

Exposure Draft

Construction Occupations Legislation Amendment Bill 2010

A guide to understanding the Bill

February 2010



**ACT Planning &
Land Authority**

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

This guide is designed to help people understand the exposure draft of the Construction Occupations Legislation Amendment Bill 2010.

The Bill amends:

- *The Constructions Occupations (Licensing) Act 2004 (COLA)*
 - Under COLA certain occupations are licensed to do particular work. To achieve the reforms set out in the Bill the existing construction occupation of **works assessor** will be expanded to include the work proposed by the Bill.
- The *Building Act 2004* (Building Act)
 - Requires a building surveyor, acting as a building certifier, to have, when considering a building approval application, either a copy of the development approval or determine that no development approval was required i.e. it is exempt development. To achieve the reforms set out in the Bill the framework for an applicant to ask whether or not work is exempt from requiring building approval will be created.
- The *Planning and Development Act 2007* (P&D Act)
 - This Act provides the framework to apply for development approvals. To achieve the reforms set out in the Bill the framework for an applicant to ask whether or not work is exempt from requiring development approval will be created.

How the Bill will progress:

The Bill is the second of two Bills (COLA – Part 1 and COLA – Part 2) that seek to introduce a set of reforms for unit title applications and exemption assessment certifications.

Because of the nature of the reforms, the ACT Planning and Land Authority (ACTPLA) decided to introduce the reforms through two individual Bills. COLA – Part 1 deals with unit title reforms and is currently before the Legislative Assembly. It is expected to be debated in the sitting week beginning 23 February 2010. This means that some of the provisions proposed in COLA – Part 2 (this Exposure Bill) rely on COLA –

Part 1. For instance, COLA – Part 1 inserts the construction occupation of works assessor and defines what that means. This Bill then seeks to expand that definition to include doing the work necessary to do an exemption assessment notice.

A copy of COLA – Part 1 can be accessed at http://www.legislation.act.gov.au/b/db_36308/default.asp. If COLA – Part 1 has been debated and passed then the amendments will appear in the respective legislation that the Bill amends:

- Constructions Occupations (Licensing) Act 2004
- Unit Titles Act 2001

This legislation can be accessed at <http://www.legislation.act.gov.au/a/default.asp>

There are two steps in implementing these reforms that will allow people to apply for a notice that states the work they are doing meets exemption criteria. The first step in achieving the reforms is the Bill. The second step will be the development of the regulations to support the framework introduced by the Bill.

The exemption criteria are listed in Schedule 1 of the *Planning and Development Regulation 2008*.

Comments received on this exposure draft will help ACTPLA develop a Bill that delivers the desired outcomes, meets industry and community expectations, and creates an efficient and easy to operate system for the provision of exemption assessment notices.

When the consultation period closes ACTPLA will consider comments, make amendments to the Bill as appropriate and present the Bill to the Legislative Assembly for consideration. If passed, the Bill will not come into effect until the regulations are ready to support its operation. Without the regulations, the Bill would not be able to operate.

Why is legislative reform necessary?

In recent years the range and type of things that can be exempt from needing development approval and/or building approval has expanded and now includes such things as a single dwelling as long as it complies with the *single dwelling housing development code* in the Territory Plan.

At the moment a person can determine for themselves whether what they intend to build meets exemption criteria. If what they are building needs building approval but not development approval then the building certifier will confirm the persons 'self-assessment' as part of the building approval application process. However, for many other types of developments such as garages and carports there is not necessarily this informal 'double-check'.

The reforms proposed by this Bill would put in place a **voluntary** process for people who would like to have their 'self-assessment' confirmed by a licensed person and have a record of this decision. This record is then available for a variety of future uses. For instance a prospective buyer would have 'peace of mind' that the exempt single dwelling they are looking at buying is an exempt development or that the double garage is exempt development.

The main objectives of the Bill are to:

- introduce a range of licensed people who can certify if a proposed development is exempt from needing development approval and/or building approval
- provide a legislative mechanism for applicants to obtain formal certification of the exempt status of a proposed development
- provide new business opportunities to licensed people.

The reforms will be delivered through both the Building Act and the Planning and Development Act. An exemption assessment notice under the Building Act will be called an **exemption assessment B** notice and a notice issued under the Planning and Development Act an **exemption assessment D** notice.

For some proposed developments, such as a garage, a proponent may seek both an exemption assessment **B** and **D** notice while for most single dwellings an exemption assessment **D** notice could be obtained.

Old provisions and new provisions

Below is an explanation of what the existing basic provision in the legislation does and what the proposed change is.

When it is appropriate relevant provisions will be grouped together and the effect of the provisions explained. For instance clauses 6 – 12 amends existing provisions that provide the framework to apply for building approval so that it incorporates the new reform exemption assessment notice and also requires the building surveyor to formally advise an applicant if building approval is not required. Clause 5 inserts a new part into the Act. This part includes a number of sections which provides the legislative framework to allow applicants to apply for a notice stating a development is exempt from application of all or part of the Building Act. However, some provisions (on their own) like clause 2 are not relevant to the reforms and are either consequential amendments or legislative in nature. These types of provisions are not covered in this guide. This is because they are not essential to understanding the objectives of the Bill. These provisions will be covered in the explanatory statement when the exposure draft is finalised and the Bill is presented to the Legislative Assembly.

The guide follows the basic structure of the exposure draft:

- Building Act
- COLA
- P&D Act.

Building Act 2004

Exemption assessments

Clause 5 New part 2A

Clause 5 includes those provisions that set out the parameters to apply for an **exemption assessment B** notice, what information must be provided in the application and what happens if requested information is not provided. These are the core provisions for **exemption assessment B** notices.

New section 13 sets out the purpose of **exemption assessment B** notices.

New section 14 sets out the requirements of an application for an **exemption assessment B** notice including the need for the application to have a number of copies of the plan of the proposed development. Other things that must be included can be prescribed by regulation.

New section 14A provides that if an application has been made to the building surveyor for an **exemption assessment B** notice, and they agree to do the assessment then the building surveyor must do the assessment and issue a notice. The notice must say what is exempt (and why) and what is not exempt (and why). A copy of the notice must be supplied to ACTPLA.

Because the building surveyor carries responsibility for the decision they need to have access to information that will help them determine the application. The provisions seek to introduce a reasonable process for both the building surveyor and applicant. The process is similar to that used in existing building/development approval application processes.

New section 14B, section 14C and section 14D set out the parameters for a building surveyor to ask for further information, the form and timeframes for requesting further information and what happens if the requested information is not provided.

New section 14E seeks to ensure that a proponent is not forced to have an exemption assessment notice when applying for building approval. Asking for an exemption assessment notice is not mandatory. A building surveyor is already (and will continue to be) required to assess if a proposed development is exempt development. However, if a proponent has obtained and supplies an exemption assessment notice, the building surveyor must use it and can not re-do the work and charge for it.

Clause 14 – 20 (inclusive) provide for the effective operation of the processes for **exemption assessment B** notices. They have similar requirements as those that already exist for normal building approval processes.

Building approval applications

Clause 6 New section 26 (2) (e) and (f)

Existing section 26 sets out the requirements for applying for building approval and includes the things that must be included in the application.

The proposed new sections 26 (2) (e) and (f) will insert the requirements that an application must also include, if obtained, a copy of the development approval and a copy of the **exemption assessment D** notice.

Requiring a copy of the DA to be included in the building approval application will help the building certifier to determine the application.

Approval requirements

Clause 9 New section 29 (1) (g) (ia)

Existing section 29 (1) states the things a building certifier must consider when determining a building approval application. Section 29 (1) requires the building certifier to determine if the proposed works are exempt and if not then a development approval needs to be attached to the application.

Proposed new section 29 (1) (g) (ia) provides that the building certifier must also consider the new **exemption assessment D** notice if one has been provided.

A proponent does not have to apply for an **exemption assessment D** notice. A building certifier will determine if the development is exempt as part of the building approval process.

Clause 11 New section 29 (6A)

The proposed provision inserts a new requirement for approvals. Because the proposed reforms seek to introduce the use of exemption assessment notices, a lifespan has been placed on their use. This is similar to building approvals and development approvals. The lifespan of an **exemption assessment B** notice is 3 months from the date it is issued. This means that an applicant can use the assessment notice for 3 months in other planning approvals processes. If no other planning approvals are required then the lifespan is not relevant.

A lifespan is considered necessary because other people will be relying on the information in the notice to determine planning approvals. The information needs to be current and accurate. Therefore, an **exemption assessment B** notice should be sought close to the date that it will be used in other planning approval processes.

Notice if building approval not required

Clause 13 New section 27A

Existing provisions in the Act require the building surveyor to issue building approval for those applications that they determine or assess as requiring building approval. However, there is no provision that requires the building surveyor to provide anything in writing if they determine that no building approval is required. This leaves the applicant with no written evidence of this decision or assessment. The proposed provision will require a building surveyor to tell an applicant in writing that their development does not need building approval.

Construction Occupations (Licensing) Act 2004

What is a works assessor?

Clause 24 Section 14A (3), definition of works assessment work

Existing section 14A (refer COLA – Part 1) provides a definition of what works assessment work is. Currently this would only include works under the Unit Titles Act.

Proposed new section 14A expands this definition to include works assessment work for exemption assessments under the Building Act and the Planning and Development Act.

The license requirements for a works assessor to do works assessment work under the Planning and Development Act will be defined in the regulation.

Planning and Development Act 2007

Exemption assessments

Clause 31 New division 7.2.6A

Clause 31 includes provisions setting out what is required to apply for an ***exemption assessment D*** notice, what information must be provided in the application and what happens if requested information is not provided. These are the core provisions for ***exemption assessment D*** notices.

New section 135A sets out the purpose of ***exemption assessment D*** notices.

New section 135B sets out the requirements of an application for an ***exemption assessment D*** notice including the need for the application to have a number of copies of the plan of the proposed development. Other things that must be included can be prescribed by regulation.

New section 135C provides that if an application has been made to a works assessor for an ***exemption assessment D*** notice, and they agree to do the assessment then the works assessor must do the assessment and issue a notice. The notice must say what is exempt (and why) and what is not exempt (and why). A copy of the notice must be provided to ACTPLA.

Because the works assessor is responsible for the decision they need to have access to information that will help them determine the application. The provisions seek to introduce a reasonable process for both the works assessor and applicant. The process is similar to that used in the existing building/development approval application processes.

New section 135D, section 135E and section 135F set out the parameters for a works assessor to ask for further information, the form and timeframes for requesting further information and what happens if required information isn't provided.

New section 136G seeks to ensure that a proponent is not forced to have an exemption assessment notice when applying for development approval. Asking for an exemption assessment notice is not mandatory. If a proponent has obtained and supplies an exemption assessment notice the person making the decision (that is the ACT Planning and Land Authority for a development approval or a building surveyor for building approval) must use it.

Clause 32 Offence to develop without approval

Existing section 199 sets out defences for people who use and act on certain approvals on the understanding that they are accurate and lawful.

The proposed provision expands the defence, to include an ***exemption assessment D*** notice.

Consultation

The exposure period will run from 22 February to 18 March 2010.

Comments citing specific provisions should be sent by email to planning.systemreform@act.gov.au by Thursday 18 March 2010.

