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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Construction Occupations Legislation Amendment Bill 2009**

**EXPLANATORY STATEMENT**

**Circulated by authority of the  
Minister for Planning  
Mr Andrew Barr MLA**

# **Construction Occupations Legislation Amendment Bill 2009**

## **Explanatory Statement**

The *Construction Occupations Legislation Amendment Bill 2009* (the Bill) amends the *Construction Occupations (Licensing) Act 2004* (COLA) and *Unit Titles Act 2001* (the UTA).

### **Overview**

The amendments made by the Bill to COLA and UTA create a new construction occupation (and associated provisions) that outsources elements of the unit title application process.

The UTA, section 17, states the information that must be provided in an application to unit title an existing or approved development under construction. Under section 17 of the UTA the application:

- must provide for the subdivision of the parcel into units, unit subsidiaries and common property.
- may provide for staged development of all or some of the units. If it does, the application must include a development statement: and
- must include:
  - (1) a certificate from a registered surveyor describing the situation of the building on the parcel; and
  - (2) a plan drawn by a registered surveyor showing encroachments into public places, if present.

The Planning and Land Authority (the authority) may approve an application under section 20 of the UTA if it is satisfied on reasonable grounds that the application fulfils stated requirements. Those requirements include that the application be in accordance with the UTA; each unit will be suitable for separate occupation and for a use that is not inconsistent with the lease; the proposed schedule of unit entitlement is reasonable; and any encroachments into a public place are satisfactory.

As part of determining an application for unit titling, the authority conducts site inspections and requests certification, if required, from relevant agencies, such as TAMS and ACTEW, on technical specifications for the development.

A site inspection may cover such things as establishing if the building has been built in accordance with the approved plans (other than those matters covered by the *Building Act 2004*); that the landscaping is consistent with the approved landscape plan; that all unit subsidiaries are located and consistent with the proposed Units Plan; that encroachments have been identified and that these are permitted; that the proposed units and car spaces are correctly numbered and letter boxes provided; and so on.

The amendments made by the Bill will privatise discrete elements of the application process to provide flexibilities to applicants. The Bill creates a new construction occupation of works assessor who, if licensed under COLA, can assess and collate stated requirements. The outcomes of this work will be compiled in a unit title assessment report and will be one element of the final application that seeks to unit title development. The applicant will be able to schedule work i.e. the site inspection through use of a private works assessor, when the development is nearing completion. The authority will retain other elements of the process and responsibility for the final decision.

The works assessor must have professional indemnity insurance (see clause 10) and ensure they do not have a conflict of interest (see Clause 9).

The Bill also legislates for the authority to make requests to an applicant for unit titling for further information. It has been the practice of the authority in the past when processing applications for unit titling to request further information, as required. The Bill provides a legislative basis for this practice.

Clause 18 of the Bill provides information about unit title assessment reports which the Bill requires to be provided with an application for unit titling if prescribed by regulation (see clause 16 of the Bill).

New sections 22A – 22G set out that:

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

- (2) If a unit title assessor receives an application and the unit title assessor agrees to undertake the work, the unit title assessor must prepare a unit title assessment report and give it to the applicant and within 5 days, give a copy to the planning and land authority.
- (3) The unit title assessor may refuse to prepare and provide a report if the unit title assessor does not have enough information.
- (4) If, after taking reasonable steps, an applicant cannot find a unit title assessor who will agree to prepare a unit title assessment report, the applicant may apply to the construction occupations registrar to appoint a unit title assessor to prepare a unit title assessment report.
- (5) A regulation may prescribe the requirements for a unit title assessment report.
- (6) A unit title assessor may, by written notice, ask the applicant to give the unit title assessor stated further information. New section 22D sets out the requirements for a request for further information.
- (7) If the applicant fails to provide some or all of the information in accordance with the request, the unit title assessor may refuse to provide a unit title assessment report.

New section 22F provides the planning and land authority with the power to require an applicant to provide further information if it is needed for the authority to be able to decide the application under the Unit Titles Act and the authority believes on reasonable grounds that the further information will help the authority to decide the application. New section 22G sets out the required content of a request for further information by the authority.

## Outline of Provisions

### Part 1 Preliminary

**Clause 1 – Name of Act** – states the name of the Act is the *Construction Occupations Legislation Amendment Act 2009*.

**Clause 2 – Commencement** – states that the Act (other than part 3) commences on the day after its notification day. Part 3 commences on a day to be fixed by the Minister by written notice.

### Part 2 – Construction Occupations (Licensing) Act 2004

**Clause 3 – Legislation amended - pt 2** – states that the part amends the *Construction Occupations (Licensing) Act 2004*.

**Clause 4 – What is a *construction occupation*? New section 7 (j)** – adds new paragraph (j) to section 7 to include a works assessor as a ***construction occupation***.

**Clause 5 – Section 9** – amends the definition of ***building surveyor*** in section 9 to include an entity that provides, has provided or proposes to provide a works assessment service. This expands the types of things a building surveyor can do from work only under the Building Act to work also under the Unit Titles Act.

**Clause 6 – What is a *plumbing plan certifier*? Section 14(1)** – omits the word “provide” and substitutes the words “provides, has provided or proposes to provide” to ensure consistency in terminology in COLA.

**Clause 7 – New section 14A** – inserts new section 14A to include a definition of a ***works assessor***. A ***works assessor*** is an entity who provides, has provided or proposes to provide a works assessment service. A ***works assessment service*** is the doing of ***works assessment work***. ***Works***

**assessment work** means preparing and providing a unit title assessment report under the *Unit Titles Act 2001*. See section 22B of the Unit Titles Act which is inserted by this Bill (see Clause 18) for further information about unit title assessment reports.

**Clause 8 – What is an operational Act? Section 16** – inserts the *Unit Titles Act 2001* in the list of operational Acts in section 16. There is a range of legislation that is linked to COLA and contains requirements in relation to licensees. These **operational Acts** are presently specified in section 16 of COLA as the *Building Act 2004*, the *Dangerous Substances Act 2004*, the *Electricity Safety Act 1971*, the *Gas Safety Act 2000*, the *Utilities Act 2000* and the *Water and Sewerage Act 2000*.

**Clause 9 – New section 26A** – inserts new section 26A which sets out the entitlement to act as a works assessor. This clause effectively prevents self certification and ensures conflicts of interest cannot arise by providing that an entity, other than the original entity, discharges the original entity's interest by certifying the plans either as part of the development approval process or the building approval process or a works assessment service (done by another works assessor). An example of how section 26A (2)(b) works is as follows:

A building designer draws up plans for a building. The building designer's interest is discharged when the designer hands those plans to another entity for 'certification' (refer new section 26A (4)). In this instance it would be in the form of a development approval where the authority is the decision maker in relation to those plans in the form of a development approval. A unit title plan is then prepared for the building and such a plan can only be prepared by a registered surveyor (UTA s. 20), that is, the building designer who drew the plans for the building cannot prepare the unit title plan. The building designer, who drew the initial plans, can then be engaged as the works assessor without there being a conflict of interest to complete the work of a unit title assessor in the form of a unit title assessment report (refer new section 22B). Section 26A (1) states that a licensed construction practitioner is not entitled to perform services as a works assessor if the practitioner has an

interest in the work (the **works**) to be considered for the works assessment service.

Section 26A(2) defines when a licensed construction practitioner has an interest in the works. The practitioner has an **interest** if the practitioner or an entity related to the practitioner -

- (a) has a legal or equitable interest in the land where the works are, or are to be, carried out; or
- (b) has prepared, or intends to prepare, drawings intended to be used in relation to the works, unless—
  - (i) the works have been certified by another entity; and
  - (ii) the other entity is not related to the practitioner; or
- (c) has carried out, or intends to carry out, any of the works; or
- (d) has a financial interest in the construction or completion of the works.

Section 26A(3) states that an entity is **related to** a licensed construction practitioner if the entity is—

- (a) an entity with which the practitioner has a personal, professional, commercial or financial relationship; or
- (b) an employer or employee of the practitioner; or
- (c) a company of which the practitioner is a director or in which the practitioner holds a share.

Section 26A (4) states works have been **certified** if—

- (a) a building approval has been issued for the works; or
- (b) a development approval has been issued for the works; or
- (c) a works assessment service has been provided for the works.

**Clause 10 – Sections 51 and 52** – substitutes new sections 51 and 52 to clarify and extend their operation. It is a part of license criteria for entities in the construction industry to have professional indemnity insurance. The amended sections 51 and 52 require people who wish to do works assessment work to extend their insurance to include this type of work.

Section 51 applies to an entity that is licensed in a construction occupation. If a construction occupation stops being eligible to provide a service because the entity is not insured in accordance with the regulation, and the construction occupation is not divided into classes, the entity's licence is automatically suspended when the insurance cover stops.

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

Section 52 applies to an entity that is licensed in an occupation class. If an entity that is licensed in an occupation class stops being eligible to provide a construction service for the occupation class because the entity is not insured in accordance with the regulation, the entity's licence is automatically suspended in relation to the class when the insurance cover stops.

**Clause 11 – End of automatic licence suspension Section 53(1), 4<sup>th</sup> and 5<sup>th</sup> dot points** – substitutes new dot points 4 and 5 in section 53(1) as a consequence of the amendment of section 51 and 52 by this Bill (see clause 10).

**Clause 12 – Notification of cancellation of insurance Section 88(1)(a)** – amends section 88 (1) a) as a consequence of the amendment of sections 51 and 52 by this Bill (see Clause 10).

**Clause 13 – Construction occupations registrar New section 103(2)(ha)** – inserts a new section (ha) in section 103(2) so as to include works assessment as one of the areas in which the person appointed as the Australian Capital Territory Construction Occupations Registrar can have experience or qualifications.

**Clause 14 – Dictionary, new definitions** - inserts new definitions in the Dictionary for ***works assessment service*** and ***works assessor***.



## **Part 3 Unit Titles Act 2001**

**Clause 15 – Legislation amended – pt 3** – states that the part amends the *Unit Titles Act 2001*.

### **Clause 16 – Unit title applications – general requirements Section 17 (5)**

– substitutes a new section 17(5).

New section 17(5) (a) inserts the words “if not provided in a unit title assessment report included in the application” to avoid applicants having to unnecessarily provide duplicate documents.

New section 17(5) (b) provides that a unit title application must include a unit title assessment report that is not more than 3 months old if the parcel is prescribed by regulation.

For further information about unit title assessment reports see new section 22B inserted by Clause 18 of this Bill.

Note: if not all required parts of the unit title assessment report have been included, the report will be taken as not having been provided with the application.

### **Clause 17 – Unit title applications – approval New section 20(4A)** –

inserts new section 20 (4A) which provides that the authority may refuse to approve a unit title application if -

- (a) the applicant is required to provide the authority with a unit title assessment report under section 17 and the applicant has not provided the assessment report or has provided a report that is more than 3 months old; or
- (b) the authority has asked for further information under section 22F and the applicant has not provided some or all of the information by the end of the period stated in the request or if the authority extends the period within which the further information must be provided, the end of that period.

Section 22F is inserted by this Bill (see clause 18).

**Clause 18 – New division 3.1A** – inserts a new division 3.1A entitled **Unit title assessment reports for unit title applications**.

**New section 22A** inserts the meaning of *unit title assessor*.

***Unit title assessor*** means—

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

**New section 22B(1) Unit title assessment reports** provides that an applicant for a unit title application may apply in writing to a unit title assessor for a unit title assessment report.

New section 22B(2) states that the application must include any details or material prescribed by regulation.

New section 22B(3) states that if a unit title assessor receives an application under subsection (1) and the unit title assessor agrees to undertake the work, the unit title assessor must—

- (a) prepare a unit title assessment report and give it to the applicant; and
- (b) not later than 5 working days after the day the assessor gives the report to the applicant, give a copy of the report to the planning and land authority.

*Note:* The unit title assessor may refuse to prepare and provide a report if the unit title assessor does not have enough information (see s 22E inserted by this Bill, clause 18).

New section 22B(4) states that if, after taking reasonable steps, an applicant cannot find a unit title assessor who will agree to prepare a unit title assessment report, the applicant may apply to the construction occupations

registrar to appoint a unit title assessor to prepare a unit title assessment report and give it to the applicant.

New section 22B(5) provides that a regulation may prescribe the requirements for a unit title assessment report, including—

- (a) what the report must contain; or
- (b) anything that must accompany the report.

**New section 22C Unit title assessment report applications –unit title**

**assessor may require further information** provides that a unit title assessor may, by written notice, ask the applicant to give the unit title assessor stated further information in relation to an application for a unit title assessment report if -

- (a) a unit title assessor requires further information to prepare the unit title assessment report under section 22B; and
- (b) the applicant and the unit title assessor have not agreed that the unit title assessor will obtain the further information; and
- (c) the unit title assessor believes on reasonable grounds that the further information will help the unit title assessor to prepare the report.

**New section 22D Unit title assessment report applications –contents of**

**request for further information** sets out the requirements for a request for further information. Section 22D(1) provides that a request under section 22C for further information must—

- (a) state the period within which the further information asked for must be provided; and
- (b) if the further information is not a document—state that the further information must be provided in writing; and
- (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the unit title assessor may refuse to provide a unit title assessment report under section 22E; and

- (d) state that, despite the applicant and unit title assessor having previously not agreed that the unit title assessor would obtain the further information, the applicant and unit title assessor may agree that the unit title assessor will obtain the information.

Section 22D(2) provides that the request may require the applicant to confirm all or part of any information provided by statutory declaration and section 22D(3) states that the period stated under section 22D(1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.

Under section 22D(4), the unit title assessor may, on application before the end of the period stated under section 22D(1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

**New section 22E Unit title assessment report applications –effect of failure to provide further information** sets out the effect of failing to provide further information. A unit title assessor may refuse to prepare and provide a unit title assessment report under section 22B -

- (a) if a unit title assessor has asked for further information under section 22C in relation; and
- (b) the applicant has not provided some or all of the information by the end of the period stated in the request; or by the end of any extended period given by the assessor; and
- (c) the applicant and the unit title assessor have not agreed that the unit title assessor will obtain the further information.

**New section 22F Unit title applications –authority may require further information** allows the planning and land authority to require an applicant to provide further information. The authority may, by written notice, ask the applicant to give the authority stated further information in relation to an application if -

- (a) an applicant has provided a unit title assessment report under section 17; and

- (b) further information is needed for the planning and land authority to be able to decide the application under section 20; and
- (c) the authority believes on reasonable grounds that the further information will help the authority to decide the application.

**New section 22G Unit title applications – contents of request for further information** sets out what is the required content of a request for further information by the authority.

A request under section 22F must—

- (a) state the period within which the further information asked for must be provided; and
- (b) if the further information is not a document—state that the further information must be provided in writing; and
- (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the authority may refuse to approve the unit title application under section 20 (4A) (a) or (b).

Under section 22G(2) the period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.

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

**Clause 19 – Regulation making power new section 181(2)** – inserts new section 181(2) that states that a regulation may create offences and fix penalties of not more than 60 penalty units for the offences.

**Clause 20 – New part 25** – inserts new part 25 **Transitional – Construction Occupations Legislation Amendment Act 2009** which provides for transitional matters.

Section 300 provides the meaning of **commencement day** for part 25.

**Commencement day** means the day this part commences.

Section 301 states that a lessee is not required to provide a unit title assessment report if –

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

Part 25 also provides a regulation making power to quickly correct or cover a matter that may have been inadvertently left out or needs amending or correcting. Section 302(1) provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of part 3 of the *Construction Occupations Legislation Amendment Act 2009*. Section 302(2) provides that 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. A regulation under subsection (2) has effect despite anything elsewhere in the UTA or another territory law and expires 2 years after the day it commences.

Section 303 Expiry—pt 25 provides that the part expires 5 years after the commencement day.

**Clause 21 – Dictionary, new definitions** – inserts new definitions for ***unit title assessment report*** and ***unit title assessor*** in the Dictionary.