



Australian Capital Territory

Building and Construction Legislation Amendment Act 2023

A2023-55

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Australian Capital Territory

Building and Construction Legislation Amendment Act 2023

A2023-55

An Act to amend legislation about building and construction

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

Part 1 Preliminary

1 Name of Act

This Act is the *Building and Construction Legislation Amendment Act 2023*.

2 Commencement

- (1) The following provisions commence on a day fixed by the Minister by written notice:
- sections 9 to 15
 - section 17
 - section 19
 - section 36
 - section 45
 - section 49
 - part 10
 - part 11.

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)).

- (2) The following provisions commence 3 months after this Act's notification day:
- part 4 (other than section 23)
 - section 39
 - section 42
 - section 44
 - sections 46 to 48
 - sections 51 to 54.

- (3) Section 18 commences on 15 January 2024.
- (4) The remaining provisions commence on the day after this Act's notification day.
- (5) If the provisions in subsection (1) have not commenced within 12 months beginning on this Act's notification day, they automatically commence on the first day after that period.
- (6) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to the provisions in subsection (1).

3 Legislation amended

This Act amends the legislation mentioned in parts 2 to 13.

Part 2 Architects Act 2004

4 Grounds for occupational discipline Section 42 (1) (b)

omit

professional conduct code has been adopted under this Act

substitute

code of professional conduct has been approved under section 88 (1)

5 Ministerial directions to board Section 68 (1), example 3

omit

professional conduct code

substitute

code of professional conduct

6 Section 88

substitute

88 Code of professional conduct

- (1) The Minister may approve a code of professional conduct for—
 - (a) registered architects; or
 - (b) an architectural service.
- (2) An approved code of professional conduct is a disallowable instrument.

- (3) An approved code of professional conduct may incorporate, apply or adopt (with or without change or modification)—
- (a) a law or an Australian Standard as in force from time to time; or
 - (b) another instrument as in force from time to time.
- (4) The [Legislation Act](#), section 47 (5) and (6) do not apply to an instrument incorporated, applied or adopted under subsection (3).

Note An instrument under subsection (3) does not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) do not apply (see [Legislation Act](#), s 47 (7)).

- (5) The director-general must ensure that an instrument that is incorporated, applied or adopted under subsection (3) (b) is—
- (a) on the ACT legislation register; or
 - (b) available for inspection by anyone without charge during ordinary business hours at an ACT government office; or
 - (c) accessible on an ACT government website, or by a link on an ACT government website.
- (6) An instrument that is incorporated, applied or adopted under subsection (3) (b) is not enforceable by or against the Territory or anyone else unless it is made accessible in accordance with subsection (5).
- (7) In this section:
- ACT legislation register*—see the [Legislation Act](#), section 18 (1).

Part 3 Building Act 2004

7 Building approval applications New section 26 (2) (aa)

insert

- (aa) nominate the kind of certificate of occupancy for which the applicant proposes to apply; and

8 Notice to produce survey plan etc Section 60

omit

9 Definitions—pt 6 Section 84, definition of *approved scheme*

omit

section 96

substitute

section 98

10 Section 84, new definition of *consumer representative*

insert

consumer representative—see section 127AA (1).

11 Complying residential building work insurance New section 90 (3A)

insert

- (3A) For subsections (1) (f) and (3), a builder is taken to have disappeared if the builder, after proper search and inquiry, cannot be found in Australia.

12 Sections 96 to 98

substitute

96 Approval of fidelity fund scheme—application

- (1) The trustees of a fidelity fund scheme may apply to the Minister for approval of the scheme.
- (2) The application must—
 - (a) be in writing and signed by all the trustees of the scheme; and
 - (b) include—
 - (i) a copy of the trust deed; and
 - (ii) evidence to show the scheme complies with the approval criteria; and
 - (iii) the address for service for the trustees.

97 Approval of fidelity fund scheme—request for more information

- (1) The Minister may, in writing, ask an applicant under section 96 to give the Minister the additional information that the Minister reasonably needs to decide the application.
- (2) The Minister may refuse to consider the application further if the information is not provided within the period stated in the request.

98 Approval of fidelity fund scheme—decision on application

- (1) If the Minister receives an application under section 96, the Minister must approve, or refuse to approve, the fidelity fund scheme.

Note An approval may be given subject to conditions (see s 100).

- (2) The Minister may approve a fidelity fund scheme only if satisfied the scheme complies with the approval criteria.
- (3) Before approving a fidelity fund scheme, the Minister may require changes to be made to the scheme to ensure that it complies with the approval criteria.
- (4) An approval is a notifiable instrument.

13 Approval criteria for schemes

Section 99 (2)

substitute

- (2) Without limiting the matters that may be included in approval criteria, the approval criteria may include requirements in relation to the following:
 - (a) the management of the scheme;
 - (b) the content of the trust deed for the scheme;
 - (c) suitability for appointment as a trustee of the scheme;
 - (d) the content of fidelity certificates;
 - (e) building work for which a fidelity certificate may, or must not, be issued under the scheme;
 - (f) making, assessing and dealing with claims under a fidelity certificate issued under the scheme;
 - (g) complaint handling in relation to fidelity certificates and claims under fidelity certificates.

14 Sections 100 to 102*substitute***100 Approved scheme—conditions**

- (1) A fidelity fund scheme's approval is subject to the following conditions:
 - (a) the approved scheme must continue to comply with the approval criteria;
 - (b) the trustees of the approved scheme must tell the Minister, in writing, if there is a material change to the way in which the approved scheme complies with the approval criteria;
 - (c) a condition prescribed by regulation;
 - (d) any other condition the Minister considers appropriate.
- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) The trustees of an approved scheme each commit an offence if the scheme does not comply with a condition mentioned in subsection (1).

Maximum penalty: 60 penalty units.

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

101 Approved scheme—application to change

- (1) The trustees of an approved scheme may apply to the Minister to change the scheme.
- (2) The application must—
 - (a) be in writing and signed by all the trustees of the scheme; and
 - (b) set out the proposed change to the scheme and the reasons for the change; and

- (c) include evidence to show the proposed change to the scheme complies with the approval criteria.
- (3) However, the Minister may declare a change to an approved scheme to be a change for which approval is not required.
- (4) A declaration is a notifiable instrument.

102 Approved scheme—decision on application to change

- (1) If the Minister receives an application under section 101, the Minister must approve, or refuse to approve, the change.
- (2) The Minister may approve a change to a fidelity fund scheme only if satisfied the scheme would continue to comply with the approval criteria and the prudential standards.
- (3) An approval or refusal is a notifiable instrument.

**15 Suspension or cancellation of approval of approved scheme
New section 107 (1) (i)**

insert

- (i) a ground prescribed by regulation for the suspension or cancellation of the approval of the scheme.

16 Section 127

substitute

127 Protection of auditor and actuary from liability

- (1) The auditor or actuary for an approved scheme, and any special actuary for the scheme, does not incur civil or criminal liability for an act or omission done honestly as the auditor or actuary.
- (2) A civil liability that would, apart from this section, attach to the auditor or actuary attaches instead to the Territory.

17 New division 6.6

after section 127, insert

Division 6.6 Consumer representative**127AA Consumer representative—appointment**

- (1) The Minister may appoint a person to advise the Minister about the interests of owners in relation to approved schemes (a *consumer representative*).

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

- (2) The Minister must not appoint a public servant or a person who represents the building and construction industry as the consumer representative.
- (3) A regulation may prescribe criteria for the appointment of a person as the consumer representative.
- (4) An appointment as the consumer representative must be for not longer than 3 years.
- (5) An appointment is a notifiable instrument.
- (6) The conditions of the consumer representative's appointment are the conditions agreed between the Minister and the person.

127AB Consumer representative—terms of reference

- (1) If the Minister appoints a consumer representative, the Minister must determine terms of reference for the exercise of functions by the consumer representative.
- (2) The terms of reference may include terms in relation to when the consumer representative may—
 - (a) attend a meeting of the trustees of an approved scheme; or
 - (b) request information from the trustees of an approved scheme.

- (3) The terms of reference are a notifiable instrument.
- (4) The consumer representative must comply with the terms of reference approved by the Minister.

127AC Consumer representative—ending appointment

The Minister may end a person's appointment as the consumer representative—

- (a) if the person does not provide advice within a reasonable time when asked by the Minister; or
- (b) for misbehaviour; or
- (c) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's ability to give advice to the Minister; or
- (d) if the Minister becomes aware that the person has at any time been convicted in Australia of an offence punishable by imprisonment for 1 year or longer; or
- (e) if the Minister becomes aware that the person has at any time been convicted outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer.

**18 Energy efficiency certificates
Section 139C (2) and (3)**

substitute

- (2) An energy efficiency certificate must be prepared in accordance with the requirements prescribed by regulation.

(3) In this section:

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 proposed building work, to comply with stated energy efficiency requirements.

19 Dictionary, new definition of *consumer representative*

insert

consumer representative, for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—see section 127AA (1).

20 Further amendments, mentions of *territory planning authority*

omit

territory planning authority

substitute

Minister

in

- sections 105 to 113
- section 115
- section 117 and 118
- section 121 to 125

21 Further amendments, mentions of *the authority*

omit

the authority

substitute

the Minister

in

- sections 106 to 109
- section 118
- sections 122 to 124

22 Further amendments, mentions of *the authority's*

omit

the authority's

substitute

the Minister's

in

- section 107
- section 112
- section 118

Part 4

Building and Construction Industry (Security of Payment) Act 2009

23 Meaning of *construction work* Section 7 (1), definition of *construction work*, paragraph (c)

omit

air-conditioning

substitute

air conditioning

24 Right to progress payments Section 10 (1)

omit everything before paragraph (a), substitute

- (1) A person is entitled to a payment (a *progress payment*) if the person has undertaken, under a construction contract, to—

25 Section 10 (2) (c)

substitute

- (c) a payment that is based on an event or date.

26 Section 10 (3)

omit

27 **Due date for payment**
Section 13 (1)

substitute

- (1) A progress payment under a construction contract is payable on the earlier of the following:
- (a) 15 business days after a payment claim is given under part 4 in relation to the payment;
 - (b) the day when the payment becomes payable under the contract.

28 **Payment claim**
New section 15 (3A)

insert

- (3A) A payment claim may be given on or after—
- (a) the last day of the calendar month in which the construction work was first carried out, or the related goods and services were first supplied, under the contract and of each subsequent calendar month; or
 - (b) if the construction contract provides for a payment claim to be given before the last day of a calendar month—the day provided under the contract; or
 - (c) if the construction contract has been terminated—the day of termination.

29 **Section 15 (4)**

omit

A payment claim

substitute

However, a payment claim

30 Section 15 (5)

omit

reference date under the construction contract

substitute

calendar month, unless the construction contract provides for more than 1 payment claim to be given in a calendar month

31 Section 15 (6)

substitute

- (6) Nothing in this section prevents the claimant from—
- (a) including more than 1 progress payment in a payment claim; or
 - (b) including in a payment claim an amount that has been the subject of a previous claim; or
 - (c) giving the respondent a payment claim in a particular calendar month for work carried out, or related goods and services supplied, in an earlier calendar month.

32 Dictionary, note 2

insert

- calendar month

Part 5 Building (General) Regulation 2008

33 General requirements for plans—Act, s 27 (1) (a)
Section 16 (3), definitions of *stormwater system*, *utility service* and *water main*

omit

34 General requirements for plans—Act, s 63A
Section 36A (3), definitions of *stormwater system*, *utility service* and *water main*

omit

35 Dictionary, new definitions

insert

stormwater system means a system of pipes, gutters, drains, floodways and channels designed to collect or carry stormwater in or through an urban area, other than for a single parcel of land.

utility service—see the *Utilities Act 2000*, dictionary.

water main means a conduit or pipeline—

- (a) owned, controlled or maintained by a utility service; and
- (b) designed to carry drinking water supplied by the service.

Part 6 Construction Occupations (Licensing) Act 2004

36 What is a *gasfitter*? Section 12 (3), definition of *gasfitting work*

omit

dictionary

substitute

section 6F

37 Licence conditions Section 21 (2) and (3)

substitute

- (2) The registrar may also impose a condition on a licence by written notice given to the licensee if satisfied it is necessary or desirable to protect the public, unless a regulation provides otherwise.

38 Establishment of advisory boards Section 114 (1)

omit

must

substitute

may

39 **New part 23***insert***Part 23** **Transitional—Building and
Construction Legislation
Amendment Act 2023****194** **Transitional—distributed energy resource work**

- (1) A person does not commit an offence against this Act only because the person does or supervises distributed energy resource work without an endorsement if the person was authorised under a licence to do or supervise that type of work immediately before the commencement of this section.
- (2) In this section:

distributed energy resource work—see the [Construction Occupations \(Licensing\) Regulation 2004](#), section 31D (5).

endorsement means an endorsement under the [Construction Occupations \(Licensing\) Regulation 2004](#), section 31D.

195 **Expiry—pt 23**

This part expires 6 months after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Part 7 Construction Occupations (Licensing) Regulation 2004

40 Skill assessment of individuals Section 14 (1) and (2)

after

licence

insert

or endorsement

41 Section 14 (5)

after

licensed

insert

, or to have a licence endorsed,

42 New section 31D

insert

31D Endorsing electricians licences for work on distributed energy resources—Act, s 22

- (1) The registrar may, on application, endorse an electrical contractor licence or an unrestricted electrician licence to authorise the licensee to do, or to supervise, distributed energy resource work if satisfied that the licensee is competent to do, or to supervise, the work.

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

- (2) The endorsement may be subject to any condition the registrar is satisfied protects the public.

- (3) The Minister may declare a thing to be a distributed energy resource.
- (4) A declaration is a disallowable instrument.
- (5) For this regulation, *distributed energy resource work* means electrical wiring work on a distributed energy resource declared under subsection (3).

**43 Requirement to consult under s 13
Section 49**

omit

**44 Classes of construction occupation licence and functions
Schedule 1, part 1.6, items 1 and 2**

substitute

1	electrical contractor	1	electrical wiring work, other than interval metering work or distributed energy resource work, without supervision
		2	supervision of electrical wiring work, other than interval metering work or distributed energy resource work
2	unrestricted	1	electrical wiring work, other than interval metering work or distributed energy resource work, without supervision
		2	supervision of electrical wiring work, other than interval metering work or distributed energy resource work

45 Schedule 1, part 1.7, new items 10 and 11

insert

10	medical gasfitter	medical gasfitting work
11	medical gas technician	medical gas technician work

**46 Reviewable decisions
Schedule 4, new item 32A**

insert

32A	31D	refuse to endorse electrical contractor licence or unrestricted electrician licence	licensee
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47 Dictionary, new definition of *distributed energy resource work*

insert

distributed energy resource work—see section 31D (5).

48 Dictionary, definition of *incidental electrical work*, paragraph (c)

after

work

insert

or distributed energy resource work

49 Dictionary, new definitions

insert

medical gasfitting work—see the [Gas Safety Act 2000](#), dictionary.

medical gas technician work—see the [Gas Safety Act 2000](#), dictionary.

Part 8 Electricity Safety Act 1971

50 Meaning of *electrical wiring rules* New section 3B (3A)

insert

- (3A) The Australian Capital Territory Appendix to AS/NZS 3000 may vary, add to or exclude parts of AS/NZS 3000 for the ACT.

51 Connecting electrical installations to network— inspections Section 4 (1) (a)

substitute

- (a) the person connects a new electrical installation, or reconnects an electrical installation that has been disconnected for 6 months or more, to an electricity network; and

52 Testing and reporting of electrical work New section 6 (5)

insert

- (5) In this section:

electrical wiring work includes the reconnection of an electrical installation that has been disconnected for 6 months or more to an electricity network.

53 Section 51*substitute***51 Powers in relation to dangerous electrical equipment and installations**

- (1) An inspector who enters premises under this part may do any of the following in relation to an electrical installation, or article of electrical equipment, on the premises:
 - (a) if the inspector believes on reasonable grounds that the installation is a source of danger—disconnect the installation;
 - (b) if the inspector believes on reasonable grounds that the article is a source of danger—
 - (i) label the article conspicuously to indicate the danger; and
 - (ii) prohibit use of the article until it has been replaced, repaired or made safe for use;
 - (c) if the inspector believes on reasonable grounds that an installation or article will become a source of danger unless it is repaired or made safe for use—
 - (i) label the installation or article conspicuously to indicate the potential danger; and
 - (ii) give the owner of the installation or article a written notice directing the owner to repair it, or make it safe for use, within 6 months or a shorter period stated in the notice;
 - (d) if an owner fails to comply with a notice given under paragraph (c) (ii) in relation to an installation—disconnect the installation.

- (2) A person commits an offence if the person reconnects an installation disconnected under subsection (1) (a) before it is repaired or made safe for use.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if the person—

- (a) removes a label applied to an article under subsection (1) (b) (i) before it is replaced, repaired or made safe for use; and
- (b) uses the article that is prohibited from use under subsection (1) (b) (ii).

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if the person—

- (a) removes a label applied to an article under subsection (1) (b) (i) before it is replaced, repaired or made safe for use; or
- (b) uses an article that is prohibited from use under subsection (1) (b) (ii).

Maximum penalty: 40 penalty units.

- (5) An offence against subsection (4) (a) is a strict liability offence.

- (6) A person commits an offence if the person—

- (a) removes a label applied to an installation or article under subsection (1) (c) (i) before it is repaired or made safe for use; or
- (b) fails to comply with a direction given to the person under subsection (1) (c) (ii).

Maximum penalty: 30 penalty units.

- (7) An offence against subsection (6) is a strict liability offence.

**54 Reviewable decisions
Schedule 1, new items 7 and 8***insert*

7	51 (1) (c)	give written notice directing owner of installation or article to repair it or make it safe for use	owner of installation or article
8	51 (1) (d)	disconnect installation	owner of installation

Part 10 Gas Safety Act 2000

56 Objects of Act New section 6 (b) (v)

insert

- (v) the installation, operation, maintenance, commissioning, testing, inspection and repair of medical gas systems.

57 Meaning of *gasfitting work* Section 6F, definition of *gasfitting work*, paragraph (a) (ii)

substitute

- (ii) the inspection or testing of a consumer piping system; or
- (iii) medical gasfitting work; or
- (iv) medical gas technician work; and

58 Dictionary, new definitions

insert

medical gas means a substance used for medical purposes and prescribed as a medical gas.

medical gasfitting work—

- (a) means the construction, installation, replacement, repair, alteration and maintenance of a medical gas system; and
- (b) if incidental to the work in paragraph (a)—includes design work and testing.

medical gas system means a reticulated system of pipes, hoses or lines that carries or controls the supply or removal of medical gas—

- (a) including related fixtures and fittings and any other thing prescribed by regulation; but

- (b) not including anything connected to, and extending or situated beyond, a wall outlet or non-interchangeable screw thread fitting.

medical gas technician work means the commissioning, testing, verification or certification of a medical gas system.

Part 11 Gas Safety Regulation 2001

59 New section 21

insert

21 Medical gases—Act, dict, def *medical gas*

The following substances are prescribed:

- (a) oxygen;
- (b) nitrous oxide;
- (c) helium;
- (d) nitrogen;
- (e) carbon dioxide;
- (f) medical air;
- (g) surgical tool gas;
- (h) a common mixture of gases mentioned in paragraphs (a) to (g);
- (i) air at a negative pressure;
- (j) waste anaesthetic gas.

Part 12 Liquor Act 2010

60 Fire engineering study and inspection Section 86 (4) (c)

substitute

- (c) the method of determining the number of people in an area under the building code.

Part 13 Water and Sewerage Act 2000

61 Appointment of certifiers New section 5 (2) (c) and (d)

insert

- (c) the work consists of replacing taps or toilets or other basic maintenance; or
- (d) the cost of the work is not more than \$1 000 or a higher prescribed amount.

62 Section 16 heading

substitute

16 Notice of sanitary plumbing or drainage work by licensee

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 September 2023.

2 Notification

Notified under the [Legislation Act](#) on 11 December 2023.

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 Building and Construction Legislation Amendment Bill 2023, which was passed by the Legislative Assembly on 29 November 2023.

Clerk of the Legislative Assembly

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