

Australian Capital Territory

Building (ACT Appendix to the Building Code) Determination 2026 (No 2)

Disallowable instrument DI2026-56

made under the

Building Act 2004, s 136 (Building code)

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Building (ACT Appendix to the Building Code) Determination 2026 (No 2)* (the *instrument*) as made by the Minister and presented to the Legislative Assembly (the *Assembly*). It has been prepared in order to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly.

Overview

This instrument is made under section 136 of the *Building Act 2004* (the *Act*).

The Building Code of Australia (the *BCA*) is developed and published by the Australian Building Codes Board (the *ABCB*). The ACT is represented on the ABCB along with representatives from all States, the Northern Territory, the Australian Government and the building industry.

The Act, section 136, adopts the BCA including any ACT-specific requirements as published in the appendices of volumes one and two of the BCA as part of the building code for the purposes of the Act.

Section 136 (3) of the Act entitles the Minister to make an ACT appendix to the BCA to provide a mechanism for the ACT to amend the BCA from time to time, including to amend the date and edition of the BCA, or a provision of the BCA.

The BCA is divided into two volumes. Volume 1 deals with all class 2 to class 9 buildings, access requirements for people with a disability in class 1b and 10a buildings and certain class 10b structures including access requirements for people with a disability in class 10b swimming pools. Class 2 to class 9 buildings as classified under the BCA include apartments, commercial residential buildings such as motels, and non-residential buildings.

Volume 2 of the BCA deals with class 1 and 10a buildings (other than access requirements for people with a disability in class 1b and 10a buildings), certain class 10b structures (other than access requirements for people with a disability in class 10b swimming pools) and class 10c private bushfire shelters. Class 1 and class 10 buildings as classified under the BCA include standard houses and non-habitable buildings such as garages, sheds, swimming pools and structures. A third volume, the Plumbing Code of Australia, together with BCA volumes 1 and 2, comprise the National Construction Code (the *NCC*).

Related to Volume 2 are the ABCB Housing Provisions. The ABCB Housing Provisions contain Deemed-to-Satisfy Provisions that are considered acceptable forms of construction that meet the requirements for complying with Volume 2.

The BCA and the ACT appendix form part of ACT law. The published ACT appendices in Volumes 1 and 2 of the 2025 BCA (published on the ABCB website) do not include specific provisions, but instead refer readers to the ACT Legislation Register (the *Legislation Register*), where all instruments made under the Act can be found, including the ACT appendix to the BCA. This is so that there is a single source for the ACT appendix to the BCA, and a single version published as current at any one time, which can be amended as required.

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

This version of the instrument makes minor edits to the *Building (ACT Appendix to the Building Code) Determination 2026 (DI2026–42)* to:

- update references to Standards from the 2022 version of the BCA to the 2025 version where these have been changed; and
- provide existing buildings with an exemption to meet the updated Water Management provisions of Part F of Volume 1 of the BCA.

As a result, DI2026–42 will only be in effect for a short period. This instrument was implemented to enable rapid implementation of several important construction productivity reforms, including measures relating to energy efficiency. These reforms are preserved in the current instrument.

Adoption date of the 2025 Building Code of Australia

Each volume of the BCA includes an assumed adoption date for each State, Territory and the Australian Government, and for the ACT this is 1 May 2026. From this date people will be able to refer to BCA 2025 provisions when making an application for Building Approval.

Some States and Territories include automatic transitional provisions in their enabling laws, under which the provisions of the BCA do not come into effect until a specified period after the adoption date published in the BCA. The ACT does not have automatic transitional provisions. Instead, a decision on transitional provisions or later adoption is made based on the nature and effect of the changes in a new edition.

For BCA 2025, a 12-month transition period will be implemented. This means that from commencement of this instrument until 30 April 2027 either the BCA 2022 or the BCA 2025 may be used. However, from the outset of a new project, the version of the BCA (either the BCA 2022 or the BCA 2025) that the new project is complying with, must be clearly nominated, and a project cannot comply with a mix of regulations from each version.

To allow for the above transition, this instrument contains two schedules. Schedule 1 contains the ACT Appendix to the BCA that applies from commencement of this instrument to 30 April 2027 for use with BCA 2022. Schedule 2 contains the ACT Appendix for use with BCA 2025. While it is optional to use from commencement of this instrument, BCA 2025 will be mandatory from 1 May 2027.

Furthermore, to provide certainty to substantially progressed projects, where a Development or Works Approval (depending on ACT Government Territory Planning Authority (TPA) or National Capital Authority jurisdictions) is lodged before 1 November 2026, the project may continue to apply for building Approval under BCA 2022 and the ACT 2022 Appendix. Lodged means that a Completeness Check has been finalised for the project to the satisfaction of the TPA and all relevant Development or Works application fees have been paid by the applicant. This will remain possible until the Development or Works Approval expires.

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 RIS to be prepared for the proposed law.

A RIS is not required for the ACT variations contained in this instrument to the 2025 BCA as it is not considered to be likely to impose appreciable costs on the community or a part of the community. The vast majority of ACT variations only apply 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. None of the ACT variations increase costs above what the ABCB RIS for the 2025 BCA found.

This instrument is not the primary mechanism for adopting the 2025 BCA, which is adopted by force of the Act. In relation to the new standards in the BCA, section 36 (1) (h) of the *Legislation Act* provides that a RIS is not required for a matter involving 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 changed regulatory structure provided by 2025 BCA.

Human Rights Impacts

During the development of the instrument, due regard was given to its engagement with human rights under the *Human Rights Act 2004* (the ***HR Act***). This instrument

engages with an individual's right to a healthy environment, under section 27C of the HR Act.

The proposed provisions in BCA 2025 support reductions in building emissions from energy efficiency and improve air quality in our city, both inside and outside our buildings from reducing the consumption of fossil fuels.

Clause Notes

Clause 1 names the instrument the *Building (ACT Appendix to the Building Code) Determination 2026 (No 2)*.

Clause 2 provides that this instrument commences on the day after its notification day.

Clause 3 contains the approval of schedules 1 and 2 of the instrument.

Clause 4 provides for when schedule 1 and schedule 2 of this instrument applies.

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 of 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 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.

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 (ACT Appendix to the Building Code) Determination 2026* that is replaced by this instrument.

Schedule 1 is the ACT Appendix of the Building Code that, depending on the circumstances, may apply from commencement of this instrument to 30 April 2027.

Schedule 2 is the ACT Appendix to the Building Code that a builder may apply from commencement of this instrument and which must apply from 1 May 2027.