

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CONSTRUCTION OCCUPATIONS LEGISLATION
AMENDMENT BILL 2010**

EXPLANATORY STATEMENT

Circulated by authority of
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Minister for Planning

Construction Occupations (Legislation) Amendment Bill 2010

Outline

In 1994 the ACT established an energy efficiency rating scheme for residential buildings.

The ACT House Energy Rating Scheme (ACTHERS) complemented new local building energy efficiency standards for houses. ACTHERS assessments rate the theoretical thermal performance of a residence on a scale of zero to ten.

In 1998 the ACT was the first jurisdiction in the world to introduce an energy efficiency mandatory disclosure scheme for residential buildings. Disclosure requirements are contained in Part 3 of the *Civil Law (Sale of Residential Property) Act 2003 (Residential Sales Act)*.

Under the *Residential Sales Act* an Energy Efficiency Rating (EER) must be declared when residential premises are advertised, or offered, for sale. Some types of dwellings such as caravans and hostel-style accommodation are excluded from EER provisions. The EER must also form part of the contract of sale.

Disclosure of an EER is also required by the *Residential Tenancies Act 1997* when leasing or advertising a rental property when an EER for the property exists.

Mandatory EER provisions were introduced to address the lack of energy efficiency information for potential buyers. ACTHERS is the only legislated scheme in Australia to require an independent energy efficiency rating. The earliest expected establishment of a comparable mandatory disclosure scheme in other jurisdictions is the latter half of 2011.

Energy performance under the *Building Code of Australia*

Since the late 1990s the Building Code of Australia (BCA) has incorporated jurisdictional energy efficiency standards for housing and since 2003 prescribed national protocols and standards for new dwellings. The BCA is applied as part of building laws in the ACT through the *Building Act 2004*.

The BCA provides various methods to assess the energy efficiency of a dwelling.

However, the requirement under ACTHERS to provide an EER statement means that most practitioners in the ACT use the software verification or “energy rating” method.

The performance equivalent to six stars is now the minimum standard for detached houses and townhouses (class 1 buildings under the BCA), which increased from a five star equivalence on 1 May 2010. A similar increase in stringency for sole-occupancy units in apartment and other buildings (Class 2 buildings and Class 4 parts of buildings) has also been introduced.

Current regulation of building energy efficiency assessors

Currently energy efficiency assessors are not licensed in the ACT.

Section 20A of the *Residential Sales Act* authorises the ACT Planning and Land Authority (ACTPLA) to make guidelines for the preparation of EER statements (the Guidelines).

Assessors preparing energy efficiency rating statements under the *Residential Sales Act* must be registered with ACTPLA. There are currently over 200 registered energy assessors.

Registered energy efficiency assessors are subject to a code of practice, as well as the Guidelines, which inform auditing requirements, protocols for assessing building elements and lodging EER certificates with ACTPLA.

Assessors for new buildings were previously registered and subject to the code of practice. Since the removal of EER requirements from development assessments in March 2008 — in line with national agreements — practitioners that carry out energy performance assessments on building plans are not registered.

As most ratings are subsequently used for sale of properties, EER Guidelines provide some level of coverage for these assessments. Provisions exist in the *Building Act 2004* and the *Construction Occupations (Licensing) Act 2004 (COLA)* that require builders and building certifiers to ensure compliance with the BCA, but at present there is no mechanism to directly regulate energy assessors.

Since the introduction of the ACTHERS, government intervention has been minimal and the approach to assessors predominantly educational. This approach is no longer viable. Recent initiatives for energy efficiency place new priorities and pressures on the provision of a highly reliable energy rating system.

Under current arrangements, there is limited capacity for government to compel assessors' compliance with provisions in ACT legislation for preparation of EERs. There is also no formal complaints mechanism for consumers to have complaints investigated.

Effect of this Bill

This Bill will utilise the existing regulatory framework under *COLA* and the *Building Act 2004* to provide suitable educative and disciplinary for building energy efficiency assessors and complaints mechanisms for consumers.

The framework for licensing builders, electricians, plumbers etc that exists in *COLA* is also suitable for energy assessors.

The Bill provides for licencing a new occupation under *COLA*. The Bill also provides for particular licensing requirements and codes of practice for energy assessors within *COLA* itself, rather than creating a separate occupational Act.

The Bill will only require individual assessors to hold a licence.

The Bill only prescribes energy assessor licensing for residential schemes. Separate endorsements will be granted for each of the software tools a licensee is trained to use, so that licensees may choose to be endorsed only for the tools they use in practice.

Licensing of building energy assessors in the ACT will enable assessors to be recognised under the existing mutual recognition framework. At present, mutual recognition provides the most appropriate cross-border arrangements as the scope and type of registration arrangements for assessments differs in each jurisdiction.

The Bill also introduces provisions to enable future classes of licence and for expansion of the scope of work to additional assessments such as water efficiency and appliances.

These provisions will allow other pre-purchase assessors, such as those who conduct building inspection reports for sale or purchase, to be regulated if necessary.

Public safety measures

The Bill includes two generic aspects of regulation to improve agency responses to events that pose a risk to public safety.

The Bill will authorise the Construction Occupations Registrar to suspend a licence where there is an issue of public safety has been identified. The Bill will also authorise relevant regulatory agencies and inspectors to share information where public safety is at risk.

Building work, including electrical, plumbing and gas work poses inherent safety risks when the work is not done according to prescribed standards. The power to suspend a licence on public safety grounds will enable the Registrar to prevent further risk to public safety and manage the existing risk as soon as the Registrar decides that reasonable grounds exist that the conduct of a licence holder is a risk to public safety. This new power is especially relevant in a context of building and development moving at rapid pace.

Example one: A licence holder is authorised to engaged in demolition work that involves the removal of asbestos. The licence holder is carrying out several demolition jobs and has several more awaiting commencement.

Building inspectors auditing one of the practitioner's jobs ascertain that the licence holder is using demolition methods inconsistent with the standards for managing asbestos. Having provided the information to the Registrar (or their delegate) the Registrar determines that the licence should be suspended so that the licence holder cannot commence further jobs until the methods are assessed and rectified and existing jobs inspected.

Example two: A licensed builder specialises in the construction of dual-occupancy residences. The builder has built seven such residences, and is building another four. Building inspectors inspecting one of the buildings under construction find that no fire-wall has been built between the two occupancies, which is also inconsistent with the building approval. In this circumstance, the Registrar may determine that the builder's licence is suspended in order to inspect the built residences and prevent the builder from building more dangerous structures.

In relation to sharing information the context of building and development, there are a range of specialised regulatory laws and corresponding agencies that deal with safety issues.

Inspectors enforcing work safety laws, building laws, gasfitting laws, plumbing laws etc are often confronted with situations that require multi-disciplinary responses or require other regulators to exercise their laws.

In most cases, referral or collaboration between agencies requires sharing information covered by the *Privacy Act 1988*, such as the name and address of the owner of a particular site, or individuals that may be working on a particular site.

In the absence of authorising legislation, the *Privacy Act 1988* requires each case to be assessed against the Information Privacy Principles.

In some cases time is of the essence and it is not possible to conduct a full assessment of the nature of the information being exchanged or affirm the relevant exclusion under the *Privacy Act 1988*. In other cases, exchange of information often takes place between inspectors who have been investigating the same incident but have different statutory roles. In this situation, there is a strong community expectation that government agencies would cooperate and collaborate to enforce all relevant laws. Consequently, it is routinely decided that information should be shared as a matter of public safety.

Doubt or concern about exchanging information in these situations can take up valuable time. Likewise, where time may not be a factor, the impact of doubt means that different cases involving the same safety issues are treated differently.

For these reasons, the Bill authorises relevant agencies to exchange information only for the purposes of exercising their relevant laws where a public safety issue is at stake. The Bill does not authorise public disclosure of the information.

The amendment will provide the specified agencies with certainty when coordinating a response to a threat to public safety that involves a number of inspectorates or agencies. Dealing with asbestos is an example, as is dealing with building work that has caused damage to power lines, gas lines etc. Another example would be the discovery of an unauthorised structure by a building inspector which has been wired for power and plumbed. Obviously electrical and plumbing work carried out unlawfully inherently raises safety issues and requires advice and inspection by other relevant inspectors.

The agencies or inspectorates contemplated by the Bill are: emergency services, work safety, dangerous substances, utilities, water, building, electrical, plumbing and gasfitting.

Human Rights

The Bill's provision that would allow the exchange of information between relevant agencies for the purpose of public safety may engage the right to privacy and reputation under section 12 of the *Human Rights Act 2004*.

The collection and exchange of information by officials of the State about an individual without consent will always concern their private life and thus falls within the scope of the right to private life. [Ursula Kilkelly, *The Right to Respect for Private and Family Life*, Council of Europe, Germany 2001, p 13.]

However, “[a]ll persons live in society, the protection of privacy is necessarily relative . . . the competent public authorities should only be able to call for such information relating to an individual’s private life the knowledge of which is essential in the interests of society as understood under the Covenant”. [International Covenant on Civil and Political Rights, Article 17, General Comment 16, 32nd session 1988, para 7.]

The *Human Rights Act 2004* recognises that some rights are not absolute in a democratic society and provides for justified limitations on human rights in section 28. The key criteria for any limitation that can be justified in a democratic society is set out in section 28(2):

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

In relation to the nature of the right affected, the right to privacy is “necessarily relative”. There are a vast array of consensual and non-consensual disclosures of private information that occur as a normal and justifiable functioning of a democratic society.

The purpose of the limitation is public safety. The purpose must be demonstrable to exercise the power contemplated by the Bill.

The extent of the limitation itself is restricted to exchange between authorities who regulate relevant legislation that have public safety elements. The limitation on the right does not extend to disclosure beyond that circle of agencies nor to any form of public disclosure not already authorised by law.

There is a direct relationship between the limitation and purpose as in all cases a place has to be identified to exercise the relevant laws. In the vast majority of cases individuals must also be identified (such as owners, lessees, builders etc).

The Government considers the approach to be the least restrictive means to achieve the purpose of the provision.

Construction Occupations (Legislation) Amendment Bill 2010

Detail

Part 1 — Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Construction Occupations (Legislation) Amendment Act 2010*.

Clause 2 — Commencement

This clause enables the Act to commence by way of a notice by the Minister after the Act is notified on the Legislation Register. If the Act is not commenced within six months of notification, the provisions of the *Legislation Act 2001* will automatically commence the Act.

Clause 3 — Legislation amended

This Bill amends the legislation listed in (a) to (e).

Clause 4 — Legislation repealed

This clause repeals the disallowable instrument made under the *Civil Law (Sale of Residential Property) Act 2003*. As discussed in the outline, this instrument provided guidelines for the preparation of energy efficiency rating statements. This Bill provides for a new means of regulating energy efficiency rating statements. Consequently, the instrument will no longer be necessary.

Part 2 — Building Act 2004

Clause 5 — Building approval applications — new section 26(2)(g)

Section 26 of the Building Act stipulates what information or documents must be submitted when applying for a building approval. This clause would require a energy efficiency certificate to be lodged with the application if required by Part 8 of the Building Act.

Clause 6 — New section 26(4)

Consistent with clause 5 above, new section 26(4) provides a definition for ‘energy efficiency provision’. The definition refers to the in-text definition in new section 139C(4) discussed under clause 8 below.

Clause 7 — Part 8 heading

This clause re-words the existing heading for part 8 of the Building Act.

Clause 8 — New division 8.3 — Energy efficiency certificates

This clause inserts a new division into part 8 of the Building Act to set out the requirements for energy efficiency certificates.

New section 139C establishes a statutory framework for when an energy efficiency certificate must be prepared. Section 139C(1) and (3) establishes that an energy

efficiency certificate must be if prepared regulations stipulate that compliance with certain energy efficiency requirements of the Building Act or Building Code of Australia require a particular form or report or other document.

New section 139C(2) specifies that an energy efficiency certificate must be prepared by a building assessor and in accordance with a code of practice and any regulations made by the Executive.

The Government intends that the Executive may make regulations for this purpose if necessary.

Section 139C(2) defines ‘code of practice’ as the foreshadowed code of practice under the COLA. The code of practice is discussed under clause 22 below.

New section 139D regulates issues of conflict of interest that may arise when building assessors are placed in a position where they may be preparing an energy efficiency certificate for building work.

In the process of lodging a building application an energy efficiency certificate must be prepared for any relevant building work. An energy efficiency rating statement may be prepared for any subsequent sale of the property. To enable prospective purchasers to be confident of the rating standard used for building the property and any subsequent rating statement, there needs to be transparency about the process and relationships involved in the preparation of these documents.

In some cases the building assessor may have a relevant material relationship or interest in the proposed building eg is working with a company involved in the design of the building in order to have energy efficiency aspects of the building considered during the design stage. In these circumstances, section 139D(2) requires the assessor to disclose this conflict to the Construction Occupations Registrar. However, if the person is the certifier for the work, section 139D would prohibit that person from also being the assessor for that work.

Clause 9 — Dictionary, new definition of energy efficiency certificate

This clause adds the definition of ‘energy efficiency certificate’ to the dictionary of the *Building Act 2004*. The meaning is set out in new section 139C.

Part 3 — Civil Law (Sale of Residential Property) Act 2003

Clause 10 — Meaning of required documents — section 9(3)

Section 9 of the *Civil Law (Sale of Residential Property) Act 2003* stipulates what documents are required for the sale of a property. Subsection 3 of the Act deals with conflict of interest issues for relevant reports.

This clause amends subsection (3) to remove the reference to energy efficiency statements, as the conflict of interest issues will now be addressed in the foreshadowed amendments to COLA.

Clause 11 — Definitions for part 3 — section 20, definition of energy efficiency rating guidelines.

As discussed in the outline, these provisions will now be addressed in the foreshadowed amendments to COLA. Consequently, this clause omits this section from the *Civil Law (Sale of Residential Property) Act 2003*.

Clause 12 — Section 20, definition of energy efficiency rating statement.

As discussed in the outline, these provisions will now be addressed in the foreshadowed amendments to COLA. Consequently, this clause substitutes this section with a new provision that refers to the relevant provision in COLA.

Clause 13 — Sections 20A and 21

As discussed in the outline, these provisions will now be addressed in the foreshadowed amendments to COLA. Consequently, this clause omits these sections from the *Civil Law (Sale of Residential Property) Act 2003*.

Clauses 14 and 15 — Dictionary, definitions of energy efficiency rating guidelines and energy efficiency rating statement

As discussed in the outline, these provisions will now be addressed in the foreshadowed amendments to COLA. Consequently, this clause omits these definitions section from the *Civil Law (Sale of Residential Property) Act 2003* dictionary.

Part 4 — Construction Occupations (Licensing) Act 2004

The amendments to COLA will use the existing regulatory COLA framework to regulate energy efficiency assessors.

The Bill provides for licensing a new occupation under COLA, namely building assessors. The amendments also provide for particular licensing requirements and codes of practice for energy assessors within COLA itself, rather than creating a separate occupational Act.

Clause 16 — What is a construction occupation? New section 7(ca)

This clause inserts a new construction occupation, namely building assessor. As discussed in the outline, this occupation may be used in the future to cover other generic occupations involved in the construction and sale of residential properties.

Clause 17 — New section 8A

This clause fleshes out the meaning of building assessor and under subsection (3) gives content to the meaning by stipulating that ‘building assessment work’ means preparing and providing energy efficiency certificates and rating statements.

The effect of clauses 16 and 17 will be to apply the full effect of COLA to the new occupation class of building assessor. In essence, individuals who wish to practice the occupation must obtain a licence to operate in the Territory.

Clause 18 — New section 52A Suspension of licence — public safety

This clause introduces a provision that will enable the Construction Occupations Registrar to suspend a licence on grounds of public safety.

The section provides examples where licences may be suspended under this provision.

Subsection (1) empowers the Registrar to suspend a licence if the Registrar decides on reasonable grounds that there is a risk, or a probability of a risk of death, injury, significant harm to the environment or significant damage to property.

Section 52A(2) requires the registrar to notify the affected person, or people, of the conduct which is determined to be a risk and the nature of the risk the conduct presents. For example, if a licensed gasfitter has engaged in fitting gas pipes below standard resulting a significant build up of gas in a residential apartment block, the Registrar must state the conduct in question and state that it affects the health and safety of residents and poses a risk of damage to the property.

Once the notification is given to the licence holder, the licence is suspended.

Section 52A(3) empowers the registrar to allow the suspended licence holder to undertake construction work that would satisfy a rectification order made by the Registrar. To remove any doubt, it is the Government's intention that the licence holder would only be able to do work required by the Registrar under this provision. Taking the example of the gasfitter above, new section 52A(3) would enable the Registrar to condition the licence suspension to fix the apartment block in question in accord with a rectification order issued by the Registrar against the suspended licensee.

Subsections (4) and (5) enable the Registrar to notify the licence holder using the most expedient means. If the Registrar notifies the licensee verbally then the Registrar must follow the verbal notice with a notice in a written form, either in hard copy or electronically (eg via e-mail).

Clause 19 — Section 53 heading

This clause amends the heading of section 53 to remove the word 'automatic'.

Clause 20 — Section 53(1)

This clause re-casts section 53(1) to account for automatic suspensions and decision-based suspensions. The list of suspensions includes the new power to suspend under 52A.

Clause 21 — Construction Occupations Registrar — New section 103(2)(ba)

Section 103 of COLA sets out the range of occupations that inform eligibility to be appointed the Construction Occupations Registrar. This clause adds the occupation of 'building assessment' to that list.

Clause 22 — New section 104A

New section 104A empowers the Registrar to approve a code of practice for construction occupations, classes of occupations and construction services.

A 'construction service' as defined by section 6 of COLA is the doing or supervision of work in a construction occupation.

The new section provides the Registrar with the flexibility of drawing upon existing Australian Standards, codes etc or other laws to form a code of practice.

Subsection (3) stipulates that any code of practice is a disallowable instrument.

Clause 23 — New parts 11AA and 11AB

This clause inserts new parts 11AA and 11AB into COLA dealing with information sharing and energy efficiency rating statements.

New part 11AA enables public safety agencies to share information as a consequence of a situation, incident or discovery that is, or presents, a risk to life, health, significant harm to the environment or significant damage to property.

The Government intends that this provision contemplates the sharing private information between relevant agencies listed in new section 123AA when it is necessary to share the information. The provision is intended to operate to set aside the effect of the *Privacy Act 1988*, where the provision is exercised lawfully. The provision is not intended to authorise public disclosure of private information, nor sharing information beyond the narrow scope of the provision.

This provision is not intended to limit the sharing of information between agencies where the information does not include private or personal information. For example, the provision is not intended to prevent, or limit, the sharing of de-identified statistics, technical information, government financial information etc.

The outline discusses the human rights justification for this provision.

Section 123AA(1) contemplates information obtained by public safety agencies because of their statutory roles to regulate safety and relevant industry.

Section 123AB stipulates the scope of sharing information between relevant agencies.

The provisions provide a discretion to agencies by using the term ‘may’, which is defined in section 146(1) of the *Legislation Act 2001*:

In an Act or statutory instrument, the word may, or a similar term, used in relation to a function indicates that the function may be exercised or not exercised, at discretion.

Section 123AB authorises a public safety agency to give information to another public safety information agency on its own initiative, request information, and provide information upon request. Under subsection (4) the agency providing the information must be satisfied that the information is relevant to the exercise of a function or power under the laws administered by the receiving agency. This includes where the receiving agency may use the information to satisfy itself as to whether or not the exercise of a power is required.

For example, an inspector under the *Work Safety Act 2008* provides an inspector under the *Building Act 2004* with information about a builder who has engaged in

unsafe building work on the basis that the building inspector has jurisdiction to take further action about the unsafe work. The building inspector may use the information to establish that the circumstances warrant no action under the *Building Act 2004*.

New part 11AB provides for energy efficiency rating statements.

Energy efficiency rating statements are prepared for the purposes of selling a residential property.

New 123AC provides a definition for energy efficiency rating statement, which references section 123AD.

New section 123AD establishes a statutory framework for when an energy efficiency statement must be prepared. Section 139C establishes that an energy efficiency statement if a provision Territory law requires a statement. The examples cite the *Civil Law (Sale of Residential Property) Act 2003* and the *Residential Tenancies Act 1997*.

New section 123AD(2) specifies that an energy efficiency certificate must be prepared by a building assessor and in accord with a code of practice and any regulations made by the Executive.

The Government intends that the Executive may make regulations for this purpose if necessary.

Codes of practice are established by new section 104A (discussed under clause 22 above).

New section 123AE addresses conflict of interest issues for building assessors preparing energy efficiency rating statements.

Section 123AE(1) re-states the conflict of interest provisions that were embodied in the *Civil Law (Sale of Residential Property) Act 2003* and the *Residential Tenancies Act 1997*. It is the Government's intention that these re-made provisions would be interpreted in a manner consistent with their antecedents in the *Civil Law (Sale of Residential Property) Act 2003* and the *Residential Tenancies Act 1997*.

Subsection (2) enables assessors to prepare a statement if there is a conflict of interests only if the assessor follows the requirements of subsection (2).

In the circumstance of a conflict of interest, the statement can only be prepared for new buildings. The statement must be based on an energy efficiency certificate prepared for the building or proposed building (discussed under clause 8 above) and be consistent with the statement. This is so that information in an energy efficiency certificate can be used for an energy efficiency rating statement to avoid the need for the preparation of two assessments for the sale of a new building. However, it is intended that this only apply when the rating and details on which the rating are based are the same in both documents. The building assessor must also declare the conflict to the Registrar and give a copy of the declaration to the seller or lessor.

Clause 24 New part 17

Clause 24 inserts a new transitional part into COLA to address the transition from the existing regulatory regime into the foreshadowed regime. The part also addresses the status of old statements and assessors in the new regime.

New section 161 defines commencement day as the day the foreshadowed Act commences. See clause 2 above for commencement provisions.

New section 162 stipulates that section 88 of the *Legislation Act 2001* does not apply. Section 88 states that any transitional laws that have been made and are later repealed, can still be used in circumstances relevant to the transitional laws. By negating this provision of the *Legislation Act 2001* the transitional provisions end in total when they expire. In other words once the provisions expire they cannot be applied after the expiry date.

New section 163 stipulates that Division 17.3 expires after one year and all of the other divisions in Part 17 expire after three years.

New Division 17.2 establishes the effect of old energy efficiency ratings and old energy efficiency rating statements under the new law.

An old rating is taken to continue as a rating under the *Civil Law (Sale of Residential Property) Act 2003*. However, this will only apply for three years after commencement day, because of the effect of new sections 162 and 163.

An old rating statement is taken to continue as a rating statement under COLA. However, this will only apply for three years after commencement day, because of the effect of new sections 162 and 163.

New Division 17.3 provides transitional arrangements for existing energy assessors who are registered. The provisions enable existing energy assessors to be eligible and apply for a licence within a year after the commencement of the foreshadowed Act.

Section 167 defines the existing energy assessors by reference to the register of assessors recognised by the instrument made under the *Civil Law (Sale of Residential Property) Act 2003*.

Section 168 deems existing registered assessors to be licensed building assessors under COLA following commencement of this foreshadowed Act. The effect of sections 162 and 163 above mean that this provision only lasts one year after commencement of the Act.

Section 169 follows the logic of section 168 in relation to the operation of authorised software. Section 169 deems existing registered assessors licences (which are deemed by section 168) to be endorsed to allow the assessor to use only the relevant software permitted under the existing registration.

Clause 25 — Dictionary, new note

The *Legislation Act 2001* defines *building code* as meaning the building code under the *Building Act 2004*, section 136. This clause introduces a note to the COLA dictionary to reference the meaning of building code to the *Legislation Act 2001*.

Clause 26 — Dictionary, new definitions

Consistent with the new provisions to COLA added by this Bill, this clause adds new relevant definitions.

Part 5 — Construction Occupations (Licensing) Regulation 2004

Part 5 of the Bill amends the Regulations made under COLA.

Clause 27 — Licence applications — section 5(h)

Section 5 of the COLA regulations sets out the requirements for a licence application. This clause re-casts the requirement to provide the name of the insurer who will provide insurance for the relevant type of licence. 5(h) would include building assessors.

Clause 28 — Section 8 heading

This clause amends the heading for section 8 of the COLA regulations

Clause 29 — Section 8(1)

Section 8 of the COLA regulations limits the life of a licence under COLA for the occupations mentioned in section 8 to one year. This clause adds building assessors to those occupations.

Clause 30 — Particulars in register — Section 9(1)(c)

Section 9 of the COLA regulations sets out what must be recorded in the register established under COLA of each licensee. Subsection (c) requires the relevant insurer to be recorded for the occupations listed. This clause adds building assessor to the list in subsection (c).

Clause 31 — New section 16B

This clause inserts a new section into the COLA regulations that stipulates the eligibility requirements for a person to be licensed as a building assessor.

The applicant must have adequate insurance and competence in the relevant software to conduct assessments.

New subsection (2) sets the minimum threshold for what is adequate insurance.

Clause 32 — New section 21A

This new clause creates a condition of licence for any class of licence that involves a code of practice made under COLA. (See clause 23 above).

Clause 33 — New section 31A

This clause empowers the Registrar to determine that a class of building assessor's licence must be endorsed to operate relevant software. It also empowers the Registrar

to stipulate the software in question. Any decision made under subsection (2) is a notifiable instrument, as required by subsection (3).

Subsection (1) authorises the Registrar to endorse a building assessor's licence to operate stated software, provided the Registrar is satisfied that the licensee is competent to operate the software in question.

Clause 34 — Consideration for endorsing under sections 30 and 31 — Section 32(1)

Consistent with new section 31A (see clause 33 above) this clause adds new section 31A to the list of endorsement provisions in section 32. Section 32 sets out the criteria the Registrar must consider when deciding upon competency of the individual to operate the relevant software.

Clause 35 — New section 37B

This clause introduces a new section 37B, which creates classes of licence for building assessors as set out in new part 1.3A. See clause 36 below.

Clause 36 — Classes of construction occupation licence and functions — Schedule 1, new part 1.3A

This clause introduces a new part to the schedule of classes of construction occupation licences.

The new schedule introduces 'class A' and 'class B' licence for energy efficiency building assessors. Class B authorises licence holders to provide energy efficiency certificates and statements on the basis of the plans of a building. Class A authorises licence holders to provide energy efficiency certificates and statements on the basis of the plans of a building and on the basis of on-site inspection of buildings.

Clause 37 — Reviewable decisions — schedule 4, new item 24A

This clause introduces a new item in schedule 4. Schedule 4 lists the decisions that are amenable to merits review by the ACT Civil and Administrative Tribunal. This clause adds the decision to refuse to endorse a licence under new section 31A as a reviewable decision. (See clause 33 above which explains new section 31A.)

Part 6 — Residential Tenancies Act 1997

Clause 38 — Dictionary, section 2, note 1

This clause updates the correct reference to the COLA, in relation to energy efficiency rating statements.

Clause 39 — Dictionary, definition of energy efficiency rating statement

This clause updates the correct reference to the COLA, in relation to energy efficiency rating statements.