

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Construction Occupations Legislation Amendment Bill 2009

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J2009-467

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

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Construction Occupations Legislation Amendment Bill 2009

A Bill for

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:

Part 1 Preliminary

1 Name of Act

This Act is the *Construction Occupations Legislation Amendment Act 2009*.

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).

1 **Part 2** **Construction Occupations**
2 **(Licensing) Act 2004**

3 **3** **Legislation amended—pt 2**

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

6 **4** **What is a *construction occupation*?**
7 **New section 7 (j)**

8 *insert*

9 (j) works assessor.

10 **5** **Section 9**

11 *substitute*

12 **9** **What is a *building surveyor*?**

13 (1) A *building surveyor* is an entity that provides, has provided or
14 proposes to provide—

15 (a) a building certification service; or

16 (b) a works assessment service.

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

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

1 (3) In this section:

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

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

8 **6 What is a *plumbing plan certifier*?**
9 **Section 14 (1)**

10 *omit*

11 provides

12 *substitute*

13 provides, has provided or proposes to provide

14 **7 New section 14A**

15 *insert*

16 **14A What is a *works assessor*?**

17 (1) A ***works assessor*** is an entity who provides, has provided or
18 proposes to provide a works assessment service.

19 (2) A ***works assessment service*** is the doing of works assessment work.

20 (3) In this section:

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

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

1 **8 What is an *operational Act*?**
2 **Section 16**

3 *insert*

- 4 • *Unit Titles Act 2001*;

5 **9 New section 26A**

6 *in division 3.1, insert*

7 **26A Entitlement to act as works assessor**

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

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

12 **10 Sections 51 and 52**

13 *substitute*

14 **51 Automatic suspension of licence—construction**
15 **occupations**

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

- 1 **52 Automatic suspension of licence—occupation classes**
- 2 (1) This section applies if an entity that is licensed in an occupation
- 3 class stops being eligible to provide a construction service for the
- 4 occupation class because the entity is not insured in accordance with
- 5 the regulation.
- 6 *Note* A regulation may divide a construction occupation into classes
- 7 (see s 15).
- 8 (2) The entity's licence is automatically suspended in relation to the
- 9 class when the insurance cover stops.

10 **11 End of automatic licence suspension**

11 **Section 53 (1), 4th and 5th dot points**

12 *substitute*

- 13 • section 51 (Automatic suspension licence—construction
- 14 occupations);
- 15 • section 52 (Automatic suspension of licence—occupation
- 16 classes).

17 **12 Notification of cancellation of insurance**

18 **Section 88 (1) (a)**

19 *omit*

20 a licensed building surveyor or plumbing plan certifier

21 *substitute*

22 licensed in a construction occupation or occupation class

23 **13 Construction occupations registrar**

24 **New section 103 (2) (ha)**

25 *insert*

26 (ha) works assessment;

1 **14 Dictionary, new definitions**

2 *insert*

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

4 *works assessor*—see section 14A (1).

1 **Part 3** **Unit Titles Act 2001**

2 **15** **Legislation amended—pt 3**

3 This part amends the *Unit Titles Act 2001*.

4 **16** **Unit title applications—general requirements**
5 **Section 17 (5)**

6 *substitute*

7 (5) The application must include—

8 (a) if not provided in a unit title assessment report included in the
9 application—

10 (i) a certificate from a registered surveyor describing the
11 degree to which any building (including an attachment to
12 a building) on, or being constructed on, the parcel is
13 situated in accordance with the application; and

14 (ii) if any existing or proposed attachment to a building on
15 the parcel encroaches, or would encroach, on a public
16 place—a plan prepared by a registered surveyor that
17 shows—

18 (A) the nature and extent of the encroachment; and

19 (B) whether the encroachment is for use with a unit or
20 the common property; and

21 (C) if the encroachment is for use with a unit—the unit
22 to which the encroachment relates; and

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

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

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

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

6 *insert*

- 7 (4A) The planning and land authority may refuse to approve the
8 application if—
- 9 (a) the applicant is required to provide the authority with a unit
10 title assessment report under section 17 and—
- 11 (i) has not provided a unit title assessment report; or
- 12 (ii) has provided a unit title assessment report that is more
13 than 3 months old; or
- 14 (b) the authority has asked for further information under
15 section 22F and the applicant has not provided some or all of
16 the information by—
- 17 (i) the end of the period stated in the request; or
- 18 (ii) if the authority has extended the period within which the
19 further information must be provided—the end of that
20 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.

1 **22B Unit title assessment reports**

2 (1) An applicant under section 17 (the *applicant*) may apply, in writing,
3 to a unit title assessor for a report (a *unit title assessment report*).

4 (2) The application must include any details or material prescribed by
5 regulation.

6 **Example**

7 proposed unit title plans

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

10 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

13 (3) If a unit title assessor receives an application under subsection (1)
14 and the unit title assessor agrees to undertake the work, the unit title
15 assessor must—

16 (a) prepare a unit title assessment report and give it to the
17 applicant; and

18 *Note 1* The report must be prepared and given to the applicant as soon as
19 possible (see Legislation Act, s 151B).

20 *Note 2* The unit title assessor may refuse to prepare and provide a report
21 if the unit title assessor does not have enough information (see
22 s 22E).

23 (b) not later than 5 working days after the day the assessor gives
24 the report to the applicant—give a copy of the report to the
25 planning and land authority.

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

10 **22C Unit title assessment report applications—unit title**
11 **assessor may require further information**

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

23 **22D Unit title assessment report applications—contents of**
24 **request for further information**

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

- 1 (b) if the further information is not a document—state that the
2 further information must be provided in writing; and
- 3 (c) state that the applicant need not provide the further
4 information, but if the applicant fails to provide some or all of
5 the information in accordance with the request, the unit title
6 assessor may refuse to provide a unit title assessment report
7 under section 22E; and
- 8 (d) state that, despite the applicant and unit title assessor having
9 previously not agreed that the unit title assessor would obtain
10 the further information, the applicant and unit title assessor
11 may agree that the unit title assessor will obtain the
12 information.
- 13 (2) The request may require the applicant to confirm all or part of any
14 information provided by statutory declaration.
- 15 (3) The period stated under subsection (1) (a) must be at least
16 20 working days or, if a shorter period is prescribed by regulation,
17 the shorter period.
- 18 (4) The unit title assessor may, on application before the end of the
19 period stated under subsection (1) (a), extend the period within
20 which the further information must be provided once only, for a
21 period not longer than 20 working days.

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

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

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

8 **22F Unit title applications—authority may require further**
9 **information**

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

20 **22G Unit title applications—contents of request for further**
21 **information**

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

- 1 (c) state that the applicant need not provide the further
2 information, but if the applicant fails to provide some or all of
3 the information in accordance with the request, the authority
4 may refuse to approve the unit title application under
5 section 20 (4A).
- 6 (2) The period stated under subsection (1) (a) must be at least
7 20 working days or, if a shorter period is prescribed by regulation,
8 the shorter period.
- 9 (3) The authority may, on application before the end of the period stated
10 under subsection (1) (a), extend the period within which the further
11 information must be provided once only, for a period not longer
12 than 20 working days.

13 **19 Regulation-making power**
14 **New section 181 (2)**

15 *insert*

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

18 **20 New part 25**

19 *insert*

20 **Part 25 Transitional—Construction**
21 **Occupations Legislation**
22 **Amendment Act 2009**

23 **300 Meaning of *commencement day*—pt 25**

24 In this part:

25 ***commencement day*** means the day this part commences.

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- 1 **301** **Transitional—unit title applications lodged before**
2 **commencement day**
- 3 (1) This section applies if—
- 4 (a) before the commencement day, a lessee of a parcel applied for
5 approval of the subdivision of the parcel under section 17 (Unit
6 title applications—general requirements); and
- 7 (b) immediately before the commencement day—
- 8 (i) the planning and land authority had not decided the
9 application under section 20 (Unit title applications—
10 approval); or
- 11 (ii) if an application for review to the ACAT had been made
12 for a decision to refuse to approve a unit title application
13 under section 20 (4)—the proceeding on the application
14 had not ended.
- 15 (2) The lessee is not required to provide a unit title assessment report.
- 16 **302** **Transitional regulations—pt 25**
- 17 (1) A regulation may prescribe transitional matters necessary or
18 convenient to be prescribed because of the enactment of part 3 of
19 the *Construction Occupations Legislation Amendment Act 2009*.
- 20 (2) A regulation may modify this part (including in relation to another
21 territory law) to make provision in relation to anything that, in the
22 Executive’s opinion, is not, or is not adequately or appropriately,
23 dealt with in this part.
- 24 (3) A regulation under subsection (2) has effect despite anything
25 elsewhere in this Act or another territory law.
- 26 (4) A regulation under subsection (2) expires 2 years after the day it
27 commences.

- 1 **303 Expiry—pt 25**
2 This part expires 5 years after the commencement day.

3 **21 Dictionary, new definitions**

4 *insert*

5 *unit title assessment report*—see section 22B.

6 *unit title assessor*—see section 22A.

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2009.
- 2 **Notification**
Notified under the Legislation Act on 2009.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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