



Australian Capital Territory

Construction Occupations Legislation Amendment Act 2006

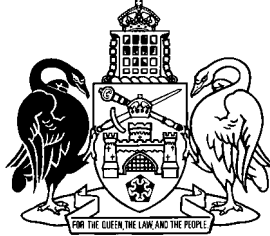
A2006-15

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J2005-21

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



Australian Capital Territory

Construction Occupations Legislation Amendment Act 2006

A2006-15

An Act to amend the law relating to construction occupations, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2005-21

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

1 Name of Act

This Act is the *Construction Occupations Legislation Amendment Act 2006*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Building Act 2004

[1.1] Section 29 (3)

substitute

(3) For subsection (1)—

- (a) a building or a building as altered does not fail to comply with this Act only because the plans for the building or alteration contain something to which the building code does not apply; and
- (b) a building product, construction method, design, component or system connected with a building is taken to comply with the building code if the product, method, design, component or system complies with a recognised standard.

[1.2] Section 61 (h)

omit

the construction occupations registrar finds, on inspection that—

substitute

the construction occupations registrar is satisfied, on reasonable grounds, that—

[1.3] Part 8 heading

substitute

Part 8 Building code and recognised standards

[1.4] New section 139A

in part 8, insert

139A Recognised standards

- (1) The Minister may declare a document to be a recognised standard for this Act.
- (2) However, the Minister must not make a declaration under subsection (1) in relation to a document unless the document has been approved (however described)—
 - (a) by or on behalf of the Australian Building Codes Board; or
 - (b) under a system or scheme (however described) administered or approved (however described) by the Australian Building Codes Board; or
 - (c) as prescribed by regulation.

- (3) A declaration under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) In this section:

Australian Building Codes Board includes an entity prescribed by regulation.

[1.5] Dictionary, new definition of *recognised standard*

insert

recognised standard means a document declared to be a recognised standard under section 139A (1).

**Part 1.2 Construction Occupations
(Licensing) Act 2004**

[1.6] Section 56 (1)

substitute

- (1) A notice (a *disciplinary notice*) given to a licensee or former licensee must—
 - (a) state each disciplinary ground for which the notice is given; and
 - (b) for each disciplinary ground to which section 54 (1) (a) applies—state the relevant contravention or, if a short description is prescribed by regulation for the contravention, state the short description; and
 - (c) for each disciplinary ground to which section 54 (1) (a) does not apply—state details of the ground sufficient to allow a reasonable person to identify the circumstances that gave rise to the ground; and
 - (d) tell the person that the person may, not later than 12 business days after the day the person is given the notice, do either or both of the following:
 - (i) give a written response to the registrar about the matters in the notice;

- (ii) ask the registrar to hold an inquiry under division 5.3 (Disciplinary inquiries) in relation to all or stated disciplinary grounds.

Note Under s 60 (5), if the person asks the registrar to hold an inquiry in relation to a disciplinary ground and the registrar decides not to hold an inquiry in relation to that disciplinary ground, the registrar must not take disciplinary action in relation to that disciplinary ground.

[1.7] Section 60 (3) and (4)

substitute

- (3) In making a decision about whether to take disciplinary action in relation to the licensee or former licensee and, if the registrar decides to take disciplinary action, what disciplinary action to take, the registrar—
 - (a) must take into account any response given to the registrar in accordance with the disciplinary notice; and
 - (b) may hold an inquiry under division 5.3 (Disciplinary inquiries) in relation to all or any of the disciplinary grounds stated in the disciplinary notice; and
 - (c) if the registrar holds an inquiry under division 5.3—must have regard to evidence given at the inquiry; and
 - (d) if the registrar decides to take disciplinary action—must consider the matters mentioned in section 62 (1).
- (4) To remove any doubt, the Legislation Act, section 146 (1) applies to subsection (3) (b).

Note The Legislation Act, s 146 (1) deals with the meaning of *may*.

- (5) Despite subsection (3) (b), the registrar must not take disciplinary action in relation to a disciplinary ground stated in the disciplinary notice if—

- (a) the licensee or former licensee asked the registrar in accordance with the disciplinary notice to hold an inquiry under division 5.3 in relation to that ground; and
 - (b) the registrar decided not to hold an inquiry under the division in relation to that ground.
- (6) If the registrar decides to take disciplinary action in relation to the licensee or former licensee—
- (a) the registrar must, by written notice given to the licensee or former licensee, tell the licensee or former licensee about the decision; and
 - (b) the decision takes effect when the licensee or former licensee is given the notice or, if the notice states a later time of effect, at that time.

[1.8] Section 62 (1)

omit everything before paragraph (a), substitute

- (1) In deciding what disciplinary action to take in relation to the entity under section 61, the registrar must consider the following:

[1.9] Section 82 (3)

substitute

- (3) It is a defence to a prosecution for an offence against subsection (2), if the partner proves that—
- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

- (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

[1.10] Section 83 (2)

substitute

- (2) Each partner in a partnership commits an offence if the partnership—
 - (a) advertises that the partnership provides, or will provide, a service in a construction occupation or occupation class; and
 - (b) does not include the following in the advertisement:
 - (i) the partnership's name as recorded on the partnership's licence;
 - (ii) the partnership's licence number.

Maximum penalty: 5 penalty units.

Example of advertising required to include details

The examples in subsection (1) apply to this subsection.

Examples that are not advertising or are not required to include details

The examples in subsection (1) apply to this subsection.

- (3) It is a defence to a prosecution for an offence against subsection (2), if the partner proves that—
 - (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

(ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

(4) An offence against this section is a strict liability offence.

[1.11] Section 84 (1) (b) (ii)

substitute

(ii) if an endorsement on the licence is required for the person to be authorised to provide the service provided and the licence does not have that endorsement.

[1.12] Section 84 (2) and (3)

substitute

(2) Each partner in a partnership commits an offence if the partnership—

(a) provides a service in a construction occupation or occupation class; and

(b) either—

(i) is not licensed in the occupation or class; or

(ii) if an endorsement on the licence is required for the partnership to be authorised to provide the service provided and the licence does not have that endorsement.

Maximum penalty: 50 penalty units.

(3) This section does not apply if—

(a) an individual provides the service, whether directly or for an entity; and

(b) the individual is working under the supervision of a licensee whose licence authorises the provision of the service; and

- (c) the licensee is not required by a condition or endorsement on the licence to provide the service as an employee or under supervision; and
 - (d) a regulation allows the service to be provided by an individual without a licence if provided under the supervision of a licensee.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.
- (5) An offence against this section is a strict liability offence.

[1.13] Section 85 (1) (a)

omit

employee (the

substitute

employee (also the

[1.14] Section 85 (2)

substitute

- (2) Each member of a partnership commits an offence if—
- (a) a partner engages someone else (the *worker*), or allows an employee of the partnership (also the *worker*), to provide a construction service for the partnership; and
 - (b) the worker is not licensed to provide the service; and
 - (c) the partner is reckless about whether the worker is licensed to provide the service.

Maximum penalty: 50 penalty units.

- (3) This section does not apply to an entity that provides a service if—
- (a) the service is provided under the supervision of a licensee; and
 - (b) the licensee is not required by a condition or endorsement on the licence to provide the service as an employee or under supervision; and
 - (c) a regulation allows the service to be provided by an individual without a licence if provided under the supervision of a licensee.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
- (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

- (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

[1.15] Section 86 (4)

substitute

- (4) It is a defence to a prosecution for an offence against subsection (2) if the partner proves that—
 - (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

[1.16] Section 87 (5)

substitute

- (5) It is a defence to a prosecution for an offence against subsection (2) or (4) if the partner proves that—
 - (a) the partner did not know about the contravention of the subsection involved in the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

[1.17] New part 14

insert

**Part 14 Transitional—Construction
Occupations Legislation
Amendment Act 2006**

154 Transitional—conduct engaged in before 1/9/04

- (1) Part 4 (Rectification orders and other obligations on licensees) and part 5 (Automatic licence suspension and disciplinary action) apply to conduct engaged in before 1 September 2004 as if—
 - (a) a reference to a construction service included a reference to a construction service provided before 1 September 2004; and
 - (b) a reference to this Act included a reference to a related Act; and
 - (c) a reference to a licensee or former licensee included a reference to a person who was a registered construction practitioner under the *Construction Practitioners Registration Act 1998* (whether or not the person is also a licensee or former licensee for this Act); and
 - (d) all other necessary changes were made; and
 - (e) any changes prescribed by regulation were made.
- (2) In this section:
related Act means any of the following Acts:
 - (a) the *Construction Practitioners Registration Act 1998*; or
 - (b) an operational Act; or
 - (c) the *Building Act 1972*; or

- (d) the *Energy and Water Act 1988*; or
- (e) the *Gas Act 1992*; or
- (f) the *Plumbers, Drainers and Gasfitters Board Act 1982*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (3) This section expires on 31 August 2014.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

[1.18] Dictionary, new definitions

insert

conduct means an act or an omission to do an act.

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act.

[1.19] Further amendments, mentions of *person* etc

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
1	section 17 (1), note 3	A person's	An entity's
2	section 51 (1)	a person who	an entity that
3	section 51 (1)	the person	the entity
4	section 51 (2)	person's	entity's
5	section 52 (1)	a person who	an entity that
6	section 52 (1)	the person	the entity

column 1 item	column 2 provision	column 3 omit	column 4 substitute
7	section 52 (2)	person's	entity's
8	section 59 (3)	person	entity
9	section 62 (1) (a)	person	entity
10	section 62 (1) (e) to (g)	person	entity
11	section 62 (1) (g) and (i)	person's	entity's
12	section 88 (1) (a) and (b)	person	entity
13	section 89, definition of <i>licensee</i>	a person who	an entity that
14	section 109 (1) (a)	a person	an entity
15	section 109 (2) and (3) (a)	person	entity
16	section 111 (2)	A person	An entity
17	section 111 (2)	the person	the entity
18	section 111 (3)	a person	an entity
19	section 111 (3) (a)	the person	the entity
20	section 124 (3)	person	entity
21	dictionary, definition of <i>former licensee</i>	a person who	an entity that

Part 1.3 Construction Occupations (Licensing) Regulation 2004

[1.20] Section 32

substitute

32 Considerations for endorsing under s 30 and s 31 etc

- (1) In deciding whether to endorse an individual's licence under section 30 or section 31, the registrar must consider the following:
 - (a) the individual's physical ability or skill;
 - (b) the individual's qualifications, training and knowledge;
 - (c) the extent, quality and relevance of the individual's experience, and how recent that experience is, in doing similar work to, or work that is equally complex as, the work to be allowed by the proposed endorsement;
 - (d) whether any disciplinary action has ever been taken in relation to the individual;
 - (e) whether the individual has incurred any demerit points that have not been deleted from the register.
- (2) In deciding whether to endorse the licence of a corporation or partnership, the registrar must consider the following:
 - (a) whether any disciplinary action has ever been taken in relation to the entity;
 - (b) whether the entity has incurred any demerit points that have not been deleted from the register.
- (3) However, the registrar may endorse the licence of the corporation or partnership only if nominees of the entity have licences that are endorsed in the way applied for.

(4) The registrar may consider anything else that is relevant.

[1.21] Schedule 1, part 1.6, new item 3

insert

3 irrigation plumber installation of irrigation networks and related equipment

[1.22] Schedule 1, part 1.6, items 3 to 5

renumber as items 4 to 6

[1.23] Further amendments, mentions of *person* etc

column 1 item	column 2 provision	column <i>omit</i>	column 4 <i>substitute</i>
1	section 17 (2)	A person	An entity
2	section 17 (2)	the person	the entity
3	section 17 (3)	a person	an entity
4	section 17 (3)	the person	the entity
5	section 17 (3)	person's	entity's
6	section 18 (2)	individual	applicant
7	section 18 (2)	person	applicant

Part 1.4 Electricity Safety Act 1971

[1.24] Section 9, definition of *relevant safety standard*

substitute

relevant safety standard, for an article of electrical equipment, means the safety standard stated under section 11A (3) for the article.

[1.25] Section 11

substitute

11 Meaning of *prescribed article of electrical equipment*

In this Act:

prescribed article of electrical equipment—

- (a) means an article of electrical equipment declared under section 11A; but
- (b) does not include an article of electrical equipment declared under section 11B.

11A Declaration of prescribed articles of electrical equipment

- (1) The planning and land authority may declare that an article of electrical equipment is a prescribed article of electrical equipment.
- (2) However, the planning and land authority must not make a declaration about an article of electrical equipment under subsection (1) unless satisfied that there are reasonable grounds for believing that—
 - (a) because of its design or construction, the article is, or is likely to become, unsafe to use; and
 - (b) because of the risk of death or injury to people or the risk of damage to property, the article should be declared to be a prescribed article of electrical equipment.
- (3) A declaration under subsection (1) about an article of electrical equipment must state the safety standard that the article must comply with.
- (4) Without limiting subsections (1) and (3), the planning and land authority may declare an article of electrical equipment under subsection (1), or state the safety standard that an article of electrical

equipment must comply with, by adopting a law of a State, as in force at a particular time or from time to time, under which the article or safety standard is prescribed.

- (5) A declaration under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

11B Declaration of articles not prescribed articles of electrical equipment

- (1) The planning and land authority may declare that an article of electrical equipment is not a prescribed article of electrical equipment.
- (2) Without limiting subsection (1), the planning and land authority may declare an article of electrical equipment under subsection (1) by adopting a law of a State, as in force at a particular time or from time to time, under which the article is prescribed.
- (3) A declaration under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

[1.26] Section 21 (1) (a)

omit

section 11

substitute

section 11A and section 11B

[1.27] Section 61 (1) (a) and (b)

substitute

- (a) under section 11A (1) declaring that an article of electrical equipment is a prescribed article of electrical equipment;

- (b) under section 11A (3) stating the safety standard that an article of electrical equipment must comply with;

[1.28] Dictionary, note 2

insert

- State

[1.29] Dictionary, definition of *prescribed article of electrical equipment*

substitute

prescribed article of electrical equipment—see section 11.

Part 1.5 Gas Safety Regulation 2001

[1.30] Section 7 (2)

omit everything before paragraph (a), substitute

- (2) The planning and land authority may exempt a person from the application of subsection (1) (a) to the installation of an appliance if the authority believes, on reasonable grounds, that—

[1.31] Section 9 (2)

omit everything before paragraph (a), substitute

- (2) The planning and land authority may exempt a person from the application of subsection (1) (a) to the installation of an appliance if the authority believes, on reasonable grounds, that—

[1.32] Section 17 heading

omit

Chief executive

substitute

Planning and land authority

[1.33] Section 17A (6)

substitute

- (6) The planning and land authority must make a copy of the register available for public inspection during ordinary office hours at the authority's office and at any other place decided by the authority.

[1.34] Sections 18F (b) and 18H (a)

omit

chief executive's

substitute

planning and land authority's

[1.35] Further amendments, mentions of *chief executive*

omit

chief executive

substitute

planning and land authority

in

- section 7 (3)
- section 9 (3)
- section 12 (2) and (4)
- section 17 (1) and (2)

- section 17A (1) and (4)
- section 17B (2) and (3)
- section 18C heading, (1) (b) and (2) (b)
- section 18D heading, (1) (b) and (2) (b)
- section 18E (1), (3) and (4)
- section 18G (2)
- section 19
- section 19A

Part 1.6 Water and Sewerage Act 2000

[1.36] Section 7

substitute

7 Application for plan approval

The owner of premises may apply to a certifier for approval of a plan in relation to sanitary drainage work, sanitary plumbing work or water supply plumbing work.

[1.37] Section 15 (3)

omit

MP52

substitute

the plumbing code

[1.38] New section 46

insert

46 Plumbing code

- (1) The Minister may declare a document to be the plumbing code for this Act.
- (2) A declaration under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

[1.39] Dictionary, definition of *MP52*

omit

[1.40] Dictionary, new definition of *plumbing code*

insert

plumbing code means a document declared under section 46.

[1.41] Dictionary, definition of *sanitary drain*, paragraph (b) (ii)

substitute

- (ii) is, or is intended to become, part of a sewerage network.

[1.42] Dictionary, definition of *water service*, paragraph (c)

substitute

- (c) does not include—
 - (i) a fire sprinkler system; or
 - (ii) part of a water network, or water supply pipework that is intended to become part of a water network.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 February 2006.

2 Notification

Notified under the Legislation Act on 6 April 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Construction Occupations Legislation Amendment Bill 2006, which was passed by the Legislative Assembly on 30 March 2006.

Clerk of the Legislative Assembly

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