



Australian Capital Territory

# Construction Occupations Legislation Amendment Act 2010 (No 2)

A2010-32

## Contents

---

	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
4	Legislation repealed	2
<b>Part 2</b>	<b>Building Act 2004</b>	
5	Building approval applications New section 26 (2) (g)	3
6	New section 26 (4)	3
7	Part 8 heading	3
8	New division 8.3	3
9	Dictionary, new definition of <i>energy efficiency certificate</i>	5

---

J2010-274

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

		Page
<b>Part 3</b>	<b>Civil Law (Sale of Residential Property) Act 2003</b>	
10	Meaning of <i>required documents</i> Section 9 (3)	6
11	Definitions for pt 3 Section 20, definition of <i>energy efficiency rating guidelines</i>	6
12	Section 20, definition of <i>energy efficiency rating statement</i>	6
13	Sections 20A and 21	6
14	Dictionary, definition of <i>energy efficiency rating guidelines</i>	6
15	Dictionary, definition of <i>energy efficiency rating statement</i>	7
<b>Part 4</b>	<b>Construction Occupations (Licensing) Act 2004</b>	
16	What is a <i>construction occupation</i> ? New section 7 (ca)	8
17	New section 8A	8
18	New section 52A	9
19	Section 53 heading	10
20	Section 53 (1)	10
21	Construction occupations registrar New section 103 (2) (ba)	11
22	New section 104A	11
23	New parts 11AA and 11AB	12
24	New part 17	16
25	Dictionary, note 2	18
26	Dictionary, new definitions	19
<b>Part 5</b>	<b>Construction Occupations (Licensing) Regulation 2004</b>	
27	Licence applications—Act, s 17 (3) Section 5 (h)	20
28	Section 8 heading	21
29	Section 8 (1)	21
30	Particulars in register Section 9 (1) (c)	21

## Contents

---

	Page	
31	New section 16B	22
32	New section 21A	23
33	New section 31A	23
34	Considerations for endorsing under s 30 and s 31 etc Section 32 (1)	24
35	New section 37B	24
36	Classes of construction occupation licence and functions Schedule 1, new part 1.3A	24
37	Reviewable decisions Schedule 4, new item 24A	25
<b>Part 6</b>	<b>Residential Tenancies Act 1997</b>	
38	Dictionary Section 2, note 1	26
39	Dictionary, definition of <i>energy efficiency rating statement</i>	26





Australian Capital Territory

# Construction Occupations Legislation Amendment Act 2010 (No 2)

**A2010-32**

---

An Act to amend legislation about construction occupations, and for other purposes

---

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Construction Occupations Legislation Amendment Act 2010 (No 2)*.

### 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

This Act amends the following legislation:

- *Building Act 2004*;
- *Civil Law (Sale of Residential Property) Act 2003*;
- *Construction Occupations (Licensing) Act 2004*;
- *Construction Occupations (Licensing) Regulation 2004*;
- *Residential Tenancies Act 1997*.

### 4 Legislation repealed

The *Civil Law (Sale of Residential Property) Energy Efficiency Rating) Guidelines Determination 2009 (DI2009-124)* is repealed.

## Part 2 Building Act 2004

### 5 Building approval applications New section 26 (2) (g)

*after note 1, insert*

- (g) if required under an energy efficiency provision—be accompanied by an energy efficiency certificate.

### 6 New section 26 (4)

*insert*

- (4) In this section:

*energy efficiency provision*—see section 139C (4).

### 7 Part 8 heading

*substitute*

## Part 8 Building code, recognised standards etc

### 8 New division 8.3

*insert*

## Division 8.3 Energy efficiency certificates

### 139C Energy efficiency certificates

- (1) This section applies if a person is required to provide a certificate or other document (an *energy efficiency certificate*) in relation to an energy efficiency provision.

- (2) An energy efficiency certificate must be prepared—
- (a) by a building assessor; and
  - (b) in accordance with—
    - (i) a code of practice (if any) in relation to the certificate; or
    - (ii) if a regulation provides for energy efficiency certificates—the regulation.
- (3) In this section:

*code of practice* means a code of practice approved under the *Construction Occupations (Licensing) Act 2004*, s 104A.

*energy efficiency provision* means a provision of this Act or the building code, prescribed by regulation, that requires building work, or proposed building work, or parts of building work, or parts of proposed building work, to comply with stated energy efficiency requirements.

*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).

### **139D Conflict of interest—building assessors**

- (1) A building assessor must not prepare an energy efficiency certificate for building work, in relation to a building, if the building assessor—
- (a) has a legal or equitable interest in the building; or
  - (b) has a financial interest in the building; or
  - (c) is the certifier for the building work.



(2) However, a building assessor who has a conflict of interest mentioned in subsection (1) (a) or (b) may prepare an energy efficiency certificate if—

(a) the certificate is for—

- (i) proposed building work; or
- (ii) building work in relation to a building or part of a building that must not be occupied under section 76 (Occupation and use of buildings); and

**Example—part of building**

- a unit in a multi-unit development
- an extension of an existing building

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) the building assessor gives the registrar a declaration of the assessor's conflict of interest.

*Note* If a form is approved under s 128 for the declaration, the form must be used.

## **9 Dictionary, new definition of *energy efficiency certificate***

*insert*

*energy efficiency certificate*—see section 139C (1).

## Part 3 Civil Law (Sale of Residential Property) Act 2003

### 10 Meaning of *required documents* Section 9 (3)

*omit*

subsection (1) (h) (ii), (iii) and (iv)

*substitute*

subsection (1) (h) (iii) and (iv)

### 11 Definitions for pt 3 Section 20, definition of *energy efficiency rating guidelines*

*omit*

### 12 Section 20, definition of *energy efficiency rating statement*

*substitute*

*energy efficiency rating statement*—see the *Construction Occupations (Licensing) Act 2004*, section 123AC.

### 13 Sections 20A and 21

*omit*

### 14 Dictionary, definition of *energy efficiency rating guidelines*

*omit*

**15 Dictionary, definition of *energy efficiency rating statement***

*substitute*

*energy efficiency rating statement*, for part 3 (Energy efficiency ratings)—see the *Construction Occupations (Licensing) Act 2004*, section 123AC.

## Part 4 Construction Occupations (Licensing) Act 2004

### 16 What is a *construction occupation*? New section 7 (ca)

*insert*

(ca) building assessor;

### 17 New section 8A

*insert*

#### 8A What is a *building assessor*?

- (1) A *building assessor* is an entity that provides, has provided or proposes to provide a building assessment service.
- (2) A *building assessment service* is the doing of building assessment work.
- (3) In this section:

*building assessment work* means preparing and providing—

- (a) an energy efficiency certificate under the *Building Act 2004*; or
- (b) an energy efficiency rating statement; or
- (c) a statement, certificate or other document prescribed by regulation.

*Note* *Energy efficiency certificate*—see the *Building Act 2004*, s 139C.

**18 New section 52A**

*insert*

**52A Suspension of licence—public safety**

- (1) This section applies if a licensed construction practitioner engages in conduct that the registrar decides, on reasonable grounds, presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to property.

**Examples**

- 1 A licensed construction practitioner is licensed to undertake demolition work that involves the removal of asbestos. An inspection of building work being undertaken by the practitioner reveals that the practitioner is employing methods of demolition that are inconsistent with the standards for managing asbestos, and has left asbestos exposed in an area which is access by members of the public and where fibres can be carried into the surrounding environment. The registrar decides to suspend the practitioner's licence to prevent the practitioner from undertaking further work until the practitioner's methods are assessed and corrected.
- 2 A licensed builder has built 7 of 11 proposed dual-occupancy residences. An inspection of 1 of the residences reveals that no fire wall has been built between the 2 occupancies, inconsistent with the building approval. The registrar decides to suspend the builder's licence to inspect the other built residences and prevent other residences being built without a fire wall.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The licensed construction practitioner's licence is suspended when the registrar gives the practitioner notice—
- (a) of the nature of the conduct; and
  - (b) of the nature of the risk; and
  - (c) that the practitioner may apply in writing to the registrar to revoke the suspension.

- (3) However, during the suspension the registrar may allow the licensed construction practitioner to undertake construction work, within the scope of the licensee's licence, necessary to comply with a rectification order.
- (4) The registrar may give the notice orally, in writing or in electronic form.
- (5) However, if the registrar gives the notice orally, the registrar must give the notice in writing or in electronic form within 2 days after giving the notice orally.

**19 Section 53 heading**

*substitute*

**53 End of licence suspension**

**20 Section 53 (1)**

*substitute*

- (1) This section applies if the licence of a construction practitioner has been suspended under 1 or more of the following sections:
  - section 48 (Automatic suspension of individual licence);
  - section 49 (Automatic suspension of corporate licence);
  - section 50 (Automatic suspension of partnership licence);
  - section 51 (Automatic suspension licence—construction occupations);
  - section 52 (Automatic suspension of licence—occupation classes);
  - section 52A (Suspension of licence—public safety).

**21 Construction occupations registrar  
New section 103 (2) (ba)**

*insert*

- (ba) building assessment;

**22 New section 104A**

*insert*

**104A Codes of practice**

- (1) The registrar may, in writing, approve a code of practice for—
- (a) a construction occupation; or
  - (b) a class of construction occupation; or
  - (c) a construction service.

*Note* Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (2) An approved code of practice may consist of a code, standard, rule, specification or provision relating to the construction occupation or class, or a construction service, and may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

*Note* A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

- (3) An approved code of practice is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

*Note 2* An amendment or repeal of an approved code of practice is also a disallowable instrument (see Legislation Act, s 46 (2)).

**23 New parts 11AA and 11AB**

*before part 11A, insert*

**Part 11AA Information sharing**

**123AA Definitions—pt 11AA**

In this part:

*public safety agency* means any of the following:

- (a) the registrar;
- (b) the chief executive responsible for this Act or an operational Act;
- (c) an inspector appointed under an operational Act;
- (d) the chief executive responsible for the *Emergencies Act 2004*;
- (e) the commissioner and chief officers appointed under the *Emergencies Act 2004*;
- (f) an inspector appointed under the *Emergencies Act 2004*;
- (g) the chief executive responsible for the *Work Safety Act 2008*;
- (h) the commissioner appointed under the *Work Safety Act 2008*;
- (i) an inspector appointed under the *Work Safety Act 2008*;
- (j) an agency prescribed by regulation.

*public safety information* means information in relation to a situation that presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to property, that is disclosed to, or obtained by, a public safety agency because the agency is, or has been, a public safety agency.



**123AB Sharing public safety information**

- (1) A public safety agency may give public safety information to another public safety agency.
- (2) A public safety agency may request public safety information from another public safety agency.
- (3) A public safety agency that receives a request under subsection (2) may comply with the request.
- (4) However, a public safety agency (the *giving agency*) must not give public safety information to another public safety agency (the *receiving agency*) unless the giving agency is satisfied that the receiving agency will use the information to exercise a function given to the receiving agency under a territory law.

**Part 11AB Energy efficiency rating statements****123AC Meaning of *energy efficiency rating statement***

In this Act:

*energy efficiency rating statement* means a statement prepared in accordance with section 123AD.

**123AD Energy efficiency rating statement**

- (1) This section applies if a person is required to give an energy efficiency rating statement under a territory law.

**Examples**

- the requirement to give an energy efficiency rating statement under the *Civil Law (Sale of Residential Property) Act 2003*, s 23

- the requirement to give an energy efficiency rating statement under the *Residential Tenancies Act 1997*, s 12

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) An energy efficiency rating statement must be prepared—
- (a) by a building assessor; and
  - (b) in accordance with—
    - (i) a code of practice (if any) in relation to the statement; or
    - (ii) if a regulation provides for energy efficiency rating statements—the regulation.

#### **123AE Conflict of interest—building assessors**

- (1) A building assessor must not prepare an energy efficiency rating statement for a building if the building assessor is—
- (a) for a statement under the *Civil Law (Sale of Residential Property) Act 2003*—
    - (i) the seller, a family member of the seller under that Act, or the seller’s agent or lawyer; or
    - (ii) a member of a firm that the seller under that Act, or the seller’s agent or lawyer, is a member of; or
    - (iii) someone else carrying on a business if the seller under that Act, or the seller’s agent or lawyer or a family member of the seller, has a direct or indirect right to participate in the profits of the business; or
  - (b) for a statement under the *Residential Tenancies Act 1997*—
    - (i) the lessor, a family member of the lessor under that Act, or the lessor’s agent or lawyer; or

- (ii) a member of a firm that the lessor under that Act, or the lessor's agent or lawyer, is a member of; or
  - (iii) someone else carrying on a business if the lessor under that Act, or the lessor's agent or lawyer or a family member of the lessor, has a direct or indirect right to participate in the profits of the business; or
- (c) in any case—a person who—
  - (i) has a legal or equitable interest in the building; or
  - (ii) has a financial interest in the building.
- (2) However, a building assessor who has a conflict of interest mentioned in subsection (1) may prepare an energy efficiency rating statement if—
  - (a) the building assessor prepares the statement for a new building; and
  - (b) the statement is based on an energy efficiency certificate in relation to the building; and
  - (c) the statement is consistent with the certificate; and
  - (d) the building assessor gives—
    - (i) the registrar a declaration of the assessor's conflict of interest; and
    - (ii) the seller or lessor a copy of the declaration.

*Note* If a form is approved under s 128 for the declaration, the form must be used.

- (3) In this section:

***energy efficiency certificate***—see the *Building Act 2004*, section 139C.

*family member*, of a person, means—

- (a) the person's domestic partner; or
- (b) the person's parent or child; or
- (c) the person's brother, sister, half-brother or half-sister; or
- (d) the parent or child of the person's domestic partner.

**24 New part 17**

*insert*

**Part 17 Transitional—energy efficiency rating statements**

**Division 17.1 General**

**161 Meaning of *commencement day*—pt 17**

In this part:

*commencement day* means the day this part commences.

**162 Transitional effect—Disapplication of Legislation Act, s 88**

This part is not a law to which the Legislation Act, s 88 (Repeal does not end effect of transitional laws etc) applies.

**163 Expiry—pt 17**

- (1) This part, other than division 17.3, expires 3 years after the commencement day.
- (2) Division 17.3 and this subsection expire 1 year after the commencement day.

## Division 17.2 Energy efficiency rating statements

### 164 Definitions—div 17.2

In this division:

*old energy efficiency rating* means an energy efficiency rating prepared before the commencement day in accordance with the *Civil Law (Sale of Residential Property) Act 2003*, part 3 as in force immediately before the commencement day.

*old energy efficiency rating statement* means an energy efficiency rating statement prepared before the commencement day in accordance with the *Civil Law (Sale of Residential Property) Act 2003*, part 3 as in force immediately before the commencement day.

### 165 Transitional—status of old energy efficiency rating

An old energy efficiency rating is taken, on and after the commencement day, to be an energy efficiency rating under the *Civil Law (Sale of Residential Property) Act 2003*.

### 166 Transitional—status of old energy efficiency rating statement

An old energy efficiency rating statement is taken, on and after the commencement day, to be an energy efficiency rating statement under this Act.

## Division 17.3 Registered assessors

### 167 Meaning of *registered assessor*—div 17.3

In this division:

*registered assessor* means an individual who the planning and land authority has registered by recording the individual's relevant details in the authority's register of energy assessors for the *Civil Law (Sale of Residential Property) Energy Efficiency Rating Guidelines Determination 2009* (DI2009-124) as in force immediately before the commencement day, if that registration has not lapsed, been invalidated, suspended or cancelled.

### 168 Transitional—status of registered assessor

A registered assessor is taken, on and after the commencement day, to be a licensed building assessor under this Act.

### 169 Transitional—endorsement of licence to operate software

- (1) This section applies if a registered assessor was registered to operate stated software immediately before the commencement day.
- (2) The registered assessor's building assessor's licence is taken, on and after the commencement day, to be endorsed to authorise the assessor to operate the stated software.

## 25 Dictionary, note 2

*insert*

- building code

**26 Dictionary, new definitions**

*insert*

*building assessor*—see section 8A.

*code of practice* means a code of practice approved under section 104A.

*energy efficiency rating statement*—see section 123AC.

*public safety agency*, for part 11AA (Information sharing)—see section 123AA.

*public safety information*, for part 11AA (Information sharing)—see section 123AA.

## Part 5

# Construction Occupations (Licensing) Regulation 2004

### 27 Licence applications—Act, s 17 (3) Section 5 (h)

*substitute*

- (h) if the application is for a licence as—
- (i) an asbestos assessor—the name of the insurer who will provide the insurance mentioned in section 16A (Eligibility to be asbestos assessor); or
  - (ii) a building assessor—the name of the insurer who will provide the insurance mentioned in section 16B (Eligibility to be building assessor); or
  - (iii) a building surveyor—the name of the insurer who will provide the insurance mentioned in section 17 (Eligibility to be building surveyor); or
  - (iv) a plumbing plan certifier—the name of the insurer who will provide the insurance mentioned in section 18 (Eligibility to be plumbing plan certifier); or
  - (v) a works assessor—the name of the insurer who will provide the insurance mentioned in section 18A (Eligibility to be works assessor);



**28 Section 8 heading**

*substitute*

**8 Term of licence for asbestos assessors, building assessors, building surveyors, plumbing plan certifiers and works assessors—Act, s 24****29 Section 8 (1)**

*substitute*

- (1) This section applies to a licence in the construction occupation of the following:
- (a) asbestos assessor;
  - (b) building assessor;
  - (c) building surveyor;
  - (d) plumbing plan certifier;
  - (e) works assessor.

**30 Particulars in register  
Section 9 (1) (c)**

*substitute*

- (c) if the licensee is—
- (i) an asbestos assessor—the name of the insurer who provides the insurance mentioned in section 16A (Eligibility to be asbestos assessor); or
  - (ii) a building assessor—the name of the insurer who provides the insurance mentioned in section 16B (Eligibility to be building assessor); or

- (iii) a building surveyor—the name of the insurer who provides the insurance mentioned in section 17 (Eligibility to be building surveyor); or
- (iv) a plumbing plan certifier—the name of the insurer who provides the insurance mentioned in section 18 (Eligibility to be plumbing plan certifier); or
- (v) a works assessor—the name of the insurer who provides the insurance mentioned in section 18A (Eligibility to be works assessor);

**31 New section 16B**

*insert*

**16B Eligibility to be building assessor**

- (1) An applicant for a licence as a building assessor is eligible for the licence only if the applicant satisfies the registrar that—
  - (a) the applicant is adequately insured; and
  - (b) if the class of licence applied for must be endorsed to authorise the licensee to operate stated software—the applicant can competently operate the software.

*Note* The registrar may determine software that a class of building assessor's licence must be endorsed to authorise the licensee to operate (see s 31A).
- (2) An applicant is *adequately insured* if the applicant has professional indemnity insurance that provides—
  - (a) indemnity against claims for breach of professional duty as a building assessor; and
  - (b) a minimum limit of indemnity of \$1 000 000 for a single claim.

**32 New section 21A**

*insert*

**21A Comply with code of practice**

- (1) This section applies to a licensee if a code of practice applies to the licensee's construction occupation or class of construction occupation, or to a construction service undertaken by the licensee.
- (2) The licensee must comply with the code of practice, including by using any form of report, certificate or other document (if any) required by the code of practice.

**33 New section 31A**

*insert*

**31A Endorsing building assessors licences for use of software—Act, s 22**

- (1) The registrar may, on application, endorse a building assessor's licence to authorise the licensee to operate stated software if satisfied that the licensee can competently operate the software.

*Note* If deciding whether to endorse a licence under this section, the registrar must consider the considerations in s 32.

- (2) The registrar may determine—
  - (a) that a class of building assessor's licence must be endorsed to authorise a licensee to operate software; and
  - (b) the software that the class of licence must be endorsed to authorise a licensee to operate.
- (3) A determination is a notifiable instrument.

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

**34 Considerations for endorsing under s 30 and s 31 etc  
Section 32 (1)**

*omit*

under section 30 or section 31,

*substitute*

under section 30, section 31 or section 31A,

**35 New section 37B**

*insert*

**37B Classes of building assessor**

The construction occupation of building assessor is divided into the classes in schedule 1, part 1.3A, column 2.

**36 Classes of construction occupation licence and functions  
Schedule 1, new part 1.3A**

*insert*

**Part 1.3A Building assessor**

column 1 item	column 2 construction occupation class	column 3 construction work
1	class A building assessor—energy efficiency	(a) the following building assessment work, based on an on-site inspection:  (i) preparing an energy efficiency certificate under the <i>Building Act 2004</i> ; or

column 1 item	column 2 construction occupation class	column 3 construction work
		(ii) preparing an energy efficiency rating statement.
		<i>Note</i> <b>Energy efficiency certificate</b> —see the <i>Building Act 2004</i> , s 139C.
		(b) doing anything allowed to be done under a class B licence
2	class B building assessor—energy efficiency	the following building assessment work, based on the plans of a building: (a) preparing an energy efficiency certificate under the <i>Building Act 2004</i> ; or (b) preparing an energy efficiency rating statement.
		<i>Note</i> <b>Energy efficiency certificate</b> —see the <i>Building Act 2004</i> , s 139C.

**37 Reviewable decisions  
Schedule 4, new item 24A**

*insert*

24A	31A	refuse to endorse building assessor’s licence	licensee
-----	-----	---	----------

## Part 6 Residential Tenancies Act 1997

### 38 Dictionary Section 2, note 1

*omit*

see the *Civil Law (Sale of Residential Property) Act 2003*, s 20

*substitute*

see the *Construction Occupations (Licensing) Act 2004*, s 123AC

### 39 Dictionary, definition of *energy efficiency rating statement*

*substitute*

*energy efficiency rating statement*—see the *Construction Occupations (Licensing) Act 2004*, section 123AC.

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 1 July 2010.

**2 Notification**

Notified under the Legislation Act on 1 September 2010.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---

I certify that the above is a true copy of the Construction Occupations Legislation Amendment Bill 2010 (No 2), which originated in the Legislative Assembly as the Construction Occupations Legislation Amendment Bill 2010 and was passed by the Assembly on 19 August 2010.

Acting Clerk of the Legislative Assembly

© Australian Capital Territory 2010