

Australian Capital Territory

Building (ACT Appendix to the Building Code) Determination 2023 (No 1)

Disallowable instrument DI2023—67

made under the

Building Act 2004, s 136 (Building code)

EXPLANATORY STATEMENT

Overview

This instrument is made under section 136 of the *Building Act 2004* (the Act).

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

Section 136 (3) of the Act entitles the Minister to make an ACT appendix to the BCA to provide a mechanism for the ACT to amend the BCA from time to time, including to amend the date and edition of the BCA, or a provision of the BCA.

The BCA is divided into 2 volumes. Volume 1 deals with all class 2 to class 9 buildings, access requirements for people with a disability in class 1b and 10a buildings and certain class 10b structures including access requirements for people with a disability in class 10b swimming pools. Class 2 to class 9 buildings as classified under the BCA include apartments, commercial residential buildings such as motels, and non-residential buildings.

Volume 2 of the BCA deals with class 1 and 10a buildings (other than access requirements for people with a disability in class 1b and 10a buildings), certain class 10b structures (other than access requirements for people with a disability in class 10b swimming pools) and class 10c private bushfire shelters. Class 1 and class 10 buildings as classified under the BCA 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 appendix form part of ACT law. The published ACT appendices in Volumes 1 and 2 of the 2022 BCA (published on the ABCB website) do not include specific provisions but instead refer readers to the ACT Legislation Register, where all instruments made under the Act can be found, including the ACT appendix to the BCA. This is so that there is a single source for the ACT appendix to the BCA, and a single version published as current at any one time, which can be amended as required.

The ACT appendix only applies to the ACT and Jervis Bay Territory.

Adoption date of the 2022 Building Code of Australia

Each volume of the BCA includes an assumed adoption date for each state and territory and the Commonwealth Government of 1 May 2023. 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.

This instrument revokes the *Building (ACT Appendix to the Building Code) Determination 2019 (No 3)* (DI2019-175) and provides for revised adoption dates for certain provisions of the BCA, to allow earlier adoption of the provisions with transitional arrangements for building approvals considered before 1 May 2023, and identifying the 1 October 2023 adoption date for certain provisions.

Section 5 of the instrument displaces the requirement in the *Legislation Act 2001* (the Legislation Act), 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 ABCB. It would not be appropriate to publicly notify the code on an ACT Government website. The notes to section 5 of the instrument describe 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 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 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. The appendix includes provisions from the 2019 BCA and the *Building (ACT Appendix to the Building Code) Determination 2019 (No 3)* which are called up and must be complied with where the 2022 corresponding provisions have yet to take effect.

This instrument is not the primary mechanism for adopting the 2022 BCA, which is adopted by force of the Act. In relation to the new standards in the BCA, section 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 structure provided by 2022 BCA.

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 BCA.