

Building and Construction Legislation Amendment Regulation 2025 (No 1)

Subordinate law SL2025-11

made under the

**Building Act 2004, the Construction Occupations (Licensing) Act 2004, and the
Gas Safety Act 2000**

EXPLANATORY STATEMENT

This explanatory statement relates to the *Building and Construction Legislation Amendment Regulation 2025 (No 1)* (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*, *Construction Occupations (Licensing) Regulation 2004*, and *Gas Safety Regulation 2001* (amended regulations).

The regulation seeks to maintain a current, clear, and effective regulatory environment that supports safety, compliance, and administrative efficiency within the building, construction, and gas sectors in the ACT. This is in part achieved by updating references to specific sections or parts of the Building Code of Australia (BCA). Most of these amendments are minor and technical amendments to update references to outdated provisions of the National Construction Code (NCC).

The primary purpose of this regulation is to revoke uncommenced provisions of the *Building (General) Amendment Regulation 2024 (No 2)*, which was notified on 9 September 2024, and scheduled to commence on 1 July 2025. As the strengthening certification initiative is no longer proceeding, it is appropriate to revoke these provisions prior to their commencement to prevent any confusion within the building and construction industry.

This regulation will also address several minor and technical amendments identified by the Environment, Planning and Sustainable Development Directorate (Directorate) or sought by Access Canberra, as the building and construction industry regulator.

To support implementation of the new property developers licensing and regulation scheme, a new section (37A) to refer to people excluded under the *Property Developers Act 2024* will be inserted in the Building (General) Regulation 2008.

This regulation does not make any policy change and simply provides a reference back to the policy position established in section 46(2) of the Property Developers Act. It makes sure that the definition of *property developer* in the *Building Act 2004* has the same meaning as the definition in the Property Developers Act.

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 Legal Affairs (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*.

Consultation

The Directorate has engaged with key regulatory and industry groups to discuss the new policy direction. These stakeholders generally support the shift in focus and have expressed their commitment to ongoing collaboration throughout all phases of the government commitment. The Directorate will continue to work closely with these organisations and relevant teams to ensure effective stakeholder engagement and project success.

Scrutiny committee principles

The regulation is consistent with Scrutiny Committee principles.

CLAUSE NOTES

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 2025 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation (other than sections 4 to 6) commences on the day after its notification day.

Sections 4 and 6 commence on the commencement of the *Building (General) Amendment Regulation 2024 (No 2)*, section 4 and section 5 commence on the commencement of the *Property Developers Act 2024*, schedule 2, amendment 2.26.

Clause 3 Legislation amended

This clause provides that the regulation amends the following legislation:

- *Building (General) Regulation 2008*;
- *Construction Occupations (Licensing) Regulation 2004*; and
- *Gas Safety Regulation 2001*.

Part 2 Building (General) Regulation 2008

Clause 4 Sections 33AA and 35AA

This clause omits section 33AA and 35 AA, thereby repealing uncommenced provisions established under the previous Strengthening Certification Project. As the Strengthening Certification Project is no longer proceeding, it is appropriate to revoke these provisions prior to their commencement to prevent any confusion within the industry.

Clause 5 Section 37A

This clause substitutes an uncommenced amendment introduced by a consequential provision of the *Property Developers Act 2024* in schedule 2 part 2.2 of the *Building (General) Regulation 2008*. Specifically, it updates the definition of "property developer" to exclude certain people as defined in section 46(2) of the *Property Developers Act 2024*.

Making this minor amendment to the *Building (General) Regulation 2008*, will ensure consistency with the upcoming *Property Developers Regulation*, which is currently being drafted. The alignment clarifies which individuals and entities are subject to specific regulatory actions, such as rectification orders and stop work notices, under the scheme.

Clause 6 Dictionary, note 2

This clause omits ‘public servant’ from the dictionary. Thereby repealing uncommenced provisions established under the previous Strengthening Certification Project.

Part 3 Construction Occupations (Licensing) Regulation 2004

Clause 7 Section 13(5) to (7)

This clause omits the disapplication of the *Legislation Act 2001*, section 47(5) and (6), and is a consequential amendment resulting from the introduction of a new section at clause 8.

Clause 8 New section 45A

This clause introduces new section 45A to part 7 of the *Construction Occupations (Licensing) Regulation 2004* which provides that a statutory instrument made under that regulation, may incorporate, apply or adopt (with or without change or modification) a law, an Australian Standard or an Australian/New Zealand Standard as in force from time to time or another instrument as in force from time to time.

This clause disapplies subsections 47(5) and (6) of the *Legislation Act 2001* (Legislation Act). Section 47(5) of the Legislation Act states that if a law of another jurisdiction or an instrument is applied as in force at a particular time, the text of the law or the instrument is considered a notifiable instrument and must be published on the Legislation Register. Section 47(6) provides that if a law of another jurisdiction or an instrument may apply as in force from time to time, the text of the law of another jurisdiction or an instrument as in force from time to time is taken to be a notifiable instrument. Section 47(7) of the Legislation Act provides that a subordinate law (in this case the Construction Occupations (Licensing) Regulation may provide that subsection 47(5) or (6) either do not apply to the relevant instrument or applies with modification stated in the authorising law or relevant instrument. This disapplication will allow a consistent approach to the application, adoption or incorporation of documents whether copyrighted or not otherwise publicly available.

The clause requires the Director-General, in circumstances where a regulation incorporates, applies or adopts an instrument (excluding a law or an Australian Standard or Australian/New Zealand Standard), to make the incorporated, applied or adopted through one of the following means:

- available for inspection by anyone without charge during ordinary business hours at an ACT Government office; or
- accessible on an ACT Government website or by a link on an ACT Government website.

An instrument applied, adopted or incorporated under subsection (1)(b) is not enforceable by or against the Territory or anyone else unless it is made available in accordance with subsection (3).

This provision aligns with similar provisions across the ACT's building and construction regulatory system.

Australian Standard or Australian/New Zealand 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 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.

Australian Standards or Australian/New Zealand Standards are subject to copyright, so cannot be published by way of a notifiable instrument. Australian Standards may be purchased at www.standards.org.au.

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/>.

The ACT continues to work with the Australian Building Codes Board to support improved access to Australian Standards referenced in their documentation, system or schemes.

Part 4 Gas Safety Regulation 2001

Clause 9 Section 17, heading

This clause substitutes the section heading to incorporate medical gas systems.

Clause 10 Section 17(1)

This clause is a minor and technical amendment to section 17(1) of the *Gas Safety Regulation 2001*, to incorporate a medical gas system into the existing provisions related to consumer piping systems. This inclusion is consequential to the changes made to the *Gas Safety Act 2000*, as part of the *Building and Construction Legislation Amendment Act 2023*.

By inserting medical gas systems, the regulation clarifies that safety assessments and regulatory requirements now also apply to medical gas systems, ensuring consistent standard and oversight across both consumer piping and medical gas systems.

Clause 11 Section 17(2)

This clause substitutes section 17(2) of the *Gas Safety Regulation 2001*, requiring certain individuals to organise testing to assess the safety of a system. This amendment will give the Construction Occupations Registrar the power to direct the relevant responsible parties to ensure safety testing is conducted on these systems.