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

BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2017

EXPLANATORY STATEMENT

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This explanatory statement relates to the *Building and Construction Legislation Amendment Bill 2017* 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 bill 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.

Overview of the Bill

The Building and Construction Legislation Amendment Bill 2017 (the Bill) amends:

- *Construction Occupations (Licensing) Act 2004*
- *Electricity Safety Act 1971*
- *Electricity Safety Regulation 2004*

The Bill is intended to improve the operation of a range of regulations applying to building and construction work in the Territory.

Construction Occupations (Licensing) Act 2004

Part 11AA *Information sharing*

The proposed amendments to the COLA are to expand the existing information sharing powers between territory public safety agencies in Part 11AA to allow an ACT public safety agency to share information with public safety agencies in other jurisdictions.

In response to concerns about building products failing to conform to required standards and other building matters, there is an increasing level of, and need for, inter-jurisdictional information sharing on compliance and enforcement issues.

The Building Ministers' Forum has created two new groups to collaborate and share on national and cross-border issues relating to building products – the Senior Officials Group and the Building Regulators Forum. Further, officials undertaking public safety-related auditing and compliance action are also often in contact with interstate colleagues seeking relevant information on licensees working across borders and other information that will help them carry out their statutory functions.

The kinds of public safety information that the proposed amendments will help facilitate sharing nationally could relate to unsafe building or construction products, materials, or systems.

Currently, the *Construction Occupations (Licensing) Act 2004* allows the restricted sharing of information within the ACT in relation to a situation that presents or is likely to present a risk of death or injury to a person, significant harm to the environment or significant damage to property, that it has obtained in its function as a public safety agency. The information cannot be given unless the giving agency is satisfied that the receiving agency will use the information to exercise a function given to the receiving agency under a territory law.

Public safety agencies include the Construction Occupations Registrar and the directors-general responsible for the *Construction Occupations (Licensing) Act 2004*, *Emergencies Act 2004* and *Work Health and Safety Act 2011*, or the commissioners, chief officers, or inspectors appointed under those Acts.

This Bill expands the powers to allow an ACT public safety agency to give public safety information to other public safety agencies in other jurisdictions (*non-Territory agencies*), subject to comparable restrictions to those mentioned above. It also allows the giving agency to impose conditions on how the receiving agency uses, stores or shares the information and to choose not to give the information if it will unreasonably compromise the exercise of a function under a Territory law.

This gives certainty to relevant officials about inter-jurisdictional sharing of critical public safety information under national reforms and in relation to cross-border compliance issues, where appropriate. The proposed amendments will help ensure that relevant bodies can share information appropriately without undue disclosure or use of private information. This will complement the *Information Privacy Act 2014* (IPA), which also applies to sharing information between relevant parties. It also provides ACT agencies to reciprocate the provision of information with other regulators are authorised to share information under the laws they administer.

Privacy implications of these provisions are discussed in the *Human Rights Implications* section below.

Electricity Safety Act 1971 and Electricity Safety Regulation 2004

The proposed amendments are to:

- create a concept of the ‘electrical wiring rules’, which provides for incorporating provisions and requirements not included in the published version of AS/NZS 3000; and
- clarify the application of exemptions under section 3 of the Regulation.

The Electricity Safety Act references Australian and New Zealand standard AS/NZS 3000 Electrical installations (known as the Australian and New Zealand Wiring Rules) as the primary standard for electrical wiring work. The associated offences in the Electricity Safety Act relate to compliance with AS/NZS 3000.

Under national reforms, some electrical work traditionally provided by utility operators is becoming contestable, for example electrical metering work. AS/NZS 3000 does not include the specific standards currently in place for metering work as it has traditionally been managed under utilities rather than electrical safety laws. It is important for ongoing access and maintenance of meters that these standards are retained as part of the electrical wiring rules. However, there are no plans nationally to include standards particular to metering work into AS/NZS 3000. While there is provision in the Electrical Safety Act to make additional standards by regulation, these standards are not linked to the relevant offences.

The Bill will amend the *Electricity Safety Act 1971*, to create the concept of the ‘electrical wiring rules’ which will consist of AS/NZS 3000, any appendix declared by the Minister in a disallowable instrument, and specific regulations. This would also link the existing offences with any additional standards in the appendix.

Providing this flexibility in prescribing technical standards is comparable to powers under *Building Act 2004* and the *Water and Sewerage Act 2000*, which enable the relevant Minister to make appendices to the Building Code of Australia and to the Plumbing Code of Australia, to vary, or add to, technical standards of those Codes in the ACT if required.

Regulatory Impact Analysis

Section 34 of the Legislation Act requires that if a proposed subordinate law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a regulatory impact statement (RIS) to be prepared for the proposed law.

This Bill amends the *Electricity Safety Regulation 2004*.

Section 36 of the Legislation Act provides for when the preparation of regulatory impact statement is unnecessary. A RIS for amendments to subordinate law proposed in this Bill is unnecessary because the amendments to the *Electricity Safety Regulation 2004* (the Regulation) are either consequential amendments made as a result of adding new sections 3B to 3D in the *Electricity Safety Act* to create the electrical wiring rules (clause 7), or clarify the application of an exemption to work under s 6 (2) of the Act.

The proposed amendments to the *Electricity Safety Act 1971* create a head of power to make new electrical standards, but does not impose any at this time. Any new standards will require regulatory impact analysis in accordance with the Legislation Act.

The proposed amendments to the *Construction Occupations (Licensing) Act 2004* are to augment the existing regulatory framework give public safety agencies the ability to share information where appropriate with interstate agencies performing similar functions.

There are no significant costs associated with the Bill.

The Government's Triple Bottom Line Assessment Framework requires an assessment of climate change impacts for government bills or for major policy proposals. A statement of effects must be included in the explanatory statement for the relevant Bill. There are no expected climate change impacts associated with the Bill.

The proposed law is consistent with the policy objectives of the regulatory framework for construction occupations licensing and electricity safety currently in place. This law exists to protect the public and responds to the substantial risks to workers, building occupants, users of building services and the general public inherent in construction work.

Scrutiny of Bills Principles

The laws in this Bill are entirely consistent with Scrutiny Committee (the Committee) principles, in that they:

- accord with the general objects of the Acts under which they are made, as discussed above;
- do not unduly trespass on rights previously established by law, as the law is consistent with Information Privacy Principles and the interference with privacy is only insofar as is necessary for the protection of public safety;
- do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; and
- do not contain matters which should properly be dealt with in an Act of the Legislative Assembly, in that all provisions other than revising an existing provision providing a limited exemption from the offences in the Electricity Safety Act, are in an Act.

Offences and penalties

There are no new offences and penalties in the Bill. However, the Bill does amend the provisions of the existing offences in sections 5 and 6 of the Act to incorporate the additional standards that may form part of the *electrical wiring rules*, not only the provisions directly contained in AS/NZS 3000. This is consistent with the intent of the offences, which apply to breaches of the relevant technical standards applied in the ACT. While these standards have traditionally been contained entirely within the AS/NZS 3000, changes to electricity market regulation and emerging technologies will lead to some standards being created outside of that document temporarily or permanently.

As all standards are intended to ensure the safe and effective operation of electrical installations, it is appropriate that the same obligations and offences apply to technical standards made outside of AS/NZS 3000 as those within it. This does not remove the discretion of the court to impose a penalty appropriate to the breach within the available range of penalties.

Human Rights Implications

This bill may engage the right to privacy. This limitation is addressed below.

Section 12 of the Human Rights Act states that:

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The amendment to Construction Occupations (Licensing) Act (COLA), Clause 15, Section 123AB creates a new power for information sharing with non-Territory public safety agencies. This amendment may engage the right to privacy.

Importance and purpose of limitation

Public safety agencies exercise functions to protect the public. Relevant goods and services are often provided across jurisdictional borders. Increasingly, to carry out their functions adequately, public safety agencies must be able to access relevant documents and information.

Nature and extent of the limitation

The extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy. It is generally agreed that there is a diminished expectation of privacy during the course of regulated activities (*R v Jarvis* [2002] 3 SCR 757). As stated in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 “*The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should... be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.*”

Participants in the construction industry and undertaking regulated activities have a clear understanding that they are participating in a regulated industry. However, the information obtained by public safety agencies may also include information about private individuals that are not participating in regulated activities.

Section 12 of the Human Rights Act includes a qualifier that privacy is not to be interfered with ‘unlawfully or arbitrarily’. The impacts on privacy in this instance are not arbitrary as the bill clearly defines the manner in which information requests can be made and information shared between relevant entities. The impact is necessary to administer the legislation.

The provisions are in keeping with the Information Privacy Principles (IPPs), which often involve weighing up competing interests. IPP 6.2(e) involves similar circumstances to the provisions in the Bill, which provides that a public sector agency may provide personal information to other parties if it reasonably believes that the use or disclosure of the information is reasonably necessary for 1 or more enforcement-related activities conducted by, or on behalf of, an enforcement body.

The *Information Privacy Act 2014* (IPA) will also apply to sharing information under the amended Act. The IPA provides a range of safeguards to ensure disclosures of information are appropriate, for example updating records and secure storage. These safeguards mean that any limitation on the right to privacy in section 12 of the *Human Rights Act 2004* are reasonable and proportionate.

Relationship between the limitation and its purpose

Offences against the COLA and its operational Acts can involve matters of life safety, health and amenity of workers, the public and the eventual occupants and users of buildings and other structures.

Building and construction, as well as other activities regulated under public safety legislation, are regulated primarily because of the capacity of the activity to impact the life safety, health and amenity of individuals or the public. Regulation is in response to the high risks associated with the activity. The ability for public safety agencies to access reasonable information relating to the activities they regulate is integral to the effectiveness of regulation, and can be critical to its enforcement.

Any less restrictive means available to achieve the purpose

There are no other, less restrictive ways to achieve the required purpose. Other, less restrictive ways of obtaining public safety information are not likely to achieve the required purpose. There are limited other means available for public safety agencies to meet obligations to reasonably protect the public if the information is not provided on request. This leads to an obstruction of the enforcement of relevant laws.

Further, the information sharing is in the interest of public safety, and includes the ability for a giving agency to impose conditions on the use, storage or further sharing of the information so that the sharing is appropriate to the purpose for which it is given to limit in appropriate disclosure.

Strict Liability Offences

There are no strict liability offences in the Bill.

Clause Notes

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the Building and *Construction Legislation Amendment Act 2017*.

Clause 2 Commencement

This clause provides for the commencement of the Act on the day after its notification day.

Clause 3 Legislation Amended

This clause provides that the Act amends the:

- *Construction Occupations (Licensing) Act 2004*
- *Electricity Safety Act 1971*
- *Electricity Safety Regulation 2004*

Part 2 Construction Occupations (Licensing) Act 2004

Clause 4 Definitions—pt 11AA Section 123AA, new definitions

This clause inserts new definitions of *law of another jurisdiction* and *non-territory agency* for Part 11AA which relate to the new provisions for information sharing with public safety agencies outside the Territory (clause 5).

Clause 5 Section 123AB

This clause substitutes a new section 123AB, which includes additional provisions in subsection (1) that the giving agency can impose conditions on how the receiving agency uses, stores or shares the information. This is to prevent inappropriate use of the information by the receiving agency and to limit any potential compromise of other Territory functions should the information be disclosed other than in accordance with the conditions.

It also inserts a new section 123ABA to provide for existing information sharing powers to Territory public safety agencies providing relevant public safety information to agencies in other Australian jurisdictions related to compliance with a law of another jurisdiction that makes provision for public safety. This could be a building regulator, and emergency service or a law enforcement agency. Limitations include that the Territory agency is satisfied that the non-Territory agency will use the information to exercise a function it has under a public safety law, and that giving the information will not unreasonably compromise the exercise of a function under a Territory law.

Clause 6 Dictionary, new definitions

This clause inserts new definitions of *law of another jurisdiction* and *non-territory agency* into the Dictionary. The definitions refer to the new definitions in Part 11AA (clause 3).

Part 3 Electricity Safety Act 1971

Clause 7 New sections 3B to 3D

Clause 7 creates a new concept of the *electrical wiring rules*. The electrical wiring rules include AS/NZS 3000, a document prescribed by regulation and any ACT Appendix made by the Minister under new 3B (2). This is similar to the arrangements for the building code created under section 136 of the Building Act 2004 and the plumbing code (s 44C, *Water and Sewerage Act 2000*). This allows the addition or variation to the national standard as required.

The provisions also allow for the publication and availability of the ACT Appendix and the electrical wiring rules. The ability to inspect the electrical wiring rules is important for access to law, particularly for the parts of the electrical wiring rules the Territory cannot reproduce or distribute under copyright laws, such as AS/NZS 3000.

Clause 8 Section 5 heading

Clause 8 makes a consequential amendment to the section heading from replacing the reference to AS/NZS 3000 in the provision with a reference to the electrical wiring rules.

Clause 9 Section 5 (1) (b)

This clause substitutes the term *electrical wiring rules* for the term *AS/NZS 3000*. This ensures that technical standards applying to electrical wiring work made under the Act are all subject to the relevant offences.

Clause 10 Testing and reporting of electrical work Section 6 (1) (a) (ii)

This clause substitutes the term *electrical wiring rules* for the term *AS/NZS 3000*. This ensures that technical standards applying to electrical wiring work made under the Act are all subject to the relevant obligations and offences.

Clause 11 Evidence Section 63 (1)

Clause 11 makes a consequential amendment as a result of creating the electrical wiring rules (clause 5), which replaces AS/NZS 3000 in the provision.

Clause 12 Dictionary, new definition of *electrical wiring rules*

This clause inserts a new definitions of *electrical wiring rules*. The definition refers readers to the new definitions in Part 11AA (clause 3).

Part 4 Electricity Safety Regulation 2004

Clause 13 Section 80B heading

This clause substitutes a new section 3, which preserves the existing exemption under part 5 of the Act and applies the exemption under part 6 of the Act as intended. Section 6 (2) was previously referred to only in the section heading.

The exemption does not apply to other parts of the electrical wiring rules. This provision is intended to allow for republications of the standard that are not controlled by the ACT Government rather than changes made by the Appendix or by regulation and so apply only to AS/NZS 3000 rather than the broader wiring rules. A six month statutory transition may not be appropriate for ACT-made instruments and regulations. Transitional periods will be determined when any new laws are made.