



Australian Capital Territory

Construction Occupations Legislation Amendment Act 2010

A2010-8

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
Part 2	Construction Occupations (Licensing) Act 2004	
3	Legislation amended—pt 2	3
4	What is a <i>construction occupation</i> ? New section 7 (j)	3
5	Section 9	3
6	What is a <i>plumbing plan certifier</i> ? Section 14 (1)	4
7	New section 14A	4

J2009-467

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

Contents

		Page
8	What is an <i>operational Act</i> ? Section 16	5
9	New section 26A	5
10	Sections 51 and 52	6
11	End of automatic licence suspension Section 53 (1), 4th and 5th dot points	7
12	Notification of cancellation of insurance Section 88 (1) (a)	7
13	Construction occupations registrar New section 103 (2) (ha)	7
14	Dictionary, new definitions	8
Part 3	Unit Titles Act 2001	
15	Legislation amended—pt 3	9
16	Unit title applications—general requirements Section 17 (5)	9
17	Unit title applications—approval New section 20 (4A)	10
18	New division 3.1A	11
19	Regulation-making power New section 181 (2)	16
20	New part 25	16
21	Dictionary, new definitions	18



Australian Capital Territory

Construction Occupations Legislation Amendment Act 2010

A2010-8

An Act to amend the *Construction Occupations (Licensing) Act 2004* and the
Unit Titles Act 2001

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

J2009-467

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

Part 1 Preliminary

1 Name of Act

This Act is the *Construction Occupations Legislation Amendment Act 2010*.

2 Commencement

- (1) This Act (other than part 3) commences on the day after its notification day.

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

- (2) Part 3 commences on a day fixed by the Minister by written notice.

Note 1 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 2 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).

Part 2 Construction Occupations (Licensing) Act 2004

3 Legislation amended—pt 2

This part amends the *Construction Occupations (Licensing) Act 2004*.

4 What is a *construction occupation*? New section 7 (j)

insert

- (j) works assessor.

5 Section 9

substitute

9 What is a *building surveyor*?

- (1) A *building surveyor* is an entity that provides, has provided or proposes to provide—
- (a) a building certification service; or
 - (b) a works assessment service.

Note **Works assessment service**—see s 14A (2).

- (2) A *building certification service* is the doing of building certification work.

- (3) In this section:

building certification work means anything a building certifier may or must do under the *Building Act 2004*.

Note The *Building Act 2004* requires a building surveyor to be appointed as a certifier before doing building certification work. It also restricts the building certification work certain building surveyors may do depending on their occupation class.

6 **What is a *plumbing plan certifier*?** **Section 14 (1)**

omit

provides

substitute

provides, has provided or proposes to provide

7 **New section 14A**

insert

14A **What is a *works assessor*?**

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

works assessment work means preparing and providing a unit title assessment report under the *Unit Titles Act 2001*.

Note ***Unit title assessment report***—see the *Unit Titles Act 2001*, s 22B.

8 **What is an *operational Act*?**
Section 16

insert

- *Unit Titles Act 2001*;

9 **New section 26A**

in division 3.1, insert

26A **Entitlement to act as works assessor**

- (1) A licensed construction practitioner is not entitled to perform services as a works assessor if the practitioner has an interest in the work (the ***works***) to be considered for the works assessment service.
- (2) For this section, a licensed construction practitioner has an ***interest*** in the works if the practitioner, or an entity related to the practitioner—
 - (a) has a legal or equitable interest in the land where the works are, or are to be, carried out; or
 - (b) has prepared, or intends to prepare, drawings intended to be used in relation to the works, unless—
 - (i) the works have been certified by another entity; and
 - (ii) the other entity is not related to the practitioner; or
 - (c) has carried out, or intends to carry out, any of the works; or
 - (d) has a financial interest in the construction or completion of the works.

- (3) For this section, an entity is *related to* a licensed construction practitioner if the entity is—
- (a) an entity with which the practitioner has a personal, professional, commercial or financial relationship; or
 - (b) an employer or employee of the practitioner; or
 - (c) a company of which the practitioner is a director or in which the practitioner holds a share.
- (4) For this section, works have been *certified* if—
- (a) a building approval has been issued for the works; or
 - (b) a development approval has been issued for the works; or
 - (c) a works assessment service has been provided for the works.

10 Sections 51 and 52

substitute

51 Automatic suspension of licence—construction occupations

- (1) This section applies if—
- (a) an entity that is licensed in a construction occupation stops being eligible to provide a construction service for the construction occupation because the entity is not insured in accordance with the regulation; and
 - (b) the construction occupation is not divided into classes.
- Note* A regulation may divide a construction occupation into classes (see s 15).
- (2) The entity's licence is automatically suspended when the insurance cover stops.

52 Automatic suspension of licence—occupation classes

- (1) This section applies if an entity that is licensed in an occupation class stops being eligible to provide a construction service for the occupation class because the entity is not insured in accordance with the regulation.

Note A regulation may divide a construction occupation into classes (see s 15).

- (2) The entity's licence is automatically suspended in relation to the class when the insurance cover stops.

**11 End of automatic licence suspension
Section 53 (1), 4th and 5th dot points**

substitute

- section 51 (Automatic suspension licence—construction occupations);
- section 52 (Automatic suspension of licence—occupation classes).

**12 Notification of cancellation of insurance
Section 88 (1) (a)**

omit

a licensed building surveyor or plumbing plan certifier

substitute

licensed in a construction occupation or occupation class

**13 Construction occupations registrar
New section 103 (2) (ha)**

insert

(ha) works assessment;

14 Dictionary, new definitions

insert

works assessment service—see section 14A (2).

works assessor—see section 14A (1).

Part 3 Unit Titles Act 2001

15 Legislation amended—pt 3

This part amends the *Unit Titles Act 2001*.

16 Unit title applications—general requirements Section 17 (5)

substitute

- (5) The application must include—
- (a) if not provided in a unit title assessment report included in the application—
 - (i) a certificate from a registered surveyor describing the degree to which any building (including an attachment to a building) on, or being constructed on, the parcel is situated in accordance with the application; and
 - (ii) if any existing or proposed attachment to a building on the parcel encroaches, or would encroach, on a public place—a plan prepared by a registered surveyor that shows—
 - (A) the nature and extent of the encroachment; and
 - (B) whether the encroachment is for use with a unit or the common property; and
 - (C) if the encroachment is for use with a unit—the unit to which the encroachment relates; and

Note **Attachment**, **encroachment** and **public place**—see the dictionary.

- (b) if the parcel is prescribed by regulation—a unit title assessment report that is not more than 3 months old.

Note *Unit title assessment report*—see s 22B.

17 Unit title applications—approval
New section 20 (4A)

insert

- (4A) The planning and land authority may refuse to approve the application if—
 - (a) the applicant is required to provide the authority with a unit title assessment report under section 17 and—
 - (i) has not provided a unit title assessment report; or
 - (ii) has provided a unit title assessment report that is more than 3 months old; or
 - (b) the authority has asked for further information under section 22F and the applicant has not provided some or all of the information by—
 - (i) the end of the period stated in the request; or
 - (ii) if the authority has extended the period within which the further information must be provided—the end of that period.

18 New division 3.1A

insert

Division 3.1A Unit title assessment reports for unit title applications**22A Meaning of *unit title assessor***

In this Act:

unit title assessor means—

- (a) a works assessor licensed under the Construction Occupations (Licensing) Act 2004; or

Note **Works assessor**—see the *Construction Occupations (Licensing) Act 2004*, s 14A.

- (b) a building surveyor licensed under the *Construction Occupations (Licensing) Act 2004* when providing a works assessment service.

Note **Building surveyor**—see the *Construction Occupations (Licensing) Act 2004*, s 9.

22B Unit title assessment reports

- (1) An applicant under section 17 (the *applicant*) may apply, in writing, to a unit title assessor for a report (a *unit title assessment report*).
- (2) The application must include any details or material prescribed by regulation.

Example

proposed unit title plans

Note 1 If a form is approved under s 180 for this provision, the form must be used.

Note 2 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).

- (3) If a unit title assessor receives an application under subsection (1) and the unit title assessor agrees to undertake the work, the unit title assessor must—
 - (a) prepare a unit title assessment report and give it to the applicant; and
 - Note 1* The report must be prepared and given to the applicant as soon as possible (see Legislation Act, s 151B).
 - Note 2* The unit title assessor may refuse to prepare and provide a report if the unit title assessor does not have enough information (see s 22E).
 - (b) not later than 5 working days after the day the assessor gives the report to the applicant—give a copy of the report to the planning and land authority.

- (4) If, after taking reasonable steps, an applicant cannot find a unit title assessor who will agree to prepare a unit title assessment report, the applicant may apply to the construction occupations registrar to appoint a unit title assessor to prepare a unit title assessment report and give it to the applicant.
- (5) A regulation may prescribe the requirements for a unit title assessment report, including—
 - (a) what the report must contain; or
 - (b) anything that must accompany the report.

22C Unit title assessment report applications—unit title assessor may require further information

- (1) This section applies if—
 - (a) a unit title assessor requires further information to prepare a unit title assessment report under section 22B; and
 - (b) the applicant and the unit title assessor have not agreed that the unit title assessor will obtain the further information; and
 - (c) the unit title assessor believes on reasonable grounds that the further information will help the unit title assessor to prepare the report.
- (2) The unit title assessor may, by written notice, ask the applicant to give the unit title assessor stated further information in relation to the application.

22D Unit title assessment report applications—contents of request for further information

- (1) A request under section 22C must—
 - (a) state the period within which the further information asked for must be provided; and

- (b) if the further information is not a document—state that the further information must be provided in writing; and
 - (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the unit title assessor may refuse to provide a unit title assessment report under section 22E; and
 - (d) state that, despite the applicant and unit title assessor having previously not agreed that the unit title assessor would obtain the further information, the applicant and unit title assessor may agree that the unit title assessor will obtain the information.
- (2) The request may require the applicant to confirm all or part of any information provided by statutory declaration.
 - (3) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
 - (4) The unit title assessor may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

22E Unit title assessment report applications—effect of failure to provide further information

- (1) This section applies if—
 - (a) a unit title assessor has asked for further information under section 22C in relation to an application; and
 - (b) the applicant has not provided some or all of the information by—
 - (i) the end of the period stated in the request; or

- (ii) if the unit title assessor has extended the period within which the further information must be provided—the end of that period; and
 - (c) the applicant and the unit title assessor have not agreed that the unit title assessor will obtain the further information.
- (2) The unit title assessor may refuse to prepare and provide a unit title assessment report under section 22B.

22F Unit title applications—authority may require further information

- (1) This section applies if—
 - (a) an applicant has provided a unit title assessment report under section 17; and
 - (b) further information is needed for the planning and land authority to be able to decide the application under section 20; and
 - (c) the authority believes on reasonable grounds that the further information will help the authority to decide the application
- (2) The authority may, by written notice, ask the applicant to give the authority stated further information in relation to the application.

22G Unit title applications—contents of request for further information

- (1) A request under section 22F must—
 - (a) state the period within which the further information asked for must be provided; and
 - (b) if the further information is not a document—state that the further information must be provided in writing; and

- (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the authority may refuse to approve the unit title application under section 20 (4A).
- (2) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
- (3) The authority may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

**19 Regulation-making power
New section 181 (2)**

insert

- (2) A regulation may create offences and fix maximum penalties of not more than 60 penalty units for the offences.

20 New part 25

insert

**Part 25 Transitional—Construction
Occupations Legislation
Amendment Act 2010**

300 Meaning of *commencement day*—pt 25

In this part:

commencement day means the day this part commences.

301 Transitional—unit title applications lodged before commencement day

- (1) This section applies if—
 - (a) before the commencement day, a lessee of a parcel applied for approval of the subdivision of the parcel under section 17 (Unit title applications—general requirements); and
 - (b) immediately before the commencement day—
 - (i) the planning and land authority had not decided the application under section 20 (Unit title applications—approval); or
 - (ii) if an application for review to the ACAT had been made for a decision to refuse to approve a unit title application under section 20 (4)—the proceeding on the application had not ended.
- (2) The lessee is not required to provide a unit title assessment report.

302 Transitional regulations—pt 25

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of part 3 of the *Construction Occupations Legislation Amendment Act 2010*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) A regulation under subsection (2) expires 2 years after the day it commences.

303 Expiry—pt 25

This part expires 5 years after the commencement day.

21 Dictionary, new definitions

insert

unit title assessment report—see section 22B.

unit title assessor—see section 22A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 December 2009.

2 Notification

Notified under the Legislation Act on 3 March 2010.

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 2010, which originated in the Legislative Assembly as the Construction Occupations Legislation Amendment Bill 2009 and was passed by the Assembly on 25 February 2010.

Acting Clerk of the Legislative Assembly

© Australian Capital Territory 2010