

2010

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Building Legislation Amendment Regulation 2010 (No 2)
Subordinate Law 2010–21**

EXPLANATORY STATEMENT

**Circulated by authority of the
Minister for Planning
Mr Andrew Barr MLA**

Building Legislation Amendment Regulation 2010 Explanatory Statement

This explanatory statement explains the *Building Legislation Amendment Regulation 2010 (No 2)* (the “proposed law”). The proposed law amends the *Building (General) Regulation 2008* (the “building regulation”) and the *Water and Sewerage Regulation 2001* (the “water regulation”).

The amendments make minor technical amendments to clarify intent.

Changes to the building regulation

The building regulation was amended by the *Building Legislation Amendment Regulation 2010 (No 1)* at the beginning May 2010. The proposed law clarifies one of those amendments.

The proposed amendment to the building regulation is to clarify an aspect of the transitional arrangement inserted by the *Building Legislation Amendment Regulation 2010 (No 1)*.

For further explanation of the intended affect of transitional arrangement see also the separate explanatory statement for the *Building Legislation Amendment Regulation 2010 (No 1)*, particular in respect of its clause 21, which inserted new Part 21 (Transitional—Building Legislation Amendment Regulation 2010 (No 1)), available here—

<http://www.legislation.act.gov.au/sl/2010-15/default.asp>.

The main aspects of that explanation are as follows—

The *Building Legislation Amendment Regulation 2010 (No 1)*, clause 21—new part 21—inserts new part 21 (Transitional—Building Amendment Regulation 2010 (No 1)), which provides at new section 110 for a transitional arrangement to inter alia prevent projects that are in the planning approval system from having to be redesigned and resubmitted for approval if they were in the system by 1 July 2010. A national awareness campaign has alerted industry to the BCA 2010 changes, so it is expected that industry ought not need to rely the transition other than for a small number of projects. The transitions in effect delay the application of BCA 2010’s energy efficiency parts to the eligible projects for a period of 7 months for houses etc and certain apartments, and 12 months for other buildings and for apartments that would need a development approval change in order to comply with BCA 2010.

New part 21 also provides a new section 111 that is intended to ensure that the transitional arrangement provided for in new part 21 expires on 1 May 2011. That is necessary as the transitional arrangements provisions indicate that they have application until immediately before that date, but they will cease there functionality on that date.

Changes to the water regulation

The water regulation was amended by the *Building Legislation Amendment Regulation 2010 (No 1)* at the beginning May 2010. The proposed law clarifies one of those amendments.

The proposed amendment to the water regulation is to clarify the intent of the definition of the term ***new class 1 building***.

For further explanation of the intended affect of the definition, see also the separate explanatory statement for the *Building Legislation Amendment Regulation 2010 (No 1)*, particular in respect of its clause 30, which substituted in schedule 2, section 2.3 (3), a definition of ***new class 1 building***, available here—

<http://www.legislation.act.gov.au/sl/2010-15/default.asp>.

The main aspects of that explanation are as follows—

The *Building Legislation Amendment Regulation 2010 (No 1)*, clause 30—Schedule 2, section 2.3 (3), definition of *new class 1 building*—substitutes into section (3) a new definition for the term ***new class 1 building***. That is necessary as the former definition related to a building that has not been previously occupied or sold as a place of residence, but determining both of those parameters is not always straightforward. Whereas, the substitute definition instead relates to a building for which a certificate of occupancy for the whole building has not been issued under the *Building Act 2004*. Determining if such a certificate has been issued is straight forward as copies of all such certificates are held by ACT Government and are publically available for inspection.

Certificates of occupancy are issued under the *Building Act 2004*, section 69 (Certificate of occupancy). The use of the term “whole building” in the substitute definition of the term ***new class 1 building*** is intended to ensure that a certificate of occupancy issued under the *Building Act 2004*, section 69 (3) for part of a building is not the kind of certificate of occupancy that the definition relates to.

Outline of Provisions

Part 1 Preliminary

Clause 1 – Name of Regulation – states the name of the regulation, which is the *Building Legislation Amendment Regulation 2010 (No 2)*.

Clause 2 – Commencement – states that the regulation commences on the day after it is notified on the ACT legislation register.

Part 2 Building (General) Regulation 2008

Clause 3 – Legislation amended—pt 2 – provides that part 2 of the proposed law amends the *Building (General) Regulation 2008*.

Clause 4 – New section 110 (2) (ab)—inserts in to s 110 (2) a new paragraph (ab), which clarifies an aspect of the transitional arrangement that section 110 provides for.

That is necessary to make it clearer that the transition caters for building work that does not require a development approval (DA) under the *Planning and Development Act 2007*, but require building approval (BA) under the *Building Act 2004*. It clarifies that to be subject to the transition the application for the approval must be made by 1 July 2010, the same “cut-off” date prescribed in section 110 (2) (a) for buildings requiring a DA.

Part 3 Water and Sewerage Regulation 2001

Clause 5— Legislation amended—pt 3— provides that part 3 of the amending regulation amends the *Water and Sewerage Regulation 2001*.

Clause 6— Schedule 2, section 2.3 (3) definition of new class 1 building—substitutes the definition of *new class 1 building* with a new definition. In effect, the substitution retains the unsubstantiated definition and adds to it—“(except a building completed before 2000)”. That is necessary to more appropriately confine the definition to the intended range of buildings—those which are relatively newly constructed. Without the substitution the definition could have applied to relevant buildings of any age, where no certificate of occupancy for the whole building has not been issued under the *Building Act 2004*. Prior to the mid 1990s relevant laws did not apply to certain land upon which the Commonwealth constructed public housing. Subsequently, large numbers of those “old” houses have not had a certificate of occupancy issued for them. It is not intended that the definition apply to such “old” housing, and the proposed amendment to the definition clarifies that intention.