

Australian Capital Territory

# Building (General) (Alternative requirements for unaltered parts) Determination 2026

Disallowable instrument DI2026–43

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

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### Overview

This explanatory statement relates to the *Building (General) (Alternative requirements for unaltered parts) 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 24 (2) of the *Building (General) Regulation 2008* (the **regulation**).

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

A substantial alteration is defined in the regulation.

This instrument should be read in conjunction with the *Building (ACT Appendix to the Building Code) Determination* (the **ACT Appendix**), as amended from time to time. The ACT Appendix gives exemptions and alternative arrangements for alterations of existing buildings when applying the National Construction Code (the **NCC**).

This instrument only applies to the ACT and Jervis Bay Territory.

### Updates

This instrument incorporates updates to provide two alternative provisions for demonstrating thermal energy efficiency for the unaltered part of a substantially

altered building. These alternative provisions can be applied to the entire house (altered and unaltered parts).

The alternative provisions are:

- a. Passivhaus Certification
  - i. If the house is being renovated into a Certified Passivhaus, it does not need to comply with sections 9, 10 (a), 10 (b), 10 (c), 10 (d), 10 (e) and 10 (f) of this instrument; or
- b. Area-weighted NatHERS pathway
  - i. If the Area-weighted NatHERS pathway is used, it does not need to comply with sections 10 (a), 10 (b), 10 (c), 10 (d), 10 (e) and 10 (f) of this instrument.

You can find more information and guidance on the above pathways in the ACT Appendix (as amended from time to time).

These amendments form part of the ACT Government's first tranche of reforms under the construction productivity agenda. This agenda focusses on implementing reforms that reduce regulatory burden, streamline approval processes, support innovation and improve workforce flexibility in the building and planning system.

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 2001* (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 it will not impose costs on the community. The introduction of the building reforms mentioned above are voluntary and 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 Passivhaus construction.

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. Passivhaus certification is used globally and is recognised as a leading standard for energy efficiency and sustainability. It is also adopted by the NSW Government as a compliance pathway for energy efficiency requirements. An overview on the certification process for a Passivhaus can be found at <https://www.passivhausassociation.com.au/certification>.

## **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 (General) (Alternative requirements for unaltered parts) Determination 2026*.

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

Clause 3 provides for when schedule 1 of this instrument applies.

Clause 4 determines the schedule of the instrument is the alternative requirements for an unaltered part.

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 NCC 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 notes in clause 5 of the instrument describe that the standards referenced in the BCA are available for purchase from [www.standards.org.au](http://www.standards.org.au). There are challenges relating to the ability to provide public access to Australian Standards due to

copyright issues. In addition, Standards Australia has released 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 (General) (Alternative requirements for unaltered parts) Determination 2024* (DI2024-83).