

AUSTRALIAN CAPITAL TERRITORY

# Construction Practitioners Legislation Amendment Act 2003

A2003-19

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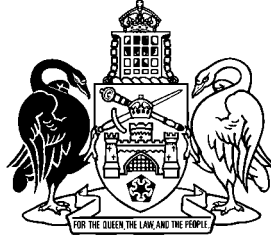
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AUSTRALIAN CAPITAL TERRITORY

# Construction Practitioners Legislation Amendment Act 2003

**A2003-19**

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An Act to provide for government certifiers, and for other purposes

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*Notified under the Legislation Act 2001 on 19 May 2003  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Construction Practitioners Legislation Amendment Act 2003*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

## Part 2 Building Act 1972

### 3 Act amended—pt 2

*This part amends the Building Act 1972.*

### 4 Interpretation for Act Section 5 (1), definition of *certifier*

*substitute*

*certifier*—

- (a) for building work—means a person who is appointed to act as certifier under section 31 (Appointment of certifiers), or as government certifier under section 31A (Appointment of government certifiers), for the work;
- (b) for division 3.2 (Certifiers and government certifiers)—see section 29A (Meaning of *certifier*, *eligible person* and *government certifier* for div 3.2).

### 5 Division 3.2

*substitute*

## Division 3.2 Certifiers and government certifiers

### 29A Meaning of *certifier*, *eligible person* and *government certifier* for div 3.2

In this division:

*certifier* does not include government certifier.

*eligible person*, for building work—see section 30 (1).

*government certifier*, for building work, means a person who is appointed under section 31A (4) for the work.

### **30 Eligibility for appointment—certifiers and government certifiers**

- (1) A registered construction practitioner (an *eligible person*) is eligible to be appointed certifier or government certifier for building work if the construction practitioner—
  - (a) is entitled under the *Construction Practitioners Registration Act 1998* to perform services as certifier for the work; and
  - (b) is qualified under the regulations to be appointed for the work.
- (2) In this section:

*registered construction practitioner* means a person registered under the *Construction Practitioners Registration Act 1998*.

### **31 Appointment of certifiers**

- (1) The owner of land where it is proposed to carry out building work may, in writing, appoint an eligible person (the *certifier*) as certifier for the work.
- (2) The appointment ends if—
  - (a) the certifier stops being an eligible person; or
  - (b) the owner of the land revokes the appointment by written notice given to the certifier; or
  - (c) the certifier resigns the appointment.
- (3) The certifier may resign the appointment only—
  - (a) with the written approval of the building controller; and
  - (b) by written notice given to the owner of the land.

- (4) The building controller may approve the resignation of the certifier only if satisfied that—
- (a) the certifier cannot exercise his or her functions in relation to the building work because of mental or physical incapacity; or
  - (b) the certifier has arranged for another certifier to take over the certifier's functions in relation to the building work; or
  - (c) it is otherwise appropriate to approve the resignation.

### **31A Appointment of government certifiers**

- (1) This section applies to building work if the last certifier appointed for the work is no longer the certifier for the work.
- (2) A certifier is *no longer the certifier* for building work if—
- (a) the certifier's registration is suspended for longer than 3 months; or
  - (b) the certifier's registration has been cancelled; or
  - (c) the certifier has resigned the appointment under section 31; or
  - (d) the certifier is dead; or
  - (e) the certifier is not covered by insurance for the *Construction Practitioners Registration Act 1998*.
- (3) The owner of the land where the building work is being carried out (or proposed to be carried out) may apply to the building controller for the appointment of a government certifier for the work.

*Note* If a form is approved under s 109 (Approved forms) for an application, the form must be used.

- (4) The building controller may appoint a government certifier for the building work if satisfied that the criteria prescribed under the regulations are satisfied.
- (5) The regulations may prescribe what must accompany the application.

**31B Power to require building documents**

- (1) A government certifier appointed for building work may, by written notice, require the person who was the certifier (or last certifier) for the building work to give the government certifier any building document the person has in relation to the work within the period (of not less than 2 weeks after the day the notice is given) stated in the notice.
- (2) A person commits an offence if the person fails to comply with a notice given to the person under section (1).

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) In this section:

*building document* means a document mentioned in section 40 (1) (c) to (j).

**31C Protection of government certifiers from liability**

- (1) A government certifier does not incur civil or criminal liability for an act or omission done honestly as a government certifier.
- (2) A civil liability that would, apart from this section, attach to the government certifier attaches instead to the Territory.

**32 Notice of certifier's appointment or end of appointment**

- (1) This section applies if—
  - (a) a building approval has been issued for building work; and
  - (b) either—
    - (i) a person is appointed certifier for the work; or
    - (ii) a person's appointment as certifier for the work ends.



- (2) The person must, within 7 days after the day the person is appointed or the appointment ends, give the building controller written notice of the appointment or end.

Maximum penalty: 1 penalty unit.

*Note* If a form is approved under s 109 (Approved forms) for a notification, the form must be used.

- (3) An offence against subsection (2) is a strict liability offence.

### **33 Prohibition against contracting out**

A provision in a contract or agreement that limits or modifies, or purports to limit or modify, the operation of this part, including this section, in relation to a certifier or building work, is void.

## **6 Review by administrative appeals tribunal New section 103 (1) (fa) and (fb)**

*insert*

- (fa) refusing to approve a certifier's resignation under section 31 (3) (a); or
- (fb) refusing an application to appoint a government certifier for building work; or

## **7 New section 103 (3) (ca) and (cb)**

*insert*

- (ca) for a decision referred to in subsection (1) (fa)—to the certifier; or
- (cb) for a decision referred to in subsection (1) (fb)—to the applicant for the appointment of a government certifier; or

## **8 Section 103 (1) and (3)**

*renumber paragraphs when Act next republished under Legislation Act 2001*

## Part 3 Building Regulations 1972

### 9 Regulations amended—pt 3

*This part amends the Building Regulations 1972.*

### 10 Regulation 6

*substitute*

#### 6 Qualifications for certifiers and government certifiers for categories of building work—Act, s 30 (1) (b)

- (1) A principal building surveyor or principal government building surveyor is qualified for any building work.
- (2) A building surveyor or government building surveyor is qualified for building work in relation to a building—
  - (a) that is 3 storeys or lower; and
  - (b) with a floor area not larger than 2 000m<sup>2</sup>.
- (3) In this regulation:

*building surveyor* means a person registered in the category of building surveyor under the CPR Act.

*CPR Act* means the *Construction Practitioners Registration Act 1998*.

*government building surveyor* means a person registered in the category of government building surveyor under the CPR Act.

*principal building surveyor* means a person registered in the category of principal building surveyor under the CPR Act.

*principal government building surveyor* means a person registered in the category of principal government building surveyor under the CPR Act.

**6A Criteria for appointment of government certifier—Act, s 31A (4)**

The criteria for the appointment of a government certifier for building work are—

- (a) a building approval for the work is in force; and
- (b) a licensed builder has started the work; and
- (c) the owner of the land where the work is being carried out cannot, after making reasonable efforts, appoint a certifier for the work.

## Part 4 Construction Practitioners Registration Regulations 1998

### 11 Regulations amended—pt 4

*This part amends the Construction Practitioners Registration Regulations 1998.*

### 12 Insurance for practitioners as building surveyors Regulation 5 (3)

*substitute*

- (3) A person applying to be registered as a principal government building surveyor or government building surveyor, who is not registered, or applying to be registered, in another category, is taken to be covered by insurance for this Act, whether or not the person holds insurance mentioned in subregulation (2).
- (4) A person registered as a principal government building surveyor or government building surveyor, who is not registered, or applying to be registered, in another category, is taken to be covered by insurance for this Act when the person is doing work as a government certifier, whether or not the person holds insurance mentioned in subregulation (2).
- (5) In this regulation:

*costs and expenses*, for subregulation (2) (d), means costs and expenses incurred with the insurer's consent.

*government certifier*—see the *Building Act 1972*, section 29A.

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**13 Register of construction practitioners  
Regulation 10 (m)**

*substitute*

- (m) for a construction practitioner who is not a principal government building surveyor or government building surveyor, the name of each insurer of the practitioner who provides insurance mentioned in the Act, section 3A.

**14 Categories and qualifications of registered construction practitioners  
Schedule 1, new items 4 and 5**

*insert*

- |   |  |  |
|---|--|--|
| 4 | principal<br>government<br>building surveyor | <p>either of the following:</p> <p>(1) registration by The Institution of Engineers, Australia on the national professional engineers register in the area of practice of ‘principal certifier—building’</p> <p>(2) accreditation as a building surveyor by the Australian Institute of Building Surveyors (ACN 004 540 836)</p> |
| 5 | government<br>building surveyor              | <p>accreditation as an assistant building surveyor by the Australian Institute of Building Surveyors (ACN 004 540 836)</p>   |

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## **Endnote**

### **Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

*[Presentation speech made in Assembly on 1 April 2003]*

I certify that the above is a true copy of the Construction Practitioners Legislation Amendment Bill 2003 which was passed by the Legislative Assembly on 6 May 2003.

Clerk of the Legislative Assembly

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