

Australian Capital Territory

Building (General) Amendment Regulation 2023 (No 1)

Subordinate law SL2023-42

made under the

Building Act 2004

EXPLANATORY STATEMENT

This explanatory statement relates to the *Building (General) 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 **amended regulation**). Its primary purpose is to amend references to a new version of the National Construction Code (the **NCC**) that comes into effect in the ACT and Jervis Bay Territory on 15 January 2024. It also clarifies which energy efficiency provisions must be completed by a building assessor, as defined under the *Construction Occupations (Licensing) Act 2004*, and prescribes the forms of documentary evidence required for demonstrating compliance with the provisions. This includes, for the first time, the new Building Code of Australia (**the BCA**) requirements around net equivalent energy usage, often referred to as a “whole of home” rating (or score).

The energy efficiency provisions prescribed in the regulation are limited to those that apply to Class 1 (houses and townhouses) and the sole occupancy units in Class 2 and 4 buildings (apartments). The 2022 edition of the NCC (**NCC 2022**) also has additional energy efficiency requirements for commercial buildings and the common areas of apartment buildings. These still need to be complied with as stipulated in the BCA, and if applicable, the ACT Appendix to the BCA.

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 BCA.

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 PCA.

The NCC undertakes a 3-yearly process of review and update, with the most recent update being published on 1 October 2022. The main provisions in NCC 2022 came into effect in the ACT on 1 May 2023. The second tranche of provisions, covering energy efficiency, condensation management and livability (accessibility) come into effect on 15 January 2024.

The regulation amends references to specific sections of parts of the BCA as part of the implementation of NCC 2022. The regulation also clarifies the role of building assessors in the application of certain energy efficiency requirements of the BCA, and the prescribed documentary evidence for compliance.

The regulation will commence on 15 January 2024 to align with the commencement of the second tranche 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 clarifies existing requirements, linking them to the new NCC.

The regulation does not contain matters which should properly be dealt with in

an Act of the Legislative Assembly.

The NCC Whole-of-home calculator is an Excel based calculation tool that was created by the Australian Building Codes Board (ABCB) to assist with the compliance of the new, net equivalent energy usage requirements. It is hosted on the ABCB website and is available for free download. See <https://www.abcb.gov.au/practitioners/information-industry-practitioners/calculators>. An interactive Excel spreadsheet cannot be notified on the ACT Legislation Register, as only word documents and pdf documents can be notified.

Outline of provisions

Clause 1 Name of regulation

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

Clause 2 Commencement

This clause provides that the regulation commences with the *Building and Construction Legislation Amendment Act 2023*, section 18.

Clause 3 Legislation amended

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

Clause 4 Section 44AA

This clause amends section 44AA to:

- define the term, *energy efficiency provision* for the purposes of the *Building Act 2004*. It prescribes the clauses of the BCA and the ACT Appendix to the BCA that form the relevant energy efficiency provisions;
- add section 44AB which prescribes the energy efficiency provisions that must be undertaken by a building assessor under the *Construction Occupations (Licensing) Act 2004*, section 126A, noting that a Nationwide House Energy Rating Scheme certificate must be produced; and
- add section 44AC which prescribes the type of energy efficiency certificate that must be produced if using the whole-of-home calculator to demonstrate compliance to relevant energy efficiency provisions.