

**2011**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CONSTRUCTION OCCUPATIONS LEGISLATION (EXEMPTION  
ASSESSMENT) AMENDMENT REGULATION 2011 (No 1)**

**SL2011-21**

**EXPLANATORY STATEMENT**

Presented by  
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## EXPLANATORY STATEMENT

This explanatory statement relates to the *Construction Occupations Legislation (Exemption Assessment) Amendment Regulation 2011(No 1)*.

### Background

In 2004, the government introduced the *Construction Occupations (Licensing) Act* (COLA) which established a framework for the effective regulation of the construction industry in the ACT.

In late 2008, the ACT Planning and Land Authority (the authority) developed an action plan, ACTPLAN, to further improve service delivery and guide the authority's work into the future. As part of ACTPLAN, an industry monitoring group was established to improve communication of industry concerns and the exchange of ideas.

In 2010, in response to industry concerns, two Acts were made which put in place a set of reforms for unit title applications and exemption assessment certifications. The first Act (*Construction Occupations Legislation Amendment Act 2010*) dealt with unit title reforms. It inserted the construction occupation of works assessor in COLA. The second Act (*Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010*) expanded that definition to include doing the work necessary to do an exemption assessment notice.

In recent years, the range and type of things that can be exempt from needing development approval and/or building approval has expanded and now includes such things as a single dwelling as long as it complies with the *single dwelling housing development code* in the Territory Plan.

At the moment, a person can determine for themselves whether what they intend to build meets exemption criteria. If what they are building needs building approval but not development approval then the building certifier will confirm the person's 'self-assessment' as part of the building approval application process. However, for many other types of developments such as garages and carports there is not necessarily this informal 'double-check'.

The Construction Occupations Legislation (Exemption Assessment) Amendment Act (the Exemption Act) put in place a **non-mandatory** process for people who would like to have their 'self-assessment' confirmed by a licensed person and have a record of the decision. This record is then available for a variety of future uses. For instance, a prospective buyer would have 'peace of mind' that the exempt single dwelling they are looking at buying is an exempt development or that the double garage is exempt development.

The main objectives of the Exemption Act were to:

- introduce a category of licensed people who can certify if a proposed development is exempt from the need to obtain development approval and/or building approval
- provide a legislative mechanism for applicants to obtain formal certification of the exempt status of a proposed development
- provide new business opportunities for licensed people.

The reforms were delivered through both the *Building Act 2004* and the *Planning and Development Act 2007*. An exemption assessment notice under the Building Act is called an *exemption assessment B* notice and a notice issued under the Planning and Development Act is called an *exemption assessment D* notice.

For some proposed developments, such as a garage, a proponent may seek both an exemption assessment **B** and **D** notice while for most single dwellings an exemption assessment **D** notice could be obtained.

### **Overview**

The amending regulation supports the abovementioned legislative reforms. It provides more details about what needs to be included in exemption assessment notices and applications for such notices including requirements for accompanying plans.

## **Outline of Provisions**

### **Part 1 Preliminary**

#### **Clause 1 — Name of regulation**

Names the regulation as the *Construction Occupations Legislation (Exemption Assessment) Amendment Regulation 2011(No 1)*.

#### **Clause 2 — Commencement**

Provides that the regulation commences on the commencement of the *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010*, section 3.

#### **Clause 3 — Legislation amended**

Provides that the regulation amends the *Building (General) Regulation 2008* and the *Planning and Development Regulation 2008*.

### **Part 2 Building (General) Regulation 2008**

#### **Clause 4 — New part 2A**

This clause inserts a new part 2A to provide information about exemption assessment B notices.

### **Part 2A Exemption assessments**

#### New section 7A Number of copies of plans – Act, s14(2)

Prescribes the number of copies of plans for new section 14(2) inserted by the Exemption Act. New section 14 sets out the requirements of an application for an exemption assessment B notice including the need for the application to have a number of copies of the plans of the proposed development. Section 7A prescribes that one copy is to be provided in electronic form, and if the building surveyor asks for paper copies, 3 copies are to be provided.

#### New section 7B Details to be contained in exemption assessment application – Act s14(3)

Prescribes the details to be contained in an exemption assessment application for new section 14 (3) inserted by the Exemption Act. Details include:

- (a) information about the parcel, for example, block and section number, division, street name and number, unit or shop number
- (b) information about the applicant, for example, full name, address, contact details,
- (c) a brief description of the building work
- (d) whether the building work has been carried out and if so, commencement and completion dates of the building work.

New sections 7A and 7B assist applicants by clarifying what information needs to be included in an application and ensures certifiers are provided with adequate information to do an assessment.

New section 7C Plan information and requirements – Act, s14(4)

This clause sets out plan information and requirements for exemption assessment applications. It does this by references to sections already in the Building Regulation because the requirements are similar to those for building approval applications.

Pursuant to new section 7C(1), the following information must be included in either the application or the plans accompanying the application:

- (a) the class of the building according to the intended use of the building as proposed to be erected or altered (s12(2)(a));
- (b) for an application for the alteration of a class 1 building if the alteration will increase the building load carried by foundation material – the site classification of the parcel of land (s12(2)(d));
- (c) the number of storeys of building as proposed to be erected or altered (s12(2)(f)); and
- (d) the floor area of the proposed building or proposed new part of the building (s12(2)(h)).

The general requirements for plans are the same as those for building approval application plans. Therefore, new section 7C(2) simply refers to section 16(2) and 17(2) of the Building Regulation.

New section 7D Exemption assessment B notices – Act, s14B(2)(b)(iii)

Prescribes additional information to be included in an exemption assessment B notice pursuant to new section 14B(2)(b)(iii). That information includes the building surveyor's name, licence number and contact details and any information used by the surveyor in assessing whether the work is exempt or not. The notice must be signed by the building surveyor (s7D(e)) and dated (s7D(f)).

New section 7E Exemption assessment B notice – attached documents – Act, s14B (2A) (a) and (b)

Prescribes requirements in relation to plans that are attached to an exemption assessment B notice. Section 7E(1) requires a copy of the plans used by the building surveyor in an exemption assessment of building work to be attached to the exemption assessment B notice issued in relation to the assessment. If the work or part of the work is assessed as exempt, the exemption must be marked or attached, or partly marked on or partly attached to, each page of the plans (s7E(2)(a)). The building surveyor must also initial, date and mark the surveyor's licence number on each page of the plans. If it is impractical to mark the exemption on the plans, the surveyor can mark each page of the plans with the surveyor's initials, licence number and date and an indication

that the details of the exemption are in the exemption assessment B notice (s7E(3)). Pursuant to s7E(4), the pages of any document attached to the exemption notice must be numbered consecutively and each page must state the total number of pages comprising the attached documents. This ensures it is obvious if a page or document is missing.

### **Clause 5 — Requirements for plans for alteration and erection of buildings – Act, s27(1)(a) New section 17(2)(d)**

Inserts new subparagraph (d) in section 17(2) to provide that plans that relate to the alteration or erection of a building must contain sufficient information to allow a certifier to work out if the building work is exempt from all or part of the Act.

## **Part 3 Planning and Development Regulation 2008**

### **Clause 6 — New part 3.1A**

#### **Part 3.1A Exemption assessment matters**

This clause inserts new part 3.1A in the *Planning and Development Regulation 2008* to provide additional information about exemption assessment D notices.

#### New section 21 Number of copies of plans – Act, s 138B (2) (a) (ia)

Prescribes the number of copies of plans for new section 138B(2)(a)(ia) inserted by the Exemption Act. This section sets out the requirements of an application for an exemption assessment D notice including the need for the application to have a number of copies of the plans of the development. Section 21 prescribes that one copy of the plans is to be provided in electronic form, and if the person to whom the application is made asks for paper copies, 3 copies are to be provided.

#### New section 22 Details to be included in exemption assessment application – Act, s 138B (2) (a) (ii)

Prescribes the information to be included in an application for an exemption assessment D notice. These include details related to the parcel of land such as the block, section number, division, street name and number; details related to the applicant such as the applicant's name, Australian Company Number (ACN), postal and email address, and contact details; and details related to the development such as a brief description of the development and whether the development has been undertaken and if so, the commencement and completion dates.

#### New section 23 Requirements for exemption assessment D notice

Details the form of an exemption assessment D notice when issued by a work assessor or building surveyor. The notice must state any information used by the assessor in assessing whether the development is exempt or not. If the development is assessed as exempt, the notice must state whether the development is exempt under a development table (and if so, which table) or the Act, section 134, or a regulation and if so, which regulation. Details about

the assessor, such as name, signature and licence number, must also be included. The notice must be dated (section 23(2)(a)).

The exemption assessment D notice must include a copy of any plans used by the assessor in assessing whether the development is exempt or not. If the assessor assess that a single dwelling is exempt under schedule 1, section 1.100, a copy of the survey certificate used by the assessor in assessing that the dwelling is exempt must be included (section 23(2)(b)).

Section 23(3) requires, where the development is assessed as exempt, that the plans be marked in a particular manner. The exemption must be marked on the plans and each page signed by the assessor. Section 23(4) provides an alternative if it is not practical, because of the size of the plans, to mark the exemption on each page of the plans. Pursuant to section 23(5), the pages of any document attached to the exemption notice must be numbered consecutively and each page must state the total number of pages comprising the attached documents. This ensures it is obvious if a page or document is missing.