

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Construction Occupations Legislation Amendment Bill 2010

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
Part 2	Building Act 2004
3	Legislation amended—pt 2 3
4	New part 2A 3
5	Building approval applications Section 26 (2), note 8
6	Contents of request for further information Section 26B (4), note 9

Contents

	Page
7 New section 27A	9
8 Issue of building approvals Section 28 (2) (a), new note	10
9 Approval requirements New section 29 (1) (g) (ia)	10
10 Section 29 (1) (g), new example and note	11
11 New section 29 (6A)	11
12 Contents of request for further information Section 32B (4), note	11
13 Notification by certifier of possible noncompliant site work New section 50A (2A) and (2B)	12
14 Site work without adequate development approval—people New section 50B (3A) and (3B)	12
15 Site work without adequate development approval—partners Section 50C	13
16 New section 50C (3A) and (3B)	13
17 Carrying out building work in contravention of s 42 Section 51 (4)	13
18 Section 51 (5) (b)	14
19 New section 51 (6)	15
20 Regulation-making power Section 152 (6)	15
21 Dictionary, new definitions	16
 Part 3 Construction Occupations (Licensing) Act 2004	
22 Legislation amended—pt 3	17
23 What is a <i>building surveyor</i> ? Section 9 (3), definition of <i>building certification work</i> , except note	17
24 What is a <i>works assessor</i> ? Section 14A (3), definition of <i>works assessment work</i> , except note	17
25 What is an <i>operational Act</i> ? Section 16	18

EXPOSURE DRAFT

	Page
26 Rectification orders—exercise of registrar's powers Section 33A (b)	18
27 Considerations for deciding under s 34 and s 35 Section 36 (3) (b)	18
28 New part 16	19
Part 4 Planning and Development Act 2007	
29 Legislation amended—pt 4	20
30 What is an <i>exempt development</i> ? Section 133, new note	20
31 New division 7.2.6A	20
32 Offence to develop without approval Section 199 (6)	26
33 Regulation-making power Section 426 (5)	27
34 Dictionary, new definitions	27
Part 5 Unit Titles Act 2001	
35 Legislation amended—pt 5	28
36 Unit title applications—general requirements New section 17 (5) (c)	28
37 Unit title assessment reports Section 22B (2), example	28

EXPOSURE DRAFT

EXPOSURE DRAFT

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Construction Occupations Legislation Amendment Bill 2010

A Bill for

An Act to amend legislation in relation to construction occupations, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Construction Occupations Legislation Amendment Act 2010*.

2 Commencement

- (1) Parts 1 and 3 commence on the day after this Act's notification day.

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

- (2) Part 5 commences on the commencement of the *Construction Occupations Legislation Amendment Act 2009*, part 3 (Unit Titles Act 2001).

Note The *Construction Occupations Legislation Amendment Act 2009* is the proposed name of the *Construction Occupations Legislation Amendment Bill 2009*. If the name of the Act as passed is different from the proposed name, the reference to the Act in s (2) is taken to be a reference to the name of the Act as passed.

- (3) Parts 2 and 4 commence on a day fixed by the Minister by written notice.

Note 1 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 2 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 2004

3 Legislation amended—pt 2

This part amends the *Building Act 2004*.

4 New part 2A

insert

Part 2A Exemption assessments

13 Purpose of exemption assessment B notices

- (1) An exemption assessment may relate to building work that is to be done or has been done.
- (2) An exemption assessment B notice in relation to building work that is to be done certifies that the work is, or is not, exempt from all or part of this Act.

Note If an exemption assessment B notice certifies that building work is exempt from all or part of this Act, it must also state what provisions of this Act the building work is exempt from and why, and anything else prescribed by regulation (see s 36D (2)).

- (3) An exemption assessment B notice in relation to building work that has been done certifies that the work is, or is not, exempt from all or part of this Act based on whether the work was exempt at the time it was done, or is currently exempt.

EXPOSURE DRAFT

14 Exemption assessment applications

- (1) The owner of a parcel of land may apply, in writing, to a building surveyor for an assessment (an *exemption assessment*) of whether building work to be carried out, or carried out, on the parcel of land is exempt from all or part of this Act.

Note 1 Building work may be exempt from all or part of this Act if the work is exempt from this Act, or part of this Act. For exempt buildings and building works, see the *Building (General) Regulation 2008*, s 6, s 7 and sch 1.

Note 2 Applying for an exemption assessment is not a requirement of the building approval or development approval process (see s 14A). A person may personally decide whether building work is exempt and not apply for an exemption assessment from a building surveyor.

- (2) The application must be accompanied by the number of copies of the plans relating to the development work prescribed by regulation.
- (3) The application must contain, or be accompanied by, any other details or material prescribed by regulation.

Note If a form is approved under s 151 for an application, the form must be used.

- (4) A regulation may prescribe information required to be shown in plans under subsection (2).

14A Exemption assessment not required for building approval

- (1) An exemption assessment is not a requirement of the building approval process.
- (2) A building surveyor may issue an exemption assessment B notice to the owner of a parcel of land only if the owner has applied to the building surveyor for an exemption assessment.

EXPOSURE DRAFT

- (3) A building surveyor must not refuse to issue a building approval on the ground that the applicant for the approval has not applied for an exemption assessment B notice.

14B Exemption assessments and notices

- (1) This section applies if—
- (a) the owner of a parcel of land applies to a building surveyor for an exemption assessment under section 14; and
 - (b) the building surveyor agrees to provide the exemption assessment.
- (2) The building surveyor must—
- (a) undertake the exemption assessment; and
 - (b) issue a notice (an *exemption assessment B notice*) stating—
 - (i) if any building work is exempt from all or part of this Act—
 - (A) the building work that is exempt; and
 - (B) the provisions of this Act that the building work is exempt from and why; and

Note For building work that is completed, see also s (3).

 - (ii) any building work that is not exempt from any part of this Act; and
 - (iii) anything else prescribed by regulation; and

Note The building surveyor may refuse to issue a notice if the building surveyor does not have enough information (see s 14E).

 - (c) give the exemption assessment B notice to the owner; and

EXPOSURE DRAFT

- (d) within 5 days after the day the building surveyor issues the notice—give a copy of the notice to the planning and land authority.
- (3) If the building work that is the subject of the application has been completed and the building surveyor certifies that the building work is exempt because the building work was exempt when built, the exemption assessment B notice must also include the dates on which the building surveyor has based the assessment that the building work was exempt.
- (4) If, after taking reasonable steps, the owner cannot find a building surveyor who will agree to provide an exemption assessment, the owner may apply to the construction occupations registrar to appoint a building surveyor to undertake the exemption assessment and issue an exemption assessment B notice to the owner.

14C Exemption assessment applications—request for further information

- (1) This section applies if—
 - (a) a building surveyor requires further information for an exemption assessment under section 14B; and
 - (b) the owner of the parcel of land and the building surveyor have not agreed that the building surveyor will obtain the further information; and
 - (c) the building surveyor believes on reasonable grounds that the further information will help the building surveyor to prepare the assessment.
- (2) The building surveyor may, by written notice, ask the owner to give the building surveyor stated further information in relation to the application.

EXPOSURE DRAFT

14D Exemption assessment applications—contents of request for further information

- (1) A request under section 14C must—
 - (a) state the period within which the further information asked for must be provided; and
 - (b) if the further information is not a document—state that the further information must be provided in writing; and
 - (c) state that the owner need not provide the further information, but if the owner fails to provide some or all of the information in accordance with the request, the building surveyor may refuse under section 14E to issue an exemption assessment B notice; and
 - (d) state that, despite the owner and building surveyor having previously not agreed that the building surveyor would obtain the further information, the owner and building surveyor may agree that the building surveyor will obtain the information.
- (2) The request may require the owner to confirm all or part of any information provided by statutory declaration.
- (3) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
- (4) The building surveyor may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

EXPOSURE DRAFT

14E Exemption assessment applications—effect of failure to provide further information

- (1) This section applies if—
- (a) a building surveyor has asked for further information under section 14C in relation to an exemption assessment application; and
 - (b) the owner has not provided some or all of the information by—
 - (i) the end of the period stated in the request; or
 - (ii) if the building surveyor has extended the period within which the further information must be provided—the end of that period; and
 - (c) the owner and the building surveyor have not agreed that the building surveyor will obtain the further information.
- (2) The building surveyor may refuse to issue an exemption assessment B notice under section 14B.

**5 Building approval applications
Section 26 (2), note**

substitute

- (e) if there is development approval for development to which the building work relates—be accompanied by a copy of the development approval, unless the applicant cannot obtain a copy of the approval after taking reasonable steps; and

EXPOSURE DRAFT

- (f) if there is an exemption assessment D notice for development to which the building work relates—be accompanied by a copy of the exemption assessment D notice.

Note 1 **Exemption assessment D notice**—see the *Planning and Development Act 2007*, s 135D.

Note 2 If a form is approved under s 151 for this provision, the form must be used.

6 Contents of request for further information Section 26B (4), note

omit

7 New section 27A

insert

27A Notice if building approval not required

- (1) This section applies if—
- (a) an application for a building approval is made to the certifier under section 26; and
 - (b) the certifier decides that building approval is not required for all or part of the building work (the ***exempt building work***) for which the application is made.
- (2) The certifier must give the applicant written notice stating that building approval is not required for the exempt building work.

EXPOSURE DRAFT

8 Issue of building approvals
Section 28 (2) (a), new note

insert

Note This may include deciding whether the building work requires development approval under the *Planning and Development Act 2007* (see s 29 (1) (g)).

9 Approval requirements
New section 29 (1) (g) (ia)

insert

- (ia) a copy of an exemption assessment D notice for the site work stating that the site work is an exempt development is attached; or

Note 1 If site work is an exempt development, it does not require development approval (see *Planning and Development Act 2007*, s 133).

Note 2 Applying for an exemption assessment is not a requirement of the development approval or building approval process. A person may personally decide whether a development is an exempt development and not apply for an exemption assessment from a works assessor or building surveyor (see *Planning and Development Act 2007*, div 7.2.6A).

10 Section 29 (1) (g), new example and note

before note 1, insert

If an exemption assessment D notice for the proposed residence and garage indicates the residence and garage are exempt from requiring development approval, then the plans do not need to include any additional information to establish that the proposed residence and garage are an exempt development.

Note 1A This provision does not give a certifier power to require an applicant to provide either development approval, or an exemption assessment D notice, under the *Planning and Development Act 2007*.

11 New section 29 (6A)

insert

(6A) For subsection (1) (g) (ia), the certifier must be satisfied that the exemption assessment D notice—

- (a) is for the site work to which the application relates; and
- (b) was issued by a works assessor or building surveyor not more than 3 months before the day the application for building approval was made.

Note There is no obligation on the certifier to confirm the exemption assessment D notice in any other way, such as for accuracy or completeness.

**12 Contents of request for further information
Section 32B (4), note**

omit

EXPOSURE DRAFT

13 Notification by certifier of possible noncompliant site work
New section 50A (2A) and (2B)

insert

- (2A) For subsection (1) (a) (ii), a certifier may rely on an exemption assessment D notice issued not more than 3 months earlier.

Note An exemption assessment D notice states whether a development is exempt from requiring development approval (see *Planning and Development Act 2007*, s 135D).

- (2B) Subsection (2A) applies whether or not the exemption assessment D notice was incorrect if the certifier was not aware, and could not reasonably have been aware, that the notice was incorrect.

14 Site work without adequate development approval—people
New section 50B (3A) and (3B)

insert

- (3A) For subsection (3) (b), a defendant is taken to be satisfied on reasonable grounds if the defendant proves that the defendant relied on an exemption assessment D notice, issued not more than 3 months before the day the building approval was issued, stating that the development did not require development approval.
- (3B) Subsection (3A) applies whether or not the exemption assessment D notice was incorrect, unless the prosecution establishes that the defendant knew, or could reasonably be expected to have known, that the notice was incorrect.

EXPOSURE DRAFT

**15 Site work without adequate development approval—
partners
Section 50C**

omit

the partnership proves

substitute

a partner proves

16 New section 50C (3A) and (3B)

insert

- (3A) For subsection (3) (b), a partnership is taken to be satisfied on reasonable grounds if a partner proves that the partnership relied on an exemption assessment D notice, issued not more than 3 months before the day the building approval was issued, stating that the development did not require development approval.
- (3B) Subsection (3A) applies whether or not the exemption assessment D notice was incorrect, unless the prosecution establishes that at least 1 of the partners knew, or could reasonably be expected to have known, that the notice was incorrect.

**17 Carrying out building work in contravention of s 42
Section 51 (4)**

substitute

- (4) It is a defence to a prosecution against the owner of the parcel of land for an offence against subsection (2) if the owner satisfies the court—
- (a) that the owner—

EXPOSURE DRAFT

- (i) believed on reasonable grounds that section 42 had been complied with; or
 - (ii) was not aware, and could not reasonably have been aware, that the building work had begun or been carried out; or
- (b) that—
 - (i) an exemption assessment B notice stating that the building work was exempt from all or part of this Act had been issued before, but not more than 3 months before, the day the building work began; and
 - (ii) the owner was not aware, and could not reasonably have been aware, that the notice was incorrect; or
- (c) that—
 - (i) a building approval, or approval of amended plans, for the building work had been issued; and
 - (ii) the building work was carried out when the building approval, or approval of amended plans, was in force; and
 - (iii) the owner was not aware, and could not reasonably have been aware, that the approval, or the approval of the amended plans, should not have been issued.

18 Section 51 (5) (b)

omit everything before subparagraph (i), substitute

- (b) the person believed on reasonable grounds that—

EXPOSURE DRAFT

19 New section 51 (6)*insert*

- (6) It is a defence to a prosecution against a person other than the owner of the parcel of land if the person satisfies the court—
- (a) that an exemption assessment B notice stating that the building work was exempt from requiring building approval had been issued not more than 3 months before the day the building work began, unless the prosecution establishes that the person knew, or could reasonably be expected to have known, that the notice was incorrect; or
 - (b) that—
 - (i) a building approval, or approval of amended plans, had been issued for the building work; and
 - (ii) the person was not aware, and could not reasonably have been aware, that the approval, or the approval of the amended plans, should not have been issued.

**20 Regulation-making power
Section 152 (6)***substitute*

- (6) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 60 penalty units for offences against the regulations.

EXPOSURE DRAFT

21 Dictionary, new definitions

insert

building surveyor—see the *Constructions Occupations (Licensing) Act 2004*, section 9.

exemption assessment—see section 14.

exemption assessment B notice—see section 14B.

exemption assessment D notice—see the *Planning and Development Act 2007*, section 135D.

EXPOSURE DRAFT

Part 3 Construction Occupations (Licensing) Act 2004

22 Legislation amended—pt 3

This part amends the *Construction Occupations (Licensing) Act 2004*.

23 What is a *building surveyor*? Section 9 (3), definition of *building certification work*, except note

substitute

building certification work means anything a building certifier may or must do under the *Building Act 2004*, other than providing an exemption assessment or exemption assessment B notice.

24 What is a *works assessor*? Section 14A (3), definition of *works assessment work*, except note

substitute

works assessment work—

- (a) means providing, including doing anything incidental to providing—
 - (i) an exemption assessment under the *Building Act 2004* or the *Planning and Development Act 2007*; or
 - (ii) a unit title assessment report under the *Unit Titles Act 2001*; but

EXPOSURE DRAFT

- (b) does not include work done by a licensed building surveyor when acting as a certifier under the *Building Act 2004*.

**25 What is an *operational Act*?
Section 16**

insert

- *Planning and Development Act 2007*;

**26 Rectification orders—exercise of registrar’s powers
Section 33A (b)**

omit

this Act, an operational Act or the *Planning and Development Act 2007*

substitute

this Act or an operational Act

**27 Considerations for deciding under s 34 and s 35
Section 36 (3) (b)**

omit

this Act, an operational Act or the *Planning and Development Act 2007*

substitute

this Act or an operational Act

EXPOSURE DRAFT

28 New part 16*insert***Part 16 Transitional—Construction
Occupations Legislation
Amendment Act 2010****158 Meaning of *commencement day*—pt 16**

In this part:

commencement day means the day this part commences.

159 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation Amendment Act 2010*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) A regulation under subsection (2) expires 2 years after the day it commences.

160 Expiry—pt 16

This part expires 2 years after the commencement day.

EXPOSURE DRAFT

Part 4 Planning and Development Act 2007

29 Legislation amended—pt 4

This part amends the *Planning and Development Act 2007*.

30 What is an exempt development? Section 133, new note

insert

Note A person may apply for an exemption assessment under s 135B to work out whether a development is an exempt development.

31 New division 7.2.6A

insert

Division 7.2.6A Exemption assessments

135A Purpose of exemption assessment D notices

- (1) An exemption assessment may relate to development that is to be undertaken or has been undertaken.
- (2) An exemption assessment D notice in relation to a development that is to be undertaken certifies that the development is, or is not, an exempt development.

- (3) An exemption assessment D notice in relation to a development that has been undertaken certifies that the development is, or is not, exempt from requiring development approval based on whether the development was exempt from requiring development approval at the time it was done, or is currently exempt from requiring development approval.

135B Exemption assessment applications

- (1) A person may apply, in writing, to a works assessor or building surveyor for an assessment (an *exemption assessment*) of whether a development is an exempt development under section 133.

Note 1 **Building surveyor**—see the *Constructions Occupations (Licensing) Act 2004*, s 9. **Works assessor**—see the *Constructions Occupations (Licensing) Act 2004*, s 14A.

Note 2 Applying for an exemption assessment is not a requirement of the development approval or building approval process (see s 135C). A person may personally decide whether a development is an exempt development and not apply for an exemption assessment from a works assessor or building surveyor.

- (2) The application must—
- (a) include—
 - (i) the number of copies of the plans relating to the development work prescribed by regulation; and
 - (ii) any other details or material prescribed by regulation; and
 - (b) be in writing signed by the applicant; and
 - (c) if the applicant is someone other than the lessee of the land to which the application relates—also be signed by—
 - (i) if the land to which the application relates is subject to a lease—the lessee of the land; or

EXPOSURE DRAFT

(ii) if the land to which the application relates is public land or unleased land—the custodian for the land; or

(iii) in any other case—the planning and land authority.

Note If a form is approved under s 425 for an application, the form must be used.

- (3) A regulation may prescribe information required to be shown in plans under subsection (2) (a) (i).

135C Exemption assessment not required for development approval

- (1) An exemption assessment is not a requirement of the development approval process.
- (2) A works assessor or building surveyor may issue an exemption assessment B notice to an applicant only if the applicant has applied to the works assessor or building surveyor for an exemption assessment.

135D Exemption assessments and notices

- (1) This section applies if a person applies to a works assessor or building surveyor for an exemption assessment under section 135B and the works assessor or building surveyor agrees to provide the exemption assessment.
- (2) The works assessor or building surveyor must—
- (a) prepare the exemption assessment; and
 - (b) issue a notice (an *exemption assessment D notice*) stating whether the development is an exempt development under section 133; and
 - (c) give the exemption assessment D notice to the applicant; and

EXPOSURE DRAFT

- (d) within 5 days after the day the works assessor or building surveyor issues the notice—give a copy of the notice to the planning and land authority.

Note 1 The works assessor or building surveyor may refuse to issue a notice if the works assessor or building surveyor does not have enough information (see s 135G).

Note 2 Other people may rely on an exemption assessment D notice, for example, a building surveyor when issuing a building approval under the *Building Act 2004*.

- (3) If the development that is the subject of the application has been undertaken and the works assessor or building surveyor certifies that the development is exempt because the development was exempt when undertaken, the exemption assessment D notice must also include the dates on which the works assessor or building surveyor has based the assessment that the development was exempt.
- (4) If, after taking reasonable steps, an applicant cannot find a works assessor or building surveyor who will agree to provide an exemption assessment, the applicant may apply to the construction occupations registrar to appoint a works assessor to prepare the exemption assessment and issue an exemption assessment D notice.

135E Exemption assessment applications—request for further information

- (1) This section applies if—
- (a) a works assessor or building surveyor requires further information for an exemption assessment under section 135D; and
 - (b) the applicant and the works assessor or building surveyor have not agreed that the works assessor or building surveyor will obtain the further information; and

EXPOSURE DRAFT

- (c) the works assessor or building surveyor believes on reasonable grounds that the further information will help the works assessor or building surveyor to prepare the assessment.
- (2) The works assessor or building surveyor may, by written notice, ask the applicant to give the works assessor or building surveyor stated further information in relation to the application.

135F Exemption assessment applications—contents of request for further information

- (1) A request under section 135E must—
 - (a) state the period within which the further information asked for must be provided; and
 - (b) if the further information is not a document—state that the further information must be provided in writing; and
 - (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the works assessor or building surveyor may under section 135G refuse to issue an exemption assessment D notice; and
 - (d) state that, despite the applicant and works assessor or building surveyor having previously not agreed that the works assessor or building surveyor would obtain the further information, the applicant and works assessor or building surveyor may agree that the works assessor or building surveyor will obtain the information.
- (2) The request may require the applicant to verify all or part of any information provided by statutory declaration.

EXPOSURE DRAFT

- (3) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
- (4) The works assessor or building surveyor may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

135G Exemption assessment applications—effect of failure to provide further information

- (1) This section applies if—
 - (a) a works assessor or building surveyor has asked for further information under section 135E in relation to an exemption assessment application; and
 - (b) the applicant has not provided some or all of the information by—
 - (i) the end of the period stated in the request; or
 - (ii) if the works assessor or building surveyor has extended the period within which the further information must be provided—the end of that period; and
 - (c) the applicant and the works assessor or building surveyor have not agreed that the works assessor or building surveyor will obtain the further information.
- (2) The works assessor or building surveyor may refuse to issue an exemption assessment D notice under section 135D.

EXPOSURE DRAFT

**32 Offence to develop without approval
Section 199 (6)***substitute*

- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves—
- (a) that before undertaking the development the defendant took reasonable steps to find out whether the development required development approval; or
 - (b) that—
 - (i) an exemption assessment D notice was issued before, but not more than 3 months before, the day the defendant started to undertake the development, stating that the development was an exempt development under section 133; and
 - (ii) the defendant was not aware, and could not reasonably have been aware, that the notice was incorrect; or
 - (c) that—
 - (i) before the day the defendant started to undertake the development, a building approval or approval of amended building work plans under the *Building Act 2004* for which development approval was required was issued; and
 - (ii) the building work was carried out when the building approval, or the approval for the amended plans, was in force; and

EXPOSURE DRAFT

- (iii) the defendant was not aware, and could not reasonably have been aware, that the building approval, or the approval of the amended plans, should not have been issued without development approval.

Note See the *Building Act 2004*, s 28 (for issue of building approvals) and s 32 (for amendment of approved plans).

33 Regulation-making power Section 426 (5)

substitute

- (5) A regulation may create offences and fix maximum penalties of not more than 60 penalty units for the offences.

34 Dictionary, new definitions

insert

exemption assessment—see section 135B.

exemption assessment D notice—see section 135D.

works assessor—see the *Constructions Occupations (Licensing) Act 2004*, section 14A.

EXPOSURE DRAFT

Part 5 Unit Titles Act 2001

35 Legislation amended—pt 5

This part amends the *Unit Titles Act 2001*.

36 Unit title applications—general requirements New section 17 (5) (c)

before the note, insert

- (c) a plan prepared by a registered surveyor showing anything prescribed by regulation.

37 Unit title assessment reports Section 22B (2), example

substitute

Examples

- 1 proposed unit title plans
- 2 information about a development approval

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

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

EXPOSURE DRAFT