

2004

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION OCCUPATIONS (LICENSING) AMENDMENT
REGULATIONS 2004 (No 1)

Subordinate Law SL2004-44

EXPLANATORY STATEMENT

Circulated by authority of
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CONSTRUCTION OCCUPATIONS (LICENSING) AMENDMENT REGULATIONS 2004 (No 1)

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OVERVIEW

These are new regulations under the *Construction Occupations (Licensing) Regulations 2004*.

BACKGROUND

The *Construction Occupations (Licensing) Act 2004* (“COLA”) and the *Construction Occupations (Licensing) Regulations 2004* (“COLR”) both commenced on 1 September 2004.

Those laws generally provide for a new licensing regime for various construction occupations. Prior to 1 September 2004, those occupations were regulated under various different Acts.

An intention in enacting COLA was to provide a seamless transition, for both licensees and law administrators, from the former licensing Acts’ disparate licensing regimes into a single uniform licensing regime under COLA. To do so COLA contains various provisions aimed at making simple transitions for each kind of occupational licence from former law into COLA.

COLA, s 152 (Transitional regulations), provides to the effect that COLR may—

prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation Amendment Act 2004* or COLA; and

modify the operation of COLA to make provision with respect to any matter that is not, or not adequately, dealt with in COLA or the *Construction Occupations Legislation Amendment Act 2004*.

The new regulations are necessary to make minor modifications to COLA and COLR to help provide better correlation between former licensing regimes and that of COLA, and to reduce the impact of unintended or unforeseen ramifications of COLA’s commencement, and to clarify intent.

DETAILS OF THE REGULATIONS

Clause 1 provides that the name of the new regulations is the *Construction Occupations (Licensing) Amendment Regulations 2004 (No 1)*.

Clause 2 prescribes that the new regulations commence on the day after the day that the regulations are notified.

Clause 3 provides that the new regulations amend the *Construction Occupations (Licensing) Regulations 2004* (“COLR”).

Clause 4 omits subregulation 28 (2) and substitutes a new subregulation in its place. That is necessary to remove doubt that licensees in the occupation class of general building surveyor employee or principle building surveyor employee may only provide construction services in that class as an employee of an employer who is licensed as general building surveyor or principle building surveyor.

Clause 5 inserts 4 new regulations into COLR—

regulation 52 (Modification of Act, pt 7, s 83—Act, s 152);

regulation 53 (Modification of Act, pt 13, s137 (2)—Act, s 152);

regulation 54 (Modification of Act, pt 13—Act, s 152); and

regulation 55 (Modification of Act, dictionary, definition of AS 3500—Act, s 152).

New regulation 52 (Modification of Act, pt 7, s 83—Act, s 152), modifies the s 83, (Advertising without details), provisions of the *Construction Occupations (Licensing) Act 2004* (“COLA”), by inserting 3 new additional subsections. An intended effect is to disapply the relevant advertising requirements to advertisements prepared or published before 1 September 2004. That is necessary as some sectors of the radio advertising and newspaper advertising industry have expressed difficulty in handling the amount of change needed to their relevant client’s advertisements to bring the noncompliant advertisements into s 83 compliance. Section 83 essentially requires relevant advertisements to state the relevant person’s name as stated on the COLA licence, the licence number, and any relevant ACN. New regulation 51 provides to the effect that the above-mentioned disapplication is only effective for 6 months. That is necessary to eventually ensure advertising after that period is fully compliant with COLA, s 83. The 6 month period is necessary to allow time to bring the noncompliant advertisement into compliance. Some advertisements had been previously booked to be published for periods of up to 12 months without alteration, prior to COLA commencement.

New regulation 53 (Modification of Act, pt 13, s137 (2)—Act, s 152), modifies COLA, s 137 (2) by omitting subregulation 137 (2) and substituting a new subsection. That is necessary as a consequence of the amendments brought about by clause 9.

New regulation 54 (Modification of Act, pt 13—Act, s 152), modifies COLA by inserting 2 new sections—

s 151, (Supervision by nominees—Act, s 28 (3) (b)); and

s 151A (Water and Sewerage Act, s 49 (5)).

COLA, new s 151, (Supervision by nominees—Act, s 28 (3) (b)), indicates how a certain reference set out in s 151 can be taken as a slightly different reference, as set out in the section also. That is necessary to avoid the unintended consequence of not permitting multiple COLA nominees of a corporation or partnership to all be nominees responsible for all work done the relevant corporation or nominee. Without the application of new s 151, COLA, s 28 implied that where a corporation or partnership had more than 1 nominee, then each nominee must be responsible for work that is different to the work of the other nominees. The intention was however, that all nominees of a single corporation or partnership could be responsible for all of the work of that corporation or partnership. The application of new s 151 would allow nominees to temporarily take leave from their responsibilities as nominee for purposes such as holidays and illness, whilst other nominee(s) substituted for that nominee, without having to formally reassign nominee responsibilities.

COLA, new s 151A (Water and Sewerage Act, s 49 (5)), provides clarification that a reference in the Water and Sewerage Act 2000, s 49 (5) to an Australian Standard includes a reference to an Australian and New Zealand standard. That is necessary to account for the fact that the relevant standard is no longer only Australian Standard but has been superseded by a joint Australian and New Zealand Standard.

New regulation 55 (Modification of Act, dictionary, definition of AS 3500—Act, s 152), modifies the COLA dictionary to define the term *Australian Standard 3500*. That is necessary to account for the fact that the relevant standard is no longer an Australian Standard but has been superseded by a joint Australian and New Zealand Standard, although subparts of it remain published as only an Australian Standard.

Clause 6 substitutes Schedule 1, part 1.1, items 2 and 3. The substitution in effect makes minor changes to the descriptions of the kinds of work that builder's licenses class B and C authorise their holder to carry out. That is necessary to enhance equivalence with the corresponding former authorities of those licenses under the *Building Act 1972* (repealed). It also clarifies that a holder of a builders licence class C is authorised to build certain structures such as fences and retaining walls etc associated with the residences the licensee is authorised to build. Such structures are referred to as class 10b structures, but the regulation excludes the licence from authorising certain structures that relate to swimming pools, as work in relation to swimming pools is treated by the regulations as specialist building work due to the safety risks associated with drowning in pools.

Clause 7 inserts a new paragraph (e) into Schedule 1, part 1.4, item 9, which relates to a certain kind of work authorised by a relevant electrical permit. That is necessary to enhance equivalence with the corresponding former authority of the equivalent permit under the *Electricity Safety Act 1971*.

Clauses 8 and 9 substitute Schedule 1, part 1.6, item 2, and insert new items 4 and 5, which together deal with the kinds of work authorised by certain water supply plumbers and fire sprinkler fitters licences. That is necessary for convenience in administering the respective licences. As drafted, item 2 encompasses water supply plumbing work, which in some circumstances prohibits certain fire sprinkler fitting work, but in other circumstances prohibits all water supply plumbing work other than fire sprinkler fitting work. The effect of clause 8 is to split the water supply plumber licence into 3 logical and distinct new provisions—

water supply plumber;

fire sprinkler fitter; and

journeypersons fire sprinkler fitter.

The changes brought about by clause 8 are intended to only impact on how the provisions are administered and to seamlessly continue former licensing matters from the licensee's perspective.

Clause 10 clarifies the definition of the term *fire sprinkler work* in the regulations' Dictionary.

FINANCIAL IMPLICATIONS

Nil