

Australian Capital Territory

Building (ACT Appendix to the Building Code) Determination 2026

Disallowable instrument DI2026–42

made under the

Building Act 2004, s 136 (Building code)

EXPLANATORY STATEMENT

Overview

This explanatory statement relates to the *Building (ACT Appendix to the Building Code) Determination 2026* (the **instrument**) as presented to the Legislative Assembly (the **Assembly**). It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly. The Statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the instrument.

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

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

Section 136 of the Act 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 two 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.

Updates

This instrument incorporates updates to the ACT Part H6 of Schedule 1 to give effect to the following building reforms as part of tranche 1 of the construction productivity agenda which:

- Simplifies energy efficiency upgrade requirements for extensions and renovations by setting a revised energy efficiency star rating for the whole house that is proportionate to the area being renovated. The area-weighted NatHERS Pathway provides an opportunity to achieve an improved energy rating for a building while performing an internal alteration, an extension, or both, to an existing building. The formulas 1, 2 and 3 calculating the required star rating that must be met or bettered.
- Recognises Passivhaus certification as a compliance pathway for energy efficiency requirements for both new homes, and for the alteration of an existing home. An overview on the certification process for a Passivhaus can be found at <https://www.passivhausassociation.com.au/certification>.

You can find more information and guidance on the above pathways in ACT Part H6 of Schedule 1.

This instrument also includes editorial changes to:

- remove Schedule 1 as it has now expired;
- remove the expired provisions in Schedule 2 that provided for transitional arrangements between 1 May 2023 to 14 January 2024. This time has passed and it is no longer relevant;
- Rename Schedule 2 to Schedule 1; and
- Address minor formatting issues.

This instrument revokes *Building (ACT Appendix to the Building Code) Determination 2023* (No 3) (DI2023-304). The declaration is a disallowable

instrument and must be presented to the Assembly within 6 days after its notification pursuant to section 64 of the *Legislation Act 2001* (the ***Legislation Act***).

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 RIS to be prepared for the proposed law.

A RIS is not required for this instrument as these changes introduce voluntary options for complying with existing requirements. Furthermore, they are unlikely to impose appreciable costs on the community. Indeed, the construction productivity agenda building reforms mentioned above are expected to reduce costs for the community by:

- addressing the need for complex redesign efforts, higher costs and risks of non-compliance by delivering an alternative pathway for energy efficiency, making it easier for industry and homeowners to meet their compliance requirements; and
- streamlining processes and reducing unnecessary cost and regulatory burden on industry and homeowners pursuing passive house construction.

Section 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.

A RIS is not required for the ACT variations to the 2022 BCA contained in this instrument as they are not considered to be likely to impose appreciable costs on the community or a part of the community. The ACT variations only apply to existing buildings and lower the cost burden because they allow for certain things not to be complied with, or give alternative, easier requirements as options. None of the ACT variations increase costs above what the ABCB regulatory impact statements for the 2022 BCA found.

Human Rights

The Standing Committee on Legal Affairs (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.

Clause Notes

Clause 1 names the instrument the *Building (ACT Appendix to the Building Code) Determination 2026*.

Clause 2 provides that this instrument commences on the day after its notification day.

Clause 3 contains the approval of schedule 1 of the instrument.

Clause 4 provides for when schedule 1 of this instrument applies. It applies from the commencement of this instrument.

Clause 5 displaces the requirement in 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.

BCA volumes 1 and 2, comprise the National Construction Code along with volume 3, the Plumbing Code of Australia. 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.

The BCA incorporates a number of Australian Standards, Australian/New Zealand Standards and International Standards. The standards are technical standards used by the building and construction sector to meet regulatory requirements across jurisdictions. The sector is generally expected to have knowledge of the standards relevant to undertaking their professional services. It is noted that there are often two or more versions of the Building Code applicable to building work at any one time and as such there are a significant number of Australian Standards and versions of Australian Standards that industry and regulators require access to.

The standards referenced in the BCA are available for purchase from www.standards.org.au. There are challenges relating to the ability to provide public access to Australian Standards due to copyright issues. Standards Australia has an initiative (Reader Room) that provides limited, no-fee access to the entire catalogue of Australian Standards for non-commercial purposes, that is for personal, domestic or household use. This initiative provides access for free to a maximum of three standards every 12 months, with access for 24 hours at a time. The Reader Room is available at <https://readerroom.standards.org.au/>.

Clause 6 revokes the *Building (ACT Appendix to the Building Code) Determination 2023 (No 3)* (DI2023-304).

Schedule 1 contains the ACT specific variations to the Building Code of Australia (volumes 1 and 2 of the National Construction Code). The new energy efficiency provision options covered by ACT Part H6 continues the ACT's flexible and practical approach to applying energy efficiency upgrades to alterations and substantial alterations of existing buildings. The variations should be read in conjunction with the *Building (General) Regulation 2008* and the *Building (General) (Alternative requirements for unaltered parts) Determination* (as amended from time to time).