

2010

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Planning)

# Construction Occupations Legislation (Exemption Assessment) Amendment Bill 2010

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J2009-826

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

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# **Construction Occupations Legislation (Exemption Assessment) Amendment Bill 2010**

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## **A Bill for**

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Construction Occupations Legislation (Exemption*  
4 *Assessment) Amendment Act 2010*.

5 **2 Commencement**

6 (1) Part 1 commences on this Act's notification day.

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

9 (2) Part 4 (other than section 42) and part 6 commence on the  
10 commencement of the *Construction Occupations Legislation*  
11 *Amendment Act 2010*, part 3 (Unit Titles Act 2001).

12 (3) The remaining provisions commence on a day fixed by the Minister  
13 by written notice.

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

17 (4) If a provision of this Act has not commenced within 1 year  
18 beginning on its notification day, it automatically commences on the  
19 first day after that period.

20 (5) The Legislation Act, section 79 (Automatic commencement of  
21 postponed law) does not apply to this Act.

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## 1                    **Part 2                    Building Act 2004**

### 2                    **3                    Legislation amended—pt 2**

3                    This part amends the *Building Act 2004*.

### 4                    **4                    New part 2A**

5                    *insert*

## 6                    **Part 2A                    Exemption assessments**

### 7                    **13                    Purpose of exemption assessment B notices**

- 8                    (1) An exemption assessment may relate to building work that is to be  
9                    done or has been done.
- 10                    (2) An exemption assessment B notice in relation to building work that  
11                    is to be done certifies that the work is, or is not, exempt from all or  
12                    part of this Act.

13                    *Note*                    If an exemption assessment B notice certifies that building work is  
14                    exempt from all or part of this Act, it must also state what provisions of  
15                    this Act the building work is exempt from and why, and anything else  
16                    prescribed by regulation (see s 14B (2)).

- 17                    (3) An exemption assessment B notice in relation to building work that  
18                    has been done certifies that the work is, or is not, exempt from all or  
19                    part of this Act based on whether the work was exempt at the time it  
20                    was done, or is currently exempt.

1     **14           Exemption assessment applications**

2           (1) The owner of a parcel of land may apply, in writing, to a building  
3           surveyor for an assessment (an *exemption assessment*) of whether  
4           building work to be carried out, or carried out, on the parcel of land  
5           is exempt from all or part of this Act.

6           *Note 1*   Building work may be exempt from all or part of this Act if the work is  
7           exempt from this Act, or part of this Act. For exempt buildings and  
8           building works, see the *Building (General) Regulation 2008*, s 6, s 7 and  
9           sch 1.

10          *Note 2*   Applying for an exemption assessment is not a requirement of the  
11          building approval or development approval process (see s 14A and  
12          *Planning and Development Act 2007*, s 138C). If a person believes that  
13          building work is exempt, the person need not apply for an exemption  
14          assessment from a building surveyor.

15          (2) The application must be accompanied by the number of copies of  
16          the plans relating to the development work prescribed by regulation.

17          (3) The application must contain, or be accompanied by, any other  
18          details or material prescribed by regulation.

19          *Note*     If a form is approved under s 151 for an application, the form must be  
20          used.

21          (4) A regulation may prescribe information required to be shown in  
22          plans under subsection (2).

23     **14A          Exemption assessment not required for building approval**

24           (1) An exemption assessment is not a requirement of the building  
25           approval process.

26           (2) A building surveyor may issue an exemption assessment B notice to  
27           the owner of a parcel of land only if the owner has applied to the  
28           building surveyor for an exemption assessment.

29           (3) A building surveyor must not refuse to issue a building approval on  
30           the ground that the applicant for the approval has not applied for an  
31           exemption assessment B notice.



1    **14B       Exemption assessments and notices**

- 2           (1) This section applies if—
- 3               (a) the owner of a parcel of land applies to a building surveyor for
- 4                 an exemption assessment under section 14; and
- 5               (b) the building surveyor agrees to provide the exemption
- 6                 assessment.
- 7           (2) The building surveyor must—
- 8               (a) undertake the exemption assessment; and
- 9               (b) issue a notice (an *exemption assessment B notice*) stating—
- 10                   (i) if any building work is exempt from all or part of this
- 11                     Act—
- 12                       (A) the building work that is exempt; and
- 13                       (B) the provisions of this Act that the building work is
- 14                         exempt from and why; and
- 15                     *Note*     For building work that is completed, see also s (3).
- 16                   (ii) any building work that is not exempt from any part of this
- 17                     Act; and
- 18                   (iii) anything else prescribed by regulation; and
- 19                     *Note*     The building surveyor may refuse to issue a notice if the building
- 20                     surveyor does not have enough information (see s 14E).
- 21               (c) give the exemption assessment B notice to the owner; and
- 22               (d) within 5 days after the day the building surveyor issues the
- 23                 notice—give a copy of the notice to the construction
- 24                 occupations registrar.

- 1           (3) If the building work that is the subject of the application has been  
2           completed and the building surveyor certifies that the building work  
3           is exempt because the building work was exempt when carried out,  
4           the exemption assessment B notice must also include the dates on  
5           which the building surveyor has based the assessment that the  
6           building work was exempt.
- 7           (4) If, after taking reasonable steps, the owner cannot find a building  
8           surveyor who will agree to provide an exemption assessment, the  
9           owner may apply to the construction occupations registrar to appoint  
10          a building surveyor to undertake the exemption assessment and  
11          issue an exemption assessment B notice to the owner.

12       **14C          Exemption assessment applications—request for further**  
13       **information**

- 14          (1) This section applies if—
- 15               (a) a building surveyor requires further information for an  
16               exemption assessment under section 14B; and
- 17               (b) the owner of the parcel of land and the building surveyor have  
18               not agreed that the building surveyor will obtain the further  
19               information; and
- 20               (c) the building surveyor believes on reasonable grounds that the  
21               further information will help the building surveyor to prepare  
22               the assessment.
- 23          (2) The building surveyor may, by written notice, ask the owner to give  
24          the building surveyor stated further information in relation to the  
25          application.
- 26          (3) This section does not entitle a building surveyor to require—
- 27               (a) photographs to be taken by someone other than the owner of  
28               the parcel of land; or

- 1 (b) photographs to be taken using equipment other than equipment  
2 of the owner's choice; or
- 3 (c) further information if—
- 4 (i) the building surveyor has, or has reasonable access to,  
5 suitable information that allows the building surveyor to  
6 decide the application without personally inspecting the  
7 land where the building work is to be carried out; or
- 8 (ii) a territory law requires the building surveyor to  
9 personally obtain or be given the information.

10 **Examples—suitable information building surveyor has or has reasonable**  
11 **access to**

- 12 1 The website [www.actmapi.act.gov.au](http://www.actmapi.act.gov.au) provides aerial photographs and  
13 topographical information including ground contours for some ACT areas. If  
14 the land to which an application relates is covered by the website, the  
15 photographs and contours have sufficient information, and are accurate and  
16 recent enough, to decide the application in relation to tree and ground-height  
17 related matters, the building surveyor may not require further information or  
18 documents by way of photographs or topographical information in relation to  
19 trees and ground heights.
- 20 2 A building surveyor may verify land tenure and permit and statutory  
21 approval matters by contacting the statutory custodians of the information to  
22 a sufficient degree to decide the application in relation to those matters. The  
23 building surveyor may not require further information in relation to those  
24 matters.
- 25 3 The land to which an application relates is covered by  
26 [www.actmapi.act.gov.au](http://www.actmapi.act.gov.au) but, because the slope of the land to be built on is  
27 steeper than would be adequately shown on the website, the building  
28 surveyor does not have suitable information to allow the building surveyor to  
29 decide the application without personally inspecting the land. Another  
30 website has some topographical information on the land, but it is not of  
31 sufficient resolution, or recent enough, to be relied on by the building  
32 surveyor in relation to ground heights to decide the application. The building  
33 surveyor may require further information in relation to ground heights.

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

1 (4) For this section, a building surveyor that is a partnership inspects  
2 land personally if any partner inspects the land.

3 **14D Exemption assessment applications—contents of request**  
4 **for further information**

5 (1) A request under section 14C must—

6 (a) state the period within which the further information asked for  
7 must be provided; and

8 (b) if the further information is not a document—state that the  
9 further information must be provided in writing; and

10 (c) state that the owner need not provide the further information,  
11 but if the owner fails to provide some or all of the information  
12 in accordance with the request, the building surveyor may  
13 refuse under section 14E to issue an exemption assessment B  
14 notice; and

15 (d) state that, despite the owner and building surveyor having  
16 previously not agreed that the building surveyor would obtain  
17 the further information, the owner and building surveyor may  
18 agree that the building surveyor will obtain the information.

19 (2) The request may require the owner to confirm all or part of any  
20 information provided by statutory declaration.

21 (3) The period stated under subsection (1) (a) must be at least  
22 20 working days or, if a shorter period is prescribed by regulation,  
23 the shorter period.

24 (4) The building surveyor may, on application before the end of the  
25 period stated under subsection (1) (a), extend the period within  
26 which the further information must be provided once only, for a  
27 period not longer than 20 working days.

- 1 **14E Exemption assessment applications—effect of failure to**  
2 **provide further information**
- 3 (1) This section applies if—
- 4 (a) a building surveyor has asked for further information under  
5 section 14C in relation to an exemption assessment application;  
6 and
- 7 (b) the owner has not provided some or all of the information by—
- 8 (i) the end of the period stated in the request; or
- 9 (ii) if the building surveyor has extended the period within  
10 which the further information must be provided—the end  
11 of that period; and
- 12 (c) the owner and the building surveyor have not agreed that the  
13 building surveyor will obtain the further information.
- 14 (2) The building surveyor may refuse to issue an exemption assessment  
15 B notice under section 14B.

16 **5 Application of pt 3 to building work**  
17 **Section 15, new note**

18 *insert*

19 *Note* The owner of a parcel of land may apply to a building surveyor for an  
20 assessment about whether building work is exempt from all or part of  
21 the Act (see pt 2A).

22 **6 Building approval applications**  
23 **Section 26 (2), note**

24 *substitute*

- 25 (e) if there is development approval for development to which the  
26 building work relates—be accompanied by a copy of the  
27 development approval, unless the applicant cannot obtain a  
28 copy of the approval after taking reasonable steps; and

- 1 (f) if there is an exemption assessment D notice for development  
2 to which the building work relates—be accompanied by a copy  
3 of the exemption assessment D notice.

4 *Note 1* **Exemption assessment D notice**—see the *Planning and Development*  
5 *Act 2007*, s 138D.

6 *Note 2* If a form is approved under s 151 for this provision, the form must be  
7 used.

8 **7 Applications for building approval—certifier may require**  
9 **further information**  
10 **Section 26A (3) (b)**

11 *substitute*

- 12 (b) photographs to be taken using equipment other than equipment  
13 of the applicant’s choice; or

14 **8 Contents of request for further information**  
15 **Section 26B (4), note**

16 *omit*

17 **9 New section 27A**

18 *insert*

19 **27A Notice if building approval not issued**

- 20 (1) This section applies if—  
21 (a) an application for a building approval is made to the certifier  
22 under section 26; and  
23 (b) the certifier does not issue the building approval for all or part  
24 of the building work that is the subject of the application  
25 because the certifier—  
26 (i) refuses to issue the approval under section 26C; or

- 1 (ii) must not consider the application under section 27; or  
2 (iii) must not issue the approval under section 30 or  
3 section 30A; or  
4 (iv) decides that the approval is not required for all or part of  
5 the building work for which the application is made.  
6 (2) The certifier must give the applicant written notice stating that  
7 building approval is not issued for the building work mentioned in  
8 subsection (1) (b) and the reason why the approval is not issued.

9 **10 Issue of building approvals**  
10 **Section 28 (2) (a), new note**

11 *insert*

12 *Note* This may include deciding whether the building work requires  
13 development approval under the *Planning and Development*  
14 *Act 2007* (see s 29 (1) (g)).

15 **11 Approval requirements**  
16 **New section 29 (1) (g) (ia)**

17 *insert*

- 18 (ia) a copy of an exemption assessment D notice for the site  
19 work stating that the site work is an exempt development  
20 is attached; or

21 *Note 1* If site work is an exempt development, it does not require  
22 development approval (see *Planning and Development*  
23 *Act 2007*, s 133).

24 *Note 2* Applying for an exemption assessment is not a requirement  
25 of the development approval or building approval process.  
26 If a person believes that a development is an exempt  
27 development, the person need not apply for an exemption  
28 assessment from a works assessor or building surveyor (see  
29 *Planning and Development Act 2007*, div 7.3.1A).

1 **12 Section 29 (1) (g), new example and note**

2 *before note 1, insert*

3 If an exemption assessment D notice for the proposed residence and garage  
4 indicates the residence and garage are exempt from requiring development  
5 approval, then the plans do not need to include any additional information to  
6 establish that the proposed residence and garage are an exempt development.

7 *Note 1A* This provision does not give a certifier power to require an applicant to  
8 provide either development approval, or an exemption assessment D  
9 notice, under the *Planning and Development Act 2007*.

10 **13 New section 29 (6A)**

11 *insert*

12 (6A) For subsection (1) (g) (ia), the certifier must be satisfied that the  
13 exemption assessment D notice—

14 (a) is for the site work to which the application relates; and

15 (b) was issued by a works assessor or building surveyor not more  
16 than 3 months before the day the application for building  
17 approval was made.

18 *Note* There is no obligation on the certifier to confirm the exemption  
19 assessment D notice in any other way, such as for accuracy or  
20 completeness.

21 **14 Contents of request for further information**  
22 **Section 32B (4), note**

23 *omit*



1 **15 Notification by certifier of possible noncompliant site**  
2 **work**  
3 **New section 50A (2A) and (2B)**

4 *insert*

5 (2A) For subsection (1) (a) (ii), a certifier may rely on an exemption  
6 assessment D notice issued not more than 3 months earlier.

7 *Note* An exemption assessment D notice states whether a development is  
8 exempt from requiring development approval (see *Planning and*  
9 *Development Act 2007*, s 138D).

10 (2B) Subsection (2A) applies whether or not the exemption assessment D  
11 notice was incorrect if the certifier was not aware, and could not  
12 reasonably have been aware, that the notice was incorrect.

13 **16 Site work without adequate development approval—**  
14 **people**  
15 **New section 50B (3A) and (3B)**

16 *insert*

17 (3A) For subsection (3) (b), a defendant is taken to be satisfied on  
18 reasonable grounds if the defendant proves that the defendant relied  
19 on an exemption assessment D notice, issued not more than  
20 3 months before the day the application for building approval was  
21 made, stating that the development did not require development  
22 approval.

23 (3B) Subsection (3A) applies whether or not the exemption assessment D  
24 notice was incorrect, unless the prosecution establishes that the  
25 defendant knew, or could reasonably be expected to have known,  
26 that the notice was incorrect.

1 **17 Site work without adequate development approval—**  
2 **partners**  
3 **Section 50C**

4 *omit*  
5 the partnership proves  
6 *substitute*  
7 a partner proves

8 **18 New section 50C (3A) and (3B)**

9 *insert*  
10 (3A) For subsection (3) (b), a partnership is taken to be satisfied on  
11 reasonable grounds if a partner proves that the partnership relied on  
12 an exemption assessment D notice, issued not more than 3 months  
13 before the day the application for building approval was made,  
14 stating that the development did not require development approval.  
15 (3B) Subsection (3A) applies whether or not the exemption assessment D  
16 notice was incorrect, unless the prosecution establishes that at least  
17 1 of the partners knew, or could reasonably be expected to have  
18 known, that the notice was incorrect.

19 **19 Carrying out building work in contravention of s 42**  
20 **Section 51 (4)**

21 *substitute*  
22 (4) It is a defence to a prosecution against the owner of the parcel of  
23 land for an offence against subsection (2) if the owner satisfies the  
24 court—  
25 (a) that the owner—  
26 (i) believed on reasonable grounds that section 42 had been  
27 complied with; or

1 (ii) was not aware, and could not reasonably have been  
2 aware, that the building work had begun or been carried  
3 out; or

4 (b) that—

5 (i) an exemption assessment B notice stating that the  
6 building work was exempt from all or part of this Act had  
7 been issued before, but not more than 3 months before,  
8 the day the building work began; and

9 (ii) the owner was not aware, and could not reasonably have  
10 been aware, that the notice was incorrect; or

11 (c) that—

12 (i) a building approval, or approval of amended plans, for  
13 the building work had been issued; and

14 (ii) the building work was carried out when the building  
15 approval, or approval of amended plans, was in force;  
16 and

17 (iii) the owner was not aware, and could not reasonably have  
18 been aware, that the approval, or the approval of the  
19 amended plans, should not have been issued.

20 **20 Section 51 (5) (b)**

21 *omit everything before subparagraph (i), substitute*

22 (b) the person believed on reasonable grounds that—

**21 New section 51 (6)**

2 *insert*

3 (6) It is a defence to a prosecution against a person other than the owner  
4 of the parcel of land if the person satisfies the court—

5 (a) that an exemption assessment B notice stating that the building  
6 work was exempt from requiring building approval had been  
7 issued not more than 3 months before the day the building  
8 work began, unless the prosecution establishes that the person  
9 knew, or could reasonably be expected to have known, that the  
10 notice was incorrect; or

11 (b) that—

12 (i) a building approval, or approval of amended plans, had  
13 been issued for the building work; and

14 (ii) the person was not aware, and could not reasonably have  
15 been aware, that the approval, or the approval of the  
16 amended plans, should not have been issued.

**22 Regulation-making power  
Section 152 (6)**

19 *substitute*

20 (6) The regulations may also prescribe offences for contraventions of  
21 the regulations and prescribe maximum penalties of not more than  
22 60 penalty units for offences against the regulations.

---

**23 New part 15***insert***Part 15 Transitional—Construction  
Occupations Legislation  
(Exemption Assessment)  
Amendment Act 2010****200 Meaning of *commencement day*—pt 15**

In this part:

*commencement day* means the day this part commences.**201 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation (Exemption Assessment) 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.

**202 Expiry—pt 15**

This part expires 2 years after the commencement day.

1 **24 Dictionary, note 2**

2 *insert*

- 3 • construction occupations registrar

4 **25 Dictionary, new definitions**

5 *insert*

6 *building surveyor*—see the *Constructions Occupations (Licensing)*  
7 *Act 2004*, section 9.

8 *exemption assessment*—see section 14.

9 *exemption assessment B notice*—see section 14B.

10 *exemption assessment D notice*—see the *Planning and*  
11 *Development Act 2007*, section 138D.

1 **Part 3** **Construction Occupations**  
2 **(Licensing) Act 2004**

3 **26** **Legislation amended—pt 3**

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

6 **27** **What is a *building surveyor*?**  
7 **New section 9 (1) (aa)**

8 *insert*

9 (aa) an exemption assessment service; or

10 **28** **New section 9 (1A)**

11 *insert*

12 (1A) An *exemption assessment service* is the doing of exemption  
13 assessment work.

14 **29** **Section 9 (3), new definition of *exemption assessment***  
15 ***work***

16 *after the note, insert*

17 *exemption assessment work* means undertaking an exemption  
18 assessment under the *Building Act 2004*.

- 1 **30** **What is a *works assessor*?**  
2 **Section 14A (3), definition of *works assessment work*,**  
3 **except note**
- 4 *substitute*
- 5 ***works assessment work*** means—
- 6 (a) undertaking an exemption assessment under the *Planning and*  
7 *Development Act 2007*; or
- 8 (b) providing, including doing anything incidental to providing, a  
9 unit title assessment report under the *Unit Titles Act 2001*.
- 10 **31** **What is an *operational Act*?**  
11 **Section 16**
- 12 *insert*
- 13 • *Planning and Development Act 2007*;
- 14 **32** **Rectification orders—exercise of registrar’s powers**  
15 **Section 33A (b)**
- 16 *omit*
- 17 this Act, an operational Act or the *Planning and Development*  
18 *Act 2007*
- 19 *substitute*
- 20 this Act or an operational Act



1 **33 Considerations for deciding under s 34 and s 35**  
2 **Section 36 (3) (b)**

3 *omit*

4 this Act, an operational Act or the *Planning and Development*  
5 *Act 2007*

6 *substitute*

7 this Act or an operational Act

8 **34 Registrar's functions**  
9 **New section 104 (3)**

10 *insert*

11 (3) A code of practice is a notifiable instrument.

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

1 **35 New part 16**

2 *insert*

3 **Part 16 Transitional—Construction**  
4 **Occupations Legislation**  
5 **Amendment Act 2010 and**  
6 **Construction Occupations**  
7 **Legislation (Exemption**  
8 **Assessment) Amendment Act**  
9 **2010**

10 **158 Meaning of *commencement day*—pt 16**

11 In this part:

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

13 **159 Transitional regulations**

14 (1) A regulation may prescribe transitional matters necessary or  
15 convenient to be prescribed because of the enactment of the  
16 *Construction Occupations Legislation Amendment Act 2010* and the  
17 *Construction Occupations Legislation (Exemption Assessment)*  
18 *Amendment Act 2010*.

19 (2) A regulation may modify this part (including in relation to another  
20 territory law) to make provision in relation to anything that, in the  
21 Executive's opinion, is not, or is not adequately or appropriately,  
22 dealt with in this part.

23 (3) A regulation under subsection (2) has effect despite anything  
24 elsewhere in this Act or another territory law.

25 (4) A regulation under subsection (2) expires 2 years after the day it  
26 commences.

- 1 **160**      **Expiry—pt 16**
- 2              This part expires 2 years after the commencement day.

1 **Part 4** **Construction Occupations**  
2 **(Licensing) Regulation 2004**

3 **36** **Licence applications—Act, s 17 (3)**  
4 **Section 5 (h)**

5 *substitute*

6 (h) if the application is for a licence as an asbestos assessor,  
7 building surveyor, plumbing plan certifier or works assessor—  
8 the name of the insurer who will provide the insurance  
9 mentioned in section 16A (Eligibility to be asbestos assessor),  
10 section 17 (Eligibility to be building surveyor), section 18  
11 (Eligibility to be plumbing plan certifier) or section 18A  
12 (Eligibility to be works assessor);

13 **37** **Section 8 heading**

14 *substitute*

15 **8** **Term of licence for asbestos assessors, building**  
16 **surveyors, plumbing plan certifiers and works**  
17 **assessors—Act, s 24**

18 **38** **Section 8 (1)**

19 *substitute*

20 (1) This section applies to a licence in the construction occupation of  
21 asbestos assessor, building surveyor, plumbing plan certifier or  
22 works assessor.

1 **39 Particulars in register**  
2 **Section 9 (1) (c)**

3 *substitute*

4 (c) if the licensee is an asbestos assessor, building surveyor,  
5 plumbing plan certifier or works assessor—the name of the  
6 insurer who provides the insurance mentioned in section 16A  
7 (Eligibility to be asbestos assessor), section 17 (Eligibility to  
8 be building surveyor), section 18 (Eligibility to be plumbing  
9 plan certifier), section 18A (Eligibility to be works assessor) or  
10 the regulations;

11 **40 New section 18A**

12 *in division 4.1, insert*

13 **18A Eligibility to be works assessor**

- 14 (1) An applicant for a licence to be a works assessor is eligible for the  
15 licence only if the applicant satisfies the registrar that the applicant  
16 is adequately insured.
- 17 (2) An applicant is *adequately insured* if the applicant has professional  
18 indemnity insurance that provides—
- 19 (a) indemnity against claims for breach of professional duty as a  
20 works assessor; and
- 21 (b) a minimum limit of indemnity of \$1 000 000 for a single claim;  
22 and
- 23 (c) a minimum limit of indemnity of \$1 000 000 for the total of all  
24 claims made against the applicant during the period of cover;  
25 and

1 (d) in addition to the indemnities mentioned in paragraphs (b)  
2 and (c), a minimum limit of indemnity for the costs and  
3 expenses of defending or settling a claim of 20% of the limit of  
4 indemnity for the claim.

5 (3) In subsection (2) (d):

6 *costs and expenses* means costs and expenses incurred with the  
7 insurer's consent.

8 **41 Schedule 1, new part 1.9**

9 *insert*

10 **Part 1.9 Works assessors**

column 1 item	column 2 construction occupation class	column 3 construction work
1	works assessor—unit titles	works assessment work

11 **42 Schedule 1, new part 1.9**

12 *substitute*

13 **Part 1.9 Works assessors**

column 1 item	column 2 construction occupation class	column 3 construction work
1	Class A works assessor—planning and development	undertaking an exemption assessment under the <i>Planning and Development Act 2007</i>

column 1 item	column 2 construction occupation class	column 3 construction work
2	Class B works assessor—planning and development	<p>undertaking an exemption assessment under the <i>Planning and Development Act 2007</i>, in relation to the following:</p> <ul style="list-style-type: none"> <li>(a) site work under the <i>Building Act 2004</i> for a class 1 building or class 10 building or structure;</li> <li>(b) development in relation to a class 1 building or class 10 building or structure, mentioned in the <i>Planning and Development Regulation 2008</i>, schedule 1, other than the following: <ul style="list-style-type: none"> <li>(i) division 1.3.6;</li> <li>(ii) section 1.102 and section 1.103;</li> <li>(iii) section 1.105 to section 1.112</li> </ul> </li> </ul>
3	works assessor—unit tiles	providing, including doing anything incidental to providing, a unit tiles assessment report under the <i>Unit Titles Act 2001</i>

1 **Part 5** **Planning and Development**  
2 **Act 2007**

3 **43** **Legislation amended—pt 5**

4 This part amends the *Planning and Development Act 2007*.

5 **44** **What is an exempt development?**  
6 **Section 133, notes**

7 *substitute*

8 *Note 1* An approval may be given subject to conditions, see s 165.

9 *Note 2* The planning and development authority must tell a proponent of a  
10 development proposal if the development is likely to be exempt (see  
11 s 138 (4) (a)). A person may apply for an exemption assessment to  
12 work out whether a development is an exempt development (see  
13 s 138B).

14 *Note 3* An example is part of the Act, is not exhaustive and may extend, but  
15 does not limit, the meaning of the provision in which it appears (see  
16 Legislation Act, s 126 and s 132).

17 **45** **Consideration of development proposals**  
18 **Section 138 (4) (a), new note**

19 *insert*

20 *Note* A person may apply for an exemption assessment to work out  
21 whether a development is an exempt development (see s 138B).



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**46 New division 7.3.1A***insert***Division 7.3.1A Exemption assessments****138A Purpose of exemption assessment D notices**

- (1) An exemption assessment may relate to development that is to be undertaken or has been undertaken.
- (2) An exemption assessment D notice in relation to a development that is to be undertaken certifies that the development is, or is not, an exempt development.
- (3) An exemption assessment D notice in relation to a development that has been undertaken certifies that the development is, or is not, exempt from requiring development approval based on whether the development was exempt from requiring development approval at the time it was done, or is currently exempt from requiring development approval.

**138B Exemption assessment applications**

- (1) A person may apply, in writing, to a works assessor or building surveyor for an assessment (an *exemption assessment*) of whether a development is an exempt development under section 133.

*Note 1* **Building surveyor**—see the *Constructions Occupations (Licensing) Act 2004*, s 9. **Works assessor**—see the *Constructions Occupations (Licensing) Act 2004*, s 14A.

*Note 2* Applying for an exemption assessment is not a requirement of the development approval or building approval process (see s 138C and the *Building Act 2004*, s 14A). If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor.

- 1 (2) The application must—  
2 (a) include—  
3 (i) the plans relating to the development prescribed by  
4 regulation; and  
5 (ii) any other details or material prescribed by regulation; and  
6 (b) be in writing signed by the applicant; and  
7 (c) if the applicant is someone other than the lessee of the land to  
8 which the application relates—also be signed by—  
9 (i) if the land to which the application relates is subject to a  
10 lease—the lessee of the land; or  
11 (ii) if the land to which the application relates is public land  
12 or unleased land—the custodian for the land; or  
13 (iii) in any other case—the planning and land authority.  
14 *Note* If a form is approved under s 425 for an application, the form must be  
15 used.  
16 (3) A regulation may prescribe information required to be shown in  
17 plans under subsection (2) (a) (i).

18 **138C Exemption assessment not required for development**  
19 **approval**

- 20 (1) An exemption assessment is not a requirement of the development  
21 approval process.  
22 (2) A works assessor or building surveyor may issue an exemption  
23 assessment D notice to a person only if the person has applied to the  
24 works assessor or building surveyor for an exemption assessment.

1    **138D    Exemption assessments and notices**

2           (1) This section applies if a person applies to a works assessor or  
3           building surveyor for an exemption assessment under section 138B  
4           and the works assessor or building surveyor agrees to provide the  
5           exemption assessment.

6           (2) The works assessor or building surveyor must—

7                   (a) prepare the exemption assessment; and

8                   (b) issue a notice (an *exemption assessment D notice*) stating  
9                   whether the development is an exempt development under  
10                  section 133; and

11                  (c) give the exemption assessment D notice to the applicant; and

12                  (d) within 5 days after the day the works assessor or building  
13                  surveyor issues the notice—give a copy of the notice to the  
14                  planning and land authority.

15           *Note 1*   The works assessor or building surveyor may refuse to issue a notice if  
16           the works assessor or building surveyor does not have enough  
17           information (see s 138G).

18           *Note 2*   Other people may rely on an exemption assessment D notice, for  
19           example, a building surveyor when issuing a building approval under  
20           the *Building Act 2004*.

21           (3) If the development that is the subject of the application has been  
22           undertaken and the works assessor or building surveyor certifies that  
23           the development is exempt because the development was exempt  
24           when undertaken, the exemption assessment D notice must also  
25           include the dates on which the works assessor or building surveyor  
26           has based the assessment that the development was exempt.

- 1 (4) If, after taking reasonable steps, an applicant cannot find a works  
2 assessor or building surveyor who will agree to provide an  
3 exemption assessment, the applicant may apply to the construction  
4 occupations registrar to appoint a works assessor to prepare the  
5 exemption assessment and issue an exemption assessment D notice.

6 *Note* If the proponent of a development proposal lodges the proposal with the  
7 planning and development authority, the authority must tell the  
8 proponent if the development is likely to be exempt (see s 138 (4) (a)).

9 **138E Exemption assessment applications—request for further**  
10 **information**

- 11 (1) This section applies if—
- 12 (a) a works assessor or building surveyor requires further  
13 information for an exemption assessment under section 138D;  
14 and
- 15 (b) the applicant and the works assessor or building surveyor have  
16 not agreed that the works assessor or building surveyor will  
17 obtain the further information; and
- 18 (c) the works assessor or building surveyor believes on reasonable  
19 grounds that the further information will help the works  
20 assessor or building surveyor to prepare the assessment.
- 21 (2) The works assessor or building surveyor may, by written notice, ask  
22 the applicant to give the works assessor or building surveyor stated  
23 further information in relation to the application.
- 24 (3) This section does not entitle a works assessor or building surveyor  
25 to require—
- 26 (a) photographs to be taken by someone other than the applicant;  
27 or
- 28 (b) photographs to be taken using equipment other than equipment  
29 of the applicant's choice; or

- 1 (c) further information if—
- 2 (i) the works assessor or building surveyor has, or has
- 3 reasonable access to, suitable information that allows the
- 4 works assessor or building surveyor to decide the
- 5 application without personally inspecting the land where
- 6 the development is to be carried out; or
- 7 (ii) a territory law requires the works assessor or building
- 8 surveyor to personally obtain or be given the information.

9 **Examples—suitable information works assessor or building surveyor has or**

10 **has reasonable access to**

- 11 1 The website [www.actmapi.act.gov.au](http://www.actmapi.act.gov.au) provides aerial photographs and
- 12 topographical information including ground contours for some ACT areas. If
- 13 the land to which an application relates is covered by the website, the
- 14 photographs and contours have sufficient information, and are accurate and
- 15 recent enough, to decide the application in relation to tree and ground-height
- 16 related matters, the works assessor or building surveyor may not require
- 17 further information or documents by way of photographs or topographical
- 18 information in relation to trees and ground heights.
- 19 2 A works assessor or building surveyor may verify land tenure and permit and
- 20 statutory approval matters by contacting the statutory custodians of the
- 21 information to a sufficient degree to decide the application in relation to
- 22 those matters. The works assessor or building surveyor may not require
- 23 further information in relation to those matters.
- 24 3 The land to which an application relates is covered by
- 25 [www.actmapi.act.gov.au](http://www.actmapi.act.gov.au) but, because the slope of the land to be built on is
- 26 steeper than would be adequately shown on the website, the works assessor
- 27 or building surveyor does not have suitable information to allow the works
- 28 assessor or building surveyor to decide the application without personally
- 29 inspecting the land. Another website has some topographical information on
- 30 the land, but it is not of sufficient resolution, or recent enough, to be relied
- 31 on by the works assessor or building surveyor in relation to ground heights to
- 32 decide the application. The works assessor or building surveyor may require
- 33 further information in relation to ground heights.

34 *Note* An example is part of the Act, is not exhaustive and may extend, but

35 does not limit, the meaning of the provision in which it appears (see

36 Legislation Act, s 126 and s 132).

1 (4) For this section, a works assessor or building surveyor that is a  
2 partnership inspects land personally if any partner inspects the land.

3 **138F Exemption assessment applications—contents of request**  
4 **for further information**

5 (1) A request under section 138E must—

6 (a) state the period within which the further information asked for  
7 must be provided; and

8 (b) if the further information is not a document—state that the  
9 further information must be provided in writing; and

10 (c) state that the applicant need not provide the further  
11 information, but if the applicant fails to provide some or all of  
12 the information in accordance with the request, the works  
13 assessor or building surveyor may under section 138G refuse  
14 to issue an exemption assessment D notice; and

15 (d) state that, despite the applicant and works assessor or building  
16 surveyor having previously not agreed that the works assessor  
17 or building surveyor would obtain the further information, the  
18 applicant and works assessor or building surveyor may agree  
19 that the works assessor or building surveyor will obtain the  
20 information.

21 (2) The request may require the applicant to verify all or part of any  
22 information provided by statutory declaration.

23 (3) The period stated under subsection (1) (a) must be at least  
24 20 working days or, if a shorter period is prescribed by regulation,  
25 the shorter period.

26 (4) The works assessor or building surveyor may, on application before  
27 the end of the period stated under subsection (1) (a), extend the  
28 period within which the further information must be provided once  
29 only, for a period not longer than 20 working days.

1 **138G Exemption assessment applications—effect of failure to**  
2 **provide further information**

- 3 (1) This section applies if—
- 4 (a) a works assessor or building surveyor has asked for further  
5 information under section 138E in relation to an exemption  
6 assessment application; and
- 7 (b) the applicant has not provided some or all of the information  
8 by—
- 9 (i) the end of the period stated in the request; or
- 10 (ii) if the works assessor or building surveyor has extended  
11 the period within which the further information must be  
12 provided—the end of that period; and
- 13 (c) the applicant and the works assessor or building surveyor have  
14 not agreed that the works assessor or building surveyor will  
15 obtain the further information.
- 16 (2) The works assessor or building surveyor may refuse to issue an  
17 exemption assessment D notice under section 138D.

18 **47 Offence to develop without approval**  
19 **Section 199 (6)**

20 *substitute*

- 21 (6) It is a defence to a prosecution for an offence against subsection (4)  
22 if the defendant proves—
- 23 (a) that before undertaking the development the defendant took  
24 reasonable steps to find out whether the development required  
25 development approval; or

- 1 (b) that—
- 2 (i) an exemption assessment D notice was issued before, but
- 3 not more than 3 months before, the day the defendant
- 4 started to undertake the development, stating that the
- 5 development was an exempt development under
- 6 section 133; and
- 7 (ii) the defendant was not aware, and could not reasonably
- 8 have been aware, that the notice was incorrect; or
- 9 (c) that—
- 10 (i) before the day the defendant started to undertake the
- 11 development, a building approval or approval of
- 12 amended building work plans under the *Building*
- 13 *Act 2004* for which development approval was required
- 14 was issued; and
- 15 (ii) the building work was carried out when the building
- 16 approval, or the approval for the amended plans, was in
- 17 force; and
- 18 (iii) the defendant was not aware, and could not reasonably
- 19 have been aware, that the building approval, or the
- 20 approval of the amended plans, should not have been
- 21 issued without development approval.

22 *Note* See the *Building Act 2004*, s 28 (for issue of building approvals)

23 and s 32 (for amendment of approved plans).

24 **48 Regulation-making power**

25 **Section 426 (5)**

26 *substitute*

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



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**49 New chapter 16***insert***Chapter 16 Transitional—Construction  
Occupations Legislation  
(Exemption Assessment)  
Amendment Act 2010****468 Meaning of *commencement day*—ch 16**

In this part:

*commencement day* means the day this part commences.**469 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation (Exemption Assessment) 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.

**470 Expiry—ch 16**

This part expires 2 years after the commencement day.

1 **50 Dictionary, new definitions**

2 *insert*

3 *building surveyor*—see the *Construction Occupations (Licensing)*  
4 *Act 2004*, section 9.

5 *exemption assessment*—see section 138B.

6 *exemption assessment D notice*—see section 138D.

7 *works assessor*—see the *Constructions Occupations (Licensing)*  
8 *Act 2004*, section 14A.

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1 **Part 6** **Unit Titles Act 2001**

2 **51** **Legislation amended—pt 6**

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

4 **52** **Unit title applications—general requirements**  
5 **New section 17 (5) (c)**

6 *before the note, insert*

7 (c) a plan prepared by a registered surveyor showing anything  
8 prescribed by regulation.

9 **53** **Unit title assessment reports**  
10 **Section 22B (2), example**

11 *substitute*

12 **Examples**

- 13 1 proposed unit title plans  
14 2 information about a development approval

15 **54** **Unit title assessment report applications—unit title**  
16 **assessor may require further information**  
17 **New section 22C (3) and (4)**

18 *insert*

- 19 (3) This section does not entitle a unit title assessor to require—  
20 (a) photographs to be taken by someone other than the owner of  
21 the parcel of land; or  
22 (b) photographs to be taken using equipment other than equipment  
23 of the owner's choice; or

- 1 (c) further information if—
- 2 (i) the unit title assessor has, or has reasonable access to,
- 3 suitable information that allows the unit title assessor to
- 4 decide the application without personally inspecting the
- 5 land where the building work is to be carried out; or
- 6 (ii) a territory law requires the unit title assessor to personally
- 7 obtain or be given the information.

8 **Examples—suitable information unit title assessor has or has reasonable**

9 **access to**

- 10 1 The website [www.actmapi.act.gov.au](http://www.actmapi.act.gov.au) provides aerial photographs and
- 11 topographical information including ground contours for some ACT areas. If
- 12 the land to which an application relates is covered by the website, the
- 13 photographs and contours have sufficient information, and are accurate and
- 14 recent enough, to decide the application in relation to tree and ground-height
- 15 related matters, the unit title assessor may not require further information or
- 16 documents by way of photographs or topographical information in relation to
- 17 trees and ground heights.
- 18 2 A unit title assessor may verify land tenure and permit and statutory approval
- 19 matters by contacting the statutory custodians of the information to a
- 20 sufficient degree to decide the application in relation to those matters. The
- 21 unit title assessor may not require further information in relation to those
- 22 matters.
- 23 3 The land to which an application relates is covered by
- 24 [www.actmapi.act.gov.au](http://www.actmapi.act.gov.au) but, because the slope of the land to be built on is
- 25 steeper than would be adequately shown on the website, the unit title
- 26 assessor does not have suitable information to allow the unit title assessor to
- 27 decide the application without personally inspecting the land. Another
- 28 website has some topographical information on the land, but it is not of
- 29 sufficient resolution, or recent enough, to be relied on by the unit title
- 30 assessor in relation to ground heights to decide the application. The unit title
- 31 assessor may require further information in relation to ground heights.

32 *Note* An example is part of the Act, is not exhaustive and may extend, but

33 does not limit, the meaning of the provision in which it appears (see

34 Legislation Act, s 126 and s 132).

- 35 (4) For this section, a unit title assessor that is a partnership inspects
- 36 land personally if any partner inspects the land.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2010.

**2 Notification**

Notified under the Legislation Act on 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).

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