

2004

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

BUILDING AMENDMENT REGULATIONS 2004 (No 1)

Subordinate Law SL2004-46

EXPLANATORY STATEMENT

Circulated by authority of  
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# BUILDING AMENDMENT REGULATIONS 2004 (No 1)

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## OVERVIEW

These are new regulations under the *Building Regulations 2004*.

## BACKGROUND

The *Building Act 2004* and the *Building Regulations 2004* both commenced on 1 September 2004.

Those laws generally provide for the procedures and technical standards to be followed in relation to doing building work and occupying buildings. Prior to 1 September 2004, those matters were regulated under the *Building Act 1972*, which was repealed on commencement of the *Building Act 2004*.

An intention in enacting the *Building Act 2004* was to provide a seamless transition from the previous regulatory regimes of the *Building Act 1972* (repealed) to the *Building Act 2004*, with the exception of builder licensing provisions, which were essentially relocated into the *Construction Occupations (Licensing) Act 2004*. To do so the *Building Act 2004* contains various transitional provisions in relation to matters previously regulated by the former Act.

The *Building Act 2004*, s 179 (Regulations modifying pt 11), provides to the effect that the *Building Regulations 2004* may modify the operation of the *Building Act 2004*, part 11 (Transitional), to make provision in relation to any matter that is not, or is not in the Executive's opinion adequately, dealt with in that part 11.

The new regulations are necessary to make minor modifications to the *Building Act 2004* to provide for certain matters not dealt with in part 11 of that Act.

## DETAILS OF THE REGULATIONS

**Clause 1** provides that the name of the new regulations is the *Building Amendment Regulations 2004 (No 1)*.

**Clause 2** prescribes that the new regulations commence on the day after the day that the regulations are notified.

**Clause 3** provides that the new regulations amend the *Building Regulations 2004*.

**Clause 4** inserts new regulation 5 (1) (c) (v), which limits the span of relevant exempt structures to 4 metres. That is necessary to align the exemption with the corresponding former exemption in the *Building Act 1972* (repealed).

**Clause 5** inserts a new regulation 32 (Modifications of Act, pt 11—Act, s 179), which has the effect of modifying the *Building Act 2004* by inserting into that Act 3 new sections—

s 164A (Certificate of regularisation); and

s 164B (Application of s 88 (2) (b)); and

s 164C (Prudential Standards).

The above-mentioned new s 164 (Certificate of regularisation), has the intention of making a transitional provision to effectively provide that certificates of regularisation, issued under the *Building Act 1972* as in force at any time, may be taken as being issued under the *Building Act 2004*, s 75.

Such certificates are issued in relation to certain buildings constructed by the Commonwealth of Australia outside of the provisions of ACT building laws. The intent of those certificates is to provide comfort to prospective purchasers of such buildings by permitting occupancy of the building despite an absence of a certificate otherwise permitting that occupancy under the *Building Act 2004*.

It is necessary to make the transitional provision to provide certainty about the ongoing validity and force of such certificates despite the repeal of the Act some were issued under—the *Building Act 1972*.

The above-mentioned new s 164B (Application of s 88 (2) (b)), in effect adjusts an inappropriate reference to ‘plans approved for the work by the construction occupations registrar’ as that register has no entitlement to approve such plans. The adjusted reference is instead to ‘approved plans’. That term ***approved plans*** is defined in the Dictionary to the *Building Act 1972*.

The above-mentioned new s 164C (Prudential standards), is intended to remove doubt that the prudential standards made under the Building Act 1972 are taken to be prudential standards under the Building Act 2004.

Fidelity fund schemes approved under the *Building Act 2004* are required by that Act to conduct the schemes in accordance with prudential standards approved under that Act. Fidelity fund schemes provide coverage against risk of loss due to a breach of statutory warranty, which is a warranty given by the builder providing that building work will meet certain specified requirements. Fidelity fund scheme coverage is not taken as providing insurance for the purposes of certain insurance law, and so the prudential standards provide for matters such as scheme governance etc, in a similar way that insurance law regulates insurance providers.

## **FINANCIAL IMPLICATIONS**

Nil