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LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION OCCUPATIONS LEGISLATION
AMENDMENT BILL 2006

EXPLANATORY STATEMENT – REVISED

Circulated by authority of the
Minister for Planning
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CONSTRUCTION OCCUPATIONS LEGISLATION AMENDMENT BILL 2006

Background

The *Construction Occupations Legislation Amendment Bill 2006* (“the Bill”) amends the following legislation (“the amended laws”) –

the Building Act 2004
the Construction Occupations (Licensing) Act 2004
the Construction Occupations (Licensing) Regulations 2004
the Electricity Safety Act 1971
the Gas Safety Regulation 2001
the Water and Sewerage Act 2000.

Objectives of the Amended Laws

The main objectives of the amended laws are to provide a licensing and disciplinary regime for construction occupations, including building certifiers and plumbing plan certifiers. The Laws and their regulations also provide for standards and technical requirements to which construction work needs to adhere. The Electricity Safety Act also provides for the regulation of certain electrical appliances.

Objectives of the Bill

The main objectives of the Bill are to amend certain laws and regulations which relate to the licensing and disciplinary regime for construction occupations to improve the functioning of the laws and to incorporate certain new initiatives, some of which are being adopted at a national level. The Bill also improves wording and clarifies certain provisions in the Laws.

Outline

The key provisions of the Bill make amendments to the amended laws to provide for certain new initiatives in the legislative framework, to clarify certain provisions and processes, and to improve the functioning of the legislation in certain areas. Specifically, these amendments achieve the following:

- make provisions to allow the Minister to recognise a standard under which building components can be accredited in order to demonstrate compliance with the Building Code of Australia;
- clarify processes for the issuing of rectification orders under Part 4 of the Building Act;
- simplify processes for the issuing of rectification orders under the Construction Occupation Licensing Act;
- clarify the application of certain provisions as they relate to entities, individuals and partnerships; insert defences for under certain provisions relating to offences committed by partnerships; clarify provisions relating to endorsements on licenses (consequential amendments resulting from amendments to provisions relating to partnerships);
- make permanent certain transitional provisions which recognise repealed laws for the purposes of disciplinary and rectification provisions in COLA;

- create ‘irrigation plumbers’ as a class of licensed plumbers;
- Amend provisions relating to prescribed articles of electrical equipment so that relevant definitions do not depend on the laws of other States;
- amend references from the ‘Chief Executive’ to the ‘planning and land authority’ in order to reflect the change in the organisation’s structure;
- clarify terminology relating to plumbing to make clear what types of work is and is not plumbing work for the purposes of the Act and to achieve consistency;
- make provision to allow the Minister to recognise certain plumbing standards
- other consequential amendments and minor wording changes to achieve consistency throughout legislation.

Notes on Clauses:

Clause 1 – Name of Act. This clause gives the Act a title.

Clause 2 – Commencement. This clause provides that the Minister may determine, by written notice, the commencement date of the Act. This provision allows for different sections to have different commencement dates as may be required.

Clause 3 – Legislation amended – Sch 1. This clause provides that the Act amends the legislation as described in Schedule 1.

Schedule 1 Legislation amended

Part 1.1 Building Act 2004

Clause [1.1] This clause creates a new subsection 29(3)(b). Section 29 lists approval requirements, which when met, require a building certifier to issue an approval under section 28 of the Act. Existing subsection 29(1) provides that an approval requirement of issuing an approval is that the building or building as altered complies with the Act and with the building code. The new subsection 29(3)(b) states that a building product, construction method, design, component or system connected with a building is taken to comply with the building code if the building product, construction method, design, component or system complies with a recognised standard. Recognised standards are provided for in newly created section 139A created under **clause [1.4]**. Together with clause [1.4], this clause will give legislative effect to a Commonwealth initiative designed to give building designers certainty that certain building components will comply with the building code and will be certified by certifiers.

Clause [1.2] amends the wording in section 61 (h). Section 61 sets out preconditions for the issuing of notices under section 62 (notices to carry out building work). Such notices are issued for example when a building has been constructed without approval or in a deficient manner. The notice is therefore in effect a rectification order. The amendment removes a requirement that the registrar conduct an inspection prior to the issuing of a notice under section 62 and replaces it with a requirement that the Registrar be satisfied on reasonable grounds that certain conditions are met. The amendment is necessary as the Registrar in some instances may need to rely on technical reports in order to be satisfied that the conditions are met and that the order should be issued. Conducting an inspection may not be sufficient to satisfy the Registrar.

Clause [1.3] amends the heading for Part 8 from ‘Building code’ to ‘Building code and recognised standards’ in order to reflect other amendments to the part which introduce provisions relating to recognised standards.

Clause [1.4] inserts a new section 139A. The new section will enable the Minister to recognise standards for the purposes of the newly created subsection 29(3)(b) under **clause [1.1]**. The clause requires that the scheme approved by the Minister either be approved by the Australian Building Codes Board or on behalf of the Board, or under a scheme or system administered by the Board, or otherwise provided for by regulation. This clause will facilitate the recognition of schemes adopted nationally by Australian jurisdictions to approve the use of certain building products, components, systems and designs.

Clause [1.5] inserts a new dictionary definition of *recognised standard* as referred to in newly created subsections 29(3)(b) and 139A (created by clauses [1.1] and [1.4]).

Part 1.2 Construction Occupations (Licensing) Act 2004.

Clause [1.6] amends section 56 (1) of the Construction Occupations (Licensing) Act 2004. Section 56 (1) stipulates that certain information must be contained in disciplinary notices which may be issued by the Registrar for Construction Occupations under section 61 (1) of the Act. The amendment to section 56 (1) makes minor wording changes, and amends subsection (d) so as to insert a provision that the licensee who is issued a notice may within 12 days give a written response to the Registrar about the matters in the notice and/or ask the Registrar to hold an inquiry under division 5.3 in relation to all the stated disciplinary grounds. A note at the end of the clause ties the section in to section 60 (4) and consequently 60 (3) (b). The effect is that the registrar may, but is not required to hold an inquiry. Section 60 (5) (under clause [1.7]) however will provide that the Registrar must not take disciplinary action if the licensee requests an inquiry and the registrar does not hold an inquiry.

Clause [1.7] replaces the existing subsections 60(3) and (4) with new subsections 60 (3) - (6). Section 60 relates to actions which the Construction Occupations Registrar must take if the registrar takes disciplinary action against a licensee. This section has been recast in order to clarify that the registrar may take disciplinary and in doing so, what matters the registrar must consider. The new section also clarifies that the registrar may not take action against the licensee or former licensee if the licensee or former licensee requested that the registrar hold an inquiry and if the registrar does not hold an inquiry.

Clause [1.8] makes a minor wording amendment to section 62(1) consistent with amendments made elsewhere in the Bill which replace references to persons with references to entities. This is to clarify that certain provisions, offences and processes apply to licensed partnerships and corporations as well as individuals.

Clause [1.9] amends slightly the existing section 82 (3) to achieve consistency with other similar provisions and deletes subsection (4) which makes the offence in section 82 a strict liability

offence. Section 82 creates an offence for advertising or otherwise providing a construction service without having a nominee who is licensed to provide the service.

Clause [1.10] inserts a new provision into section 83. Section 83 creates an offence for advertising a construction service without providing certain details in the advertisement. The amendment inserts new subsections (2) and (3). Subsection (2) extends the offence to partnerships. Subsection (3) inserts a defence for partners in a partnership in the event that a partner can prove that the partner did not know about the contravention involved in the offence and either took reasonable steps to avoid the contravention or was not in a position to influence the partnerships conduct involved in the contravention. The strict liability offence is maintained in renumbered subsection (4).

Clause [1.11] inserts words in subsection 84(1)(b)(ii) to clarify that an offence is committed if a person provides a construction service which requires an endorsement on a license and the person does not have an endorsement.

Clause [1.12] inserts a new provision into section 84. Section 84 creates an offence for providing occupation services for which an individual or entity is not licensed or, where an endorsement on a licence is required, does not have an endorsement. The new provisions extend this offence to apply to partnerships and create a defence if a partner can prove that the partner did not know about the contravention involved in the offence and either took reasonable steps to avoid the contravention or was not in a position to influence the partnership's conduct involved in the contravention. Renumbered subsection (3)(a) contains a minor word change to reflect that an exemption to the offence, which applies when working under supervision, applies whether working for an entity or directly. The strict liability offence is maintained in renumbered subsection (5).

Clause [1.13] inserts the word 'also' in subsection 85(1)(a) in order to remove potential confusion. The section relates to recklessly engaging unlicensed workers to provide construction services.

Clause [1.14] inserts a new provision into section 85. Section 85 creates an offence for allowing unlicensed people to provide construction services. The new provision extends this offence to apply to partnerships. The provision creates a defence if a partner can prove that the partner did not know about the contravention involved in the offence and either took reasonable steps to avoid the contravention or was not in a position to influence the partnerships conduct involved in the contravention. Minor wording changes reflect that that an exemption to the offence, which applies if providing a service under supervision when eligible to do so, applies to both individuals and entities.

Clause [1.15] inserts a new provision into section 86. Section 86 creates an offence for not surrendering a license. This offence applies to partnerships. The section provides a defence if a partner can prove that the partner did not know about the contravention involved in the offence and either took reasonable steps to avoid the contravention or was not in a position to influence the partnerships conduct involved in the contravention. The clause makes minor wording amendments in order to achieve consistency in wording with other provisions which create a

defence for partners in cases where offences apply to partnerships. The effect of the section remains unchanged.

Clause [1.16] inserts a new provision into section 87. Section 87 creates an offence for breaching license conditions or codes. The offence applies to partnerships. The new provision creates a defence if a partner can prove that the partner did not know about the contravention involved in the offence and either took reasonable steps to avoid the contravention or was not in a position to influence the partnerships conduct involved in the contravention.

Clause [1.17] creates a new Part 14. The Part deals with transitional provisions. The amendments provide that:

- references to construction services include construction services provided prior to the commencement of the Act on 1 September 2004, and
- that references to the Act include references to *related Act*, and
- that a reference to a licensee includes a reference to a former licensee under a related Act.

Subsection 154(2) defines *related Acts* as an operational Act, or as certain repealed Acts as listed. Section 154 is a law to which the Legislation Act, section 88 applies. (Section 88 of the Legislation Act provides that repeal of Acts does not end their effect in transitional laws). This amendment is necessary to allow the Construction Occupations Registrar to take disciplinary action under parts 4 and 5 of the Act against licensees or former licensees for work undertaken prior to the introduction of a new Construction Occupations Licensing regime on 1 September 2004.

This provision is not a retrospective provision in that the amendment cannot affect orders which the registrar may have made prior to the commencement of the Act and can only affect future orders, based on past events – those being the construction of buildings by certain persons. It is therefore a prospective based on past events the basis of the principle that it affects the future operation of the Act based on past events. (The principle is based on case law and has been established in precedents such as *Coleman v Shell Co of Australia Ltd (1943)*, *Robertson v City of Nunawading [1973]*, and *La Macchia v Minister for Primary Industry (1986)*).

The Amendment provides for a sunset clause which takes effect on 31 August 2014. This will effectively remove section 154 from appearing in the Act at that time, however will not remove its effect.

Clause [1.18] amends the Act to insert definitions in the *Dictionary* for the terms *conduct* and *engage*.

Clause [1.19] amends the act by changing certain references from persons or ‘person’ to entities or ‘entity’ consistent with amendments which clarify that certain provisions apply to entities as well as individuals.

Part 1.3 Construction Occupations (Licensing) Regulation 2004

Clause [1.20] substitutes section 32 of the regulation effectively amend the regulation to replace occurrences of the word ‘person’ in subsection (1) and replace it with the word individual. This is in order to clarify that individuals may obtain endorsements of their licenses. The clause adds

a new subsection (2) which clarifies that the Registrar may endorse the license of a corporation after considering certain things. New subsection (3) provides that the registrar may only endorse the licenses of corporations or partnerships only if nominees of the entity have licenses that are endorsed in the way in the same way (the way applied for). This is to clarify that an entity may not have a license endorsed other than in the same way as its nominees. The amendment also clarifies however that the license of an entity may carry more than one endorsement if multiple individual nominees of the entity poses among them the same endorsements.

Clauses [1.21] and [1.22] amend Schedule 1, part 1.6, to insert a new item 3 and renumber the remaining items accordingly. Item 3 creates a new construction occupation class of irrigation class plumber and defines the construction work involved as “installation of irrigation networks and related equipment”.

Clause [1.23] amends certain references from “person” to “entity” in order to clarify that certain provisions apply to entities as well as individuals. The affected sections are sections 17 and 18 of the regulations which deal with insurance requirements for licensees.

Part 1.4 Electricity Safety Act 1971

Clause [1.24] amends section 9 to change the definition of the term ‘*relevant safety standard*’ to reflect changes made to section 11 under clause [1.25].

Clause [1.25] amends section 11 of the Act and inserts a new section 11A and 11B. These sections provide that the planning and land authority may declare that an article is a prescribed article of electrical equipment if the planning and land authority is satisfied that the article is or is likely to become unsafe and that it may pose a risk of death or injury to people and should be so prescribed. The section provides that the declaration must state the safety standard with which the article must comply and allows the planning and land authority to adopt a law of another State for the purposes of declaring articles. Section 11B states that the planning and land authority may declare that an article is not a prescribed article and may adopt laws of other States for this purpose.

Clause [1.26] amends section 21 (1) (a) to omit the words “section 11” and replace with “section 11A and section 11B”. Section 21 (1) provides that the Construction Occupations Registrar must keep a register of declarations made under section 11. Section 11 relates to prescribed articles of electrical equipment. Clause [1.25] amends section 11 so that the relevant determinations will now be made under sections 11A and 11B.

Clause [1.27] amends section 61(1) (a) and (b) to reflect amendments made to section 11 under clause [1.25]. Section 61 provides that applications may be made to the Administrative Appeals Tribunal for a review of certain decisions of the planning and land authority. The amendment will provide that applications can be made to the administrative appeals tribunal regarding decisions made under sections 11A and 11B which relate to prescribed articles of electrical equipment and articles that are not prescribed articles of electrical equipment.

Clause [1.28] amends a note in the Dictionary to insert the word ‘State’. This note relates to other relevant definitions under the Legislation Act. The inclusion of a reference to the definition of the word ‘State’ reflects the inclusion of a reference to the laws of a State under clause [1.25].

Clause [1.29] amends the dictionary definition of *prescribed article of electrical equipment* to reflect the amendment made under clause [1.25].

Part 1.5 Gas Safety Regulation 2001

Clauses [1.30] – [1.35] amend references in the Gas Safety regulation from Chief executive to planning and land authority in order to reflect the change in the organisation’s structure which took place since the adoption of the regulation.

Part 1.6 Water and Sewerage Act 2000

Clause [1.36] amends section 7 of the Act to clarify terminology relating to types of plumbing work in order to achieve consistency with other parts of the Act and Regulations. It specifies types of plumbing work as sanitary plumbing work or water supply plumbing work.

Clause [1.37] amends wording in section 15 (3) to omit the word MP52 and substitute “the plumbing code”. This amendment is necessary to recognise a plumbing code rather than referencing a specific standard.

Clause [1.38] inserts a new section 46. The new section provides that the Minister may declare a document to be the plumbing code for the purposes of the Act and that such a declaration is a notifiable instrument. The plumbing code is referred to in amended section 15(3) and replaces a reference to MP52 – a plumbing standard.

Clause [1.39] omits the dictionary definition of MP52. The definition is no longer needed as the only reference to MP52 is deleted under clause [1.37].

Clause [1.40] inserts a dictionary definition for “plumbing code” to reflect the amendment made under clause [1.38].

Clause [1.41] amends the dictionary definition of *sanitary drain* to reflect that a sanitary drain which is part of a sewerage network or is intended to become, part of the sewerage network is not a sanitary drain for the purposes of the Act. This amendment is necessary in order to clarify that a network which is being constructed but has not, at the time of its construction, physically become part of a sewerage network, is a part of a sewerage network for the purposes of the Water and Sewerage Act and is not considered to be a sanitary drain under the Act.

Clause [1.42] inserts a paragraph (c)(ii) to the definition of *water service* in the dictionary. The new definition clarifies that part of a water network or water supply pipework that is intended to become part of the water network is not a water service for the purposes of the Water and Sewerage Act.