

# Construction Occupations (Licensing) Building Surveyors Code of Practice 2019

## Disallowable instrument DI2019-174

made under the

**Construction Occupations (Licensing) Act 2004, 126A (Codes of practice)**

## EXPLANATORY STATEMENT

---

In June 2016, the ACT Government announced the *Improving the ACT Building Regulatory System* reforms. <https://www.planning.act.gov.au/build-buy-reno/reviews-and-reforms/building-reforms> (link current at time of publication).

Reform 4 is to develop new provisions in the *Building Act 2004* (Building Act) outlining the functions of the certifier, the purpose and scope of stage inspections, and supporting codes of practice.

Codes of practice may be made under section 126A of the *Construction Occupations (Licensing) Act 2004* (COLA) and consist of a code, standard, rule, specification or provision relating to the construction occupation or occupation class, or a construction service, and may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time. A breach of a code of practice under that Act, is an offence.

The object of the *Construction Occupations (Licensing) Building Surveyors Code of Practice 2019* is to set out minimum standards of practice for licensed building surveyors. This includes specific requirements in relation to—

- (a) building certification services;
- (b) exemption assessment services; and
- (c) advice and other services that may be provided by a licensed building surveyor in relation to a service in (a) or (b).

The code does not include practice requirements for works assessments services that may be provided by a licensed building surveyor. Codes of practice relating to works assessment services can be found at <https://www.legislation.act.gov.au/a/2004-12/> under the Regulations & Instruments tab.

The code also informs land owners engaging the services of a building surveyor, and the community, about the standards of practice to be expected from a building surveyor.

### **Disapplication of Legislation Act 2001, section 47(3)**

The instrument applies, adopts or incorporates the Australian Standards or other instruments into the code of practice. Section 47(3) of the *Legislation Act 2001* (Legislation Act) does not apply to the Australian Standards or other instruments applied, adopted or incorporated into the code of practice, meaning that they are not required to be notifiable instruments and published on the Legislation Register.

Section 126A (4) of COLA provides that the Legislation Act, sections 47 (5) or (6) do not apply in relation to a law or instrument referred to, incorporated or adopted in an approved code of practice, and are therefore not required to be notifiable instruments registered on the Legislation Register.

Copyright to the Building Code of Australia (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 6 of the instrument provides for alternative access to the BCA as it is not being notified on the Legislation Register.

The code also makes general reference to Australian Standards already adopted under the BCA. Australian Standards are subject to copyright, and cannot be republished by the ACT Government. Adopted standards are available for inspection at the ACT Environment, Planning and Sustainable Development Directorate shopfront during business hours and can be purchased at [www.standards.org.au](http://www.standards.org.au).

The breadth of subjects and the level of expertise required to develop standards means that not all standards are developed by governments or to be provided available without cost. Adoption of technical standards is important to the effective functioning of building regulation. Where it is not possible to publish a standard, the instrument and schedule provide information on where to access standards.

### **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 provisions of the code are not expected to impose appreciable costs on the community, or part of the community. The document provides for administrative requirements and standards for carrying out stage inspections that are in general already adhered to by building surveyors. As such, the code does not fundamentally affect the law's application or operation. If there are additional costs of complying, for the majority of building surveyors, they are expected to be negligible.

### **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. It provides for practice requirements for licensed building surveyors that do not impact on human rights.

## **Provisions of the determination**

**Section 1** names the instrument as the *Construction Occupations (Licensing) Building Surveyors Code of Practice 2019*.

**Section 2** provides that the instrument commences on 1 September 2019.

**Section 3** makes Schedule 1 to the instrument, the Building Surveyors Code of Practice 2019, as a code of practice under the *Construction (Occupations) Licensing Act 2004*.

**Section 4** provides that s47(3) of the Legislation Act does not apply, meaning that the Australian Standards or other instrument applied, adopted or incorporated into the code of practice are apply as they exist from time to time. Section 126A(4) of the *Construction Occupations (Licensing) Act 2004* displaces the requirement to notify laws or instrument referred to, incorporated or adopted into a code of practice under s47(5) and (6).

The BCA and Australian standards mentioned in the document are 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** is to make the community aware of how they can access a copy of the code of practice.

**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> .

**Section 7** is to make the community aware where they can access Australian Standards.

**Schedule 1** makes a code of practice for building surveyors

**Part 1** provides for preliminaries which include the name of the code, information about the dictionary at the end of the code and potential consequences of failing to comply with the code.

**Part 2** includes important concepts, including the object of the code, and how it applies to building surveyors. The code applies in relation to licensed building surveyors when they are undertaking work that can only be done by a licensee.

**Part 3** outlines the general obligations of a building surveyor when performing services and functions. The obligations include to act in the public interest, comply with relevant laws, ensure their decisions are reasonable and fair, and to take appropriate compliance action. These obligations are similar to those in place in other

jurisdictions and for public officials in the ACT.

The Part also includes provisions for:

- (a) notifying and managing matters that may affect their ability to undertake statutory functions;
- (b) taking action when they become aware of particular circumstances such as where information provided in the building approval is false or misleading; and
- (c) confirming people who make applications instead of a landowner have the authority to do so.

**Part 4** relates building certification and related services. The role of the building certifier is important in the building regulatory system.

This part includes requirements in relation to:

- Recording of appointments as a building certifier and additional agreements, which is intended to delineate statutory building certification functions from other services a building surveyor may legitimately provide;
- Recording advice that a building certifier may have given in relation to a project;
- Making sure that all required technical information and documents are in a building approval application before issuing the approval;
- Building commencement notice applications;
- Requiring confirmation of receipt of approved plans prior to work.

This part also include Division 4.1 which includes requirements for the carrying out of stage inspections. This includes that which a building certifier must consider in determining inspection requirements for building classes where they have discretion to choose which work must be inspected. It also includes requirements that the certifier must personally inspect work at a prescribed stage. This is important to establish that only licensed practitioners are carrying out inspections.

**Part 5** provides for recordkeeping requirements. Detailed requirements are further outlined in Appendix 2 to the code.

**Part 6** provides that building surveyor must have, and comply with, a reasonable policy and associated procedures for accepting and resolving complaints from clients and other entities in relation to building surveying services the licensee is carrying out, or has carried out.

An individual building surveyor need not have policies and procedures in accordance with this section if they provide building surveying services solely as an employee or nominee of another building surveyor.

It also provides that a building surveyor must comply with any reasonable request or direction by the Construction Occupations Registrar to take a stated action in relation to a complaint made to the Construction Occupations Registrar about the building surveyor's services under Part 11 of the Construction Occupations (Licensing) Act.

The **Dictionary** provides for definitions for important concepts used in the guideline.

**Appendix 1** provides specific elements that must be inspected at certain stages of work. It also includes explanatory information about the purpose of inspecting certain elements. Importantly, the schedule includes minimum requirements and does not limit what a certifier may inspect at a stage.

**Appendix 2** provides for specific requirements for keeping records relating to exemption assessments (2.1), building approval applications (2.2), commencement notice applications (2.3) and stage inspections (2.4).