

Australian Capital Territory

Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 2)

Disallowable instrument DI2023—237

made under the

Building (General) Regulation 2008, s 24 (Unaltered parts need not comply with building code if alternative requirements met—Act, s 29 (2) (b))

EXPLANATORY STATEMENT

Overview

This instrument is made under section 24 (2) of the *Building (General) Regulation 2008* (the *regulation*).

This instrument contains provisions relating to alternative requirements to the Building Code of Australia (the *BCA*) that apply to unaltered parts of substantially altered class 1, 10a or 10b buildings.

A substantial alteration is defined in the regulation.

This instrument should be read in conjunction with the *Building (ACT Appendix to the Building Code) Determination* (as amended from time to time). The ACT Appendix gives exemptions and alternative arrangements for alterations of existing buildings when applying the National Construction Code (the *NCC*).

The instrument only applies to the ACT and Jervis Bay Territory.

Adoption date of NCC 2022 provisions

The NCC 2022 has transition arrangements that were agreed by Building Ministers in August 2022. The main provisions of the BCA came into effect on 1 May 2023. Additional provisions addressing energy efficiency, condensation management and liveable housing will be adopted in the ACT from 15 January 2024. Until then, the minimum energy efficiency and condensation provisions in NCC 2019 continue to apply. There are no liveable housing provisions in NCC 2019.

Regulatory Impact Statement (RIS)

Section 34 of the 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 must arrange for a regulatory impact statement to be prepared for the proposed law.

A RIS is not required for this instrument as the provisions are not likely to impose appreciable costs on the community or a part of the community.

In addition, a RIS is not required where the matter contained in the subordinate law or disallowable instrument involves 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.

The ABCB has undertaken and published on its website (www.abcb.gov.au) comprehensive regulatory impact analysis, including regulatory impact statements, for the increased regulatory structure provided by 2022 BCA.

This instrument only applies to existing buildings and lower the cost burden because they allow for certain things not to be complied with, or give alternative, easier requirements as options. As such nothing in this instrument increases costs above what the ABCB regulatory impact statements for the 2022 BCA.

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 instrument.

Clause Notes

Clause 1 names the instrument the *Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 2)*.

Clause 2 provides that this instrument commences on 15 January 2024.

Clause 3 determines the schedule of the instrument is the alternative requirements for an unaltered part.

Clause 4 provides for when schedule 1 of this instrument applies.

Clause 5 displaces the requirement in the *Legislation Act 2001*, section 47 (5). Section 47 (5) provides that the text of an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore must be published on the Legislation Register. Copyright to the BCA is collectively owned by the Australian Government and the states and territories.

The arrangement between jurisdictions is that the BCA will be published on behalf of the jurisdictions in a single place by the ABCB. It would not be appropriate to publicly notify

the code on an ACT Government website. The notes to section 5 of the instrument describe alternative access to the BCA as it is not being notified on the Legislation Register.

Clause 6 revokes the *Building (ACT Appendix to the Building Code) Determination 2023 (No 1)* that is replaced by this instrument.

Schedule 1 supports the adoption of new NCC 2022 provisions that commence in the ACT on 15 January 2024, as well as maintain the main NCC 2022 provisions that commenced on 1 May 2023.

One previous ACT specific alternative option for energy efficiency upgrades to the unaltered part of existing buildings has been removed. Previously, the addition of solar control films to existing windows was permitted as a means to complying with the glazing energy efficiency requirements. Given the new, more stringent glazing requirements of NCC 2022, these provisions have been removed, as the solar control film will not be able to achieve the required insulative properties.