

Australian Capital Territory

Building and Construction Legislation Amendment Regulation 2023 (No 1)

Subordinate law SL2023-7

made under the

Building Act 2004, Construction Occupations (Licensing) Act 2004, Unit Titles Act 2001 and Water and Sewerage Act 2000.

EXPLANATORY STATEMENT

This explanatory statement relates to the *Building and Construction Legislation Amendment Regulation 2023 (No 1)* (the **regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation and to help inform debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The regulation amends the *Building (General) Regulation 2008*, the *Construction Occupations (Licensing) Regulation 2004*, the *Unit Titles Regulation 2001* and the *Water and Sewerage Regulation 2001* (the **amended regulations**). It seeks to clarify the desired policy intent and outcome of the provisions, remove inconsistencies and reduce duplication. This is in part achieved by updating references to specific sections or parts of the Building Code of Australia (the **BCA**). Most of these amendments are minor and technical amendments to update references to old provisions of the National Construction Code (the **NCC**).

The primary purpose of the regulation is to amend the amended regulations due to a new version of the NCC coming into effect. This amendment will also address several minor and technical amendments identified by the Building Reform team or sought by Access Canberra, as the building and construction industry regulator.

Further, the *Building (General) Regulation 2008* is being amended so that sections dealing with unaltered parts of substantially altered buildings that need not comply with the building code if alternative requirements are met, will be determined by the Minister by disallowable instrument. This means these exemptions will no longer be

part of the regulation itself. Combining these exemptions into a single disallowable instrument and placing them alongside the ACT Appendices will increase their visibility and reduce complexity, thereby supporting improved compliance. This streamlining process will also facilitate an easier process to make amendments in the future.

National Construction Code

The NCC consists of the BCA (Volumes 1 and 2) and the Plumbing Code of Australia (the *PCA*) (Volume 3).

The BCA is given legal effect in the ACT and Jervis Bay Territory through the *Building Act 2004*, *Building (General) Regulation 2008* and an Australian Capital Territory Appendix to the Building Code of Australia.

The PCA is given legal effect in the ACT and Jervis Bay Territory through the *Water and Sewerage Act 2000*, *Water and Sewerage Regulation 2001* and an Australian Capital Territory Appendix to the Plumbing Code of Australia.

The NCC undertakes a 3-yearly process of review and update, with the most recent update being published on 1 October 2022. Some provisions in the 2022 edition of the NCC (*NCC 2022*) will come into effect in the ACT on 1 May 2023.

The regulation amends references to specific sections of parts of the BCA and the PCA as part of the implementation of NCC 2022. The regulation also makes minor and technical amendments to other related building and construction legislation.

The regulation will commence on 1 May 2023 to align with the commencement of NCC 2022.

Regulatory Impact Statement

A regulatory impact statement is not required as the regulation does not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

Offences and Penalties

The regulation does not introduce any new offences or penalties.

Consistency with Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters. There are no human rights impacts related to this regulation. The regulation does not engage with human rights under the *Human Rights Act 2004*.

Scrutiny Committee Principles

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

- Although the *Building Act 2004* does not include objects, the regulation accords with the general purpose of the Act by matching the intention of the law regarding advancing safety in building and construction in the Territory.
- The regulation does not unduly trespass on rights previously established by law. The regulation simplifies and clarifies existing requirements.
- The regulation does not contain matters which should properly be dealt with in an Act of the Legislative Assembly.

Outline of provisions

Part 1 Preliminary

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Building and Construction Legislation Amendment Regulation 2023 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation (other than section 7) commences on 1 May 2023.

Section 7 commences on 1 October 2023.

Clause 3 Legislation amended

This clause provides that the regulation amends the following legislation:

- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Regulation 2004*
- *Water and Sewerage Regulation 2001*
- *Unit Titles Regulation 2001*

Part 2 Building (General) Regulation 2008

Clause 4 Sections 24 to 29

This clause substitutes existing sections 24 to 29 of the *Building (General) Regulation 2008* with an amended section 24 that provides that unaltered parts of substantially altered class 1, class 10a or class 10b buildings need not comply with the building code if alternative requirements are met.

This provides that the Minister may determine those unaltered parts that need not comply with the BCA by disallowable instrument.,

Clause 5 Section 33A

This clause amends section 33A. It applies to a certifier who is undertaking stage inspections of building work.

Section 33A is amended to clarify that the way in which a certifier is to provide prescribed information is through provision of a copy of the original inspection record within 2 working days. It is also amended to clarify that the intention of the provision is that records must be provided that indicate whether a certifier is satisfied or not satisfied on reasonable grounds that the building work complies with the *Building Act 2004* (section 44).

Clause 6 Section 43A

This clause amends section 43A to clarify the documents forming part of the building code for the *Building Act 2004* include each volume of the NCC series that includes a notation that it forms part of the BCA and the Housing Provision Standard.

Clause 7 Section 44AA

This clause amends section 44AA to reference NCC 2022 and introduces references to the new energy use requirements under NCC 2022.

Part 3 Construction Occupations (Licensing) Regulation 2004

Clause 8 Schedule 2, part 2.1, items 2.1.1 to 2.1.15

This clause amends schedule 2, part 2.1 of the *Construction Occupations (Licensing) Regulation 2004* to update references to align with NCC 2022.

Clause 9 Schedule 2, part 2.1, item 2.1.29, column 2

This clause amends schedule 2, part 2.1 to update references to align with NCC 2022.

Clause 10 Schedule 2, part 2.3, items 2.3.1 to 2.3.9

This clause amends schedule 2, part 2.3 to update references to align with NCC 2022.

Clause 11 Schedule 2, part 2.4

This clause amends schedule 2, part 2.4 relating to demerit grounds for occupational discipline due to changes in the Australian/New Zealand Standard AS/NZS3000.

Clause 12 Schedule 2, part 2.46, item 2.6.1 to 2.6.9

This clause amends schedule 2, part 2.3 to update references to align with NCC 2022.

Clause 13 Dictionary, note 2

This clause inserts a signpost definition of the term *building code* as a term defined in the *Legislation Act 2001*.

Clause 14 Dictionary, definitions of AS 3000 and AS 3017

This clause omits the definitions of the terms *AS 3000* and *AS 3017* from the dictionary.

Clause 15 Dictionary, new definition of *plumbing code*

This clause inserts a new signpost definition of the term *plumbing code*, referring the reader to the *Water and Sewerage Act 2000*, section 44C.

Part 4 Water and Sewerage Regulation 2001

Clause 16 Part 4 heading

This clause amends the heading
part 4 of the *Water and Sewerage Regulation 2001*, previously titled *Miscellaneous*
to instead be titled *Certificates of compliance*.

Clause 17 New part 5 heading

This clause creates a new part 5 by inserting a new heading titled *Notification and review of decisions* after section 25.

Clause 18 New part 6

This clause inserts a new section 28, similar to section 43 in the *Building (General) Regulation 2008*, to reflect that the BCA is now known as the NCC, which includes the PCA.

Schedule 1 Unit Titles Regulation 2001—Technical amendment

Clause [1.1] Dictionary, definition of *building code*

This clause omits a definition that is not used in the regulation.