

Australian Capital Territory

Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No1)

Disallowable instrument DI2023—69

made under the

Building (General) Regulation 2008, s 24 (Unaltered parts need not comply with building code if alternative requirements met—Act, s 29 (2) (b))

EXPLANATORY STATEMENT

Overview

This instrument is made under section 24 (2) of the *Building (General) Regulation 2008* (the regulation).

This instrument contains provisions relating to alternative requirements to the Building Code of Australia (BCA) that apply to unaltered parts of substantially altered class 1, 10a or 10b buildings.

A substantial alteration is defined in the regulation.

These provisions were previously located in the regulation. In the latest republication of the regulation, dated 1 April 2021, they were included at sections 24 to 29 inclusive. These provisions addressed energy efficiency, fire safety, swimming pool safety, glazing, stairs and barriers and handrails.

This instrument will allow the sections specifying parts that need not comply with the BCA to be made into a disallowable instrument, rather than part of the regulation itself. The provisions included in this instrument address energy efficiency, fire safety, swimming pool safety, glazing, stairs and barriers and handrails.

Combining the exemptions into a single disallowable instrument and placing them alongside the ACT Appendices will increase their visibility and reduce complexity, thereby supporting improved compliance.

Adoption date of NCC 2022 provisions

The National Construction Code (NCC) 2022 has transition arrangements that were agreed by Building Ministers in August 2022. The main provisions of the BCA come into effect on 1 May 2023. Additional provisions addressing energy efficiency,

condensation management and liveable housing commence on 1 October 2023. Until 1 October 2023 the energy efficiency and condensation provisions in NCC 2019 continue to apply. There are no liveable housing provisions in NCC 2019.

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 Commonwealth 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 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.

This instrument is not the primary mechanism for adopting the 2022 BCA, which is adopted by force of the *Building Act 2004*. In relation to the new standards in the BCA, s 36 (1) (h) of the Legislation Act provides that a RIS 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.