

Australian Capital Territory

Building (General) (Alternative requirements for unaltered parts) Determination 2024

Disallowable instrument DI2024–83

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.

This instrument makes minor edits to the section on Swimming Pool Safety in the Schedule 1 of the *Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 2)* (DI2023-237) as a consequence of the *Building (Swimming Pool Safety) Amendment Act 2023* commencing on 1 May 2024.

Other than some changes in formatting such as replacing the section entitled “Ancillary provisions and additional construction requirements” with separate sections on bushfire prone areas and swimming pool safety and associated renumbering of subsequent sections, the remainder of the schedule, is the same as Schedule 1 to the *Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 2)* (DI2023-237), which is repealed by this instrument.

Home Swimming Pool Safety Reforms

The *Building (Swimming Pool Safety) Legislation Amendment Act 2023* (the **Act**) establishes new rules for regulated swimming pools in the ACT. The Act commences on 1 May 2024, with a four-year transition period, before compliance with the prescribed safety standards becomes mandatory on 1 May 2028.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* (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 new provisions in Schedule 1 are not likely to impose appreciable costs on the community or a part of the community. The new provisions are not a change to the requirements for unaltered parts, it is a change to how those requirements are referenced because of the commencement of the Act. As such, nothing in this instrument increases costs above what the BCA requires and what the now repealed instrument required.

The Explanatory Statement to the now repealed *Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 2)* (DI2023-237), outlined that a RIS was not required as the instrument involved 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 undertook and published on its website (www.abcb.gov.au) comprehensive regulatory impact analysis, including regulatory impact statements, for the increased regulatory structure provided by 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 2024*.

Clause 2 provides that this instrument commences on 1 May 2024.

Clause 3 provides for when schedule 1 of this instrument applies.

Clause 4 determines the schedule of the instrument is the alternative requirements for an unaltered part.

Clause 5 displaces the requirement in the Legislation Act, 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.

The BCA incorporates a number of Australian Standards, Australian/New Zealand Standards and International Standards. The standards are technical standards used by the building and construction sector to meet regulatory requirements across jurisdictions. The sector is generally expected to have knowledge of the standards relevant to undertaking their professional services. It is noted that there are often two or more versions of the Building Code applicable to building work at any one time and as such there are a significant number of Australian Standards and versions of Australian Standards that industry and regulators require access to.

The notes to section 5 of the instrument describe that the standards referenced in the BCA are available for purchase from www.standards.org.au. There are challenges relating to the ability to provide public access to Australian Standards due to copyright issues. In addition, Standards Australia has recently released an initiative (Reader Room) that provides limited, no-fee access to the entire catalogue of Australian Standards for non-commercial purposes, that is for personal, domestic or household use. This initiative provides access for free to a maximum of three standards every 12 months, with access for 24 hours at a time. The Reader Room is available at <https://readerroom.standards.org.au/>.

Clause 6 revokes the *Building (General) (Alternative requirements for unaltered parts) Determination 2023 (No 2) (DI2023-237)* that is replaced by this instrument.