person in control, enter the place to the extent that is reasonable to contact the person.

(4) Subsection (2)(a) does not allow entry to a home without the occupier's consent or a warrant.

(5) In this section:

home means any part of a building, caravan or other structure in which an individual lives.

public place means:

(a) a place, or a part of a place, that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

(b) a place, or part of a place, that the occupier allows members of the public to enter, whether or not on payment of money.

66 Application for warrant

(1) An authorised officer may apply to a magistrate of a participating jurisdiction for a warrant for a place.

(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

67 Issue of warrant

(1) The magistrate may issue the warrant only if the magistrate is satisfied:

(a) there are reasonable grounds for suspecting there is a particular thing or activity that may provide evidence of an offence against this Law or a prescribed Act at the place; or

(b) it is necessary for the purpose of determining whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act at the place.

(2) The warrant must state:

(a) that a stated authorised officer may, with necessary and reasonable help and force:

(i) enter the place and any other place necessary for entry; and

(ii) exercise the authorised officer's powers under this Part; and

(b) the matter for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 14 days after the warrant's issue, the warrant ends.

68 Application by electronic communication

(1) An authorised officer may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the authorised officer considers it necessary because of:

(a) urgent circumstances; or

(b) other special circumstances, including the authorised officer's remote location.

(2) The application:

(a) may not be made before the authorised officer prepares the written application under section 66(2); but

(b) may be made before the written application is sworn.

(3) The magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied:

(a) it was necessary to make the application under subsection (1); and

(b) the way the application was made under subsection (1) was appropriate.

(4) After the magistrate issues the original warrant:

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or

(b) otherwise:

(i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and

(ii) the authorised officer must complete a form of warrant including by writing on it:

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) the other terms of the warrant.

(5) The copy of the warrant referred to in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(6) The authorised officer must, at the first reasonable opportunity, send to the magistrate:

(a) the written application complying with section 66(2) and (3); and

(b) if the authorised officer completed a form of warrant under subsection (4)(b), the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6), file the original warrant and documents in the court.

(8) Despite subsection (5), if:

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This section does not limit section 66.

69 Procedure before entry under warrant

(1) Before entering a place under a warrant, an authorised officer must do or make a reasonable attempt to do the following:

(a) identify himself or herself to a person present at the place who is an occupier of the place or the person apparently in control of the place by producing the authorised officer's identity card or another document evidencing the authorised officer's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(2) However, the authorised officer need not comply with subsection (1) if the authorised officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

70 Powers after entering places

(1) This section applies if an authorised officer enters a place under section 65.

(2) The authorised officer may for the purposes of the investigation do the following:

(a) search any part of the place;

(b) inspect, measure, test, photograph or film any part of the place or anything at the place;

(c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;

(d) copy, or take an extract from, a document at the place;

(e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Part;

(f) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);

(g) require the occupier of the place, or a person at the place, to give the authorised officer information, including, for example, the person's name, address or licence number, to help the authorised officer ascertain whether this Law or the prescribed Act is being complied with.

(3) The authorised officer may also require any of the following persons to do, or refrain from doing, something at the place if the officer reasonably believes it is necessary to do so to prevent injury or other harm to persons at the place:

(a) a licensee who has been carrying out prescribed work at the place or a person acting under the direction of the licensee;

(b) a person who has been carrying out prescribed work at the place under the direction of or on behalf of a licensee;

(c) the occupier of the place or a person at the place.

(4) When making a requirement mentioned in subsection (2)(f) or (g) or (3), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

71 Offences for failing to comply with requirement under section 70

(1) A person required to give reasonable help under section 70(2)(f) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

(a) for an individual – $10 000; or

(b) for a body corporate – $50 000.

(2) A person of whom a requirement is made under section 70(2)(g) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

(a) for an individual – $10 000; or

(b) for a body corporate – $50 000.

(3) It is a reasonable excuse for an individual not to comply with a requirement under section 70(2)(f) or (g) that complying with the requirement might tend to incriminate the individual.

Division 3 Power to stop and search vehicles

72 Division applies only to certain licensed occupations

This Division applies only in relation to a licensed occupation that is prescribed as being a relevant occupation for the purposes of this Division.

73 Power to stop and search vehicles

(1) An authorised officer may enter a vehicle and exercise the powers set out in section 70(2) if:

(a) the authorised officer is investigating whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act; or

(b) the authorised officer suspects on reasonable grounds that:

(i) the vehicle is being, or has been, used in the commission of an offence against this Law or a prescribed Act in relation to a relevant occupation; or

(ii) the vehicle, or anything on or in the vehicle, may afford evidence of the commission of an offence against this Law or a prescribed Act in relation to a relevant occupation.

(2) The authorised officer may enter the vehicle and exercise the powers with necessary and reasonable help and force, and without consent or a warrant.

(3) Without limiting subsection (2), the authorised officer may require the driver of the vehicle or the person otherwise in control of the vehicle:

(a) to give the authorised officer reasonable help to enable the vehicle to be entered; or

(b) to bring the vehicle to a specified place and remain in control of the vehicle to enable the authorised officer to exercise the authorised officer's powers in relation to the vehicle.

(4) A person must not, without reasonable excuse, contravene a requirement under subsection (3).

Penalty: $10 000.

(5) If the vehicle is moving or about to move the authorised officer may signal the driver of the vehicle to stop or not to move the vehicle.

(6) A person must not, without reasonable excuse, disobey a signal under subsection (5).

Penalty: $10 000.

(7) It is a reasonable excuse for the person to fail to stop or to move the vehicle if:

(a) to immediately obey the signal would have endangered, or damaged the property of, the person or another person; and

(b) the person obeys the signal as soon as it is practicable to obey the signal.

Division 4 Power to seize evidence

74 Seizing evidence at place entered with consent or warrant

(1) If an authorised officer enters a place with the consent of the occupier or person in control of the place, the authorised officer may seize a thing at the place if:

(a) the authorised officer reasonably believes the thing is evidence that is relevant to the investigation being conducted by the authorised officer; and

(b) seizing the thing is consistent with the purpose of the entry as told to the occupier or person in control when asking for the occupier's or person in control's consent.

(2) If an authorised officer enters a place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.

(3) For the purposes of subsections (1) and (2), the authorised officer may also seize anything else at the place if the authorised officer reasonably believes:

(a) the thing is evidence that is relevant to the investigation; and

(b) seizing the thing is necessary to prevent the thing being hidden, lost or destroyed.

75 Seizing evidence from other places

(1) This section applies if an authorised officer does any of the following without consent or a warrant:

(a) enters a place during times when prescribed work is being carried out at the place;

(b) enters a public place when the place is open to the public;

(c) enters a vehicle.

(2) The authorised officer may seize a thing at the place, or on or in the vehicle, if the authorised officer reasonably believes the thing is evidence that is relevant to the investigation being conducted by the authorised officer.

76 Securing evidence

(1) Having seized a thing, an authorised officer may:

(a) move the thing from the place where it was seized; or

(b) leave the thing at the place where it was seized but:

(i) take reasonable action to restrict access, or prevent or mitigate damage, to it; or

(ii) direct the person the authorised officer reasonably believes is in control of the seized thing to take reasonable action to restrict access, or prevent or mitigate damage, to it; or

(iii) for equipment, make it inoperable, or direct the person the authorised officer reasonably believes is in control of the thing to make it inoperable.

(2) A person to whom a direction is given under subsection (1)(b)(ii) or (iii) must comply with the direction.

Penalty: $10 000.

77 Tampering with seized things

(1) If an authorised officer or a person acting at the officer's direction restricts access to a seized thing, a person must not tamper or attempt to tamper with it, or something restricting access to it, without an authorised officer's approval.

Penalty: $25 000.

(2) If an authorised officer or a person acting at the officer's direction makes a seized thing inoperable, a person must not tamper or attempt to tamper with the thing, without an authorised officer's approval.

Penalty: $25 000.

78 Receipt for seized things

(1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place where it was seized in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally the seized thing and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

79 Forfeiture of seized thing

(1) A seized thing is forfeited to the Licensing Authority if the Authority:

(a) cannot find its owner, after making reasonable inquiries; or

(b) cannot return it to its owner, after making reasonable efforts.

(2) In applying subsection (1):

(a) subsection (1)(a) does not require the Licensing Authority to make inquiries if it would be unreasonable to make inquiries to find the owner; and

(b) subsection (1)(b) does not require the Licensing Authority to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

(3) Regard must be had to a thing's nature, condition and value in deciding:

(a) whether it is reasonable to make inquiries or efforts; and

(b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

80 Dealing with forfeited things

(1) On the forfeiture of a thing to the Licensing Authority, the thing becomes the Authority's property and may be dealt with by the Authority as the Authority considers appropriate.

(2) Without limiting subsection (1), the Licensing Authority may destroy or dispose of the thing.

81 Return of seized things

If a seized thing has not been forfeited, the Licensing Authority must immediately return the thing to its owner if the Authority is no longer satisfied its continued retention as evidence is necessary.

82 Access to seized things

(1) Until a seized thing is forfeited or returned, the Licensing Authority must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection.

Division 5 General

83 Compensation

(1) A person may claim from the Licensing Authority the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under this Part by an authorised officer.

(2) Without limiting subsection (1), compensation may be claimed for damage to property incurred in complying with a requirement made of the person under this Part.

(3) Compensation is not payable for damage caused to the property of a relevant person if the exercise or purported exercise of the power under this Part by the authorised officer occurred in the course of an investigation of the relevant person.

(4) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

(5) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) The national regulations may provide for matters to which a court may, must or must not have regard in deciding whether to make an order under this section.

(7) In this section:

relevant person means the following:

(a) a licensee;

(b) a person, other than a licensee, who is or was carrying out prescribed work;

(c) a person, other than a licensee, who is or was advertising or holding out that he or she was licensed to carry out a licensed occupation.

84 False or misleading information

A person must not, in relation to a licence or a licensed occupation, state anything to an authorised officer that the person knows is false or misleading in a material particular.

Penalty:

(a) for an individual – $25 000; or

(b) for a body corporate – $125 000.

85 False or misleading documents

(1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Penalty:

(a) for an individual – $25 000; or

(b) for a body corporate – $125 000.

(2) Subsection (1) does not apply to a person who, when giving the document:

(a) informs the authorised officer, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the authorised officer if the person has, or can reasonably obtain, the correct information.

86 Obstructing authorised officers

(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Penalty:

(a) for an individual – $25 000; or

(b) for a body corporate – $125 000.

(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that:

(a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and

(b) the authorised officer considers the person's conduct is an obstruction.

(3) In this section:

obstruct includes hinder and attempt to obstruct or hinder.

87 Impersonation of authorised officers

A person must not pretend to be an authorised officer.

Penalty: $25 000.

Part 5 Reviews and Appeals

Division 1 Preliminary

88 Definitions

In this Part:

affected person, for a reviewable decision, means a person prescribed by the national regulations as being a person who may apply for an internal review of the reviewable decision.

reviewable decision means any of the following decisions made under this Law:

(a) a decision to refuse to grant a licence;

(b) a decision to refuse to renew or vary a licence;

(c) a decision to vary a licence at the Licensing Authority's initiative;

(d) a decision to immediately suspend a licence;

(e) a decision by the Licensing Authority to take disciplinary action against a licensee;

(f) a decision to revoke a licence;

(g) a decision to give a licensee, or a member of a class of licensees, a direction under section 101;

(h) another decision prescribed by the national regulations as being a decision for which a person may apply for an internal review under this Part.

review decision, see section 91.

reviewer means a person deciding an internal review of a reviewable decision under this Part.

Division 2 Reviews

89 Applying for internal review

(1) An affected person for a reviewable decision may apply to the Licensing Authority for an internal review of the decision.

(2) The application must be made within 28 days after the day the affected person is given notice of the reviewable decision.

(3) The Licensing Authority may, at any time, extend the time for applying for the internal review.

(4) The application for an internal review must be in writing and state fully the grounds of the application.

90 Internal review

(1) An internal review must not be decided by:

(a) the person who made the reviewable decision; or

(b) a person who holds a less senior position than that person.

(2) The reviewer must conduct the review on:

(a) the material before the Licensing Authority that led to the reviewable decision; and

(b) the reasons for the reviewable decision; and

(c) any other relevant material the reviewer allows.

(3) For the review, the reviewer must give the affected person a reasonable opportunity to make written or oral representations to the reviewer.

91 Review decision

(1) The reviewer must make a decision (the ***review decision***) to:

(a) confirm the reviewable decision; or

(b) amend the reviewable decision; or

(c) substitute another decision for the reviewable decision.

(2) If the review decision confirms the reviewable decision, for the purpose of an appeal, the reviewable decision is taken to be the review decision.

(3) If the review decision amends the reviewable decision, for the purpose of an appeal, the reviewable decision as amended is taken to be the review decision.

(4) If the review decision substitutes another decision for the reviewable decision, for the purpose of an appeal, the substituted decision is taken to be the review decision.

92 Notice of review decision

(1) The Licensing Authority must, as soon as practicable after the review decision is made, give the affected person notice (the ***review notice***) of the review decision.

(2) If the review decision is not the decision sought by the affected person, the review notice must also state the following:

(a) the reasons for the decision;

(b) that the affected person may appeal against the decision in accordance with the national regulations;

(c) how to appeal.

(3) If the Licensing Authority does not give the review notice within the review period the Authority is taken to have made a review decision confirming the reviewable decision.

(4) In this section:

review period means:

(a) the period ending 28 days after the application is made; or

(b) the period, ending not more than 56 days after the application is made, agreed between the Authority and the affected person.

Division 3 Appeals

93 Appellable decisions

(1) A person who has applied for an internal review of a reviewable decision under Division 2 and is dissatisfied with the review decision may appeal against the review decision to the relevant tribunal or court for a participating jurisdiction.

(2) Also, the relevant tribunal or court for a participating jurisdiction may deal with an appeal by a person against a reviewable decision if the person did not apply for an internal review of the reviewable decision under Division 2 but only if:

(a) the relevant tribunal or court is satisfied:

(i) the person was an affected person for the reviewable decision; and

(ii) the person made a late application for the internal review; and

(iii) the person dealing with the application unreasonably refused to consider the application; and

(iv) the appeal was lodged within a reasonable time after the making of the reviewable decision; or

(b) the relevant tribunal or court is satisfied:

(i) the person was an affected person for the reviewable decision; and

(ii) it is necessary for the relevant tribunal or court to deal with the appeal to protect the applicant's interests; and

(iii) the appeal was lodged within a reasonable time after the making of the reviewable decision.

94 Proceedings and decision

(1) After hearing the matter, the relevant tribunal or court must:

(a) confirm the review decision or reviewable decision; or

(b) amend the review decision or reviewable decision; or

(c) substitute another decision for the review decision or reviewable decision.

(2) In substituting another decision for the review decision or reviewable decision, the relevant tribunal or court has the same powers as the entity that made the review decision or reviewable decision.

Part 6 Ministerial Council

95 Functions of Ministerial Council

The Ministerial Council is responsible for the effective implementation and operation of the national licensing system.

96 Directions

(1) The Ministerial Council may give directions to the Licensing Authority about the policies to be applied by the Licensing Authority in exercising its functions.

(2) However, neither the Ministerial Council nor a Minister may give a direction to the Licensing Authority about:

(a) a particular person; or

(b) a particular application; or

(c) a particular disciplinary proceeding or disciplinary action.

Part 7 National Occupational Licensing Authority

Division 1 Establishment, functions and powers

97 Establishment of Licensing Authority

(1) The National Occupational Licensing Authority is established.

(2) The Licensing Authority:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

(3) The Licensing Authority represents the State.

98 General powers of Licensing Authority

The Licensing Authority has all the powers of an individual and, in particular, may:

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, real and personal property; and

(c) do anything necessary or convenient to be done in the performance of its functions.

99 Functions of Licensing Authority

(1) The principal functions of the Licensing Authority are:

(a) to develop policy about, and administer, the national licensing system; and

(b) to provide advice to the Ministerial Council about matters relating to the national licensing system.

(2) In exercising its functions, the Licensing Authority must have regard to the objectives of the national licensing system set out in section 3.

(3) Without limiting subsection (1), the functions of the Licensing Authority include the following:

(a) to give effect to policy directions and other decisions made by the Ministerial Council;

(b) to undertake reviews of legislation, and develop and review policy matters, relating to occupational licensing and provide advice to the Ministerial Council about matters arising out of the reviews;

(c) to analyse, and prepare projections about, its budget and provide the analysis and projections to the Ministerial Council;

(d) to manage its resources in a way that ensures the national licensing system is as efficient as possible;

(e) to review and make recommendations about any national licensing fees provided for under this Law;

(f) to undertake research and consultation to support the development, monitoring and maintenance of policy about:

(i) the regulation of licensed occupations; and

(ii) the licensing of persons carrying out licensed occupations; and

(iii) requirements relating to the conduct of licensees;

(g) to regulate the conduct of licensees;

(h) to prosecute persons who commit offences against this Law or the national regulations;

(i) to keep up-to-date and publicly accessible national registers of licensees;

(j) to develop, for approval by the Ministerial Council, measures and processes for assessing its performance and to report on the measures and processes to the Council;

(k) to advise the Ministerial Council on issues relevant to the national licensing system;

(l) to liaise with participating jurisdictions in a way that is transparent and provides for the sharing of information with State or Territory entities, relevant jurisdictional regulators and statutory bodies having functions in relation to licensed occupations or licensees;

(m) to cooperate with any entity reviewing the national licensing system;

(n) to establish, as appropriate, committees and other mechanisms to assist the Authority in performing its functions.

100 Consultation

In exercising its functions in relation to reviewing legislation or developing or reviewing policy matters about licensed occupations, the Licensing Authority must, to the extent the Authority considers reasonable in the circumstances, consult with:

(a) stakeholders from relevant licensed occupations; and

(b) the community.

101 Directions

(1) The Licensing Authority may give a direction to a licensee, or a class of licensees, about a matter relating to the way in which the licensee or class of licensees carries out the licensed occupation.

(2) A direction must be by written notice given to the licensee, or each licensee who is a member of the class of licensees, the subject of the direction.

102 Delegation

(1) The Licensing Authority may delegate any of its functions, other than developing policy about the national licensing system, to:

(a) an entity, or the chief executive of an entity or department of government, of a participating jurisdiction nominated by the member of the Ministerial Council that represents that jurisdiction; or

(b) a member of the police force or police service of a participating jurisdiction.

(2) The Licensing Authority may delegate any of its functions to the chief executive officer or another member of the Authority's staff.

(3) An entity or chief executive to whom a function has been delegated under subsection (1)(a) by the Licensing Authority may subdelegate the function (including this power of subdelegation).

Division 2 Governing Board of Licensing Authority

Subdivision 1 Establishment and functions

103 National Occupational Licensing Board

(1) The Licensing Authority has a governing board known as the National Occupational Licensing Board.

(2) The Licensing Board consists of not more than 10 members appointed by the Ministerial Council.

(3) The members of the Licensing Board consist of:

(a) one person appointed by the Ministerial Council as Chairperson, being a person who is not a licensee or otherwise involved in any licensed occupation; and

(b) 2 persons (***jurisdictional regulator members***) who are jurisdictional regulators or members of the staff of jurisdictional regulators, nominated by the chief executives of First Ministers' Departments; and

(c) other persons the Ministerial Council considers have appropriate skills or experience in unions, employer representation, consumer advocacy or training.

(4) In appointing members of the Licensing Board, the Ministerial Council must have regard to the need for the Board to have an appropriate balance of skills and expertise among its members.

104 Functions of Licensing Board

(1) The affairs of the Licensing Authority are to be controlled by the Licensing Board.

(2) All acts and things done in the name of, or on behalf of, the Licensing Authority by or with the authority of the Licensing Board are taken to have been done by the Licensing Authority.

(3) The Licensing Board must ensure the Licensing Authority performs its functions in a proper, effective and efficient way.

(4) The Licensing Board has any other functions given to the Licensing Board by or under this Law.

Subdivision 2 Members

105 Terms of office of members

(1) Subject to this Division, a member holds office:

(a) for a jurisdictional regulator member, for 2 years; and

(b) otherwise, for the period, not more than 3 years, specified in the member's instrument of appointment.

(2) If otherwise qualified, a member is eligible for reappointment.

106 Remuneration

(1) A member, other than a jurisdictional regulator member, is entitled to be paid the remuneration and allowances decided by the remuneration tribunal from time to time.

(2) In this section:

remuneration tribunal means a tribunal prescribed by the national regulations.

107 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

(a) completes a term of office; or

(b) resigns the office by signed notice given to the Chairperson of the Ministerial Council; or

(c) is removed from office by the Chairperson of the Ministerial Council under this section; or

(d) is absent, without leave first being granted by the Licensing Board, from 3 or more consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post; or

(e) dies.

(2) The Chairperson of the Ministerial Council may remove a member from office if:

(a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with member's creditors or makes an assignment of member's remuneration for their benefit; or

(c) the Licensing Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.

108 Vacancies to be advertised

(1) Before the Ministerial Council appoints a member of the Licensing Board, other than a jurisdictional regulator member, the vacancy to be filled is to be publicly advertised.

(2) It is not necessary to advertise a vacancy in the membership of the Licensing Board before appointing a person to act in the office of a member.

109 Extension of term of office during vacancy in membership

(1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled, whether by reappointment of the member or appointment of a successor to the member.

(2) However, this section ceases to apply to the member if:

(a) the member resigns the member's office by signed notice given to the Chairperson of the Ministerial Council; or

(b) the Chairperson of the Ministerial Council decides the services of the member are no longer required.

(3) The maximum period for which a member is taken to continue to be a member under this section after completion of the member's term of office is 6 months.

110 Members to act in public interest

A member of the Licensing Board is to act impartially and in the public interest in the exercise of the member's functions as a member.

111 Disclosure of conflict of interest

(1) If:

(a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Licensing Board; and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) Particulars of any disclosure made under this section must be recorded by the Licensing Board in a register of interests kept for the purpose.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Licensing Board otherwise decides:

(a) be present during any deliberation of the Board with respect to the matter; or

(b) take part in any decision of the Board with respect to the matter.

(4) For the purposes of the making of a decision by the Licensing Board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the decision; or

(b) take part in the making by the Board of the decision.

(5) A contravention of this section does not invalidate any decision of the Licensing Board but if the Board becomes aware a member of the Board contravened this section the Board must reconsider any decision made by the Board in which the member took part in contravention of this section.

Subdivision 3 Meetings

112 General procedure

The procedure for the calling of meetings of the Licensing Board and for the conduct of business at the meetings is, subject to this Law, to be decided by the Board.

113 Quorum

The quorum for a meeting of the Licensing Board is a majority of its members.

114 Chief executive officer may attend meetings

(1) The chief executive officer may attend meetings of the Board and participate in discussions of the Board, but is not entitled to be present during the consideration by the Board of any matter in which the chief executive officer has a direct personal interest.

(2) The chief executive officer is not entitled to vote at a meeting.

115 Presiding member

(1) The Chairperson is to preside at a meeting of the Board.

(2) However, in the absence of the Chairperson the following person is to preside at a meeting of the Licensing Board:

(a) if the Chairperson has nominated another person who is present at the meeting to preside at the meeting, that person;

(b) otherwise, a person elected by the members of the Licensing Board who are present at the meeting.

(3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

116 Voting

A decision supported by a majority of the votes cast at a meeting of the Licensing Board at which a quorum is present is the decision of the Board.

117 First meeting

The Chairperson may call the first meeting of the Licensing Board in any manner the Chairperson thinks fit.

118 Defects in appointment of members

A decision of the Licensing Board is not invalidated by any defect or irregularity in the appointment of any member of the Board.

Division 3 Chief executive officer

119 Chief executive officer

(1) There is to be a chief executive officer of the Licensing Authority.

(2) The chief executive officer is to be appointed by the Licensing Board with the approval of the Ministerial Council.

(3) The chief executive officer is to be appointed for a period, not more than 5 years, specified in the officer's instrument of appointment.

(4) The chief executive officer is eligible for reappointment.

(5) The chief executive officer is taken, while holding that office, to be a member of the staff of the Licensing Authority.

120 Functions of chief executive officer

The chief executive officer

(a) is responsible for the day-to-day management of the Licensing Authority; and

(b) has any other functions conferred on the chief executive officer by the Licensing Board.

Division 4 Staff

121 Staff

(1) The Licensing Authority may, for the purpose of exercising its functions, employ staff.

(2) The staff of the Licensing Authority are to be employed on the terms and conditions prescribed by the national regulations.

122 Staff seconded to Licensing Authority

The Licensing Authority may make arrangements for the services of a person who is a member of the staff of a government agency of a participating jurisdiction or the Commonwealth to be made available to the Licensing Authority in connection with the exercise of its functions.

Division 5 Authorised officers

123 Powers of authorised officers

(1) An authorised officer has the powers given by this Law.

(2) In exercising the powers, the authorised officer is subject to the directions of the Licensing Authority.

124 Functions of authorised officer

An authorised officer has the following functions:

(a) to enforce this Law;

(b) to monitor compliance with this Law;

(c) to determine whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act.

125 Appointment of authorised officers

(1) The Licensing Authority may appoint any of the following persons as an authorised officer:

(a) a member of the Licensing Authority's staff;

(b) an employee of a jurisdictional regulator;

(c) a member of the police force or police service of a participating jurisdiction;

(d) a person prescribed for the purposes of this section by the national regulations;

(e) a person who is a member of a class of persons prescribed for the purposes of this section by the national regulations.

(2) The Licensing Authority may appoint a person as an authorised officer only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

126 Appointment conditions and limits on powers

(1) An authorised officer holds office on the conditions:

(a) stated in the authorised officer's instrument of appointment; or

(b) stated in a notice given by the Licensing Authority to the authorised officer; or

(c) prescribed by the national regulations.

(2) The instrument of appointment, a notice given by the Licensing Authority or the national regulations may limit the authorised officer's powers under this Law.

127 Identity card

(1) The Licensing Authority must issue an identity card to each authorised officer.

(2) The identity card must:

(a) contain a recent photograph of the authorised officer; and

(b) contain a copy of the authorised officer's signature; and

(c) identify the person as an authorised officer under this Law; and

(d) include an expiry date.

(3) This section does not prevent the issue of a single identity card to a person for this Law and other Acts.

128 Production and display of identity card

(1) An authorised officer may exercise a power in relation to someone else (the ***other person***) only if the authorised officer:

(a) first produces the authorised officer's identity card for the other person's inspection; or

(b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

129 When authorised officer ceases to hold office

(1) An authorised officer ceases to hold office if any of the following occurs:

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the authorised officer ceases to hold office;

(c) the authorised officer's resignation takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

130 Resignation

An authorised officer may resign by signed notice given to the Licensing Authority.

131 Return of identity card

A person who ceases to be an authorised officer must return the person's identity card to the Licensing Authority within 7 days after ceasing to be an authorised officer, unless the person has a reasonable excuse.

Penalty: $5 000.

Division 6 Occupational Licence Advisory Committees

132 Establishment of Advisory Committee

The Licensing Authority must establish an Occupational Licence Advisory Committee for each licensed occupation.

133 Function of Advisory Committee

The function of an Advisory Committee is to give advice to the Licensing Authority about:

(a) the development, maintenance and performance of licensing policy in relation to the licensed occupation for which the Advisory Committee is established; and

(b) any other matter referred to the Advisory Committee by the Licensing Authority.

134 Membership and procedures of Advisory Committee

(1) An Advisory Committee is to consist of the members appointed in writing by the Licensing Board.

(2) Before appointing members of an Advisory Committee, the Licensing Authority must invite nominations for membership of the Advisory Committee from:

(a) national peak bodies who represent the licensed occupation; or

(b) if there is not a national peak body that represents the licensed occupation, another peak body that represents the licensed occupation.

(3) Without limiting subsection (2), peak bodies include the following:

(a) unions and employer bodies;

(b) occupational professional associations;

(c) consumer advocacy organisations;

(d) bodies that regulate the licensed occupation;

(e) if relevant, peak insurance bodies;

(f) bodies involved in the national training system.

(4) In appointing members to an Advisory Committee, the Licensing Board must have regard to the need for the Advisory Committee to have a balance of expertise relevant to the licensed occupation including in relation to the following areas:

(a) regulation of the licensed occupation;

(b) occupational operations and practices, including from a union and employer perspective;

(c) workplace health and safety;

(d) consumer advocacy;

(e) training;

(f) if relevant, insurance.

(5) The national regulations may provide for:

(a) the appointment of members of Advisory Committees; and

(b) the procedures of Advisory Committees.

Part 8 Information and privacy

Division 1 Privacy

135 Application of Commonwealth Privacy Act

(1) Subject to subsection (3), the Privacy Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the Privacy Act does not apply to the national licensing system to the extent that functions, other than functions relating to the national registers, are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the Privacy Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may:

(a) provide that the Privacy Act applies as if a provision of the Privacy Act specified in the national regulations were omitted; or

(b) provide that the Privacy Act applies as if an amendment to the Privacy Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section:

Privacy Act means the *Privacy Act 1988* of the Commonwealth, as in force from time to time.

Division 2 Disclosure of information and confidentiality

136 Definition

In this Division:

protected information means information that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law or a prescribed Act.

137 Application of Commonwealth FOI Act

(1) Subject to subsection (3), the FOI Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the FOI Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the FOI Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may:

(a) provide that the FOI Act applies as if a provision of the FOI Act specified in the national regulations were omitted; or

(b) provide that the FOI Act applies as if an amendment to the FOI Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section:

FOI Act means the *Freedom of Information Act 1982* of the Commonwealth, as in force from time to time.

138 Duty of confidentiality

(1) A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

Penalty:

(a) for an individual – $25 000; or

(b) for a body corporate – $125 000.

(2) However, subsection (1) does not apply if:

(a) the information is disclosed in the exercise of a function under, or for the purposes of, this Law; or

(b) the disclosure is authorised or required by any law of a participating jurisdiction; or

(c) the disclosure is otherwise required or permitted by law; or

(d) the disclosure is with the agreement of the person to whom the information relates; or

(e) the disclosure is in a form that does not identify the identity of a person; or

(f) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or

(g) the disclosure is the publication of information about disciplinary action taken against persons under this Law or the national regulations or the conviction of persons for offences against this Law or the national regulations and the publication is in accordance with the national regulations; or

(h) the information is, or has been, accessible to the public, including because it is or was recorded in a national register; or

(i) the disclosure is to a prescribed entity or is otherwise authorised by the national regulations.

139 Disclosure to jurisdictional regulators and other Commonwealth, State and Territory entities

A person exercising functions under this Law may disclose protected information to any of the following entities if the disclosure is in connection with functions exercised by that entity:

(a) a jurisdictional regulator;

(b) another Commonwealth, State or Territory entity.

Division 3 Registers and other records

140 National Registers and records

(1) The Licensing Authority must keep the national registers and other records required by the national regulations.

(2) Without limiting subsection (1), the national regulations may provide for:

(a) the information that must be collected and recorded by the Licensing Authority about licensees; and

(b) the information that is to be included in public registers about licensees; and

(c) the way the public registers are to be kept; and

(d) the inspection of the public registers by members of the public; and

(e) the publication of information included in public registers.

141 Application of Commonwealth Archives Act

(1) Subject to subsection (3), the Archives Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the Archives Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the Archives Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may:

(a) provide that the Archives Act applies as if a provision of the Archives Act specified in the national regulations were omitted; or

(b) provide that the Archives Act applies as if an amendment to the Archives Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section:

Archives Act means the *Archives Act 1983* of the Commonwealth, as in force from time to time.

Part 9 Miscellaneous

Division 1 Finance

142 National Occupational Licensing Authority Fund

(1) The National Occupational Licensing Authority Fund is established.

(2) The Authority Fund is a fund to be administered by the Licensing Authority.

(3) The Licensing Authority may establish accounts with any financial institution for money in the Authority Fund.

(4) The Authority Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

143 Payments into Authority Fund

There is payable into the Authority Fund:

(a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and

(b) the proceeds of the investment of money in the Fund; and

(c) all grants, gifts and donations made to the Licensing Authority, but subject to any trusts declared in relation to the grants, gifts or donations; and

(d) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

(e) any other money or property prescribed by the national regulations; and

(f) any other money or property received by the Licensing Authority in connection with the exercise of its functions.

144 Payments out of Authority Fund

Payments may be made from the Authority Fund for the purpose of:

(a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law; and

(b) any other payments recommended by the Licensing Authority and approved by the Ministerial Council.

145 Investment by Licensing Authority

(1) The Licensing Authority must invest its funds in a way that is secure and provides a low risk so that the Authority's exposure to the loss of funds is minimised.

(2) The Licensing Authority must keep records that show it has invested in a way that complies with subsection (1).

146 Financial management duties of Licensing Authority

The Licensing Authority must:

(a) ensure its operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the Authority Fund; and

(c) ensure expenditure is made from the Authority Fund for lawful purposes only and, as far as possible, that reasonable value is expended from the Fund; and

(d) ensure its procedures, including internal control procedures, afford adequate safeguards with respect to:

(i) the correctness, regularity and propriety of payments made from the Authority Fund; and

(ii) receiving and accounting for payments made to the Authority Fund; and

(iii) prevention of fraud or mistake; and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and

(f) take any action necessary to facilitate the audit of the financial statements in accordance with this Law; and

(g) arrange for any further audit by a qualified person of the books and records kept by the Licensing Authority, if directed to do so by the Ministerial Council.

Division 2 Reporting and planning arrangements

147 Annual report

(1) The Licensing Authority must, within 3 months after the end of each financial year, give the Ministerial Council an annual report for the financial year.

(2) Despite subsection (1), the first annual report of the Licensing Authority must:

(a) relate to the period starting on 1 January 2011 and ending on 30 June 2012; and

(b) be made by 30 September 2012.

(3) The annual report must:

(a) include for the period to which the report relates:

(i) the financial statements that have been audited by an auditor decided by the Ministerial Council; and

(ii) information about the consultation processes used by the Licensing Authority in exercising its functions of reviewing legislation and developing and reviewing policy matters about licensed occupations; and

(iii) other matters required by the national regulations; and

(b) be prepared in the way required by the national regulations.

(4) Without limiting subsection (3)(b), the national regulations may provide:

(a) that the financial statements are to be prepared in accordance with Australian Accounting Standards; and

(b) for the auditing of the financial statements.

(5) The Ministerial Council is to make arrangements for the tabling of the Licensing Authority's annual report in each House of the Parliament of each participating jurisdiction.

(6) As soon as practicable after the annual report has been tabled in at least one House of the Parliament of a participating jurisdiction, the Licensing Authority must publish a copy of the report on its website.

(7) In this section:

Australian Accounting Standards means Accounting Standards issued by the Australian Accounting Standards Board.

148 Strategic and operational plans

(1) The Licensing Authority must prepare and give to the Ministerial Council for approval by the Council:

(a) a strategic plan for each 3-year period; and

(b) an annual operational plan.

(2) The strategic plan must be given to the Ministerial Council:

(a) for the Licensing Authority's first strategic plan, within 6 months after the commencement of this section; and

(b) for subsequent strategic plans, not later than 6 months before the preceding strategic plan is due to expire.

Division 3 Provisions relating to persons exercising functions under Law

149 General duties of persons exercising functions under this Law

(1) A person exercising functions under this Law must, when exercising the functions, act honestly and with integrity.

(2) A person exercising functions under this Law must exercise the person's functions under this Law:

(a) in good faith; and

(b) with a reasonable degree of care, diligence and skill.

(3) A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions:

(a) to gain an advantage for himself or herself or another person; or

(b) to cause a detriment to the development, implementation or operation of the national licensing system.

Penalty: $25 000.

150 Application of Commonwealth Ombudsman Act

(1) Subject to subsection (3), the Ombudsman Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the Ombudsman Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the Ombudsman Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may:

(a) provide that the Ombudsman Act applies as if a provision of the Ombudsman Act specified in the national regulations were omitted; or

(b) provide that the Ombudsman Act applies as if an amendment to the Ombudsman Act made by a law of the Commonwealth and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section:

Ombudsman Act means the *Ombudsman Act 1976* of the Commonwealth, as in force from time to time.

151 Protection from personal liability for persons exercising functions

(1) A person who is or was a protected person is not personally liable for anything done or omitted to be done in good faith:

(a) in the exercise of a function under this Law; or

(b) in the reasonable belief that the act or omission was the exercise of a function under this Law.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the Licensing Authority.

(3) In this section:

protected person means any of the following:

(a) a member of the Licensing Board;

(b) a member of a committee of the Licensing Authority;

(c) a member of the staff of the Licensing Authority;

(d) an authorised officer;

(e) a person to whom the Licensing Authority has delegated any of its functions;

(f) a person to whom an entity, or the chief executive of an entity or department of government, of a participating jurisdiction has subdelegated a function delegated to the chief executive by the Licensing Authority;

(g) a member of the staff of an entity or department referred to in paragraph (f);

(h) a person acting under the authority or direction of a person referred to in paragraphs (a) to (g).

Division 4 Legal proceedings

152 Limitation on time for starting proceedings

A proceeding for an offence against this Law or the national regulations must start within 6 years after the commission of the offence.

153 Evidentiary certificates

(1) A certificate purporting to be signed by the chief executive officer of the Licensing Authority and stating any of the following matters is prima facie evidence of the matter:

(a) a stated document is one of the following things made, given, issued or kept under this Law:

(i) an appointment or decision;

(ii) a notice, direction or requirement;

(iii) a licence;

(iv) a register, or an extract from a register;

(v) a record, or an extract from a record;

(b) a stated document is another document kept under this Law;

(c) a stated document is a copy of a document referred to in paragraph (a) or (b);

(d) on a stated day, or during a stated period, a stated person was or was not a licensee;

(e) on a stated day, or during a stated period, a licence was or was not subject to a stated condition or undertaking;

(f) on a stated day, a licence was suspended or cancelled;

(g) on a stated day, or during a stated period, an appointment as an authorised officer was or was not in force for a stated person;

(h) on a stated day, a stated person was given a stated notice or direction under this Law;

(i) on a stated day, a stated requirement was made of a person.

(2) If functions are being exercised under this Law by a State or Territory entity, a certificate purporting to be signed by any of the following, and stating any of the matters referred to in subsection (1), is prima facie evidence of the matter:

(a) if there is a chief executive of the entity, the chief executive;

(b) if there is no chief executive of the entity but there is a chairperson (however described) of the entity, the chairperson;

(c) otherwise, a member of the entity.

Division 5 Miscellaneous

154 Approved forms

(1) The Licensing Authority may approve forms for use under this Law.

(2) The approval of a form must be notified on the Licensing Authority's website.

155 Extrinsic materials

The COAG Agreement is declared to be extrinsic material for the purposes of paragraph (h) of the definition ***extrinsic material*** in section 8(1) of Schedule 1.

156 References to laws includes references to instruments made under laws

(1) In this Law, a reference (either generally or specifically) to a law or a provision of a law (including this Law) includes a reference to the statutory instruments made or in force under the law or the provision.

(2) In this section:

law means a law of the Commonwealth or a State or Territory.

157 Service of documents

(1) If this Law or the national regulations require or permit a document to be served on a person, the document may be served by:

(a) on an individual:

(i) delivering it to the person personally; or

(ii) leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or

(iii) sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(iv) sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(b) on a body corporate:

(i) leaving it at, or sending it by post to, the head office, a registered office or the principal place of business of the body corporate; or

(ii) sending it by facsimile transmission to a facsimile number notified to the sender by the body corporate as an address at which service of notices under this Law will be accepted; or

(iii) sending it by email to an internet address notified to the sender by the body corporate as an address at which service of notices under this Law will be accepted.

(2) Subsection (1) applies whether the word "deliver", "give", "notify", "send" or "serve" or another expression is used.

(3) Subsection (1) does not affect the power of a court or tribunal to authorise service of a document otherwise than as provided in that subsection.

158 Service by post

If a document authorised or required to be served (whether the word "deliver", "give", "notify", "send" or "serve" or another expression is used) on a person is served by post, service of the document:

(a) may be effected by properly addressing, prepaying and posting a letter containing the document; and

(b) in Australia or in an external Territory – is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth business day after the letter was posted; and

(c) in another place – is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of post.

159 Review of Law

(1) The Ministerial Council is to conduct independent public reviews of the operation of the national licensing system and this Law to determine whether the system and the Law continue to comply with the objectives and principles set out in clause 4 of the COAG Agreement.

(2) The reviews are to be undertaken:

(a) for the first review, as soon as possible after the period of 5 years from the date on which this Law commences in at least one participating jurisdiction; and

(b) for subsequent reviews, at intervals of not more than 10 years.

(3) A report on the outcome of each review is to be tabled in each House of the Parliament of each participating jurisdiction within 3 months after the end of the review.

Division 6 Regulations

160 National regulations

(1) The Ministerial Council may make regulations for the purposes of this Law.

(2) The regulations may provide for the following:

(a) the occupations to which this Law is to apply;

(b) the licensing of persons carrying out licensed occupations;

(c) other matters relating to licences including:

(i) applications for licences; and

(ii) the requirements to be satisfied by persons to be eligible for a licence or to continue to hold a licence; and

(iii) the granting of licences; and

(iv) the renewal, variation or surrender of licences;

(d) fees under this Law including:

(i) the fees to be paid for applications made under this Law for licences or the renewal or variation of a licence; and

(ii) the refunding of fees; and

(iii) the waiver of fees; and

(iv) late fees and fees for dishonoured payments;

(e) arrangements for the publication of fees prescribed under Acts of participating jurisdictions that relate to licensees or licensed occupations;

(f) the conduct of licensees, including the making and adoption of codes of practice applicable to licensees;

(g) matters relating to compliance with and enforcement of this Law and the regulations, including, for example:

(i) monitoring and auditing of licensees and work undertaken by licensees; and

(ii) complaints about licensees or former licensees; and

(iii) the grounds on which licences are automatically suspended or cancelled and other matters relating to those suspensions or cancellations; and

(iv) the establishment of a demerit point scheme for licensees; and

(v) the establishment of an infringement notice scheme for persons who allegedly contravene this Law or the regulations; and

(vi) other matters relating to disciplinary proceedings and disciplinary action;

(h) matters relating to nominees for licences;

(i) matters relating to directors and members of licensees who are bodies corporate, including:

(i) the duties and obligations of directors and members; and

(ii) matters relating to the liability of directors and members;

(j) matters relating to persons who are employed or otherwise engaged by licensees, including:

(i) the duties and obligations of licensees in relation to those persons; and

(ii) the duties and obligations of those persons; and

(iii) matters relating to vicarious liability for the actions of those persons;

(k) matters relating to persons who are receivers, managers or administrators appointed to carry out, wind up or otherwise administer or operate businesses conducted by licensees or persons whose licences have been suspended or cancelled, including matters relating to the appointment of those persons

and the obligations and responsibilities of those persons in carrying out, winding up or otherwise administering or operating the businesses;

(l) matters relating to fidelity funds and indemnity funds held in relation to licensees;

(m) matters relating to trust funds held by licensees;

(n) the payment of penalties and fines imposed under this Law, including who the penalties and fines are to be paid to;

(o) the imposition of penalties, of not more than $5,000 for individuals or $25,000 for bodies corporate, for a contravention of a provision of the regulations;

(p) criteria or procedures to be used by the Licensing Authority in developing policy about the national licensing system and the admission of new occupations to the system;

(q) the publication of information about disciplinary action taken against persons under this Law or the regulations or the conviction of persons for offences against this Law or the regulations;

(r) provisions of a savings or transitional nature:

(i) consequent on the enactment of this Law in a participating jurisdiction or the making of the regulations under this Law; or

(ii) to otherwise allow or facilitate the change from the operation of a law of a participating jurisdiction relating to the licensing of persons carrying out licensed occupations to the operation of this Law or the regulations made under this Law;

(s) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(3) Savings and transitional provisions consequent on the enactment of this Law in a participating jurisdiction, or to allow or facilitate the licensing of persons carrying out a licensed occupation in a participating jurisdiction, may have retrospective operation to a day not earlier than the participation day for that participating jurisdiction.

161 Regulations about licensing, registration and accreditation of persons carrying out licensed occupations

(1) Without limiting section 160(2)(b), the national regulations may provide for:

(a) the different categories of licences, registration and accreditation that may be granted for licensed occupations; and

(b) the scope of work that may be carried out under the authority of the different categories of licences, registration and accreditation; and

(c) the different types of licences, registration and accreditation that may be granted for licensed occupations; and

(d) the ways in which licensed occupations are to be carried out, including, for example, the way in which work is to be carried out under licences, registration and accreditation and the records to be kept by persons who hold licences, registration and accreditation.

(2) The national regulations may not provide for the licensing, registration or accreditation of persons carrying out, in a participating jurisdiction, prescribed work that is within the scope of a licensed occupation if:

(a) immediately before the occupation became a licensed occupation for the participating jurisdiction under this Law, persons carrying out that prescribed work in the participating jurisdiction were not required to hold a licence, registration or accreditation or be otherwise authorised to carry out the work; and

(b) the Minister who is the member of the Ministerial Council representing the participating jurisdiction has not agreed to the making of the regulation.

162 Inclusion of new occupations in national regulations

(1) A regulation may be made prescribing an occupation as being a licensed occupation only if the requirements of this section have been satisfied.

(2) A participating jurisdiction that licences or proposes to licence an occupation may make a nomination to the Ministerial Council that the occupation should be a licensed occupation.

(3) If the Ministerial Council unanimously agrees that the occupation is to be a licensed occupation a regulation may be made prescribing the occupation as a licensed occupation.

(4) If a majority of the members of the Ministerial Council agrees that the occupation is to be a licensed occupation, a regulation may be made:

(a) prescribing the occupation as a licensed occupation; and

(b) providing that the occupation is a licensed occupation only in specified participating jurisdictions.

(5) A regulation made under subsection (4) must be reviewed by the Ministerial Council at intervals of not more than 12 months.

(6) This section does not apply to an occupation referred to in clause 3.5 of the COAG agreement.

163 Publication of national regulations

(1) The national regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

(2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

164 Parliamentary scrutiny of national regulations

(1) The member of the Ministerial Council representing a participating jurisdiction is to make arrangements for the tabling of a regulation made under this Law in each House of the Parliament of the participating jurisdiction.

(2) In addition, any other requirement of a law of a participating jurisdiction relevant to the disallowance of a regulation in that jurisdiction is to be complied with in that jurisdiction in relation to a regulation made under this Law as if the regulation had been made under an Act of that jurisdiction.

(3) A regulation made under this Law may be disallowed in a participating jurisdiction by a House of the Parliament of that jurisdiction in the same way, and within the same period, that a regulation made under an Act of that jurisdiction may be disallowed.

(5) If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the day of its disallowance in the last of the jurisdictions forming the majority.

(6) In this section:

regulation includes a provision of a regulation.

Note for section 164

This section differs from section 164 of the Occupational Licensing National Law set out in the Schedule to the Occupational Licensing National Law Act 2010 (Vic) because section 164(4) of the Victorian Schedule has not been enacted.

165 Effect of disallowance of national regulation

(1) The disallowance of a regulation in a majority of jurisdictions has the same effect as a repeal of the regulation.

(2) If a regulation ceases to have effect under section 164 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation has not been made.

(3) The restoration or revival of a law under subsection (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

(4) In this section:

regulation includes a provision of a regulation.

Schedule 1 Miscellaneous provisions relating to interpretation

section 5

Part 1 Preliminary

1 Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2 General

2 Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the Legislature of this jurisdiction:

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This section applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3 Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4 Material that is, and is not, part of this Law

(1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5 References to particular Acts and to enactments

In this Law:

(a) an Act of this jurisdiction may be cited:

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited:

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited:

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act;

together with a reference to the jurisdiction.

6 References taken to be included in Act or Law citation etc.

(1) A reference in this Law to an Act includes a reference to:

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference – the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to:

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re enacted (with or without modification) since the enactment of the reference – the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subsections (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7 Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subsection (1) applies whether or not the purpose is expressly stated in this Law.

8 Use of extrinsic material in interpretation

(1) In this section:

extrinsic material means relevant material not forming part of this Law, including, for example:

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this section.

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subsection (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation:

(a) if the provision is ambiguous or obscure – to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable – to provide an interpretation that avoids such a result; or

(c) in any other case – to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to:

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9 Effect of change of drafting practice

If:

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example:

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

10 Use of examples

If this Law includes an example of the operation of a provision:

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11 Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires:

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

Part 3 Terms and references

12 Definitions

(1) In this Law:

Act means an Act of the Legislature of this jurisdiction.

adult means an individual who is 18 or more.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes:

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not:

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending:

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day – at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

confer, in relation to a function, includes impose.

contravene includes fail to comply with.

country includes:

(a) a federation; or

(b) a state, province or other part of a federation.

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent.

definition means a provision of this Law (however expressed) that:

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression.

document means any record of information and includes:

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any computer, disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device); or

(d) a map, plan, drawing or photograph.

electronic communication means:

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity.

expire includes lapse or otherwise cease to have effect.

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

fail includes refuse.

financial year means a period of 12 months beginning on 1 July.

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

function includes a power, authority or duty.

Gazette means the Government Gazette of this jurisdiction.

gazetted means published in the *Gazette*.

Gazette notice means notice published in the *Gazette*.

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument.

individual means a natural person.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

insert, in relation to a provision of this Law, includes substitute.

instrument includes a statutory instrument.

interest, in relation to land or other property, means:

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property.

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

Jervis Bay Territory means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth.

make includes issue or grant.

minor means an individual who is under 18.

modification includes addition, omission or substitution.

month means a calendar month.

named month means 1 of the 12 months of the year.

Northern Territory means the Northern Territory of Australia.

number means:

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter.

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

office includes position.

omit, in relation to a provision of this Law or an Act, includes repeal.

party includes an individual or a body politic or corporate.

penalty includes forfeiture or punishment.

person includes an individual or a body politic or corporate.

power includes authority.

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law.

printed includes typewritten, lithographed or reproduced by any mechanical means.

proceeding means a legal or other action or proceeding.

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes:

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or

(b) a clause, section, subsection, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act.

repeal includes:

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or instrument concerned; or

(d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance.

sign includes the affixing of a seal or the making of a mark.

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise.

word includes any symbol, figure or drawing.

writing includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument:

the Law means this Law.

13 Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law:

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14 Meaning of *may* and *must* etc.

(1) In this Law, the word ***may***, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word ***must***, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This section has effect despite any rule of construction to the contrary.

15 Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This section has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

16 Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression "person", "party", "someone", "anyone", "no-one", "one", "another" or "whoever" or another expression is used):

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17 Production of records kept in computers etc.

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law:

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs;

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18 References to this jurisdiction to be implied

In this Law:

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19 References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20 Reference to certain provisions of Law

If a provision of this Law refers:

(a) to a Part, section or Schedule by a number and without reference to this Law – the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law – the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, section, subsection, item, column, table or form by a number and without reference to this Law – the reference is a reference to:

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the section, subsection, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the clause, section, subsection, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;

as the case requires.

21 Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes:

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example for section 21

A reference to "sections 5 to 9" includes both section 5 and section 9.

It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

Part 4 Functions and powers

22 Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

23 Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision:

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24 Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of:

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may:

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to:

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may:

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to:

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25 Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26 Appointments may be made by name or office

(1) If this Law authorises or requires a person or body:

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing;

the person or body may make the appointment by:

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27 Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint:

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may:

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subsection (2), the appointee may continue to act until:

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy;

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office:

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28 Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office:

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes:

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subsection (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subsection (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subsection (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29 Delegation of functions

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to:

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may be:

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If:

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office;

then:

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.

(10) If:

(a) the delegator is a body; and

(b) there is a change in the membership of the body;

then:

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office:

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this section applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30 Exercise of powers between enactment and commencement

(1) If a provision of this Law (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power:

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then:

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of an Act (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power:

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then:

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If:

(a) this Law has commenced and confers a power to make a statutory instrument (the ***basic instrument-making power***); and

(b) a provision of an Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the ***additional instrument-making power***);

then:

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subsection (2).

(4) If an instrument, or a provision of an instrument, is made under subsection (1) or (2) that is necessary for the purpose of:

(a) enabling the exercise of a power mentioned in the subsection; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect:

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If:

(a) an appointment is made under subsection (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subsection (1) or (2) is not necessary for a purpose mentioned in subsection (4);

the appointment, instrument or provision takes effect:

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subsection (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subsection (2) but before the provision's commencement, this section applies as if the references in subsections (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subsection (2) as amended by the empowering provision.

(8) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5 Distance, time and age

31 Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event; and:

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days – by excluding the day on which the purpose is to be fulfilled; and.

(b) in any other case – by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6 Effect of repeal, amendment or expiration

32 Time of Law ceasing to have effect

If a provision of this Law is expressed:

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day;

this provision has effect until the last moment of the specified day.

33 Repealed Law provisions not revived

If a provision of this Law is repealed or amended by an Act, or a provision of an Act, the provision is not revived merely because the Act or the provision of the Act:

(a) is later repealed or amended; or

(b) later expires.

34 Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not:

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35 Continuance of repealed provisions

If an Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36 Law and amending Acts to be read as one

This Law and all Acts amending this Law are to be read as one.

Part 7 Instruments under Law

37 Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8 Application to coastal sea

38 Application

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Occupational Licensing (National Uniform Legislation) Act 2011* (Act No. 26, 2011)**

Assent date	31 August 2011
Commenced	s 7(1)(c) and (2) & s 9 & app pts 2 to 5 & s 99(3)(g) to (i) & pt 8 div 1 & s 137 & div 3 & pt 9 div 2 & ss 150 & 153 & div 5: nc; rem: 1 August 2012 (*Gaz* G31, 1 August 2012, p 3)