

Australian Capital Territory

Building (ACT Appendix to the Building Code—2008 and 2009 editions) Determination 2009

Disallowable instrument DI2009— 26

made under the

Building Act 2004, s 136 (2) (Building Code)

EXPLANATORY STATEMENT

The *Building Act 2004* (“the ACT”), section 136 (Building code), gives effect to the Building Code of Australia (the “building code”) and entitles the Minister to make ACT appendices to the building code. As such the building code and its appendices form part of ACT law.

The building code applies throughout Australia and is divided into 2 volumes. Volume 1 deals with class 2 to class 9 buildings, as classified under the code. Volume 2 deals with class 1 and class 10 buildings. Each published volume consists of a main text and a group of appendices for each State and Territory. The building code, including State and Territory appendices, is published annually by the Australian Building Codes Board (“the ABCB”). The ACT is represented on the ABCB along with out representatives from other jurisdictions and industry.

To provide a mechanism for the ACT to depart from or vary the building code from time to time, in addition to the yearly changes made to the code by the ABCB, the Act, s 136 (2) entitles the Minister to make ACT appendices to the building code. The appendices only apply to the ACT, and can amend the provisions of body of the building code.

The *Building (ACT Appendix to the Building Code—2008 and 2009 editions) Determination 2009* (“the determination”) revokes relevant previous ACT appendices to the building code and makes new appendices for both the 2008 and 2009 editions of the building code.

The 2008 edition of the building code was published in early 2008 but commenced in law in the ACT on 1 May 2008. The 2009 edition of the building code was published in early 2009 and it provides that it will commence in law in the ACT on 1 May 2009.

Because of the delayed commencement of the building code’s 2009 edition, the determination’s provisions in relation to that edition also provide for a delayed commencement of 1 May 2009.

The only substantive change that the determination makes to the published version of the appendices it refers to is to apply the latest version of Australian Standard AS 3959—*Construction in bushfire-prone areas*, as in force from time to time.

Without the effect of the determination, the building codes of 2008 and 2009 reference the 1999 edition of that standard. However, Standards Australia has revised that standard and are about to publish the revised version. The effect of the determination is to omit from the building code, prescriptive provisions about bushfire-resistant construction that are inconsistent with the revised standard, and to apply through the 2008 and 2009 editions of the building code the latest version of the standard as in force from time to time.

So an intended effect is to allow the 1999 edition of AS 3959 to be the relevant standard until such time as it is superseded, for example by the proposed 2009 version.

The determination also disapplies the provisions of the Legislation Act, s section 47 (5), which otherwise would have required the notification on the legislation register—

- the building code; and
- Australian Standard AS 3959—*Construction in bushfire-prone areas*.

It is not practical to notify those documents as they are subject to copyright and provide sales revenue for their publishers.

The ABCB announced on 6 March 2009 that it would incorporate the revised standard in the 2010 edition of the building code. The determination will allow the ACT community to benefit from the results of latest research into fire-resistant construction from when the determination commences rather than wait until 2010.

The revised standards only require extra construction measures to be built into new housing located in a designated bushfire-prone area, and this will only be necessary when an assessment of the housing made under the standard finds risks of bushfire attack to be at or above the prescribed threshold.

Compliance with the revised standard is not mandatory under the building code if it can be proved that an alternative construction method produces housing in bushfire-prone areas that will be as safe and bushfire-resistant as housing that complies with the standard.

The revised standard includes improved ways to assess fire fuel loads, and revised ways to make the outside of houses resistant to ember, heat and flame attack. It also caters for higher flame temperatures and assigns the ACT the highest risk factor, 100, which takes account our relatively dry climate and volatile vegetation types.

Currently, all areas of the ACT outside of the urban area are designated bushfire-prone. Therefore, the determination will only immediately affect the few rural houses etc currently under construction, and it is unlikely it will require any significant change to those houses because they are not in areas of significant bushfire fuel load. Therefore, no transitional implementation arrangements are necessary for the determination.

The building code has various provisions that enable the local jurisdiction responsible for administering the building code to make determinations about how to apply the provisions in that jurisdiction. The determination also includes such a provision to cater for a circumstance where a document requires compliance with a particular aspect of the 1999 version of AS 3959, under the building code, but where a later version of that standard is in force but does not have corresponding provisions. It is intended in that case that the local jurisdiction can make a determination in writing on how to comply with the document in that case. It is intended that the registrar mentioned in the Act is entitled to make such a determination, for example.

The ABCB has undertaken a comprehensive regulatory impact analysis and produced a regulatory impact statement (“RIS”) for the revised standard. The RIS indicated that compliance with the revised standard instead of the 1999 version will have negligible yearly cost impacts on the aggregate yearly construction costs across the ACT. Implementation of the determination will have nil cost to Government and not create human rights issues.