

Australian Capital Territory

Building (ACT Appendix to the Building Code) Determination 2019 (No 2)

Disallowable instrument DI2019-55

made under the

Building Act 2004, s 136 (3) (Building code)

EXPLANATORY STATEMENT

The Building 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 *Building Act 2004* (the Act), section 136 (Building code), adopts the Building Code of Australia (BCA) including any ACT-specific requirements as published in the appendices of volume one and volume two of the BCA as part of the building code for the purposes of the Building Act.

Section 136 (3) of the Act empowers the Minister to make an ACT appendix to the building code to provide a mechanism for the ACT to amend the BCA from time to time, including to amend the date an edition of the BCA, or a provision of the BCA, comes into effect in the ACT.

The BCA is divided into 2 volumes. Volume 1 deals with class 2 to class 9 buildings, as classified under the code, which includes apartments, commercial residential buildings such as motels, and non-residential buildings. Volume 2 deals with class 1 and class 10 buildings, which include standard houses and non-habitable buildings such as garages, sheds, swimming pools and structures. A third volume, the Plumbing Code of Australia, together with BCA volumes 1 and 2 comprise the National Construction Code.

The BCA and its ACT appendices form part of ACT law. The published ACT appendices in Volumes 1 and 2 of the 2019 BCA do not include specific provisions but instead refer readers to the page for the *Building Act 2004* 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 Building Code of Australia

Each volume of the BCA 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 BCA do not come into effect until a specified period after the adoption date published in the BCA.

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.

DI2019-45 *Building (ACT Appendix to the Building Code) Determination 2019* amended the adoption date for the ACT to 1 September 2019.

This instrument revokes DI2019-45 and provides for revised adoption dates for certain provisions of the code, to allow earlier adoption of the majority of the provisions with transitional arrangements for building approvals considered before 1 September 2019, and preserving the 1 September 2019 adoption date for certain provisions with transitional arrangements.

Section 4 of the instrument displaces the requirement in the *Legislation Act 2001*, section 47 (5). Section 47(5) provides that the text of 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. Copyright to the BCA is collectively owned by the Australian Government and the states and territories. The arrangement between jurisdictions is that the BCA will be published on behalf of the jurisdictions in a single place by the Australian Building Codes Board (ABCB). It would not be appropriate to publicly notify the code on an ACT Government website. Section 5 of the instrument provides for alternative access to the BCA as it is not being notified on the Legislation Register.

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 and transitional provisions are not expected to impose appreciable costs on the community or part of the community. Although the adoption date for certain provisions is brought forward, the appendix includes transitional provisions under which projects may comply using either the 2016 provisions or the 2019 corresponding provisions for the relevant subject matter.

This instrument is not the primary mechanism for adopting the 2019 BCA, which is adopted by force of the Building Act. In relation to the new standards in the BCA, 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 website (www.abcb.gov.au) comprehensive regulatory impact analysis, including regulatory impact statements, for the increased regulatory stricture provided by BCA 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 BCA.

Provisions of the determination

Section 1 names the determination as the *Building (ACT Appendix to the Building Code) Determination 2019 (No 2)*.

Section 2 provides that the determination commences on the day after the notification date.

Section 3 makes Schedule 1 to the instrument as an Australian Capital Territory Appendix to the Building Code of Australia (BCA). Schedule 1 provides for amended adoption dates for Volumes 1 and 2 of the BCA.

Section 4 provides that the requirement of the *Legislation Act 2001*, section 47 (5) is disapplied. Section 47(5) provides that the text of 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 BCA is subject to copyright, making it inappropriate to notify on the legislation register. The BCA is freely available online to any person via the ABCB web site (see section 6).

Section 5 revokes DI2019-45 *Building (ACT Appendix to the Building Code) Determination 2019*.

Section 6 is to make the community aware of how they can access a copy of the ACT Appendix.

Section 7 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 Volumes 1 and 2 in the ACT by substituting new provisions naming:

- Table E1.5, Row 3 in relation to class 2 and 3 buildings; Specification E1.5 2 (b) and (c); Specification E1.5a; and Part F6 (Volume 1) and P2.4.7 and Part 3.8.7 (Volume 2); and
- 1 June 2019 as the adoption date for all other provisions.

The schedule provides a transition for provisions other than those with a later adoption of 1 September. For applications for a building approval determined from 1 June 2019 to 31 August 2019, proposed building work may comply with the provisions mentioned in (1) or the corresponding provisions in Volume 1 and Volume 2 2016.

The specific provisions outlined above are new provisions.