

2012

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Building (General) Amendment Regulation 2012 (No 2)
SL2012-33**

EXPLANATORY STATEMENT

**Presented by
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EXPLANATORY STATEMENT

Background

The Construction Occupations Legislation Amendment Act 2010 (No 2) (the Amending Act) created powers for the regulation of building energy efficiency assessments for regulatory purposes. The legislation is intended to apply to residential energy efficiency assessments for compliance with energy efficiency disclosure requirements under the *Civil Law (Sale of Residential Property) Act 2003* and the *Residential Tenancies Act 1997*, and to assessments undertaken for compliance with certain energy efficiency provisions in the ACT building code.

The reforms bring building assessors into the construction occupations licensing framework and provide for minimum criteria for the quality of assessments and the standardisation of energy efficiency information in certificates and statements provided by assessors.

On 1 May 2011 licensing requirements came into effect for building assessors preparing energy efficiency rating statements for existing dwellings for sale or lease of residential premises. The amending regulation inserts new provisions in the *Building (General) Regulation 2008* (the regulation) to extend regulation to assessments prepared and used for compliance with prescribed energy efficiency provisions. This fully enacts the regulatory reforms commenced with the Amending Act.

The regulation prescribes which provisions of the building code require an energy efficiency certificate to demonstrate compliance and to form part of a building approval application.

The regulation also makes consequential amendments to references to class 10 buildings required after the introduction of a new classification of 10c private bushfire shelters in the Building Code of Australia.

Overview

New provisions for energy efficiency certificates

Subsection 26 (2) (g) of the *Building Act 2004* (the Act) provides that if required under an energy efficiency provision, an application for a building approval must be accompanied by an energy efficiency certificate.

Under section 139C an energy efficiency provision is a provision of the Act or the building code, prescribed by regulation, that requires building work, or proposed building work, or parts of building work, or parts of proposed building work, to comply with stated energy efficiency requirements.

The Act is supported by the construction occupations licensing framework. An energy efficiency certificate must be prepared by a building assessor licensed under the *Construction Occupations Licensing Act 2004* (the Licensing Act) in accordance with any relevant code of practice made by regulation or by the ACT construction occupations registrar under s104A of the Licensing Act.

There are a number of energy efficiency performance requirements that apply to residential buildings. These include standards for individual appliances as well for the energy efficiency (thermal efficiency) of a dwelling. As a performance-based standard, the building code allows various methods to assess the energy efficiency of a dwelling. Many of these methods can be carried out by a relatively simple assessment of the information contained in building plans and specifications and do not require the use of complex tools or an independent assessment.

In assessing the thermal efficiency of a class 1 or 2 dwelling or a class 4 part of a building the building code allows the use of house energy rating software. This compliance method is not mandatory; however, given the design flexibility it provides and the use of energy efficiency ratings in the ACT's mandatory disclosure legislation most practitioners in the ACT use the software verification or "energy rating" method.

An energy efficiency assessment undertaken on house energy rating software requires skills and knowledge in the design and construction of buildings, the principles of thermal efficiency, the properties of construction materials and the operation of energy rating software. The regulation prescribes the provisions of the Building Code of Australia (BCA) and the ACT Appendix to the BCA that allow the use of house energy rating software as those requiring an energy efficiency certificate.

The requirement to provide an energy efficiency certificate will only apply to provisions including an energy rating method. Standard requirements for a building certifier to satisfy his/herself about compliance apply to other energy efficiency compliance methods.

The output from approved software can differ from package to package. The energy efficiency certificate will be an approved form, which will standardise the minimum information required to demonstrate compliance with relevant provisions.

Amendments to existing provisions

References to class 10 buildings

Sections 24, 29, 33, 34, 36 and schedule 2 part 2.2 item 7 refer to class 10 buildings. The definition of building classes are taken from the BCA classifications. Prior to the 2011 version of the BCA, class 10 buildings included class 10a buildings and class 10 buildings.

A class 10a building is a non-habitable building being a private garage, carport, shed, or the like. A class 10b structure is a structure such as a fence, mast, antenna, retaining or free-standing wall or swimming pool.

The Victorian Bushfire Royal Commission of 2009 (VBRC) highlighted evidence of market failure for private bushfire shelters, which previously could be classified as a class 10a building. It highlighted that there may be a lack of transparency in the level of quality of shelters and their capacity to save a life. These include:

- confused understanding about standards; and

- contradictory advice on the survival rate within shelters.

With the aim of providing a national standard for private bushfire shelters, the Australian Building Codes Board inserted comprehensive performance requirements for construction of private bushfire shelters into the 2011 edition of the building code.

A class 10c classification for such buildings was also inserted into the 2011 edition of the building code. It relates only to private bushfire shelters, which are only associated with a class 1 residence, and only for occupants of that residence.

Standards for class 10c buildings are sufficiently different to those for less complex buildings such as pergolas and walls or those not intended to provide the same level of life safety to require a separate classification.

The building code provides that a reference to the term 'class 10' includes a reference to the classes within the class 10 classification. Therefore, references in the regulation to 'class 10' will correspondingly refer to class 10a, 10b and 10c. Thus, consequential amendments to the regulation are required where the regulation ought to be referring to class 10a or 10b buildings, rather than to 'class 10' buildings, where it is not intended that the provisions apply to class 10c bushfire shelters.

The amending regulation clarifies that the existing provisions are not intended to apply to private bushfire shelters.

Regulatory impact

Part 5.2 of the Legislation Act outlines when a regulatory impact statement is required for a subordinate law.

Energy efficiency provisions

The regulation introduces provisions that are consequential to an existing reform and regulatory impact statement prepared for cabinet consideration accompanying the Construction Occupations Legislation Amendment Bill 2010 (No 2).

In tabling the legislation the then Minister for Planning stated that:

“...given the reliance on energy ratings to demonstrate compliance with the building code and when selling a property, it is increasingly important that consumers and the building industry have confidence in the rating system.”

He further clarified that the reforms were to provide “stronger regulation for both mandatory disclosure and BCA compliance.”

Regulatory impact analysis and consultation for the reforms included the full scope of regulation. The regulations are consistent with the intent of the building assessment reforms and do not create new policy.

References to class 10 buildings

The regulation also clarifies references to subclasses of class 10 buildings. These are editorial changes consequential to the introduction of a new class of building (10c) into the building code.

A regulation impact statement was prepared by the Australian Building Codes Board about the implementation of new standards for class 10c private bushfire shelters. It takes account of how the Territory was expected to amend their building approval and certification systems to align with the premises standards and new class 10c private bushfire shelter construction requirements. The regulation impact statements was assessed against the Council of Australian Governments Best Practice Regulation requirements by the Office of Best Practice Regulation and cleared for release. The document can be found at

<http://www.abcb.gov.au/~media/Files/Download%20Documents/Archived/Consultation/Private%20Bushfire%20Shelter%20Final%20Decision%20RIS.ashx>.

Subsection 36 (1) (h) provides that a regulation impact statement need not be prepared 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. Additionally, the amendments do not fundamentally affect the law's application or operation (s36 (1) (e)). The ACT adopted provisions for class 10c buildings in 2011.

Outline of Provisions

Clause 1 Name of regulation

Clause 1 names the regulation as the Building (General) Amendment Regulation 2012 (No 2).

Clause 2 Commencement

Clause 2 states the regulation commences on the day after its notification.

Clause 3 Legislation amended

Clause 3 notes that the regulation amends the *Building (General) Amendment Regulation 2008*.

Clause 4 Section 29

Clause 4 deletes the existing reference to class 10 buildings in section 29 of the regulation and substitutes a reference to class 10a buildings.

The existing section provides for circumstances where unaltered parts of a building need not comply with the energy efficiency provisions for external glazing in the building code. Energy efficiency provisions apply to class 10a buildings associated with class 1 dwellings such as houses and townhouses. The provisions do not apply to class 10b or 10c structures.

The new reference clarifies the application of the provisions to class 10a buildings only. This is a minor editorial change consequential to amendments made to the Building Code of Australia.

Clause 5 Section 36 and example

Clause 5 deletes the existing reference to class 10 buildings in section 36 of the regulation and example and substitutes a reference to class 10a or class 10b buildings.

The provisions for determining fundamental non-compliance under subsection 36 (2) apply to class 10a and 10b buildings. The specialised nature of a class 10c building fundamental non-compliance is not determined by these provisions.

Clause 6 New section 44AA

Clause 5 inserts a new section in part 5 of the Regulations which prescribe the provisions that require an energy efficiency certificate to be provided as part of a building approval application.

The energy efficiency provisions are those that allow the use of house energy rating software to calculate the heating and cooling loads of a dwelling. Heating and cooling loads indicate the relative thermal efficiency of the dwelling.

The provisions include compliance methods in the BCA and in the ACT Appendix to the BCA. The ACT Appendix applies energy efficiency performance requirements to alterations and additions to existing class 1 and associated class 10a buildings.

Some compliance pathways permit the use of house energy rating software to show that the performance standard for energy efficiency (heating and cooling loads) is met.

The clause also inserts a new definition for house energy rating software. Certain software packages that meet minimum requirements for accuracy and consistency of assessment are approved for use under energy rating compliance methods. The software is accredited for assessing thermal efficiency and calculating an energy efficiency rating against a series of defined benchmarks. The definition is consistent with that in the BCA but also allows for the ability of the ACT construction occupations registrar to prescribe software that a building assessor licence can be endorsed for and to make codes of practice that may allow alternative software.

New definitions for the ACT Appendix to the building code and relevant energy efficiency provisions are also included to clarify the application of the clause.

Clause 6 Schedule 1, section 1.4 (1), examples

Clause 6 amends sections 24, 33, 34, and schedule 2, part 2.2, item 7. It deletes the existing reference to class 10 buildings the listed sections of the regulation and substitutes a reference to class 10a and 10b buildings.

This is required to clarify that the provisions do not apply to, or include, the new classification of 10c private bushfire shelters.

This is a minor editorial change consequential to amendments made to the Building Code of Australia.