

Australian Capital Territory

Building (General) Emergency Hospital Exemption 2020 (No 1)

Disallowable instrument DI2020–56

made under the

Building (General) Regulation 2008, section 7 (Minister may exempt buildings – Act, s 152 (2))

EXPLANATORY STATEMENT

The Australian Capital Territory is undergoing an unprecedented public health emergency in response to the public health risk to the ACT community posed by coronavirus disease 2019 (COVID-19), caused by the novel coronavirus SARS-CoV-2.

As part of the ACT Government's response to the emergency, a temporary emergency hospital department is being constructed on Block 9, Section 33, Garran. The short timeframe in which to complete the building does in support of the public health emergency not allow for complete compliance with the *Building Act 2004* (the Building Act).

The Building Act states, amongst other things, that building work must not be carried out unless a building approval (BA) and commencement notice have been issued by a building certifier (Division 3.3 of the Building Act).

A BA cannot be issued unless the application meets the requirements of the *Building (General) Regulation 2008* (the Building Regulation). This includes, but is not limited to, compliance with the National Construction Code, Building Code of Australia, the prescribed minimum documentation guidelines, and payment of the associated building fees.

Section 7 of the Building Regulation states the Minister may exempt a building from the application of the Act, conditionally or otherwise, for a stated period of not longer than one year.

This instrument exempts the building work from compliance with specific parts of the Building Act for a stated period of not longer than one year. The building work remains subject to all other building laws.

Regulatory Impact Statement

Section 34 of the *Legislation Act 2001* (Legislation Act) provides that if a proposed subordinate law or disallowable instrument (the proposed law) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the administering Minister) must arrange for a Regulatory Impact Statement (RIS) to be prepared for the proposed law. However, Section 36 (2) of the Legislation Act states that a RIS is not required if, or to the extent that, it would be against the public interest because of the nature of the proposed law or the circumstances in which it is made. It is noted that the example provided for this section states: A law may need to be made urgently for controlling the spread of a disease or dealing with another urgent situation. This instrument is only required as a direct result of the COVID-19 declared public health emergency and is an urgent situation noting that the additional hospital capacity has been directed by Government. For these reasons, a RIS is deemed to be not required.

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 negative human rights impacts related to this instrument. It provides for an exemption from compliance with certain provisions of the Building Act to enable the urgent construction of an emergency hospital as part of a public health emergency response to treat persons who may be infected by COVID-19.

Provisions of the instrument

Section 1 names the instrument as the *Building (General) Emergency Hospital Exemption 2020 (No 1)*.

Section 2 provides that the instrument commences on the day after it is notified.

Section 3 details the specific sections of the Building Act from which the building work is exempt.

It provides that the building work is exempt from compliance with section 139BA of the Building Act - *Building (Minimum Documentation and Information for Building Approval Applications – Class 2-9 Buildings) Guideline 2019* (DI2019-178). This guideline has been notified under the Building Act section 139BA – Approval of guidelines.

Noting the short period of time in which the building work needs to be completed, it is reasonable to exempt the building certifier from having to comply with this requirement on the basis that, on balance, there is a sufficient level of documentation that will receive building approval; and that those documents will demonstrate compliance with the National Construction Code and the Building Code of Australia (excluding section J of the Code).

It also provides that the building work is exempt from compliance section 42 and section 29 (1)(b) of the Building Act which requires compliance with the National Construction Code – Building Code of Australia (BCA) Volume 1 Section J. Section 29 (1)(b) outlines that the building approval must comply with, amongst other things, the BCA. Section 42 outlines that the building must be constructed in accordance with, amongst other things, the BCA. Section J of the BCA are the components of the code that relate to building energy efficiency compliance. From a functional perspective, Section J aims to reduce greenhouse gas emissions by ensuring that the building and its services are capable of efficiently using energy, and that any services used for heating a building obtain their energy from a low greenhouse gas intensity source, an onsite renewable energy source or another process of reclaimed energy. The ACT has also determined an ACT Appendix to the Building Code in relation to Section J, *Building (ACT Appendix to the Building Code) Determination 2019 (No 3)*. The drafting of the exemption also excludes compliance with the ACT Appendix noting that the definition of the building code under section 136 of the Building Act also includes any determined appendices.

With respect to exempting the building from compliance with section J, the building to be approved and constructed is of a temporary nature, and in this context it is not unreasonable to exempt this requirement when balanced across the urgent need to complete the construction of the building. In addition, the core health and safety elements under the building code including, but not limited to, structural, fire safety and access and egress will still be addressed as part of the building approval.

Section 4 exempts the building work from compliance with the *Building (General) Regulation 2008* section 11 (1) (a) – general requirements for an application for building approvals – Act, s 26 (3). This section states that the application must contain an estimate of the cost of the proposed building work worked out in accordance with a method determined by the construction occupations registrar.

The calculation methods are based on the class of building and the gross floor area of the building. Noting that the proposal is for the building to not have to comply with the full requirements of the BCA, it would be difficult, and an unnecessary redirection of resources given the circumstances, to establish a calculation methodology for this project.

The cost of work determination is used to calculate the relevant fees payable to the government. This includes the building levy as determined under the Building Act and the training levy as determined under the *Building and Construction Industry Training Levy Act 1999*. Exemption from this requirement effectively results in removing the requirement for fees to be paid for the proposal. In the circumstances, there is no net benefit in charging the fee. Notwithstanding the exemption of the cost of works, Major Projects Canberra will engage with the ACT Training Fund Authority in relation to contributing to the fund.

Section 5 states that there are no conditions of exemption.

The primary issues that relate to the safety of building occupants, primarily compliance with the BCA with respect to structural integrity, fire safety, access, egress and amenity, will still be achieved through a building approval.

Section 6 states that this legislative instrument exempts the Emergency Hospital for a period of one year from the date of notification.

This is in accordance with section 7 of the Building Regulation under which this instrument is made. This section states that an exemption may be made for a stated period of not longer than one year.