



Australian Capital Territory

Construction Occupations Legislation Amendment Act 2005

A2005-34

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2004 133B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Construction Occupations Legislation Amendment Act 2005

A2005-34

An Act to amend the law relating to construction occupations, and for other purposes

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

2004 133B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Construction Occupations Legislation Amendment Act 2005*.

2 Commencement

This Act commences on the 21st day after its notification day.

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

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

(see s 4)

Part 1.1 Building Act 2004

[1.1] Section 13

substitute

13 Application of Act to buildings and building work

- (1) This Act does not apply to—
 - (a) a temporary building (other than a dwelling) if—
 - (i) the temporary building is erected on the site of building work for the erection or alteration of another building; and
 - (ii) building approval has been obtained for the building work; and
 - (iii) the temporary building is to be removed on completion of the building work; or
 - (b) a building prescribed by regulation.
- (2) However, if building work in relation to a building mentioned in subsection (1) involves the handling of asbestos or disturbance of loose asbestos, this Act applies in relation to the building work as if this Act applied to the building.

Example

Loose asbestos insulation is discovered in the roof of a temporary shed at a building site. Under subsection (2), removal of the asbestos from the shed's roof must comply with the provisions of this Act applying to asbestos removal work, (eg getting a building approval and a certificate of occupancy). However, the shed itself as a building need not comply with this Act. Nevertheless, the shed as

a whole may be affected by the building work if, for example, it needs to be enclosed in an isolation structure during asbestos removal.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.2] Section 15

substitute

15 Building work to which pt 3 applies and does not apply

- (1) This part does not apply to—
 - (a) building work in relation to an exempt building; or
 - (b) building work exempted under the regulation.
- (2) However, this part applies to building work mentioned in subsection (1) if the work involves the handling of asbestos or disturbance of loose asbestos.

[1.3] Section 29 (1) (a)

substitute

- (a) if the plans are for the substantial alteration of a building—the building as altered will comply with this Act and the building code;

[1.4] Section 29 (2)

substitute

- (2) A regulation may declare that—
 - (a) an alteration of a building is or is not a substantial alteration; or
 - (b) a part of a building (the *unaltered part*) that has not been altered need not comply with the building code despite subsection (1) (a).

[1.5] Section 42 (1) (d)

substitute

- (d) building work must be carried out—
- (i) in accordance with approved plans; or
 - (ii) if the building work involves the handling of asbestos or disturbance of loose asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;

[1.6] Section 42A (6)

omit

[1.7] Section 49 (4)

substitute

- (4) For this section, building work is taken to result in a building that complies with the building code if the building complies with the building code as in force at the time the approved plans for the building work were approved.

[1.8] Section 61 (g)

omit

exempt building work

substitute

exempt building

[1.9] Section 65

substitute

65 Building work to which pt 5 applies and does not apply

This part does not apply to building work in relation to an exempt building, unless the work involves the handling of asbestos or disturbance of loose asbestos.

[1.10] Section 66

substitute

66 Meaning of *prescribed requirements* for div 5.1

In this division:

prescribed requirements, in relation to building work, means—

- (a) if the building work involves the handling of asbestos or disturbance of loose asbestos—the requirements of this Act; or
- (b) for any other building work—
 - (i) the requirements of this Act; or
 - (ii) the approved plans for the work.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation and the building code (see Legislation Act, s 104).

[1.11] Section 83

substitute

83 Building work to which pt 6 applies and does not apply

- (1) This part does not apply to—
 - (a) building work in relation to an exempt building; or

- (b) building work exempted under a regulation.
- (2) However, this part applies to building work mentioned in subsection (1) if the work involves the handling of asbestos or disturbance of loose asbestos.

[1.12] Section 88 (2) (b)

substitute

- (b) that the work has been or will be carried out in a proper and skilful way and—
- (i) in accordance with the approved plans; or
 - (ii) if the work involves or involved the handling of asbestos or disturbance of loose asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;

[1.13] New section 164A

insert

164A Certificate of regularisation

A certificate of regularisation issued under the *Building Act 1972* as in force at any time is taken to be a certificate of regularisation issued under this Act, section 75.

[1.14] Section 172

omit

In section 136:

substitute

- (1) In section 136:

[1.15] Section 172

insert

- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) does not apply.
- (3) This section expires on the day this subsection commences.

Part 1.2 Building Regulation 2004

[1.16] Sections 4A (3), 4B (3), 12A (3), 14A (4)

omit

[1.17] Section 16 heading

substitute

16 Substantial alteration—Act, s 29 (2) (a)

[1.18] Section 16, examples

substitute

Example of effect

- 1 A house is extended by 51%. The whole house must comply with this Act and the building code, not just the extension (see par (a)), other than the parts of the building code that do not apply to the unaltered part of the house because of section 16A.
- 2 A sunroom is added to a building, adding only 10% to the building. The sunroom must comply with this Act and the building code, but the rest of the building need not comply (see par (b)).
- 3 Two shops in a mall are to be combined to form a café. The building work involves replacing all the shops' fitout, including all fixtures, the glazed shopfront walling and ceiling, and removal of the common wall. In the 3 years immediately before the application for building approval is made, other shops in the mall have been altered similarly. The total volume of the refitted shops, with the volume of the café, is more than 50% of the volume of the mall. The whole mall must comply with this Act and the building code, not just the café.

- 4 A photocopier room is to be added to an office building. In the 3 years immediately before the application for building approval is made the building has often had parts of its fitout altered. Open plan cubical work stations were moved, enclosed meeting rooms were converted to open plan cubical workstations, 3 walls of another enclosed office were moved to make a hallway and new enclosed offices were created where open plan cubical workstations originally were.
- the 1st alterations to the cubical workstations did not involve altering or erecting fixtures, so the alterations do not need to be included when working out the total volume of alterations to the building
 - the cubicle work stations erected in place of the enclosed meeting rooms were fixtures that are not exempted from the Act, so the volume of each workstation, worked out by multiplying its usable floor area by the height of the floor or roof above, must be included in working out to the total volume of alterations to the building
 - the removal of the 3 walls of the enclosed office to make a hallway prevent the room functioning as a room, so the volume of the room must be included in working out the total volume of the alterations to the building
 - the walls erected to form a room or substantially enclosed space must be included to work out the total volume of the alterations to the building

However, the total of the volumes of the alterations made to the building, when added to the volume of the proposed photocopier room, amount to 45% of the building, so only the proposed room has to comply with this Act and the building code, not the whole building.

- 5 A building contains a nightclub where a fire sprinkler system was installed 1 year ago. Plans now propose to upgrade the airconditioning system throughout the building. The volume of the sprinkler pipework and proposed airconditioning ducts are included in working out the total volume of alterations to the building, but the volume of the spaces they can sprinkle or ventilate is not included.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.19] New section 16A

insert

16A Unaltered parts that need not comply with building code—Act, s 29 (2) (b)

- (1) The unaltered part of a substantially altered building that is a class 1 or class 10 building need not comply with the building code as a whole if the unaltered part complies with each of the following:
- (a) either—
 - (i) the building code, volume 2, part 3.6.4 (which is about the use of glazing where there are human impact safety requirements); or
 - (ii) the alternative glazing requirements;
Note For the alternative glazing requirements, see s (2).
 - (b) the building code, volume 2, part 3.7.2 (which is about the installation of smoke alarms);
 - (c) the building code, volume 2, part 3.7.4 (which is about the requirements for building in bush fire areas);
 - (d) either—
 - (i) the building code, volume 2, part 3.9.1 (which is about stair construction); or
 - (ii) the alternative stair requirements;
Note For the alternative stair requirements, see s (3).
 - (e) if a balustrade compliance requirement applies to the unaltered part of the building—the building code, volume 2, part 3.9.2 (which is about the construction of balustrades);
Note For the balustrade compliance requirements, see s (4).

- (f) the building code, volume 2, part 3.9.3 (which is about swimming pool access);
- (g) in relation to walls, unless compliance is unreasonable—
 - (i) the building code, volume 2, part 3.12 (which is about energy efficiency); or
 - (ii) the alternative energy efficiency requirements;

Note 1 For when compliance is unreasonable, see s (5).

Note 2 For the alternative energy efficiency requirements, see s (6).

- (h) in relation to the roof, unless compliance is unreasonable—
 - (i) the building code, volume 2, part 3.12 (which is about energy efficiency); or
 - (ii) the alternative energy efficiency requirements.

- (2) The unaltered part of a substantially altered building complies with the alternative glazing requirements if any glazing that would be required to be replaced for the part to comply with the building code, volume 2, part 3.6.4 is coated and permanently bonded on at least one side with a continuous polymeric coating, sheet or film.
- (3) The unaltered part of a substantially altered building complies with the alternative stair requirements if it complies with each of the following:
 - (a) the dimensions of goings and risers (other than winders and tapered treads in a spiral stair) are constant throughout each stair flight;
 - (b) winder dimensions are constant throughout the flight;
 - (c) for a spiral stair—tapered tread dimensions are constant throughout the flight;
 - (d) riser dimensions are not taller than 250mm;

- (e) if the stairway is more than 10m high or connects more than 3 storeys—the treads are of solid construction (for example, not mesh or other perforated material);
- (f) a 125mm ball cannot pass between the treads of a riser opening;
- (g) all treads have a slip-resistant finish or a suitable non-skid strip near the edge of the nosings;
- (h) if the stair flight is more than 1m high and does not comply with the building code, volume 1, part 3.9.1.4 (which is about riser and going dimensions), whether or not it is required to comply with the part—
 - (i) the stairway has handrails; and
 - (ii) the handrails comply with the building code, volume 1, part D2.17 (which is about handrails), whether or not they are required to comply with the part.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) Each of the following is a balustrade compliance requirement for the unaltered part of a building:
 - (a) the part would be required to have a balustrade under the building code, volume 2, part 3.9.2, and has none;
 - (b) the part—
 - (i) would be required to have a balustrade under the building code, volume 2, part 3.9.2; and
 - (ii) has a balustrade that—
 - (A) does not comply with the building code, volume 2, part 3.9.2 and does not comply with the requirements of any law applying to the

construction of balustrades at the time the balustrade was constructed, whether or not the balustrade previously complied with the code or requirements; and

- (B) is installed so that a person breaching the balustrade could fall more than 4m measured from the lowest part of the balustrade at the point where the balustrade is breached.
- (5) For this section, compliance with the building code, volume 2, part 3.12, or the alternative energy efficiency requirements, in relation to an unaltered part of a substantially altered building is unreasonable only if—
- (a) for walls in the unaltered part—
 - (i) complying would require the removal of more than 10% of wall linings, or cladding, in the part; or
 - (ii) there is insufficient wall cavity space to accommodate enough thermal insulation material to achieve the R-value mentioned in subsection (6) (a); or
 - (b) for the roof in the unaltered part—
 - (i) complying would require the removal of more than 10% of the part's roofing; or
 - (ii) there is insufficient roof cavity space to accommodate enough thermal insulation material to achieve the R-value mentioned in subsection (6) (b).
- (6) The unaltered part of a substantially altered building complies with the alternative energy efficiency requirements if it complies with each of the following:
- (a) the exterior walls of the building have a total R-value of R2.0 or more;

(b) the roof of the building has a total R-value of R4.0 or more.

(7) In this section:

flight means part of a stair with a continuous series of risers, including risers of winders, not interrupted by a landing or floor.

going means the horizontal dimension from the front to the back of a tread less any overhang from the next tread above.

riser means the height between the consecutive treads.

R-value means the thermal resistance ($\text{m}^2\text{K}/\text{W}$) of a component calculated by dividing its thickness by its thermal conductivity.

tapered tread means a stair tread with a walking area that grows smaller towards one end.

total R-value, of walls or a roof, means the total of the R-values of each component of the walls or roof.

winders means treads within a straight flight that are used to change direction of the stair.

[1.20] Section 31

omit

[1.21] Section 32, modified sections 164A and 164B

omit

Part 1.3 Construction Occupations (Licensing) Act 2004

[1.22] Section 28 (3) (b) and (c)

substitute

(b) each nominee is responsible for the supervision of particular construction services provided by it; and

- (c) there is a written record of the construction services each nominee is responsible for supervising; and
- (d) between them, the nominees are responsible for the adequate supervision of all the construction services to be provided by the corporation or partnership.

[1.23] Section 35 (1)

substitute

- (1) This section applies if—
 - (a) the registrar has given an entity notice under section 34; and
 - (b) the entity provided the construction service, or part of the construction service, to which the notice relates; and
 - (c) after considering any submissions made within the time mentioned in the notice, the registrar is satisfied—
 - (i) the entity is contravening, or has contravened, this Act or an operational Act; and
 - (ii) it is appropriate to make a rectification order in relation to the entity.

Note 1 If deciding under this section whether it is appropriate to make a rectification order, the registrar must consider the considerations mentioned in s 36.

Note 2 See s 149 for the extended meaning in this section of a *contravention* of this Act.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

[1.24] Section 83 (1) (b) (iii)

after

ACN

insert

(if any)

[1.25] Section 83 (1), new examples

insert

Examples of advertising required to include details

- 1 providing a prospective client with a letter, business card, sample contract, brochure and items such as caps, shirts and mugs, each with the construction service company name printed on it
- 2 vehicle signage or clothing such as a T-shirt, with a construction occupation or class stated on it eg 'Jo Jones licensed plumber'
- 3 a radio advertisement describing the features of a display home open for inspection and including a musical jingle mentioning 'ACME Homes', advertising to the public that ACME Homes provides construction services
- 4 a sign erected outside a building construction site states only 'ACME Constructions', advertising to the public that ACME Constructions provides construction services at the site
- 5 an entry in a published directory that lists an entity by name, address, telephone number, construction occupation or class, for example 'ACME Plumbing, plumbers and drainers'

Examples that are not advertising or are not required to include details

- 1 a builder talking to a prospective client about the services the builder can provide to the particular client
- 2 ACME Homes advertises in the newspaper stating that a particular display home is for sale, but the advertising, states that ACME Homes is the owner, builder and seller of the house, not that it offers building services generally
- 3 a sign erected outside a building construction site states only 'ACME', which does not advertise that ACME is providing construction services at the site
- 4 an entry in a published directory that lists an entity alphabetically by name and includes the entity's address and telephone number, even if the name of

the entity implies that the entity can provide the service, for example, ‘ACME Plumbing, 1 Smith St, City, 55577777’

- 5 ACME Home Services advertises offering to arrange the provision of electrical services, but the advertisement includes the following statements: ‘ACME Homes Services does not provide electrical wiring services, independent contractors provide those services’

Note An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.26] Section 137 (2)

substitute

- (2) The person is taken to hold a plumbers licence in the occupation class fire sprinkler fitter.

[1.27] Section 141 (a)

substitute

- (a) a reference to a licensee or former licensee includes a reference to a person who was registered or licensed, or who held a permit under—
- (i) the *Construction Practitioners Registration Act 1998*, as in force at any time before the commencement of this Act; or
 - (ii) an operational Act, as in force at any time before the commencement of this Act; or
 - (iii) the *Building Act 1972*, as in force at any time before the commencement of this Act; or

- (iv) the *Plumbers, Drainers and Gasfitters Board Act 1982*, as in force at any time before the commencement of this Act; and

Example of former licensee

a person who held an owner-builder's licence under the *Building Act 1972*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.28] Section 143 (1), definition of *former licensee*, paragraph (a)

substitute

- (a) the *Construction Practitioners Registration Act 1998*, as in force at any time before the commencement of this Act; or

[1.29] Dictionary, definition of *AS 3500*

substitute

AS 3500 means the following standards, as in force from time to time:

- (a) AS 3500.1.1;
(b) AS 3500.2.1;
(c) AS/NZS 3500.

Part 1.4 Construction Occupations (Licensing) Regulation 2004

[1.30] Section 5 (e) (iii) and (f) (i)

after

ACN

insert

(if any)

[1.31] Section 5 (f) (iii)

substitute

- (iii) if the history of the corporation is on a database kept by the Australian Securities and Investments Commission—
an extract about the history of the corporation from the database;

[1.32] Section 6 (1) (c) (ii) and (d)

after

ACN

insert

(if any)

[1.33] Section 15 (1) (f)

substitute

- (f) plumber;
- (g) plumbing plan certifier.

[1.34] Section 17 (1)

substitute

- (1) An applicant for a licence as a building surveyor (other than a principal government building surveyor or government building surveyor) is eligible for the licence only if the applicant satisfies the registrar that the applicant is adequately insured.

[1.35] Section 30 heading

substitute

30 Endorsing builders licences for building work—Act, s 22

[1.36] Section 30 (1)

omit

specialist building work

substitute

any building work, including specialist building work,

[1.37] Section 45 (1) (q)

omit

specialist

[1.38] Sections 53 to 55

omit

[1.39] Schedule 2, part 2.3, item 2.3.10, column 2

substitute

fail to comply with *Water and Sewerage Act 2000*, s 16—provided sanitary drainage service without giving required notice

[1.40] Schedule 2, part 2.3, item 2.3.10, column 3

substitute

failure to give required notice of intention to start or completion of sanitary drainage work

[1.41] Schedule 2, part 2.3, item 2.3.15, column 2

omit

fee

substitute

evidence of fee payment

[1.42] Schedule 2, part 2.3, item 2.3.15, column 3

after

fee

insert

payment evidence

[1.43] Schedule 2, part 2.6, item 2.6.9, column 2

substitute

fail to comply with *Water and Sewerage Act 2000*, s 15 (2) or (3)—

- (a) contravened direction of registrar about how water supply plumbing service is to be provided; or
- (b) installed a thing to which MP52 applies and the thing was not certified under MP52

[1.44] Schedule 2, part 2.6, item 2.6.9, column 3

substitute

failure to provide service as directed by registrar or installing MP52 thing not certified under MP52

[1.45] Schedule 2, part 2.6, item 2.6.13, column 2

omit

fee

substitute

evidence of fee payment

[1.46] Schedule 2, part 2.6, item 2.6.13, column 3

after

fee

insert

payment evidence

[1.47] Schedule 2, part 2.6, item 2.6.15, column 2

substitute

fail to comply with *Water and Sewerage Act 2000*, s 16—provided sanitary plumbing service without giving required notice

[1.48] Schedule 2, part 2.6, item 2.6.20, column 2

omit

fee

substitute

evidence of fee payment

[1.49] Schedule 2, part 2.6, item 2.6.20, column 3

after

fee

insert

payment evidence

[1.50] Dictionary, new definition of *electrical installation*

insert

electrical installation—see the *Electricity Safety Act 1971*, dictionary.

[1.51] Dictionary, definition of *incidental electrical work*

substitute

incidental electrical work means work carried out by a person whose main occupation is not as an electrician if the work—

- (a) either—
 - (i) involves the disconnection and reconnection of an appliance, or fitting, that is an electrical installation; or
 - (ii) involves finding and fixing faults in components of an appliance, or fitting, that is an electrical installation; and
- (b) is incidental to the person's main occupation.

Part 1.5 Water and Sewerage Act 2000

[1.52] Section 49 (5)

after

Australian Standard

insert

or an Australian/New Zealand Standard

[1.53] Dictionary, definition of *Australian Standard 3500*

substitute

Australian Standard 3500 means the following standards, as in force from time to time:

- (a) AS 3500.1.1;
- (b) AS 3500.2.1;
- (c) AS/NZS 3500.

Part 1.6 Water and Sewerage Regulation 2001

[1.54] Dictionary, note 4, new dot point

before 1st dot point, insert

- Australian Standard 3500

[1.55] Dictionary, definition of *Australian Standard 3500*

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 5 May 2005.

2 Notification

Notified under the Legislation Act on 6 July 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Construction Occupations Legislation Amendment Bill 2005, which was passed by the Legislative Assembly on 1 July 2005.

Acting Clerk of the Legislative Assembly

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