

Australian Capital Territory

Water and Sewerage (ACT Appendix to the Plumbing Code) Determination 2019

Disallowable instrument DI2019—46

made under the

Water and Sewerage Act 2000, s 44C (3) (Plumbing code)

EXPLANATORY STATEMENT

The Plumbing Code of Australia is developed and published by the Australian Building Codes Board (ABCB). The ACT is represented on the ABCB along with representatives from all States, the Northern Territory, the Commonwealth Government and the building industry.

The *Water and Sewerage Act 2000* (the Act), section 44C (Plumbing code), adopts the Plumbing Code of Australia (PCA) including any ACT-specific requirements as published in the appendices of the PCA as part of the plumbing code for the purposes of the Act.

Section 44C (3) of the Act entitles the Minister to make ACT appendices to the plumbing code to provide a mechanism for the ACT to amend the PCA from time to time, including to amend the date an edition of the PCA, or a provision of the PCA, comes into effect in the ACT.

The PCA and its ACT appendices form part of ACT law. The published ACT appendices in the 2019 PCA do not include specific provisions but instead refer readers to the page for the *Water and Sewerage Act 2000* on the ACT Legislation Register, where all instruments made under the Act can be found. This is so that there is a single location for ACT appendices, and a single version published as current at any one time, which can be amended as required.

The ACT appendices only apply to the ACT and Jervis Bay Territory.

Adoption date of the 2019 Plumbing Code of Australia

The PCA includes an assumed adoption date for each state and territory and the Australian Government of 1 May 2019. Some states and territories include automatic transitional provisions in their enabling laws, under which the provisions of the PCA do not come into effect until a specified period after the adoption date published in the PCA.

The ACT does not have automatic transitional provisions. Instead, a decision on transitional provisions or later adoption is made based on the nature and effect of the changes in a new edition.

Previously, new editions of the PCA were published each year. However, the ABCB now published new editions every three years. The 2019 PCA is the first new edition since 2016. It includes substantial changes to the provisions of the code including to increase the stringency of some existing standards.

A preview of the 2019 PCA was not released publicly until 1 February 2019. A digital version of the PCA designed to assist readers to easily search and find provisions relevant to them was made available on 25 March 2019.

Given the substantive nature of the changes, the short period between the release of the preview and the expected adoption date is insufficient for land owners and practitioners to make changes to projects that are at, or are close to, the end of the design phase. Further, it does not provide a practicable transition for projects for which an application for a development approval (DA) has been made but not determined, or for which a DA has been granted but there is no building approval.

To allow people to familiarise themselves with the new requirements and make any necessary changes to projects in the planning and design phase, the instrument amends the adoption date for the ACT to 1 September 2019.

As the ACT has adopted the 2016 PCA, it will continue in force until the 2019 code has legal effect in the ACT. This includes any ACT appendices to the 2016 PCA.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* provides that if a proposed subordinate law or disallowable instrument (the proposed law) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the administering Minister) must arrange for a regulatory impact statement to be prepared for the proposed law.

A RIS is not required for this instrument as the amended adoption date is not expected to impose appreciable costs on the community or part of the community.

This instrument is not the primary mechanism for adopting the 2019 PCA, which is adopted by force of the Water and Sewerage Act. In relation to the new standards in the PCA, s 36 (1) (h) of the Legislation Act provides that a regulatory impact

statement is not required for a matter involving the adoption of an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, the ACT.

The ABCB has undertaken and published on its web site (www.abcb.gov.au) comprehensive regulatory impact analysis, including regulatory impact statements, for the increased regulatory stricture provided by PCA 2019.

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. There are no human rights impacts related to this instrument. The instrument amends the adoption date for the technical standards in the 2019 PCA.

Provisions of the determination

Section 1 names the determination as the *Water and Sewerage (ACT Appendix to the Plumbing Code) Determination 2019*.

Section 2 provides that the determination commences on 1 May 2019.

Section 3 makes Schedule 1 to the instrument as an Australian Capital Territory Appendix to the Plumbing Code of Australia (PCA). Schedule 1 provides for amended adoption date for the PCA.

Section 4 provides that the requirement of the *Legislation Act 2001*, section 47 (5) is disapplied. That section provides that the text an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore must be published on the Legislation Register.

The PCA is subject to copyright, making it inappropriate to notify on the legislation register. The PCA is freely available online to any person via the ABCB web site (see section 6).

Section 5 is to make the community aware of how they can access a copy of the ACT Appendix.

Section 6 is to make the community aware they can access the Building Code of Australia for free at <https://ncc.abcb.gov.au/ncc-online/NCC>.

Schedule 1 amends the adoption date for the PCA in the ACT by substituting new provisions naming 1 September 2019 as the adoption date.