Regulatory Impact Statement

Unit Titles Amendment Regulation 2010 (No 1)
SL2010-37

Prepared in accordance with the
***Legislation Act 2001,* section 34**

Circulated by authority of
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This regulatory impact statement relates to substantive elements of the *Unit Titles Amendment Regulation (No 1)* (the proposed law) which amends the *Unit Titles Regulation 2001* (UTR).

Background

The *Construction Occupations Legislation Amendment Act 2010* (the Act) amended the *Construction Occupations (Licensing) Act 2004* (COLA) and *Unit Title Act 2001* (UTA) to create a new construction occupation of works assessor. A works assessor will assess and collate stated requirements for a unit title application and provide that material to the planning and land authority (the authority) in the form of a unit title assessment report. The report is one element of the final application for unit titling a development and the authority retains responsibility for the final decision.

The UTA, section 17, states the information that must be provided in an application to the authority to unit title an existing or approved development under construction.

The authority may approve an application under section 20 of the UTA if it is satisfied on reasonable grounds that the application fulfils stated requirements. Those requirements include that the application be in accordance with the UTA; each unit will be suitable for separate occupation and for a use that is not inconsistent with the lease; the proposed schedule of unit entitlement is reasonable; and any encroachments into a public place are satisfactory.

Previously, as part of determining an application for unit titling, the authority conducted site inspections and requested certification, if required, from relevant agencies, such as TAMS and ACTEW, on technical specifications for the development.

A site inspection covered such things as establishing that the building had been built in accordance with the approved plans (other than those matters covered by the *Building Act 2004*); that the landscaping was consistent with the approved landscape plan; that the location of units and unit subsidiaries was consistent with the site plan and floor plan; that encroachments have been identified and that these are permitted; that the proposed units and car spaces are correctly numbered and letter boxes provided; and so on.

The works assessor will do the site inspection and provide a report on that inspection as well as collating other materials that are required for an application for unit titling.

Overview

The proposed law inserts a new division 2.1A in the UTR which, amongst other things, provides information about the content of the unit title assessment report which is prepared by the works assessor.

The proposed law prescribes what is to be included in an application by a developer to a works assessor requesting the works assessor to prepare a unit title assessment report (UTAR). The developer must provide sufficient details to enable the works assessor to make an informed decision about accepting the job. This is because under section 22B of the UTA, a works assessor must prepare the UTAR if the works assessor agrees to undertake the work.

The proposed law prescribes the content of a UTAR and the list of materials that accompanies the UTAR. In essence, the job of the works assessor is to do a site inspection of the development with the object of assessing whether the site plan and floor plan prepared by a registered surveyor is the same as the development approval and that both of these are the same as what has been physically built. The content of the UTAR reflects this.

Section 19 of the Construction Occupations Legislation Amendment Act amended the UTA to allow a regulation to create offences and fix maximum penalties of not more than 60 penalty units. New sections 2F and 2G of the proposed law create offences relating to preparing a false or misleading unit title assessment report. New section 2C creates an offence of knowingly or recklessly including false information, or omitting something without which the information is false or misleading, in an application by a developer to a works assessor to prepare a UTAR. The maximum penalty for these offences is 60 penalty units. A penalty unit is defined under the *Legislation Act 2001* and is currently $110.

This regulatory impact statement deals with the information about the proposed law as required by section 35 of the *Legislation Act 2001*

(a) The authorising law

The provisions in the proposed law are authorised by the following sections of the Unit Titles Act:

- section 22B (2) and (5) Unit title assessment reports
- section 181 Regulation-making power

(b) Policy objectives of the proposed law

The regulations that are the subject of this RIS set out a range of administrative and machinery matters which assist in providing certainty and clarity of processes and requirements under the Unit Titles Act.

The proposed law is an integral part of a package of reforms aimed at streamlining the unit title application process. The policy objectives of the proposed law are the same as those that apply to the Construction Occupations Legislation Amendment Act (the Act). The proposed law has been developed more or less contemporaneously with the Act and gives effect to matters the UTA allows to be prescribed by regulation.

The policy objectives are to:

(1) streamline the unit title application process thereby improving the efficacy of the planning system
(2) enhance and develop private certification services within the Territory
(3) provide a transparent and consistent regulatory system for the new occupation of works assessor

(1) streamline the unit title application process thereby improving the efficacy of the planning system

An application for unit titling is currently wholly managed by the authority. The construction industry experiences peaks in demand for services which the authority cannot always respond to in a timely manner.

The proposed law expands an existing regulatory framework as a result of discussions through the ACTPLAn Industry Monitoring Group (IMG) convened by the authority. The IMG was established as a result of the Chief Minister's Roundtable with industry, held in December 2008, to monitor and report on the implementation of the Planning and Development Act and discuss ways to streamline processes and gain greater efficiencies for industry and government.

Industry has indicated a desire to more fully integrate the unit title application process into the private certification processes because delays experienced during periods of peak demand were impacting on the final occupation of units. The creation of a construction occupation of works assessor that can do the site inspection elements and collation of materials for unit title applications will deliver greater flexibilities to industry while maintaining the overall integrity of the process.

(2) enhance and develop private certification services within the Territory

An objective of the proposed law is to further develop and expand the private certification area of the development and building sectors. It is anticipated that the proposed law will provide business and employment opportunities in the construction industry and the streamlining of the processes will assist developers in terms of time and money. The proposed law is seen as a part of the ACT (and the Commonwealth) government's ongoing commitment to assist the Territory in overcoming the effects of the recent global financial recession.

It is expected that the proposed law will increase economic activity across the private sector, promote competitive practices, provide employment and potentially lower costs to consumers and developers.

(3) provide a transparent and consistent regulatory system for the new occupation of works assessor

An objective of the proposed law is to provide a transparent regulatory system for the new occupation of works assessor in respect of unit titling applications.

In 2004, COLA introduced significant reforms to the regulation of building and construction industry trades. It implemented the recommendations of the National

Competition Policy Review of Occupational Licensing in the ACT, which reflected reform proposals that had been considered over a number of years. The legislation introduced a single licensing and disciplinary regime for builders, electricians, plumbers, drainers, gasfitters, building surveyors (certifiers) and plumbing plan certifiers. It replaced the multiple systems that previously existed and provided a consistent and transparent approach to the regulation of each trade.

The trades are referred to as construction occupations, and licensees are construction practitioners who provide construction services. Some new provisions improved the effectiveness of the regulatory scheme, including a demerits points system for licensees. Licensing boards, which existed for electricians, and plumbers, drainers and gasfitters, were replaced by Advisory Boards, which can be established for each construction occupation, or a combination of occupations. Complementary enhancements were drawn up for construction legislation that deals with matters like standards and approval requirements for licensed construction workers.

The proposed law extends this regulatory system to the new construction occupation of works assessor. By requiring the works assessor to be licensed under COLA, works assessors will be subject to the same regulatory system as other construction occupations. This provides security and protection for the community.
Further protection of the community is provided by the proposed law by the creation of offences relating to the preparation of unit title assessment reports. New sections 2F and 2G of the proposed law create offences relating to preparing a false or misleading unit title assessment report. New section 2C creates an offence of knowingly or recklessly including false information, or omitting something without which the information is false or misleading, in an application by a developer to a works assessor to prepare a UTAR.

(c) Achieving the policy objectives

It is envisaged that the works assessor will work closely with the developer during key phases of construction to ensure that requirements for a unit title application are done in a timely and cost efficient manner.

Industry will be able to employ a works assessor to carry out the site inspection and associated processes and record their findings in a works assessment report. This report will then form part of the unit title application.

Industry and developers will have greater flexibility and certainty. Developers will be able to employ a works assessor during the course of the construction rather than waiting for the authority to carry out the inspection at the end of the building process.

By clearly defining requirements and by having the works assessor working closely with the developer during the construction phase of a development, the pathway to unit titling will be smoother and quicker. The works assessor, knowing the requirements for a works assessment report, will be able to liaise with the developer to ensure that the report is completed at the optimum time for the developer. This has the potential to save the developer considerable holding costs and to allow those persons who have bought a unit to take ownership of that unit sooner.

The proposed law will help industry to better identify and work within known requirements to process their unit title applications. With the works assessor working in close liaison with the developer, the works assessment report can be finalised in the most efficient manner. For instance, the works assessor can identify early on any need to seek an amendment of the approved plans through the authority because the report will need to correlate certain things such as whether the completed on-the-ground building correlates with the approved plans and the site plan.

This will ameliorate delays in the unit title application by alerting the developer earlier in the process that an application for amendment of the development approval needs to be made to the planning and land authority. Previously, these sorts of things were usually not discovered and dealt with until the unit title application had been lodged with the authority and the site inspection done.

Another benefit of this reform is the new opportunity for industry through the creation of the newly licensed construction occupation of works assessor.

The work that will now be undertaken by the private sector is currently done by the authority. The authority will, however, continue to do other administrative tasks associated with unit title applications.

Persons who can meet the mandatory qualifications and work experience requirements will be able to be licensed as a works assessor. In practice, this may mean that existing licensed persons will expand the scope of the services that they offer or alternatively, completely new business opportunities could be taken up.

By licensing a works assessor through COLA, those provisions that govern the conduct of other construction occupations, such as a builder or electrician or plumber, will extend to works assessors. This means that the Constructions Occupations Registrar can deal with breaches of conduct in the same way as currently happens for other construction occupations.

Further protection is given to the community by requiring all works assessors to hold professional indemnity insurance. The report signed by the works assessor will be absolute and a person will be able to act on the report in good faith and be protected from prosecution.

The proposed law also requires that certain documents such as the site plan and floor plan as well as the unit title assessment report be no older than 3 months when the unit title application is lodged with the authority. This ensures the authority is dealing with the most up to date information which in turn, improves the efficiency of the unit titling process.

(d) Consistency of the proposed law with the authorising law

The authorising law, section 22B (2) and (5) **Unit title assessment reports** of UTA entitles the regulation to prescribe what an application by a developer to engage a works assessor must include and what a unit title assessment report must contain or anything that must accompany the report.

The proposed law is within the parameters of the authorising law. New section 2B prescribes what details and material must be included in a unit title report application under section 22B(2). New section 2D prescribes the contents of a unit title assessment report under section 22B(5)(a). New section 2E prescribes the material to accompany a unit title assessment report under section 22B(5)(b).

Section 19 of the Construction Occupations Legislation Amendment Act amended the UTA, s181, to allow a regulation to create offences and fix maximum penalties of not more than 60 penalty units. New sections 2C, 2F and 2G of the proposed law create offences with a maximum penalty of 60 penalty units.

(e) the proposed law is not inconsistent with the policy objectives of another territory law.

The proposed law is not inconsistent with the policy objectives of another territory law and is consistent with the policy objectives of the Construction Occupations (Licensing) Act.

(f) Reasonable alternatives to the proposed law

The alternative is to maintain the unit title application process in its present form and not amend the legislation. This is not reasonable given the issues about delays being experienced by industry at times of peak demand and the expressed wishes of industry that a more integrated unit titling application process be initiated.

(g) Brief assessment of benefits and costs of the proposed law

Cost and benefits for industry

Licensing costs

Persons who seek to be licensed under the proposed law will be required to pay two fees; an application fee and a license fee. However, there is no obligation on an individual, corporation or partnership to become licensed. The authority will be the '*assessor*' of last resort, as it is for building surveyors, should the market not take up the opportunity of entering this new and expanded area of work. However, existing licensed building surveyors can do works assessment work.

The application fee payable will be comparable to those paid for other construction occupation classes. Application fees are between $24 for construction occupations of plumber, drainer, gasfitter and electrician and $129 - $196 for a builder, building surveyor, asbestos assessor, plumbing plan certifier and asbestos removalist.

A building certifier, and other classes of construction occupation classes which have

mandatory insurance requirements, can only obtain a license for the period of their insurance which is typically one year. License fees range from $47 to $421 for a one year license dependant on the construction occupation class. A license for a plumber, for instance, including application fee and license fee costs $71 for a year or $106 for 3 years. There are currently 2600 persons licensed in this range of application fees. Fees for the proposed new construction occupation of works assessor will be in the vicinity of that currently existing for plumbers, gas fitters etc i.e. $71 per year.

Licensed building surveyors will be able to do works assessment work without having to pay any additional application and license fees. There are currently 55 licensed building surveyors. There will therefore, be negligible revenue income gain in this occupation class.

Industry costs

The proposed law streamlines an existing process and deliver benefits to industry which they have been actively pursuing through the Chief Ministers Roundtable with industry.

The unit title applicant will incur extra costs under the proposed reforms as the private sector will charge for services. Cordell Housing Building Cost Guide sets professional fees at $150 - $234 per hour. A works assessor may charge around $600 to $934 for each application, but any final costs will be determined in the market. However, charges could be significantly less as the licensed person may use an unlicensed person to assist the licensed person, therefore, keeping costs down. In addition, costs can be minimised by integrating existing industry processes with the actual preparation of a unit titling application. The builder/developer can also minimise costs by undertaking some of the functions themselves with the licensed person doing the site inspection and final certification.

Industry benefits

Higher initial costs to the applicant will be largely offset by savings achieved by the more efficient process. Significant savings will be achieved through reduced holding costs on funds for the development. Delays can add significantly to holding costs, far

out-weighing any works assessor costs. For example, a developer currently undertaking unit titling is incurring $8,000 per day holding costs on the development while re-inspection is carried out. Additionally, the unit being available to the rental market sooner means earlier realisation of rental income.

Those taking up works assessment work will obviously benefit from an additional source of income and the expansion of their business.

Benefits to industry are also achieved through access to a larger pool of persons that can provide the proposed services and flexibility in accessing these services.

Costs and benefits for the authority/Territory

The authority administers the existing license regime and can incorporate the new construction occupation of works assessor into existing practice.

In respect to unit title applications, there are negligible resource implications to the Territory.

For the financial year 2008/2009, the authority receipted 140 applications for unit titling. The initial application fee includes the initial inspection and 20 applications required further inspections. 103 of these applications were for 2 unit residential developments, 23 for developments ranging from 4 units (including residential and commercial developments) to 10 units with the remaining applications ranging from 12 units to over 150 units.

Time taken by the authority to complete a site inspection varies depending on the layout and complexity of each site and requires coordination of timing with the applicant. A straightforward 2 unit application can take on average 2 hours (4 resource hours) a 10 unit, 3 hours (6 resource hours) and 20+ units, 4 hours (8 resource hours). An inspection report takes on average 1.5 hours to prepare.

Indefeasibility of title requires that the processes supporting an application are stringent and include appropriate auditing. For this reason, the authority proposes a 100% audit regime in the first year of operation. It is anticipated that the resources

currently used by the authority to process unit title applications, and available as a result of the proposed law, will be redirected to audit functions. Audit will include on-site inspections and review of all documents comprising the application. While during the 100% audit phase, it is likely the authority will have to absorb some costs, over time, the new process should allow some small redirection of staff resources to ongoing compliance and other unit title matters.

Revenue from license fees etc is not considered to be of a material amount.

(h) Brief assessment of the consistency of the proposed law with Scrutiny of Bills Committee principles

The proposed law was developed more or less concurrently with the Constructions Occupations Legislation Amendment Act and gives effect to matters the Unit Titles Act allows to be prescribed by regulation.

The general principles of the authorising law have been assessed by the Human Rights Commissioner and all issues responded to. Similarly, the proposed law has been reviewed by the Human Rights section of the ACT Department of Justice and Community Safety and no issues were identified.

The Construction Occupations Legislation Amendment Act, section 19 inserted a section in the Unit Titles Act that permits the Unit Titles regulation to create offences and fix penalties of not more than 60 penalty units for the offences. The Act passed through the Legislative Assembly and the Scrutiny of Bills Committee without adverse comment. The offences prescribed in the proposed law have maximum penalties of 60 penalty units and are therefore, within legislative power.