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LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION OCCUPATIONS LEGISLATION AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
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Background

The *Construction Occupations Legislation Amendment Bill 2005* (“the Bill”) amends the following legislation (“the amended laws”)—

the *Building Act 2004*

the *Building Regulation 2004*

the *Construction Occupations (Licensing) Act 2004* (“COLA”)

the *Construction Occupations (Licensing) Regulation 2004*

the *Water and Sewerage Act 2000*

the *Water and Sewerage Regulation 2001*.

The main objectives of the Bill are to:

- resolve minor anomalies in the wording of the amended laws; and
- enhance the wording of certain provisions of the amended laws so they more effectively achieve their objective and are clearer to understand; and
- permit corporations and partnerships to be licensed under COLA in the construction occupation of plumbing plan certifier; and
- provide exemptions to the application of certain provisions of the Building Code of Australia, in certain described circumstances.

The Bill does not increase the level of regulatory burden of the amended laws. The above-mentioned exemptions have the effect of reducing an aspect of regulation of existing houses in certain circumstances.

Objectives of the amended laws

COLA provides for a uniform system of regulating construction occupation licensing and construction work in relation the following construction occupations—

- builders
- building surveyors (provision of building certifier services under the *Building Act 2004*)
- drainers (provision of sanitary drainage services)
- electricians
- gasfitters
- plumbers (provisions of water supply plumber services or sanitary plumbing services)

- plumbing plan certifiers (provision of services in connection with approving plumbing plans).

COLA provides the legislative framework for licensing people in those occupations, for stipulating general obligations on licensees, and for taking action against licensee who fail to comply with COLA requirements or requirements of its operational Acts. The above-mentioned *Building Act 2004* and *Water and Sewerage Act 2000* are two of COLA's operational Acts. Those Acts provide the technical requirements for COLA licensees when providing construction services in the respective construction occupations.

Outline

The key provisions of the Bill cover amending the respective amended laws to provide for:

- specifying that corporations and partnerships are eligible for a COLA licence in the construction occupation of plumbing plan certifier;
- clarifying that the exemptions in the *Building Act 2004* do not apply in relation to handling or disturbing asbestos that is part of a building, so that all such asbestos work is covered by that Act's asbestos regulatory regime, regardless of the nature of the building involved;
- ensuring that such asbestos work is not exempt from having to be done in accordance with that regime, on the basis of relevant approved plans being defective in that they incorrectly describe the existence or location of asbestos in the building;
- clarifying that when construction of a building is lawfully underway the work does not have to be altered to bring it into compliance with a subsequent change in a relevant provision of the Building Code of Australia, provided the respective approved plan has not expired;
- the Building Regulations to prescribe when a pre-existing building must be brought into compliance with the current edition of Building Code of Australia during alteration or extension to the building, and to prescribe which parts of the code the pre-existing part of the building must, or need not, be brought into compliance with. Those provisions are intended to provide a level of exemption from having to make the whole of the pre-existing part of the building comply with the whole of the code;
- clarifying the extent of application of the term "advertising" in COLA, as COLA requires certain persons advertising to provide COLA construction services to specify certain things in the advertisement;
- clarifying that principle government building surveyors or government building surveyors do not require insurance as a COLA licence eligibility prerequisite;
- permitting COLA builders licenses to be endorsed to authorise any kind of building work rather than only specialist building work;
- defining the terms **electrical installation** and **incidental electrical work**, which are used in COLA to describe services covered by certain classes of electricians licence;
- minor and technical amendments to address wording anomalies or to enhance the wording of various provisions.

Notes on Clauses

Clause 1 gives the formal title of the Bill.

Clause 2 provides that the Bill commences on the day that is 21 days after the Bill is notified as an Act on the ACT Legislation Register. That commencement delay facilitates consolidation of the Bill's provisions into republications of the amended laws.

Clause 3 explains that the “notes” that appear in the Bill are only explanatory, and not part of the Bill.

Clause 4 explains that the pieces of legislation mentioned in schedule 1 of the Bill are amended by the Bill in accordance with the provisions of schedule 1.

Schedule 1 Legislation amended

Part 1.1 Building Act 2004

Clauses 1.1, 1.2, 1.5, 1.9, 1.10, 1.11, 1.12 amend various provisions of the Act that relate to building work involving disturbing or handling asbestos that is part of a building. The amendments remove doubt that despite the Act indicating that the Act does not apply in part, or in whole, to specified kinds of exempted buildings and structures, its asbestos regulatory provisions apply to all buildings and structures defined by the Act, without exemption. That is necessary to ensure that such asbestos work that is carried out in relation to buildings that may be otherwise exempt from the Act, or part of it, are not exempt from the Act's asbestos provisions. The Act only applies to buildings, as defined in the Act, and as such the Act does not apply to asbestos containing materials that fall outside the definition of **building work** in the Act.

Clause 1.3 amends the Act by substituting a new section 29 (1) (a), which deals with requirements for approving building plans. This is necessary to clarify that the intent of the section is to require not only compliance with the Act, but also with the Building Code of Australia. Without this amendment it may not be clearly understood that the Code is applied where there is no intention of carrying out building work in older parts of a building. The Act would otherwise require new building work on to be done in accordance with the Code.

Clause 1.4 amends the Act by substituting a new section 29 (2). The amendment entitles a regulation to provide exemptions from the application of prescribed parts of the Building Code of Australia, in relevant circumstances. Those circumstances are where the Act requires a pre-existing building to be brought into compliance with the current version of the code.

That is necessary as there are circumstances where it is not feasible to bring an old house, for example, into full compliance with the current code. Many old brick veneer houses with timber floors have no termite management systems, such as termite shields built into their outer brick walls. It is not feasible to retrofit metal

termite shields in the outer brick walls of such houses. Modern versions of the code require termite management systems.

The circumstances that the Act describes as triggering the need to bring pre-existing buildings into code compliance are, in summary, when more than 50% of the volume of the building is altered within a 3-year period. Such alterations include internal renovation that falls within the Act's definition of **building work** and alters room sizes, for example, or an extension to the building, as both activities alter volume of spaces in the building or of the building in total.

The requirement to bring the pre-existing part of the altered building into code compliance applies regardless of the fact that no other building work may have been otherwise intended to be done to that pre-existing part.

Clause 1.6 omits section 42A (6) of the Act, which provided that section 42A of the Act would expire on 1 September 2006 (2 years after the Act commenced). That is necessary to give permanent effect to section 42A, which establishes certain offences in relation to failures to comply with some of the Act's asbestos requirements. The section originally was set to expire in anticipation that the Act may not ultimately be the vehicle for such asbestos regulation, but in the mean time it is necessary to ensure it remains so beyond 1 September 2006.

Clause 1.7 amends the Act by substituting a new section 49 (4). That is necessary to clarify that the intent of the section is as follows—

the Act requires building work to be carried out in accordance with plans approved under the Act (**approved plans**), and the Building Code of Australia (described under the Act as the Building Code of Australia prepared and published by the Australian Building Codes Board). The Act provides to the effect that the approved plans expire 3 years after they are approved. New versions of the Code are published regularly, often yearly, to take account of amendments to its provisions.

Without the provisions of **clause 1.7**, buildings being constructed during the 3-year life of the approved plans may have to be altered during construction to achieve compliance with the Code, if the Code's relevant provisions change during construction. To avoid such alteration during construction, **clause 1.7** is intended to permit the building to be constructed in accordance with its approved plans and the version of the Code that was in force when those plans were approved, despite the fact that the Code may have subsequently changed before construction of the building is completed. However, if the approved plans expire, and the building is not complete, and therefore a new approval is required in relation to its expired approved plans, those plans must reflect a building that if constructed in accordance with the new approval, will comply with the Code as in force on the day the new approval was issued, rather than the day of the previous approval's issue.

It is not intended that amendments to approved plans, as provided for under the Act, trigger a need to comply with versions of the code that are published later than the day the subject plan was approved, provided that plan has not subsequently expired under the Act.

Clause 1.8 removes minor superfluous wording at section 61 (g) of the Act.

Clause 1.13 inserts a new section 164A (Certificate of regularisation) into the Act, which ensures that certificates of regularisation issued under the Act's predecessor (the *Building Act 1972* (repealed)) continue in effect under the Act, section 75 (Decision on s 74 application). That is necessary as the repeal of the former Act had the effect of rendering the certificates of regularisation issued under it invalid for the purposes of such certificates under the 2005 Act.

The certificates act as a permission to occupy a building and are a mechanism to help ensure buildings meet basic occupancy requirements set out in the Act. Occupancy of a building without such a valid certificate may be unlawful under the Act.

Clauses 1.14 and 1.15 have the effect of amending section 172 of the Act so as the ACT appendices to the Building Code of Australia, which were made under the Act's predecessor, (the *Building Act 1972*), no longer are taken as appendices under the 2005 Act. That is necessary as the appendices under the former Act are now superseded by the appendices in the most recent version of the Code. The Act provides that the ACT appendices published in the code are the ACT appendices under the Act, negating the need to formerly make the appendices separately (they are automatically adopted as published from time to time in the Code).

Part 1.2 Building Regulation 2004

Clauses 1.16 and 1.20 omit various sections of the regulation, which provided that those sections would expire on 1 September 2006 (2 years after the regulation was first made). That is necessary to give permanent effect to the respective sections, which prescribe various asbestos requirements. The sections were originally set to expire in anticipation that the Regulation may not ultimately be the vehicle for such asbestos regulation, but in the meantime it is necessary to ensure it remains so beyond 1 September 2006.

Clause 1.17 makes a consequential amendment to the reference to the Act in the heading of section 16. It amends the reference to "s 29 (2) (a)" from the former reference of "s 29 (2)".

Clause 1.18 makes minor adjustments to the wording of several of the examples under section 16 of the Act, by substituting a new set of examples, which mirror the former set, bar the adjustments. The adjustments clarify, but do not alter, the examples' intents. The examples are about when a pre-existing building is, or is not, required to be brought into compliance with the Building Code of Australia and the Act.

Clause 1.19 inserts a new section 16A into the Regulation to provide technical details about the construction of a building, which if complied with, exempts the relevant element of the building from having to be brought into compliance with all of the relevant provisions of the Building Code of Australia. The section operates in relation to the Act's requirements to bring certain pre-existing buildings into compliance with the Code when the building is altered by certain renovations or

extensions. That is necessary to ensure that not every provision of the code is applied to pre-existing buildings as it is not technically feasible to bring many aspects of old buildings into compliance with the modern code. For example, if reinforced concrete footings of a house are too small to comply with the code it is not feasible to enlarge them to meet the code. There is no benefit in enlarging them to meet the code if they have proved to be structurally sufficient over the long life of the building.

The new section 16A indicates it only applies to buildings which are class 1 or class 10. The Act defines what such classes mean, and in this case the section applies to certain houses and non-habitable buildings usually associate with houses, including garages and carports.

The provisions of new section 16A are intended to have the effect of exempting all of the provisions of Code from applying to the above-mentioned buildings except for the Code's provisions dealing with—

- glazing (which is about glass in windows, doors, shower screens and the like);
- smoke alarms (which is about smoke detectors which sound an alarm intended to wake people sleeping during a house fire);
- bushfire areas (which is about building construction in declared bushfire zones, so as the building withstands the passing of the flame front of a bush fire);
- balustrades (which is about barriers to prevent falls from high stairs and edges of high floors and balconies and the like);
- swimming pool access (which is about barriers to prevent young children gaining unsupervised access to swimming pool areas);
- energy efficiency of walls and roof (which is mainly about thermal insulation).

However, the provisions of new section 16A also prescribe alternative technical requirements to those of the Code, in some instances to cater for circumstances where an aspect of code compliance may be unfeasible. For example a flight of stairs may be a little too steep to comply with the code, but the building does not have sufficient dimensions to accommodate making the stairway less steep to comply with the code. In that case the new section 16A provides technical requirements about the geometry of a stairway which, if complied with, satisfy the relevant requirements without having to comply with all of the Code's stair provisions. In that case the requirements of new section 16A also require the stairway to have a handrail to increase the safety of people using the stairway.

In relation to glazing, new section 16A permits safety film (as described in the section) to be applied to glass as an alternative to having to replace substandard glass in circumstances described in the section.

In relation to balustrades, new section 16A permits pre-existing balustrades to take the place of a balustrade required by the Code, despite the fact that the balustrade

may not comply with the Code, but only in the circumstances prescribed by the section.

In relation to energy efficiency, new section 16A intends to not require more than 10% of wall linings or more than 10% of roofing to be removed in order to achieve compliance with the relevant thermal insulation requirements. The intention is to require, for example, bulk thermal insulation bats to be placed in accessible roof spaces, or granular thermal insulation to be pumped into wall cavities, to achieve the required insulation level, with minor disturbance to wall linings or roofing.

New section 16A also provides definitions of technical terms it relies on, and those definitions have correlation with the equivalent terms in the Code.

Clause 1.21 omits section 32 of the Regulation. Section 32 had transitional effect under the Act, section 179, to modify the Act for a period of 2 years to address anomalies in the Act's drafting or to take account of matters not adequately dealt with by the Act. Section 32 inserted the following sections into the Act—

- section 164A (certificate of regularisation);
- section 164B (Application of s 88 (2) (b));
- section 164C (Prudential standards).

It is necessary to omit those provisions as they are taken account of elsewhere, with permanent effect, except for the above-mentioned section 164C (Prudential standards). Section 164C was intended as a transitional provision to recognise prudential standards under the repealed *Building Act 1972*. It is not intended to continue this provision despite it being necessary to have such standards in force. The Prudential Standards will be updated and remade by the Minister as provided for under section 103 (1) of the Act and will come into force to replace the old standards. The Ministerial determination will repeal the old Prudential Standards.

Part 1.3 Construction Occupations (Licensing) Act 2004 (“COLA”)

Clause 1.22 amends sections 28 (3) (b) by splitting it into 2 new sections ((b) and (c)), and renumbering section 28 (3) (c) as 28 (3) (d). The intention of the amendment is to clarify that a partnership or corporation can have 2 or more nominees who are responsible for the same particular construction service provided by the corporation or partnership, provided the respective responsibilities are recorded in writing.

An example of how the provision could operate is in relation to building certifier services is as follows—

a licensed building surveyor company is appointed as the building certifier for 300 houses over the course of its yearly business. The company gave a written statement to it 3 nominees that each nominee would be responsible for all of the building projects that company was appointed certifier for. That allows any of the nominees to act as the nominee responsible for any of the 300 houses.

The amendment is necessary to clarify the intent of the provision, as previously there was doubt that the provision allowed a nominee to be responsible for a project that was the responsibility of another nominee.

Clause 1.23 amends section 35 (1) of the Act by substituting a recast provision. Section 35 deals with aspects of issuing rectification orders to people responsible for providing COLA construction services unlawfully and in a substandard manner. The amendment removes doubt that rectification orders are applicable in circumstances where the ordered person is, or was, the owner of the land to which the order applies. That is necessary to ensure that owner-builders and speculative builders (builders who acquire land to build upon to then immediately sell the property), in particular, are entitled to be served with rectification orders.

Clause 1.24 amends section 83 (1) (b) (iii) of the Act by inserting words that indicate that the section can apply to corporations that do not have an ACN (an “Australian Company Number” under the *Corporations Act 2001* (Commonwealth)). That is necessary as the *Legislation Act 2001* provides that the term **corporation** includes a **body politic**. Many bodies politic do not have an ACN. An example of the effect of the amendment is to make it clear that an administrative unit of the ACT Government is entitled to apply for a licence under the Act, despite the fact that the entity may not have an ACN, provided it is a **body politic**.

Clause 1.25 amends section 83 (1) of the Act, which deals with requirements of advertisements offering to provide construction services. The requirements include specifying details such as the relevant construction occupation licence number. The amendments insert two sets of examples—

- examples required to include details;
- examples that are not advertising or not required to include details.

The intention is to describe some circumstances where advertising does or does not convey a message that a person (an individual, corporation or partnership) provides or can provide a construction service covered by the Act.

The examples include similar, but slightly different, circumstances in each of the above-mentioned two lists, to illustrate how differences in circumstances can turn, or not turn, a message into an advertisement for the purposes of the provision. One such circumstance is where a building company advertises to invite the public to inspect its display home. A clear intention is to invite the public to inspect the building services that the company has provided by building the display home, with the intention of conveying to the public that the company can provide such services. In that case the advertisement is subject to section 83 of the Act.

On the other hand, the company is entitled to advertise that display home for sale, in a manner that does not indicate the company provides building services. Provided the advertisement does not convey that message, it is thereby not be subject to section 83.

Example 5 of the list of examples that are not advertising etc, describes a situation where an advertisement appears to convey a message that a person arranges for

the provision of a construction service covered by the Act, but the advertisement clearly indicates that—

the person does not provide the construction service; and that

another person who is independent of the person who placed the advertisement provides the construction service.

That example is necessary to ensure that such advertisements make it clear to the person's potential clients that the person will not be the licensee who provides the construction service. That example caters for circumstances where the advertiser acts as a broker or agent, such as where a real estate agent advertises that he or she can arrange to provide a house and land package despite the fact that the real estate agent is not licensed to provide the construction services needed to build the house.

Clause 1.25 also includes a note about examples not providing an exhaustive list of examples and that examples can extend the meaning of the provision they appear in, but that they do not limit that meaning.

Clause 1.26 makes a consequential amendment to section 137 of the Act by substituting a replacement section 137 (2). The amendment is necessary to cater for the fact that fire sprinkler work is now a construction occupation under the Act, rather than only a type of work under the occupation of water supply plumber.

Clause 1.27 amends section 141 (a) of the Act, which provides transitional arrangements so as rectification orders under section 34 of Act can be made in respect of certain failures to comply with legislation which preceded the Act. The amendment lists a wider range of legislation than the original section 141. That is necessary to give full effect to the original intent of the provision.

Clause 1.28 amends section 143 (1) (a) of the Act by substituting a replacement section. Section 143 provides transitional arrangements covering the term **former licensee** for the purposes of section 54 (3) of the Act (which deals with disciplinary grounds in relation to licensee and **former licensees**). The amendment changes the provision's reference about the "the repealed Act" to a reference to the "*Construction Practitioners Registration Act 1998* ("CPRA"), as in force at any time before the commencement of [the] Act". That is necessary as the reference to the repealed Act refers to the definition of the term **repealed Act** at section 130 of the Act which only encompasses the CPRA immediately before part 13 of COLA commenced, rather than encompassing the CPRA as in force at any time.

The effect of the amendment is to achieve the original intent of section 143 (1) (a) which included entitling disciplinary action to be taken in respect of disciplinary grounds arising from failure to comply with the CPRA at any time it was in force.

Clause 1.29 makes minor technical amendments to the Act's dictionary's definition of the term AS 3500 to take account of the fact that parts of the former Australian Standard AS 3500 have been superseded by an Australian and New Zealand standard, AS/NZS 3500.

Part 1.4 Construction Occupations (Licensing) Regulation 2004

Clauses 1.30, 1.31 and 1.32 amend various sections of the Regulation by inserting words that indicate that the respective sections can apply to corporations that do not have an ACN (an “Australian Company Number” under the *Corporations Act 2001* (Commonwealth)). That is necessary as the *Legislation Act 2001* provides that the term **corporation** includes a **body politic**. Many bodies politic do not have an ACN. An example of the effect of the amendment is to make it clear that an administrative unit of the ACT Government is entitled to hold a licence under the Act, despite the fact that the entity may not have an ACN, provided it is a **body politic**.

Clause 1.33 amends section 15 (1) (g) of the Regulation by inserting a reference to the construction occupation of **plumbing plan certifier**. That is necessary to allow corporations and partnerships to be licensed in that occupation. That is consistent with the entitlement to those kinds of licences that are available under COLA for building surveyors (who provide building certifier functions).

Clause 1.34 amends section 17 (1) of the Act, which deals with the requirement for various kinds of building surveyors to have insurance, as one of the eligibility criteria for the grant of a construction occupation licence in any of the building surveyor classes. The effect of the amendment is to exempt applicants for principle government builder surveyor licences, or government building surveyor licenses, from needing to hold insurance as part of the eligibility criteria for those licenses. The amendment is necessary to ensure that the provision is consistent with the former provision it replaces, which was provided in the *Construction Practitioners Registration Act 1998* (repealed), which did not require those kinds of building surveyors to hold insurance.

Clauses 1.35 to 1.37 amend various sections of the regulation covering the endorsement of builders licences to authorise the holder to carry out work that is beyond the inherent authority of the licence. Originally the section only provided for endorsing such licences to authorise specialist building work, as defined in the Act. The amendments continue the entitlement to endorse builders licences to authorise specialist building work, but also entitle the licences to be endorsed to authorise any kind of building work in addition to the inherent authority of the licence. The amendments are necessary to enhance the flexibility of builders licences.

Clause 1.38 omits sections 53 to 55 of the Regulation. Sections 53 to 55 had transitional effect under the Act, section 152, to modify the Act for a period of 2 years to address anomalies in the Act’s drafting or to take account of matters not adequately dealt with by the Act.

Section 53 modified the Act by substituting a new section 137 (2) into the Act, to deal with transitional arrangements covering fire sprinkler fitter licenses.

Section 54 inserted the following sections into the Act—

- section 151 (Supervision by nominees—Act, s 28 (3) (b));
- section 151A (Water and sewerage Act, s 49 (5));

Section 55 modified the the Act's dictionary definition of the term AS 3500.

It is necessary for **clause 1.38** to omit sections 53 to 55 of the regulations as the provisions of those sections are taken account of elsewhere, with permanent effect.

Clauses 1.39 to 1.49 amend various parts of schedule 2 of the Regulation. Schedule 2 covers occupation licence demerit point details. The amendments are minor and technical and, in some cases, consequential. The amendments are necessary to better correlate the demerit grounds with the respective provisions of the COLA operational acts they operate in respect of.

Clauses 1.50 amends the Regulation's dictionary by inserting a reference to a definition for the term **electrical installation**, as that term is used in the Regulation in relation to work covered by certain electricians licences. The term was not previously defined in the Regulation. The new reference is to the definition of the term that is provided in the dictionary of the *Electricity Safety Act 1971*.

Clause 1.51 amends the regulation's dictionary by substituting a definition of the term **incidental electrical work**. The substituted definition ensures that the term is defined in the regulation whereas the previous definition it replaces was a reference to the *Electricity Safety Act 1971* (the "ESA"). The amendment is necessary as the ESA does not contain a definition of the term.

Part 1.5 Water and Sewerage Act 2000; and

Part 1.6 Water and Sewerage Regulation 2001

Clauses 1.52 to 1.55 make minor technical amendments to various provisions of the Act and Regulation which mention the term **AS 3500**, to take account of the fact that parts of the former Australian Standard AS 3500 have been superseded by an Australian and New Zealand standard, AS/NZS 3500.

Cost implications

Nil.