

Australian Capital Territory

# Building (General) Amendment Regulation 2019 (No 1)

Subordinate law SL2019-17

made under the

Building Act 2004, s 152 (Regulation-making power)

## EXPLANATORY STATEMENT

---

This explanatory statement relates to the *Building (General) Amendment Regulation 2019 (No 1)* (the regulation). It has been prepared to assist the reader of the regulation and has not been endorsed by the Assembly.

The Statement is to be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. This statement provides information about the intent of the provisions in the regulation; however, it is not to be taken as providing a definitive interpretation of the meaning of a provision.

### Overview

The *Building (General) Amendment Regulation 2019 (No 1)* amends the *Building (General) Regulation 2008*.

In June 2016, the ACT Government announced the *Improving the ACT Building Regulatory System* reforms. <https://www.planning.act.gov.au/build-buy-reno/renovate/reviews-and-reforms/building-reforms> (link current at time of publication).

The first reforms were implemented in the [\*Building and Construction Legislation Amendment Act 2016\*](#). That Act introduced new Division 6.2A Standard conditions, which includes powers to make regulation in relation to residential building work contracts, including to prescribe prohibited conditions.

### Regulation to delineate agency agreements from a building contract

Reform 21 is to enact a regulation to delineate agency agreements from a building contract for certain residential building contracts. This refers to an agreement to act as an agent in relation to appointing, or otherwise dealing with, a building certifier for building work carried out on a land owner's property.

Although land owners are responsible for appointing a building certifier, they can authorise another person as an agent to make the appointment on their behalf.

Contracts may include clauses giving the builder the authority to choose and appoint the certifier, or to apply for approvals, including building approvals, amongst other things. Contracts do not generally alert land owners that appointing the certifier is their legal requirement and that the builder is effectively acting as an agent of the owner. An owner may be unaware of their rights to choose the building certifier and that it is not part of the builder's role, or they do not have to accept the builder's choice or allow the builder to act as their agent.

For work on residential buildings, including on class 1 buildings (houses and townhouses etc.), or on existing apartments (sole occupancy units in a class 2 building), the land owner may rarely engage with the building process and may be unaware of the role of the building certifier, or their own rights and obligations relating to building work.

To help people to understand that appointing a builder to undertake building work and appointing a building certifier are separate matters, the regulation prohibits conditions in certain contracts for residential building work (see clause 4, new section 38B).

This does not preclude the land owner appointing the builder or another party as their agent in respect of the building certifier, but any agreement would need to be entered into separately. This amendment will be supported by new and existing education materials that provide information about the building approval process.

The prohibition does not apply to the construction of new class 2 residential buildings (apartment buildings), as it is expected that a developer of these buildings will negotiate their own contract with a builder, and will generally negotiate building certification services separately.

The prohibition also does not prevent conditions for arranging other approvals, such as a development approval, that may be required for the work.

#### Standard information for a building contract

Reform 22 includes developing standard information for a building contract including explanations on common variation clauses and their meanings. New section 38A gives the Minister the power to determine a document that must be attached to residential building work contract. This could include a document containing information relevant to parties entering into a contract on their rights and obligations.

#### **Regulatory Impact Statement (RIS)**

A regulatory impact statement is not required for this regulation as it does not impose any appreciable costs on the community, or part of a community. It provides for the Minister to make an instrument and prohibited clauses in a residential building contract in relation to appointing a building certifier.

## **Offences and Penalties**

The regulation does not introduce any new offences or penalties.

## **Human Rights**

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. There are no human rights impacts related to this regulation. The regulation does not prohibit a land owner from lawfully entering into an agency agreement separate to a residential building contract.

## **Scrutiny Committee Principles**

The regulation is consistent with Scrutiny Committee (the Committee) principles.

- Although the Building Act does not include objects, the regulation accords with the general purpose of the Act by matching the intention of the law, which gives land owners the responsibility of appointing the building certifier, and to promote fair contracting practices.
- The regulation does not unduly trespass on rights previously established by law. A builder who is not the owner of land where building work is proposed to be carried out does not have a lawful right to appoint a certifier, or apply for a building approval without the land owner's authority. The regulation improves protections available to parties to a building contract.
- The regulation does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions, as it concerns prohibited conditions and information that must be provided with the contract rather than decision-making powers.
- The regulation does not contain matters which should properly be dealt with in an Act of the Legislative Assembly. The Act includes powers to provide for prohibited conditions and information that must be provided with the contract for certain contracts involving residential building work in a regulation.

## **Outline of provisions**

### **Part 1 Preliminary**

#### **Clause 1 Name of Regulation**

This clause provides that the name of the regulation is the *Building (General) Amendment Regulation 2019 (No 1)*.

#### **Clause 2 Commencement**

This clause provides that the regulation commences on 1 October 2019.

#### **Clause 3 Legislation amended**

This clause provides that the regulation amends the *Building (General) Regulation 2008*.

#### **Clause 4 New sections 38A and 38B**

This clause inserts new sections 38A and 38B.

Section 38A provides for the Minister to determine a required document for a residential building work contract.

Section 38B prohibits a condition in certain residential building contracts that allows a person, other than the owner of the land where the work is to be carried out under the contract, to appoint or revoke the appointment of an eligible entity as a building certifier for the work, or act as the agent of the owner in dealing with a building certifier appointed for the work.

This section applies to a residential building work contract for—

- (a) a new class 1 building; or
- (b) an alteration to, or demolition of, an existing class 1 or class 2 building; or
- (c) a class 10 building that provides structural support, or is a structurally integral adjunct, to a new class 1 building or an existing class 1 or class 2 building.

A class 10 building is a non-habitable building such as a garage, shed, antenna, or wall. The scope of residential building work in the Act includes those class 10 buildings that provide a structural support to the residence. The intent is to provide specific protections in relation to people's residences within the scope of work already covered by existing protections such as statutory warranties, rather than ancillary structures.

Work on an existing class 2 building includes work on class 2 common areas of the building under the management of the owners' corporation.

**Clause 5      Dictionary, note 3**

This clause also inserts a new note in the dictionary to include residential building work contract as a term defined in the dictionary to the Building Act.

This clause also inserts a new note in the dictionary to include owner-builders as a term defined in the dictionary to the Building Act. This is a minor editorial amendment. The term is not used in the new provisions.