

Review of the operation of the Construction Occupations (Licensing) Act 2004

Prepared in accordance with Section 131 of the Construction Occupations (Licensing) Act 2004

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ACT Planning &
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Introduction

In 2004, the Government introduced the *Construction Occupations (Licensing) Act*. The new legislation brought with it significant improvements to the way the construction sector is administered in the ACT. It established a framework which provides for effective regulation of the construction industry in the ACT and establishes a qualifications framework which enables labour market mobility and high levels of competence and training in the industry.

The Act requires that a review of the legislation be conducted covering the first two years of the Act's operation. The Minister for Planning directed the ACT Planning and Land Authority to undertake a review of the operation of the *Construction Occupations (Licensing) Act* and its several operational Acts. The detailed review focussed on the provisions of the legislation, the functions of the Construction Occupations Registrar and the administrative procedures adopted in its implementation and operation.

Methodology

A detailed internal review of the provisions within the legislation and departmental procedures was undertaken. The review focused on the effectiveness of the Act in delivering the intended policy outcomes. This document is a summary report of the main issues identified through the review process.

The findings of the detailed internal review will be used by the Construction Occupations Registrar to improve internal procedures involved in implementing the Act. The Review has also identified the need for several legislative amendments. Following more extensive consultation with industry, it is anticipated that these legislative changes will come before the Legislative Assembly in autumn 2008. This report therefore constitutes a first step in a more comprehensive process of industry consultation.

The following methodology was used in undertaking the review:

- workshops were held involving relevant senior officers within the ACT Planning and Land Authority to review the procedures involved in administering the legislation;
- discussions were held with audit and administrative officers to identify issues arising from the administration of the legislation;
- a review of decisions handed down by Courts and the Administrative Appeals Tribunal with a view to identifying provisions which had not operated in practice as the original policy intended;
- workshops were held to review in detail the wording in the Act and consider the Act's provisions in context of experience in practice; and
- key industry groups were asked to identify in broad terms any issues that they experienced with the implementation of the legislation.

Overview of the construction industry

Construction work in the ACT for which building approvals were granted during the review period, (1 September 2004 – 31 August 2006) were valued at \$3.42 billion. This value does not include the value of electrical, plumbing, gasfitting, or drainage work for which building approvals were not required.

The Construction Occupation Licensing framework created under the Act requires that individuals providing services in the following occupations must be licensed:

- (a) asbestos assessor;
- (b) asbestos removalist;
- (c) builder;
- (d) building surveyor;
- (e) drainer;
- (f) electrician;
- (g) gasfitter;
- (h) plumber; and
- (i) plumbing plan certifier.

Licensees may be licensed in more than one occupation. This is common for instance among plumbers who are also gasfitters. The number of licensees licensed in each occupation class are listed in the table below.

OCCUPATION	Number of licensees 1 Sept 2004	Number of licensees 1 Sept 2006	Change
Builder	3754	3962	208
Drainer	483	638	155
Plumber	544	688	144
Gasfitter	430	587	157
Electrician	2511	2836	325
Building Surveyor	25	37	12
Plumbing Plan Certifier	3	3	0
Asbestos Assessor	0	1	1
Total	7750	8752	1002

During the two year review period there were 9092 building approvals issued, and 9732 gas, 20,037 electrical and 9665 plumbing work certificates lodged.¹

¹ The term “work certificates” has been used to include Gas Compliance Certificates, Certificates of Electrical Safety and Plumbing Start of Works Notices, each required under the respective legislation upon the completion of works in the respective field.

Objectives of the Construction Occupations (Licensing) Act 2004

The Act provides an effective framework for:

- the licensing of construction occupations;
- undertaking investigations and imposing sanctions upon licensees who act in a manner contrary to that proscribed by legislation; and
- making provision for the issuing of rectification order in cases of work undertaken in contravention of the relevant legislation.

The Act sets out requirements for obtaining licenses, and through its operational Acts, sets out the procedures and standards which must be followed when undertaking construction work.

Through audit and inspection procedures and complaints mechanisms, the legislation sets out to identify and address non-compliance. The disciplinary mechanisms in the Act seek to address non-compliance through educating licensees and correcting inappropriate activities while reserving the highest level disciplinary actions, such as suspensions and disqualifications, for the most severe breaches of the Act.

The Act establishes the statutory position of Construction Occupations Registrar who is responsible for administering the Act and its operational Acts. The Act establishes responsibilities and powers of the Registrar in administering the Act and allows for the delegation of these functions. The Act provides:

- administrative procedures and requirements for the licensing of construction occupations;
- procedures and powers relating to the making of rectification orders;
- powers and procedures relating to disciplinary action and related investigations;
- the administration of a demerit points schemes;
- administration of registers and information required by the Act;
- the establishment and operation of advisory boards;
- licensees' responsibilities and offences;
- audit and enforcement procedures and powers; and
- procedures for the handling of complaints against licensees.

Qualification framework

The structure of the licensing and qualification framework established under the Act is unique among the Australian jurisdictions. The licensing and regulatory framework introduced by the Act has allowed the ACT to adopt an approach to licensing which has facilitated the movement of construction practitioners to Canberra.

The framework established by the Act sits comfortably within the new national approach to the licensing of vocationally trained occupations agreed by all Australian jurisdictions under the February 2006 COAG agreement. The COAG framework establishes national training packages delivered by registered training organisations as the core requirements for licensing of vocationally trained occupations.

Unlike previous licensing regimes which operated in each state and territory, under the national framework in order to be eligible to become licensed anywhere in the country, it is only necessary that a tradesperson or construction practitioner complete the agreed national training package. National training packages are consistent across Australia and will now be developed in cooperation with industry regulators to

ensure that training packages will deliver a licensing outcome for the trainee. In the ACT, the Registrar of Construction Occupations under COLA will be involved actively with the vocational education system through a formal agreement with the state training authority.

The revised system of integration of training and education with licensing has dramatically improved the ability of licensed construction practitioners to use the mutual recognition system to seamlessly move across borders to wherever the demand for labour is greatest.

The ease with which the ACT has been able to adopt the COAG framework has not only resulted in greater engagement between the regulatory authority and training providers but has importantly meant that construction practitioners from interstate can quickly and easily become licensed in the ACT, resulting in a more flexible and more effective regulatory and compliance framework. All of these facts play a crucial role in ensuring the availability of a competent and highly skilled labour force in the midst of Canberra's construction boom in this tight labour market.

Review outcomes

A detailed review of the legislation has been undertaken. The review concluded that the Act has established a robust licensing and compliance framework for the regulation of the construction industry. The framework has delivered a consistent approach to licensing and regulation across all licensable occupations and is consistent with the national qualifications framework. It is able to address non-compliance in a manner appropriate to the contravention through a broad range of flexible disciplinary sanctions.

The Review has also identified a number of improvements that can be made to the operation of the legislation and to administrative arrangements and procedures within the Authority. Some of these will require further consultation with industry and may result in proposals for legislative changes.

Rectification orders

The Act provides for the making of 'rectification orders', which require licensees to rectify work that was not undertaken in accordance with the relevant Act or prescribed standards. The ability to make such orders, including the ability to make emergency rectification orders has been affected by decisions by the Administrative Appeals Tribunal and by the Courts. Issues arose from technical points and interpretation of laws. The review has identified legislative improvements that would substantially improve the operation of the provisions relating to the making of rectification orders.

Demerit points

The Act provides for the issuing of demerit points in situations where disciplinary grounds are breached. These provide a means of identifying ongoing non-compliance with the Act and providing a deterrent to licensees against acting contrary to legislation. The review has identified a range of improvements to several administrative procedures and legislative requirements that will enhance the operation of the demerit point system. Some of these will involve clarifying definitions and procedures in legislation.

Occupations not currently licensed under the Act

The Review has identified several occupations not currently licensed where there may be a public benefit if licensing were introduced. These include:

- pre-purchase building inspectors;
- pre-purchase pest inspectors; and
- building energy assessors.

Further industry and public consultation will be required before policy decisions on these matters are put to the Government for consideration.

Following a review of occupations, which was undertaken concurrent with the process under the COAG, issues associated with the regulation of activities under the existing classes of occupations have been identified. Primary amongst these is the licensing of electrical workers in transmission and distribution networks. It is proposed that further consideration be given to introducing licensing for these occupations.

Suspending disciplinary actions

The *Construction Occupations (Licensing) Act 2004* provides for a disciplinary process whereby sanctions may be imposed on licensees who are found to have breached prescribed disciplinary grounds. The Review has identified the potential to make provision for 'suspended' disciplinary sanctions similar to judicial suspended sentences. It is proposed that a sanction could be imposed upon a licensee who is found to have breached a disciplinary ground and that the sanction could be suspended on certain conditions. For example that the licensee commit to undertaking rectification work in addition to not committing any further offences. Further consideration should be given to this proposal.

Advertising provisions

The Act contains a number of requirements for advertising the provision of construction services. These require the disclosure of license numbers and names of nominees on such items as business cards, t-shirts, caps, vehicles, and letterheads and in radio and television advertising. Some of the requirements, particularly those applicable to advertising on clothing, are difficult for industry to comply with and difficult to enforce. Several improvements to the provisions have been identified which will provide greater clarity and improve the operation and implementation of enforcement provisions.

Amendments to operational Acts

A number of improvements to the operational Acts requiring legislative or regulatory amendment have been identified. Several of these are of a minor nature and would provide clarity in the interpretation of the Acts and procedures required in the legislation.

Others include:

- amending requirements which currently require the Registrar to conduct a physical inspection of a building before issuing certain orders (such as rectification orders). It is often more appropriate that the Registrar make such decisions after consideration of expert reports rather than relying on a physical inspection by the Registrar;
- addressing inconsistencies in reporting, disclosure and insurance requirements imposed on the various occupations and occupation classes, including for documentation required for the issuing of certificates of occupancy; and
- reviewing the appropriateness of the structure of certain classes of occupation and considering changes to enhance administrative efficiency.

Minor issues

A number of minor issues have been identified which call for changes of an administrative or procedural nature. These include:

- addressing the use of inconsistent terminology, and clarifying definitions in the Act and Regulations;
- improving administrative procedures; and
- clarifying requirements in the Act and Regulations for disciplinary and investigatory procedures.

Examples of these issues include:

- ensuring that certain provisions apply consistently to individuals, partnerships, and corporations;
- clarifying the meanings of certain definitions and terms; and
- allowing more adequate timeframes for individuals to make submissions to the Registrar upon receiving notices of intention to issue rectification orders. There is currently only a 5 day minimum period for making submissions with no provisions for extensions.

Summary

The review has found overall that the policy direction established by the Construction Occupations licensing framework is an effective means of regulating the construction industry and ensuring an efficient framework for skills recognition which is compatible with the national framework. The overall policy provides for consistency across occupations and occupation classes, provides the ability to address disciplinary matters as appropriate to the circumstances and allows for a mechanism to make rectification orders where appropriate. The review also identified specific areas where improvements to procedures and legislative provisions are warranted. Some of these may require further policy consideration including further consultation with the relevant sectors of the construction industry. These changes are necessary to ensure the continuing effective regulation of the rapidly expanding and dynamic construction industry. Nevertheless, the existing legislation, including the operational Acts, provides a robust framework through which to achieve a consistent, flexible and effective regulation of the construction industry.