

Australian Capital Territory

Construction Occupations (Licensing) Amendment Regulation 2016 (No 1)

Subordinate law SL2016–36

made under the

Construction Occupations (Licensing) Act 2004, section 18 (Eligibility for a licence)

EXPLANATORY STATEMENT

This explanatory statement relates to the Construction Occupations (Licensing) Amendment Regulation 2016 (No 1) as presented to the ACT Legislative Assembly. It has been prepared to assist the reader of the amending regulation. It does not form part of the amending regulation and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amending regulation. It is not, and is not meant to be, a comprehensive description of the amending regulation. This statement provides information about the intent of the provisions in the regulation; however, it is not to be taken as providing a definitive interpretation of the meaning of a provision.

Background

Under section 16 of the *Construction Occupations (Licensing) Regulation 2004*, an individual is eligible to be an owner-builder only if, amongst other things, he or she has not been granted an owner-builders licence in relation to land other to where the work is being carried out in the previous five years before applying for licence. This provision is intended to prevent speculative building under owner-builder licences. There are no exemptions to the five year criterion.

Many lessees have surrendered or sold a premises affected by loose-fill asbestos insulation under the ACT Government's related buyback schemes. A person who held an owner-builder licence for the affected premises, purchases their land back after the affected premises has been demolished and rebuilds on the same land would be eligible for a new owner-builder licence within five years, as both licenses relate to the same land. However, for owner-builders who chose to build or renovate another home after allowing the Territory to acquire their affected premises would not.

This regulation allows applicants who have held an owner-builders licence in relation to a premises that has been acquired under buyback scheme for either affected residential premises under the *Dangerous Substances Act 2004*, or eligible residential premises under the *Civil Law (Sale of Residential Property) Act 2003* to be eligible for an owner-builder licence for a different premises within the five year period.

The exemption would apply only if the applicant has surrendered the affected premises to the Territory and does not have a current owner-builder licence for the affected premises. The exemption would apply regardless of whether the affected property has been demolished, as the timing for demolition of properties is not within the applicant's control. Similarly, the affected premises need not be vacant, as some owners will have arrangements with the Asbestos Response Taskforce for owners to continue to occupy premises prior to their demolition. This will allow the individual to work on their new home prior to vacating their acquired premises.

Regulatory impact statement

The *Legislation Act 2001* section 36(1) states in part:

- (1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:
 - (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—
 - (i) adversely affecting the person's rights; or
 - (ii) imposing liabilities on the person;

A regulatory impact statement is not required for the regulation. This is because the regulation does not adversely affect any rights and does not impose liabilities. The regulation instead assists owner-builders licensed in relation to premises affected by loose-fill asbestos, to undertake work on their new premises and potentially smooth the transition from the affected property to new home.

Outline of Provisions

Clause 1 Name of regulation

This clause names the amending regulation as the Construction Occupations (Licensing) Amendment Regulation 2016 (No 1).

Clause 2 Commencement

This clause states that the amending regulation commences on the day after its notification.

Clause 3 Legislation amended

This clause notes that the amending regulation amends only the *Construction Occupations (Licensing) Regulation 2004*.

Clause 4 Section 16

This clause substitutes a new section 16. Subsection (2) retains the current five year period for owner-builders licences, but includes a new exemption for certain owner-builders who have previously held a licence in relation to a residential premises affected by loose-fill asbestos, or a non-habitable class 10 building, such as a sheds or garage, associated with that premises.

Not all buildings on affected premises may be demolished. For example, an outbuilding in which no asbestos fibres are detected may remain when the property passes to a new owner. To ensure the exemption applies only to people who were owners at the time the premises was an affected or eligible premises the premises must have been acquired from the individual applying for the new licence.

Subsection (1) is not changed from the previous section 16.

The clause also inserts new definitions applying to the provisions referring readers to existing definitions in the Civil Law (Sale of Residential Property) and Dangerous Substances and Building Acts.
