

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION PRACTITIONERS LEGISLATION AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by the authority of  
Minister for Planning  
Simon Corbell MLA

## CONSTRUCTION PRACTITIONERS LEGISLATION AMENDMENT BILL 2003

### Outline

The *Construction Practitioners Legislation Amendment Bill 2002* (the Bill) establishes the capacity for the appointment of government building certifiers. Under the current *Construction Practitioners Registration Act 1998* there are no categories of government building surveyor. Similarly the *Building Act 1972* does not enable the Government to appoint building surveyors to undertake building certification functions. If a certification job is left unfinished and the owner of the parcel of land cannot find a replacement private certifier, the building work cannot be completed, a Certificate of Occupancy cannot be issued, and the building therefore cannot be occupied.

Unlike NSW, Victoria and Queensland, which also have private building certification, there is no capacity in the ACT for the Government to provide certification services. Under the State/Local Government structures, local councils have the legislative capacity (in some states a mandatory requirement), to provide building certification functions. Because the ACT has only a privatised certification system, certifiers have the right to refuse to take on work, particularly uncompleted projects of another certifier who is no longer registered. Without some amendment to the current system, there is potentially no way to finalise the uncompleted projects.

This Bill will provide for a government certifier of “last resort”. The amendments to the *Building Act 1972* and regulations and the *Construction Practitioners Registration Regulations 1998* prescribe the circumstances in which it is considered appropriate for the Government to appoint a registered government building surveyor to undertake building certification work.

The key amendments are:

- a) Two new categories of Construction Practitioner – principal government building surveyor and government building surveyor. A principal government building surveyor can certify all building work, and a government building surveyor can certify work on a building three storeys or lower, with a floor area not larger than 2000m<sup>2</sup>.
- b) The building controller is the only person who can appoint or revoke an appointment of a registered government building surveyor to act as government certifier for certification work. The appointment can only occur after the building controller has approved an application from the owner of the land where the certification work is required.
- c) The regulations stipulate the circumstances in which a lessee can apply for the use of a government building surveyor to undertake building certification work.
- d) The Government appointed certifier has the power to require existing records from the previous certifier for any certification work already undertaken.

The *Building Act 1972* has been amended so that the Government will indemnify work undertaken by a government certifier. The *Construction Practitioners Registration Regulations 1998* is amended so that a registered government building surveyor will not be required to have their own professional indemnity insurance for work undertaken as a government appointed certifier.

The criteria for use of a government certifier mean that they will primarily be limited to an inspection and certification role. They will not issue an initial building approval, but would be able to certify any required amendments.

The government certifier will be subject to the same audit and disciplinary provisions as private certifiers under the CPRA. In addition, where the government certifier is also a public servant, disciplinary action under the *Public Sector Management Act 1994* would also be available depending on the seriousness of the breach.

## **Clause Notes**

### **Part 1 - Preliminary**

#### **Clause 1 – Name of Act**

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

#### **Clause 2 – Commencement**

The Act will commence on a day fixed by the Minister by written notice.

### **Part 2 - Building Act 1972**

#### **Clause 3 – Act amended – pt 2**

Part 2 of this Bill amends the *Building Act 1972*.

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

A new definition of *certifier* is substituted into the *Building Act 1972*, which refers to the use of the terms *certifier* and *government certifier* in section 29A, 31 and 31A of the Act.

#### **Clause 5 - Division 3.2 – Certifiers and government certifiers**

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

This section specifies that the term *certifier* does not include *government certifier*. It also defines *government certifier* as a person who is appointed by the building controller under sub-section 31A(3), on application by the owner of the parcel of land on which the certification work is to be carried out.

*Eligible person* is also referenced for its use in section 30(1) of the Act.

##### **Section 30 – Eligibility for appointment – certifiers and government section**

The new section 30 outlines the eligibility requirements for registered construction practitioners (referred to as *eligible person*) to be appointed as a *certifier* or *government certifier* for building work. The construction practitioner must be registered in the relevant category in the *Construction Practitioners Regulations 1998* in relation to the work and be qualified to be appointed under the regulations. The regulations specify the types of work that each category of construction practitioner covers.

##### **Section 31 – Appointment of certifiers**

Section 31 includes a new provision that requires a certifier to obtain the written approval of builder controller before they are able to resign their appointment as a certifier under s31(1). The building controller must be satisfied that the certifier cannot complete their functions under the appointment as a result of physical or mental incapacity, or that they have arranged for another certifier to take over their work. There is also the capacity for the building controller to take other factors into account in making the decision to approve or not approve the resignation of the certifier. The decision of the building controller is appealable to the Administrative Appeals Tribunal.

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

Section 31A has been inserted to specify the circumstances in which the owner of the land may apply to the building controller for the appointment of a government certifier. These provisions apply when the last certifier appointed for the building work is *no longer the certifier*. There are five circumstances where a certifier is considered *no longer the certifier*. They are:

- a) the certifier's registration is suspended for longer than three months; or
- b) the certifier's registration has been cancelled; or
- c) the certifier has resigned an appointment under section 31(3); or
- d) the certifier is dead; or
- e) the certifier is not covered by insurance for the *Construction Practitioners Registration Act 1998*.

The building controller must then be satisfied that the criteria in the regulations are met before he or she can appoint a government certifier.

### **Section 31B – Power to require building documents**

The new section 31B provides that a government certifier can require the previous certifier to provide any building document they have in relation to the building work, such as copies of plans and certificates. The previous certifier must be given a period of not less than two weeks to provide the documents. Failure to provide the documents within the requested time period is a strict liability offence, which carries a maximum penalty of 50 penalty units.

### **Section 31C – Protection of government certifiers from liability**

This new section provides that where a registered principal government building surveyor or government building surveyor is appointed to undertake work as government certifier, they are not required to hold personal professional indemnity insurance. Provided the work they undertake as an appointed government certifier is done honestly, then the criminal or civil liability for any act or omission done as a government certifier attaches to the Territory.

### **Section 32 – Notice of certifier's appointment or end appointment**

This section has been amended to take account of the amendments to section 30, where subsection 30(3) has been removed. The notice of a certifier's end of appointment is now simply referred to as when "a person's appointment as certifier for the work ends." The amendment

also specifies the failure to notify the building controller of the appointment or end of appointment as a strict liability offence.

### **Section 33 – Prohibition against contracting out**

This maintains the existing section 33 in the Act.

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

Two new appeal rights to the Administrative Appeals Tribunal have been added to the Building Act. A certifier can appeal a decision by the building controller to refuse to accept their resignation of their appointment under section 31 (3)(a). In addition, an owner of the land whose application to the building controller for the appointment of a government certifier is refused can appeal the decision.

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

Where the building controller has made a decision to refuse a certifier's application to resign their appointment, the building controller must give written notice of the decision to the certifier. Where the building controller makes a decision to refuse to appoint a government certifier, the building controller must give a written notice of the decision to the applicant for the appointment of a government certifier.

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

Notes that paragraphs 103(1) and (2) are to be renumbered when the *Building Act 1972* is next republished under the *Legislation Act 2001*.

## **Part 3 – Building Regulations 1972**

### **Clause 9 – Regulations amended – pt 3**

Part 3 of the Bill amends the *Building Regulations 1972*.

### **Clause 10 – Regulation 6 – Qualifications for certifiers and government certifiers for categories of building work – Act, s 30(1)(b)**

A new regulation 6 is substituted to include the qualifications required for registration in the new categories of principal government building surveyor and government building surveyor in relation to the categories of building work that they can certify. The previous qualifications for the categories of principal building surveyor and building surveyor are unchanged. Principal government building surveyors and principal building surveyors can certify any building work. Government building surveyors and building surveyors can certify building work in relation to a building that is three storeys or lower, and has a floor area not larger than 2000m<sup>2</sup>.

Definitions of categories of surveyors for the purpose of this regulation have also been inserted.

## **Regulation 6A – Criteria for appointment of government certifier – Act s31A(4)**

This new regulation specifies the criteria in relation to building work that must be met for the building controller to appoint a government certifier. The three criteria that must be met are:

- a) a building approval was issued for the work before the commencement of the regulation and is still valid; and
- b) a licensed builder has started the work; and
- c) the owner of the land where the work is being done cannot, after making reasonable efforts, appoint a certifier for the work.

## **Part 4 – Construction Practitioners Registration Regulations 1998**

### **Clause 11 – Regulations amended – pt 4**

Part 4 of the Bill amends the *Construction Practitioners Registration Regulations 1998*.

### **Clause 12 – Insurance for practitioners as building surveyors Regulations 5(3)**

Two new provisions are added to the existing regulation 5 to specify the circumstances in which the mandatory insurance provision for construction practitioners registered as building surveyors is not required. When a person applies to be registered as a principal government building surveyor or government building surveyor, they do not have to hold professional indemnity insurance to be registered in either of the categories. However, if they are also applying for registration as a principal building surveyor or building surveyor then to be registered in either of those categories the insurance requirements stipulated in 5(1) and (2) must be met for those categories.

When a person is registered as a principal government building surveyor or government building surveyor, they are taken to be covered by professional indemnity insurance when they do work as a government certifier, having been appointed by the building controller to undertake that work. This is because the liability for work done by a government certifier (appointed by the building controller) attaches to the Territory. However, if the person is also registered as principal building surveyor or building surveyor then they must hold professional indemnity insurance for any work that they undertake as a certifier (not a government certifier).

The new subregulation (5) is the existing subregulation (3) renumbered, and defines *government certifier* for this regulation.

### **Clause 13 – Register of construction practitioners - Regulation 10(m)**

This clause substitutes a new regulation 10(m), which stipulates that the Register of construction practitioners will not contain insurance details for a construction practitioner registered as a principal government building surveyor or building surveyor. However if that person is also

registered as a principal building surveyor or building surveyor, then the insurance details for the insurance required for registration in those two categories shall be included on the register.

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

This clause inserts the new construction practitioner categories of principal government building surveyor and government building surveyor, and the qualifications required to be eligible to register in either category.