

Australian Capital Territory

Construction Occupations (Licensing) Amendment Regulation 2024 (No 1)

Subordinate law SL2024–22

made under the

Construction Occupations (Licensing) Act 2004, s 129 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Construction Occupations (Licensing) Amendment Regulation 2024 (No 1)* (the **regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

This regulation is made under section 129 of the *Construction Occupations (Licensing) Act 2004* (the **Act**).

The *Building and Construction Legislation Amendment Act 2023* (the **amendment Act**) established a licensing framework for people installing and working on medical gas systems. The new licensing framework introduces new licence classes under the occupation of gasfitter in the *Construction Occupations (Licensing) Regulation 2004* – medical gasfitter and medical gas technician. The framework is supported by new definitions of medical gas, medical gasfitting work and medical gas technician work in the *Gas Safety Act 2000*.

This regulation:

- a) Introduces two new licence classes - medical gasfitter permit and medical gas technician permit, which enable the provision of medical gas services under supervision.
- b) Excludes medical gasfitting and medical gas technician work for a medical gas system used, or for use, only in the practice of veterinary science from the construction occupation of gasfitter and the requirement for a licence.

- c) Establishes a condition that limits an individual licensee from undertaking medical gas technician work for a medical gas system that they have already undertaken medical gasfitting work on, in the case that they hold both classes of licence. This condition does not limit the ability for a company to employ two individuals to perform the separate roles of medical gasfitter and medical gas technician.
- d) Includes other minor and technical amendments.

The provisions give effect to the objectives of the licensing framework by limiting the significant risk to health, safety and economic wellbeing of the community resulting from the provision of medical gas services by unqualified individuals or without an established verification process.

From 11 December 2024 anyone performing medical gas work in the ACT will be required to hold a licence. Existing offence provisions in the Act relating to performing work unlicensed will apply to these new licence requirements.

CONSULTATION ON THE PROPOSED APPROACH

In developing the amendment regulation, the Government consulted with key stakeholders on the medical gas licensing framework.

Stakeholders consulted include the Justice and Community Safety Directorate, the Chief Minister, Treasury and Economic Development Directorate, ACT Health, Canberra Health Services and the Plumbing and Pipe Trades Employees Union.

Consultation was undertaken with community, industry and key stakeholders throughout development of the licensing framework.

REGULATORY IMPACT STATEMENT

Section 34 of the *Legislation Act 2001* (the *Legislation Act*) provides that if a proposed subordinate law or disallowable instrument (the *proposed 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 to be prepared for the proposed law.

A RIS is not required for this regulation as the new provisions are not likely to impose appreciable costs on the community or a part of the community, as they are not expected to result in more than a minor change in obligations and behaviour of, or impact on, individuals and businesses currently engaging in medical gas work.

CONSISTENCY WITH HUMAN RIGHTS

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters.

A detailed assessment of the human rights implications of the new licensing framework for medical gasfitters and medical gas technicians was contained in the explanatory statement to the amendment Act.

It was recognised in that explanatory statement that the new licensing framework engaged the right to work (section 27B (1) of the *Human Rights Act 2004* (the HRA)) and may limit this right by restricting access to what was a previously self-regulated profession. Section 27B (1) of the HRA expressly provides that the practice of a trade, occupation or profession may be regulated by law.

There are significant risks to health, safety and the economic wellbeing of individuals resulting from the provision of medical gas services where an individual does not have adequate qualifications, experience or follow an established verification process for the installation. The need to mitigate these risks has been recognised in the establishment of the requirement for demonstration of knowledge and experience.

The introduction of two new permit classes (Medical Gasfitter permit and Medical gas Technician permit) supports people entering the industry that may be unable to demonstrate these requirements. The permits provide a pathway for applicants to obtain experience and qualifications who would otherwise not be eligible to work within this field under the licensing framework.

The framework has been designed to be the least restrictive approach and with sufficient safeguards to ensure the limitation on the right to work can be considered reasonable and justifiable.

The condition established in this regulation that limits an individual licensee from undertaking medical gas technician work for a medical gas system that they have already undertaken medical gasfitting work on, in the case that they hold both classes of licence, is considered reasonable and proportionate to the objectives of the medical gas licensed framework established by the amendment Act. The prevention of individuals commissioning their own work mitigates the likelihood that a poor installation can be certified and placed into operation putting the wider community at risk.

SCRUTINY COMMITTEE PRINCIPLES

This regulation and explanatory statement has been developed in accordance with the Scrutiny Committee (the Committee) principles and technical and stylistic standards expected by the Assembly.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Construction Occupations (Licensing) Amendment Regulation 2024 (No 1)*.

Clause 2 Commencement

This clause provides for the commencement of the regulation. The majority of the regulation commences on the commencement of section 45 of the *Building and Construction Legislation Amendment Act 2023*. That provision will commence on 11 December 2024.

Clause 9 of the regulation will commence on the day after notification.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Construction Occupations (Licensing) Regulation 2004*.

Clause 4 New section 4B

This new clause is made under section 6 (3) (b) of the *Construction Occupations (Licensing) Act 2004*.

The amendment Act defines *medical gas* as a substance used for medical purposes. The licensing framework for medical gas systems has been introduced to promote human safety.

To provide clarity around what is a medical purpose, this new clause excludes work on medical gas systems used in, or for the use in the practice of veterinary science from the construction occupation of gasfitter as the scheme was not intended to capture the practice of veterinary science. *Veterinary science* is defined in this section using the definition from the *Veterinary Practice Act 2018*.

All work on medical gas systems, including for the purpose of veterinary science, will continue to be required to meet current regulatory practices and comply with relevant Australian Standards, Codes and legislation.

Clause 5 New section 26A

This new clause provides that a medical gas technician must not commission or test a medical gas piping system that they have also carried out the relevant medical gasfitting work on that led to the need for the testing or commissioning. This is intended to provide additional safeguards by ensuring two separately licensed individuals have been involved in assuring the safety of the system.

Clause 6 Schedule 1, part 1.7, items 1 to 3

This clause prohibits other construction occupation classes of gasfitter from undertaking medical gasfitting or medical gas technician work by amending the current scope of work to exclude medical gasfitting and medical gas technician work. It is not intended for an advanced, general or journey person gasfitter to have the ability to perform work on a medical gas system.

Clause 7 Schedule 1, part 1.7, new item 10A

This clause inserts a new occupation class of medical gasfitter permit into the table for gasfitters at part 1.7 and lists its functions as medical gasfitting work under the supervision of a licensed medical gasfitter.

Clause 8 Schedule 1, part 1.7, new item 12

This clause inserts a new occupation class of medical gas technician permit into the table for gasfitters at part 1.7 and lists its functions as medical gas technician work under the supervision of a licensed medical gasfitter.

Clause 9 Schedule 1, part 1.7A, item 2, column 2

This clause is a minor and technical amendment to the title of a construction occupation class to ensure alignment between the title and the scope of work in column 3.

Clause 10 Dictionary, new definition of *medical gas system*

This clause is a minor and technical amendment to signpost to the definition of *medical gas system* in the *Gas Safety Act 2000*.