

2012

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

BUILDING (GENERAL) AMENDMENT REGULATION 2012 (No 1)

SL2012-26

EXPLANATORY STATEMENT

Presented by
Mr Simon Corbell MLA
Minister for the Environment and Sustainable Development

EXPLANATORY STATEMENT

This explanatory statement relates to the Building (General) Amendment Regulation 2012 (No 1) (the amending regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Assembly.

Terms Used

The following terms are used in this statement:

- “the act” – refers to the *Building Act 2004*
- “the regulation” – refers to the *Building (General) Regulation 2008*
- “amending regulation” – refers to the Building (General) Amendment Regulation 2012 (No 1)
- “PABLAA” – refers to the *Planning and Building Legislation Amendment Act 2011 (No 2)*
- “COLA” – refers to the *Construction Occupations (Licensing) Act 2004*
- “PABELAB” – refers to the *Planning, Building and Environment Legislation Amendment Act 2012*

Background

PABLAA was presented to the Legislative Assembly on the 17 November 2011 and passed on the 6 December 2011. PABLAA is a process by which minor but vital amendments are made to planning and building legislation. Some of the amendments made by PABLAA are currently un-commenced (i.e. not in effect).

The un-commenced PABLAA amendments will commence on a day fixed by the Minister by written notice, as stated under Part 1 Clause 2.

PABLAA, clause 6, new sections 37A (s37A) and 37B (s37B) provide that a notice about building works is erected for all building work that requires a licensed builder.

New section 30A (s30A) sets out the minimum requirements for a building works sign. For instance, s30A (a) requires the sign to be at least 600mm by 900mm in size while S30A (b) requires the sign to contain a heading at least 50mm high stating ‘Notice about building work’. S30A (c) also requires certain information to be included on the sign such as:

- name and licence number of the builder undertaking the building work;
- contact telephone number of the builder undertaking the building work;
- name and licence number of the certifier assessing the building work;
- contact telephone number of the certifier assessing the building work
- the street address where the building work is being undertaken;
- a description of the nature of the building work being undertaken;
- the development approval number for the building works (if applicable);
- a note stating that the building work was exempt from requiring development approval (if applicable);
- a note stating that it has not been determined if the works are exempt from development approval (if applicable); and
- a note stating what stage the building works are in if the development is required to be completed in stages.

Overview

The amending regulation amends section 30A and section 30B of PABLAA. Once commenced, these sections will amend the *Building (General) Regulation 2008* (the regulation). In summary the amending regulation:

1. inserts new section 30A (c) (ia), s30A (c) (iva) and s30A (c) (va);
2. amends section 30A (d); and
3. amends section 30B (b).

The amending regulation will commence upon the commencement of Part 3 of PABLAA. This means that the relative provisions in PABLAA and this amending regulation will commence at the same time. This will ensure that industry has one clear set of requirements from the first day of the new requirements operating. The commencement of PABLAA was delayed to allow industry to become familiar with the new requirements and gear-up their business practices.

The amending regulation makes some minor changes to s30A. It inserts new s30A (c) (va) which requires the building works sign to include the block, section and division of the parcel of land in which building work is being undertaken.

The amending regulation also inserts new ss30A (c) (ia) and 30A(c) (iva) to require licensed builders and certifiers that are corporations to display their ACN (if any) on the building works sign. Under the *Construction Occupations (Licensing) Act 2004* (COLA) it is an offence to advertise without details such as a name, licence number and ACN number. The inclusion of these subsections will ensure that if the building works sign is considered to be *advertising* then it will not breach COLA, in particular s83 (b).

S30A (d) of PABLAA requires that the building works sign be made of a 'waterproof material'. The amending regulation omits 'waterproof material' and substitutes it with 'durable material that will remain intact for the period of construction'.

Industry has indicated that a waterproof sign may not be suitable for the entirety of the required life of the sign. The objective of s30A (d) was to have a sign that could last the entirety of the building works period by being able to withstand manmade and natural elements. Industry feedback stated that requiring a sign to be waterproof does not guarantee the sign can withstand the rigours for the entirety of building works period. By substituting 'waterproof' with 'durable' the amending regulation allows greater flexibility in terms of the sign's material and will guarantee that the sign remains intact for the period in which building work is being undertaken.

Planning, Building and Environment Legislation Amendment Act 2012 (PABELAB) expanded the current exemptions for single dwellings under section 1.100 (s1.100 and 1.100A (s1.100A) of the *Planning and Development Regulation 2008*. PABELAB retains s1.100 and s1.100A in their current form for old residential land (all land that has had a dwelling on it) and inserted new section 1.100AA and s1.100AB for new residential land (Greenfield sites).

Under s37B (1) (b) of PABLAA building work that is prescribed development must display a building works sign on the parcel of land in which the work is being undertaken. Section 30B (b) of PABELAA states that prescribed development includes s1.100 or s1.100A of the *Planning and Development Regulation 2008*.

As PABELAB expanded these sections to include new section 1.100AA and s1.100AB in 2012 and PABLAA was proposed in 2011 there are now some omissions in what the provision is meant to cover. The intent was that a sign be required to be displayed for all single dwelling development irrespective of whether or not it was development on old residential land or new residential land.

The amending regulation includes s1.100AA and s1.100AB of PABELAB in s30B (b) of PABLAA to ensure that all exempt single dwellings require a building works sign.

Outline of Provisions

Clause 1 Name of regulation

Clause 1 names the regulation as the *Building (General) Amendment Regulation 2012 (No 1)*.

Clause 2 Commencement

Clause 2 states that the regulation commences on the commencement of the *Planning and Building Legislation Amendment Act 2011 (No 2)*, section 7.

Clause 3 Legislation amended

Clause 3 states that this regulation amends the *Building (General) Regulation 2008*.

Clause 4 – New section 30A (c) (iia)

Clause 4 inserts new section 30A (c) (iia) to require the Australian Company Number (ACN) number of the licensed builder on the sign, if they are a corporation.

Section 83 (b) (iii) of *Construction Occupations (Licensing) Act 2004 (COLA)* states that a person commits an offence if they advertise without displaying details such as the licence holders name, licence number and ACN. If a building works sign includes a company logo, it may be considered advertising under COLA. To remove all doubt the amending regulation requires building works signs to include the building and/or certifiers ACN (if applicable). All other requirements of s83 (b) of COLA have already been included in s30A of PABLAA and thus the building works signs will comply with s83 of COLA.

Clause 5 – New section 30A (c) (iva)

Clause 5 inserts new section 30A (c) (iva) to require the Australian Company Number (ACN) number of the licensed certifier on the sign, if they are a corporation.

This requirement was included for the same reasons as clause 4.

Clause 6 – New section 30A (c) (va)

Clause 6 inserts a new section 30A (c) (va) into the (un-commenced) PABLAA provisions of the *Building (General) Regulation 2008*.

New section 30A (c) (va) requires a building works sign to include block, section and division details of the parcel of land. Including block, section and division details on the building works sign will further identify the parcel of land in which work is being undertaken.

Clause 7 – Section 30A (d)

Clause 7 amends a requirement of the as yet un-commenced PABLAA provisions of the *Building (General) Regulation 2008*. New section 30A (d) omits the words 'waterproof material' and substitutes it with 'durable material that will remain intact for the period of construction'.

Clause 8 – Section 30B (b)

Clause 8 is a consequential amendment of section 30B (b) of PABLAA to include s.100AA and s1.100AB in addition to those already covered.