

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Construction Occupations Legislation Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended—sch 1	2
Schedule 1	
Legislation amended	3
Part 1.1	
Building Act 2004	3
Part 1.2	
Construction Occupations (Licensing) Act 2004	5
Part 1.3	
Construction Occupations (Licensing) Regulation 2004	16
Part 1.4	
Electricity Safety Act 1971	17

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Contents

Part 1.5	Gas Safety Regulation 2001	Page 20
Part 1.6	Water and Sewerage Act 2000	22

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Construction Occupations Legislation Amendment Bill 2006

A Bill for

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:

1 **1 Name of Act**

2 This Act is the *Construction Occupations Legislation Amendment*
3 *Act 2006*.

4 **2 Commencement**

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

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

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

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

15 **3 Legislation amended—sch 1**

16 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1** **Legislation amended**

2 (see s 3)

3 **Part 1.1** **Building Act 2004**

4 **[1.1] Section 29 (3)**

5 *substitute*

6 (3) For subsection (1)—

7 (a) a building or a building as altered does not fail to comply with
8 this Act only because the plans for the building or alteration
9 contain something to which the building code does not apply;
10 and

11 (b) a building product, construction method, design, component or
12 system connected with a building is taken to comply with the
13 building code if the product, method, design, component or
14 system complies with a recognised standard.

15 **[1.2] Section 61 (h)**

16 *omit*

17 the construction occupations registrar finds, on inspection that—

18 *substitute*

19 the construction occupations registrar is satisfied, on reasonable
20 grounds, that—

1 **[1.3] Part 8 heading**

2 *substitute*

3 **Part 8 Building code and recognised**
4 **standards**

5 **[1.4] New section 139A**

6 *in part 8, insert*

7 **139A Recognised standards**

8 (1) The Minister may declare a document to be a recognised standard
9 for this Act.

10 (2) However, the Minister must not make a declaration under
11 subsection (1) in relation to a document unless the document has
12 been approved (however described)—

13 (a) by or on behalf of the Australian Building Codes Board; or

14 (b) under a system or scheme (however described) administered or
15 approved (however described) by the Australian Building
16 Codes Board; or

17 (c) as prescribed by regulation.

18 (3) A declaration under subsection (1) is a notifiable instrument.

19 *Note* A notifiable instrument must be notified under the Legislation Act.

20 (4) In this section:

21 *Australian Building Codes Board* includes an entity prescribed by
22 regulation.

1 **[1.5] Dictionary, new definition of *recognised standard***

2 *insert*

3 *recognised standard* means a document declared to be a recognised
4 standard under section 139A (1).

5 **Part 1.2 Construction Occupations**
6 **(Licensing) Act 2004**

7 **[1.6] Section 56 (1)**

8 *substitute*

9 (1) A notice (a *disciplinary notice*) given to a licensee or former
10 licensee must—

11 (a) state each disciplinary ground for which the notice is given;
12 and

13 (b) for each disciplinary ground to which section 54 (1) (a)
14 applies—state the relevant contravention or, if a short
15 description is prescribed by regulation for the contravention,
16 state the short description; and

17 (c) for each disciplinary ground to which section 54 (1) (a) does
18 not apply—state details of the ground sufficient to allow a
19 reasonable person to identify the circumstances that gave rise
20 to the ground; and

21 (d) tell the person that the person may, not later than 12 business
22 days after the day the person is given the notice, do either or
23 both of the following:

24 (i) give a written response to the registrar about the matters
25 in the notice;

- 1 (ii) ask the registrar to hold an inquiry under division 5.3
2 (Disciplinary inquiries) in relation to all or stated
3 disciplinary grounds.

4 *Note* Under s 60 (5), if the person asks the registrar to hold an inquiry in
5 relation to a disciplinary ground and the registrar decides not to hold an
6 inquiry in relation to that disciplinary ground, the registrar must not take
7 disciplinary action in relation to that disciplinary ground.

8 **[1.7] Section 60 (3) and (4)**

9 *substitute*

10 (3) In making a decision about whether to take disciplinary action in
11 relation to the licensee or former licensee and, if the registrar
12 decides to take disciplinary action, what disciplinary action to take,
13 the registrar—

14 (a) must take into account any response given to the registrar in
15 accordance with the disciplinary notice; and

16 (b) may hold an inquiry under division 5.3 (Disciplinary inquiries)
17 in relation to all or any of the disciplinary grounds stated in the
18 disciplinary notice; and

19 (c) if the registrar holds an inquiry under division 5.3—must have
20 regard to evidence given at the inquiry; and

21 (d) if the registrar decides to take disciplinary action—must
22 consider the matters mentioned in section 62 (1).

23 (4) To remove any doubt, the Legislation Act, section 146 (1) applies to
24 subsection (3) (b).

25 *Note* The Legislation Act, s 146 (1) deals with the meaning of *may*.

26 (5) Despite subsection (3) (b), the registrar must not take disciplinary
27 action in relation to a disciplinary ground stated in the disciplinary
28 notice if—

- 1 (a) the licensee or former licensee asked the registrar in
2 accordance with the disciplinary notice to hold an inquiry
3 under division 5.3 in relation to that ground; and
- 4 (b) the registrar decided not to hold an inquiry under the division
5 in relation to that ground.
- 6 (6) If the registrar decides to take disciplinary action in relation to the
7 licensee or former licensee—
- 8 (a) the registrar must, by written notice given to the licensee or
9 former licensee, tell the licensee or former licensee about the
10 decision; and
- 11 (b) the decision takes effect when the licensee or former licensee is
12 given the notice or, if the notice states a later time of effect, at
13 that time.

14 **[1.8] Section 62 (1)**

15 *omit everything before paragraph (a), substitute*

- 16 (1) In deciding what disciplinary action to take in relation to the entity
17 under section 61, the registrar must consider the following:

18 **[1.9] Section 82 (3)**

19 *substitute*

- 20 (3) It is a defence to a prosecution for an offence against subsection (2),
21 if the partner proves that—
- 22 (a) the partner did not know about the contravention of the
23 subsection involved in the offence; and
- 24 (b) either—
- 25 (i) the partner took reasonable precautions and exercised
26 appropriate diligence to avoid the contravention; or

- 1 (ii) the partner was not in a position to influence the
2 partnership in relation to the conduct involved in the
3 contravention.

4 **[1.10] Section 83 (2)**

5 *substitute*

6 (2) Each partner in a partnership commits an offence if the
7 partnership—

8 (a) advertises that the partnership provides, or will provide, a
9 service in a construction occupation or occupation class; and

10 (b) does not include the following in the advertisement:

11 (i) the partnership's name as recorded on the partnership's
12 licence;

13 (ii) the partnership's licence number.

14 Maximum penalty: 5 penalty units.

15 **Example of advertising required to include details**

16 The examples in subsection (1) apply to this subsection.

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

18 The examples in subsection (1) apply to this subsection.

19 (3) It is a defence to a prosecution for an offence against subsection (2),
20 if the partner proves that—

21 (a) the partner did not know about the contravention of the
22 subsection involved in the offence; and

23 (b) either—

24 (i) the partner took reasonable precautions and exercised
25 appropriate diligence to avoid the contravention; or

1 (ii) the partner was not in a position to influence the
2 partnership in relation to the conduct involved in the
3 contravention.

4 (4) An offence against this section is a strict liability offence.

5 **[1.11] Section 84 (1) (b) (ii)**

6 *substitute*

7 (ii) if an endorsement on the licence is required for the
8 person to be authorised to provide the service provided
9 and the licence does not have that endorsement.

10 **[1.12] Section 84 (2) and (3)**

11 *substitute*

12 (2) Each partner in a partnership commits an offence if the
13 partnership—

14 (a) provides a service in a construction occupation or occupation
15 class; and

16 (b) either—

17 (i) is not licensed in the occupation or class; or

18 (ii) if an endorsement on the licence is required for the
19 partnership to be authorised to provide the service
20 provided and the licence does not have that endorsement.

21 Maximum penalty: 50 penalty units.

22 (3) This section does not apply if—

23 (a) an individual provides the service, whether directly or for an
24 entity; and

25 (b) the individual is working under the supervision of a licensee
26 whose licence authorises the provision of the service; and

- 1 (c) the licensee is not required by a condition or endorsement on
2 the licence to provide the service as an employee or under
3 supervision; and
- 4 (d) a regulation allows the service to be provided by an individual
5 without a licence if provided under the supervision of a
6 licensee.
- 7 (4) It is a defence to a prosecution for an offence against subsection (2)
8 if the partner proves that—
- 9 (a) the partner did not know about the contravention of the
10 subsection involved in the offence; and
- 11 (b) either—
- 12 (i) the partner took reasonable precautions and exercised
13 appropriate diligence to avoid the contravention; or
- 14 (ii) the partner was not in a position to influence the
15 partnership in relation to the conduct involved in the
16 contravention.
- 17 (5) An offence against this section is a strict liability offence.

18 **[1.13] Section 85 (1) (a)**

19 *omit*

20 employee (the

21 *substitute*

22 employee (also the

1 **[1.14] Section 85 (2)**

2 *substitute*

- 3 (2) Each member of a partnership commits an offence if—
- 4 (a) a partner engages someone else (the *worker*), or allows an
5 employee of the partnership (also the *worker*), to provide a
6 construction service for the partnership; and
- 7 (b) the worker is not licensed to provide the service; and
- 8 (c) the partner is reckless about whether the worker is licensed to
9 provide the service.

10 Maximum penalty: 50 penalty units.

- 11 (3) This section does not apply to an entity that provides a service if—
- 12 (a) the service is provided under the supervision of a licensee; and
- 13 (b) the licensee is not required by a condition or endorsement on
14 the licence to provide the service as an employee or under
15 supervision; and
- 16 (c) a regulation allows the service to be provided by an individual
17 without a licence if provided under the supervision of a
18 licensee.
- 19 (4) It is a defence to a prosecution for an offence against subsection (2)
20 if the partner proves that—
- 21 (a) the partner did not know about the contravention of the
22 subsection involved in the offence; and
- 23 (b) either—
- 24 (i) the partner took reasonable precautions and exercised
25 appropriate diligence to avoid the contravention; or

- 1 (ii) the partner was not in a position to influence the
2 partnership in relation to the conduct involved in the
3 contravention.

4 **[1.15] Section 86 (4)**

5 *substitute*

- 6 (4) It is a defence to a prosecution for an offence against subsection (2)
7 if the partner proves that—
8 (a) the partner did not know about the contravention of the
9 subsection involved in the offence; and
10 (b) either—
11 (i) the partner took reasonable precautions and exercised
12 appropriate diligence to avoid the contravention; or
13 (ii) the partner was not in a position to influence the
14 partnership in relation to the conduct involved in the
15 contravention.

16 **[1.16] Section 87 (5)**

17 *substitute*

- 18 (5) It is a defence to a prosecution for an offence against subsection (2)
19 or (4) if the partner proves that—
20 (a) the partner did not know about the contravention of the
21 subsection involved in the offence; and
22 (b) either—
23 (i) the partner took reasonable precautions and exercised
24 appropriate diligence to avoid the contravention; or
25 (ii) the partner was not in a position to influence the
26 partnership in relation to the conduct involved in the
27 contravention.

1 **[1.17] New part 14**

2 *insert*

3 **Part 14 Transitional—Construction**
4 **Occupations Legislation**
5 **Amendment Act 2006**

6 **154 Transitional—conduct engaged in before 1/9/04**

7 (1) Part 4 (Rectification orders and other obligations on licensees) and
8 part 5 (Automatic licence suspension and disciplinary action) apply
9 to conduct engaged in before 1 September 2004 as if—

10 (a) a reference to a construction service included a reference to a
11 construction service provided before 1 September 2004; and

12 (b) a reference to this Act included a reference to a related Act;
13 and

14 (c) a reference to a licensee or former licensee included a
15 reference to a person who was a registered construction
16 practitioner under the *Construction Practitioners Registration*
17 *Act 1998* (whether or not the person is also a licensee or former
18 licensee for this Act); and

19 (d) all other necessary changes were made; and

20 (e) any changes prescribed by regulation were made.

21 (2) In this section:

22 ***related Act*** means any of the following Acts:

23 (a) the *Construction Practitioners Registration Act 1998*; or

24 (b) an operational Act; or

25 (c) the *Building Act 1972*; or

- 1 (d) the *Energy and Water Act 1988*; or
2 (e) the *Gas Act 1992*; or
3 (f) the *Plumbers, Drainers and Gasfitters Board Act 1982*.
- 4 *Note* A reference to an Act includes a reference to the statutory instruments
5 made or in force under the Act, including any regulation (see
6 Legislation Act, s 104).
- 7 (3) This section expires on 31 August 2014.
- 8 (4) This section is a law to which the Legislation Act, section 88
9 (Repeal does not end effect of transitional laws etc) applies.

10 **[1.18] Dictionary, new definitions**

11 *insert*

12 *conduct* means an act or an omission to do an act.

13 *engage* in conduct means—

- 14 (a) do an act; or
15 (b) omit to do an act.

16 **[1.19] Further amendments, mentions of *person* etc**

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
1	section 17 (1), note 3	A person's	An entity's
2	section 51 (1)	a person who	an entity that
3	section 51 (1)	the person	the entity
4	section 51 (2)	person's	entity's
5	section 52 (1)	a person who	an entity that
6	section 52 (1)	the person	the entity

column 1 item	column 2 provision	column 3 <i>omit</i>	column 4 <i>substitute</i>
7	section 52 (2)	person's	entity's
8	section 59 (3)	person	entity
9	section 62 (1) (a)	person	entity
10	section 62 (1) (e) to (g)	person	entity
11	section 62 (1) (g) and (i)	person's	entity's
12	section 88 (1) (a) and (b)	person	entity
13	section 89, definition of <i>licensee</i>	a person who	an entity that
14	section 109 (1) (a)	a person	an entity
15	section 109 (2) and (3) (a)	person	entity
16	section 111 (2)	A person	An entity
17	section 111 (2)	the person	the entity
18	section 111 (3)	a person	an entity
19	section 111 (3) (a)	the person	the entity
20	section 124 (3)	person	entity
21	dictionary, definition of <i>former licensee</i>	a person who	an entity that

1 **Part 1.3** **Construction Occupations**
2 **(Licensing) Regulation 2004**

3 **[1.20] Section 32**

4 *substitute*

5 **32 Considerations for endorsing under s 30 and s 31 etc**

- 6 (1) In deciding whether to endorse an individual's licence under
7 section 30 or section 31, the registrar must consider the following:
- 8 (a) the individual's physical ability or skill;
- 9 (b) the individual's qualifications, training and knowledge;
- 10 (c) the extent, quality and relevance of the individual's experience,
11 and how recent that experience is, in doing similar work to, or
12 work that is equally complex as, the work to be allowed by the
13 proposed endorsement;
- 14 (d) whether any disciplinary action has ever been taken in relation
15 to the individual;
- 16 (e) whether the individual has incurred any demerit points that
17 have not been deleted from the register.
- 18 (2) In deciding whether to endorse the licence of a corporation or
19 partnership, the registrar must consider the following:
- 20 (a) whether any disciplinary action has ever been taken in relation
21 to the entity;
- 22 (b) whether the entity has incurred any demerit points that have
23 not been deleted from the register.
- 24 (3) However, the registrar may endorse the licence of the corporation or
25 partnership only if nominees of the entity have licences that are
26 endorsed in the way applied for.

1 (4) The registrar may consider anything else that is relevant.

2 **[1.21] Schedule 1, part 1.6, new item 3**

3 *insert*

3 irrigation plumber installation of irrigation networks and
related equipment

4 **[1.22] Schedule 1, part 1.6, items 3 to 5**

5 *renumber as items 4 to 6*

6 **[1.23] Further amendments, mentions of *person* etc**

column 1 item	column 2 provision	column <i>omit</i>	column 4 <i>substitute</i>
1	section 17 (2)	A person	An entity
2	section 17 (2)	the person	the entity
3	section 17 (3)	a person	an entity
4	section 17 (3)	the person	the entity
5	section 17 (3)	person's	entity's
6	section 18 (2)	individual	applicant
7	section 18 (2)	person	applicant

7 **Part 1.4 Electricity Safety Act 1971**

8 **[1.24] Section 9, definition of *relevant safety standard***

9 *substitute*

10 *relevant safety standard*, for an article of electrical equipment,
11 means the safety standard stated under section 11A (3) for the
12 article.

1 **[1.25] Section 11**

2 *substitute*

3 **11 Meaning of *prescribed article of electrical equipment***

4 In this Act:

5 *prescribed article of electrical equipment*—

- 6 (a) means an article of electrical equipment declared under
7 section 11A; but
- 8 (b) does not include an article of electrical equipment declared
9 under section 11B.

10 **11A Declaration of prescribed articles of electrical equipment**

- 11 (1) The planning and land authority may declare that an article of
12 electrical equipment is a prescribed article of electrical equipment.
- 13 (2) However, the planning and land authority must not make a
14 declaration about an article of electrical equipment under
15 subsection (1) unless satisfied that there are reasonable grounds for
16 believing that—
- 17 (a) because of its design or construction, the article is, or is likely
18 to become, unsafe to use; and
- 19 (b) because of the risk of death or injury to people or the risk of
20 damage to property, the article should be declared to be a
21 prescribed article of electrical equipment.
- 22 (3) A declaration under subsection (1) about an article of electrical
23 equipment must state the safety standard that the article must
24 comply with.
- 25 (4) Without limiting subsections (1) and (3), the planning and land
26 authority may declare an article of electrical equipment under
27 subsection (1), or state the safety standard that an article of electrical

1 equipment must comply with, by adopting a law of a State, as in
2 force at a particular time or from time to time, under which the
3 article or safety standard is prescribed.

4 (5) A declaration under subsection (1) is a notifiable instrument.

5 *Note* A notifiable instrument must be notified under the Legislation Act.

6 **11B Declaration of articles not prescribed articles of electrical**
7 **equipment**

8 (1) The planning and land authority may declare that an article of
9 electrical equipment is not a prescribed article of electrical
10 equipment.

11 (2) Without limiting subsection (1), the planning and land authority
12 may declare an article of electrical equipment under subsection (1)
13 by adopting a law of a State, as in force at a particular time or from
14 time to time, under which the article is prescribed.

15 (3) A declaration under subsection (1) is a notifiable instrument.

16 *Note* A notifiable instrument must be notified under the Legislation Act.

17 **[1.26] Section 21 (1) (a)**

18 *omit*

19 section 11

20 *substitute*

21 section 11A and section 11B

22 **[1.27] Section 61 (1) (a) and (b)**

23 *substitute*

24 (a) under section 11A (1) declaring that an article of electrical
25 equipment is a prescribed article of electrical equipment;

1 (b) under section 11A (3) stating the safety standard that an article
2 of electrical equipment must comply with;

3 **[1.28] Dictionary, note 2**

4 *insert*

- 5 • State

6 **[1.29] Dictionary, definition of *prescribed article of electrical***
7 ***equipment***

8 *substitute*

9 *prescribed article of electrical equipment*—see section 11.

10 **Part 1.5 Gas Safety Regulation 2001**

11 **[1.30] Section 7 (2)**

12 *omit everything before paragraph (a), substitute*

- 13 (2) The planning and land authority may exempt a person from the
14 application of subsection (1) (a) to the installation of an appliance if
15 the authority believes, on reasonable grounds, that—

16 **[1.31] Section 9 (2)**

17 *omit everything before paragraph (a), substitute*

- 18 (2) The planning and land authority may exempt a person from the
19 application of subsection (1) (a) to the installation of an appliance if
20 the authority believes, on reasonable grounds, that—

1	[1.32] Section 17 heading
2	<i>omit</i>
3	Chief executive
4	<i>substitute</i>
5	Planning and land authority
6	[1.33] Section 17A (6)
7	<i>substitute</i>
8	(6) The planning and land authority must make a copy of the register
9	available for public inspection during ordinary office hours at the
10	authority's office and at any other place decided by the authority.
11	[1.34] Sections 18F (b) and 18H (a)
12	<i>omit</i>
13	chief executive's
14	<i>substitute</i>
15	planning and land authority's
16	[1.35] Further amendments, mentions of <i>chief executive</i>
17	<i>omit</i>
18	chief executive
19	<i>substitute</i>
20	planning and land authority
21	<i>in</i>
22	• section 7 (3)
23	• section 9 (3)
24	• section 12 (2) and (4)
25	• section 17 (1) and (2)

- 1 • section 17A (1) and (4)
- 2 • section 17B (2) and (3)
- 3 • section 18C heading, (1) (b) and (2) (b)
- 4 • section 18D heading, (1) (b) and (2) (b)
- 5 • section 18E (1), (3) and (4)
- 6 • section 18G (2)
- 7 • section 19
- 8 • section 19A

9 **Part 1.6** **Water and Sewerage Act 2000**

10 **[1.36] Section 7**

11 *substitute*

12 **7 Application for plan approval**

13 The owner of premises may apply to a certifier for approval of a
14 plan in relation to sanitary drainage work, sanitary plumbing work
15 or water supply plumbing work.

16 **[1.37] Section 15 (3)**

17 *omit*

18 MP52

19 *substitute*

20 the plumbing code

1 **[1.38] New section 46**

2 *insert*

3 **46 Plumbing code**

4 (1) The Minister may declare a document to be the plumbing code for
5 this Act.

6 (2) A declaration under subsection (1) is a notifiable instrument.

7 *Note* A notifiable instrument must be notified under the Legislation Act.

8 **[1.39] Dictionary, definition of *MP52***

9 *omit*

10 **[1.40] Dictionary, new definition of *plumbing code***

11 *insert*

12 *plumbing code* means a document declared under section 46.

13 **[1.41] Dictionary, definition of *sanitary drain*, paragraph (b) (ii)**

14 *substitute*

15 (ii) is, or is intended to become, part of a sewerage network.

16 **[1.42] Dictionary, definition of *water service*, paragraph (c)**

17 *substitute*

18 (c) does not include—

19 (i) a fire sprinkler system; or

20 (ii) part of a water network, or water supply pipework that is
21 intended to become part of a water network.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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

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