



Australian Capital Territory

# **Land (Planning and Environment) (Bushfire Emergency) Regulation 2003**

**SL2003-4**

made under the

**Land (Planning and Environment) Act 1991**

**Republication No 5**

**Effective: 9 March 2005 – 30 March 2008**

Republication date: 9 March 2005

Last amendment made by A2004-57

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Land (Planning and Environment) (Bushfire Emergency) Regulation 2003*, made under the *Land (Planning and Environment) Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 March 2005. It also includes any amendment, repeal or expiry affecting the republished law to 9 March 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Land (Planning and Environment) (Bushfire Emergency) Regulation 2003

made under the

**Land (Planning and Environment) Act 1991**

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R5  
09/03/05

Land (Planning and Environment) (Bushfire Emergency)  
Regulation 2003

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Effective: 09/03/05-30/03/08

## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Land (Planning and Environment) (Bushfire Emergency) Regulation 2003*.

### 3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation or in other legislation.

For example, the signpost definition '*bushfire emergency*—see section 6.' means that the term 'bushfire emergency' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 5 Main object of regulation

The main object of this regulation is to assist people who suffered property damage because of fires that happened during the bushfire emergency to redevelop their land.

**6 The bushfire emergency**

For this regulation, the *bushfire emergency* is the period that began on 18 January 2003 and ended on 28 January 2003.

## Part 2 Clearing land

### 7 Fire-caused clearing developments exempted from Act, div 6.2

(1) The Minister may, in writing, declare that this regulation applies to land mentioned in the declaration.

(2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(3) The Act, division 6.2 (Approvals) does not apply to a fire-caused clearing development on land mentioned in a declaration under subsection (1) if—

(a) a building surveyor licensed under the *Construction Occupations (Licensing) Act 2004* endorses a plan of works in relation to the work included in the development; and

(b) the development is carried out in accordance with the plan of works; and

(c) the development is carried out by a person in accordance with—

(i) an agreement between the person and the owner of the land that is approved by the construction occupations registrar; and

(ii) any conditions approved by the construction occupations registrar; and

(d) the development is carried out in accordance with Australian Standard 2601.

(4) For subsection (3), a development is a ***fire-caused clearing development*** if the development is—



- 
- (a) the demolition of a building or structure damaged during the bushfire emergency by fire or in the course of fighting fire; or
  - (b) work mentioned in paragraph (a) and other work reasonably necessary to reduce possible damage by future fires that consists of—
    - (i) earthworks or other construction work on or under the land; or
    - (ii) if the land is specified land—other work that would affect the landscape of the land.
- (5) In this section:

*specified land* means land that is—

- (a) not leased for residential purposes; or
- (b) leased for residential purposes and is not a place registered under the *Heritage Act 2004*.

## 8 Plans of works

- (1) A *plan of works* is a plan for carrying out work relating to the demolition of a building or structure (a *building*).
- (2) A plan of works complies with this section if it—
  - (a) identifies the site where the work is to be carried out; and
  - (b) sets out, to the nearest 0.5m, the overall height of the building above ground level and its distance from the closest boundary; and
  - (c) describes the building type by its class under the building code, its structural support system and the main materials of its construction; and
  - (d) states the number of dwellings to be demolished; and

- (e) describes the methods of demolition and the number and types of the major items of equipment proposed to be used; and
- (f) if the proposed work involves the removal of stable asbestos cement sheeting from a residential building—complies with the *Building Regulation 2004*, section 12A (Building approval for asbestos removal—Act, s 26 (3)) as if the plan were an application under the *Building Act 2004*; and
- (g) describes the methods proposed to be used for handling and disposing of any other demolished material, mentioning specifically any hazardous substance; and
- (h) describes the sequence of major activities involved in carrying out the work and the estimated number of days likely to be needed for each major activity and for completing the works; and
- (i) sets out details of how Australian Standard 2601 will be complied with in relation to the following:
  - (i) hoardings and fencing around the proposed work;
  - (ii) any overhead protection;
  - (iii) any scaffolding necessary to carry out the proposed work; and
- (j) contains, or has attached to it, any illustration, other plan or other document that may be necessary for the better understanding of anything set out in the plan.

## 9 Endorsement of plans

A building surveyor licensed under the *Construction Occupations (Licensing) Act 2004* may endorse a plan of works if satisfied that—

- (a) the plan complies with section 8; and

- (b) the plan relates to land that is mentioned in a declaration under section 7 (Fire-caused clearing developments exempted from Act, div 6.2).

## Part 3 Rebuilding

### 10 Fire-caused rebuilding developments

For this part, a *fire-caused rebuilding development* is a development consisting of the erection or alteration of 1 or more buildings or structures on land mentioned in a declaration under section 7 (1) (Fire-caused clearing developments exempted from Act, div 6.2), if—

- (a) any building or structure to be erected replaces a building or structure of the same kind that was located on the land immediately before the beginning of the bushfire emergency, and that was damaged during the bushfire emergency; and
- (b) any building or structure to be altered was damaged during the bushfire emergency.

### 11 Previous approval

- (1) For this part, a development or a design or siting feature of a building or structure is *previously approved* if, before the beginning of the bushfire emergency, it had been approved under the Act, division 6.2 or the *Buildings (Design and Siting) Act 1964*.
- (2) However, a development or a design or siting feature is not taken to be previously approved if—
  - (a) the approval was given under the Act, division 6.2 for the development or feature before the beginning of the bushfire emergency; and
  - (b) immediately before the beginning of the bushfire emergency—
    - (i) the period for applying to the administrative appeals tribunal for a review of a decision in relation to the approval under the Act, section 276 (3) (Review of

decisions—objectors and third parties to approvals) had not ended; or

- (ii) an application to the tribunal for a review of such a decision had been made and the application had not been finally disposed of by the tribunal.

- (3) In this section:

*design or siting feature*, of a building or structure, means—

- (a) its height or gross floor area; or
- (b) a dwelling or dwellings for which it is used; or
- (c) its setbacks.

## **12 Rebuilding in accordance with previous approvals**

The Act, division 6.2 (Approvals) does not apply to a fire-caused rebuilding development if the development has been previously approved, whether or not any development in accordance with the approval has ever been undertaken.

## **13 Exemption from public consultation requirements**

- (1) An application for a fire-caused rebuilding development of land is exempt from the application of the Act, section 229 (1) and (6) (Notice of application), section 231 (1) (a) (ii) (Matters to be considered) and subdivision 6.2.2 (Objections) unless the development would result in—
  - (a) the height of any new or altered building or structure being greater than the previously approved height of the building or structure that is replaced or altered; or
  - (b) the gross floor area of any new or altered building or structure being more than 15% greater than the previously approved gross floor area of the building or structure that is replaced or altered; or

- (c) any new or altered building or structure being used for a greater number of dwellings than were previously approved; or
  - (d) the setbacks for any new or altered building or structure not complying with the lesser of the following:
    - (i) the setbacks recommended under the relevant performance measures and performance criteria set out in the plan, appendix III (Residential design and siting codes);
    - (ii) any setbacks that were previously approved for the building or structure that is replaced or altered.
- (2) This section does not apply if, at the time the application for the development is made, the person who was the lessee of the land at the beginning of the bushfire emergency is no longer the lessee of the land.
- (3) If, before the beginning of the bushfire emergency, a person had entered into an agreement with the lessee of the land giving the person a right to the transfer of the lease, but no transfer had been registered under the *Land Titles Act 1925* in accordance with the agreement, the person is taken for subsection (2) to be the lessee of the land at the beginning of the emergency.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this regulation.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- building code
- construction occupations registrar.

*Note 3* Terms used in this regulation have the same meaning that they have in the *Land (Planning and Environment) Act 1991* (see Legislation Act, s 148.) For example, the following term is defined in the *Land (Planning and Environment) Act 1991*, dict:

- plan.

***bushfire emergency***—see section 6.

***dwelling***—see the plan, part D.

***fire-caused rebuilding development***—see section 10.

***gross floor area***—see the plan, part D.

***height***—see the plan, part D, definition of ***height of building***.

***plan of works***—see section 8 (1).

***previously approved***—see section 11.

***setback***—see the plan, part D.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|   |   |
|---|---|
| am = amended  | ord = ordinance   |
| amdt = amendment                                    | orig = original   |
| ch = chapter  | par = paragraph/subparagraph                                      |
| def = definition                                    | pres = present  |
| dict = dictionary                                   | prev = previous   |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously  |
| div = division                                      | pt = part   |
| exp = expires/expired                               | r = rule/subrule  |
| Gaz = gazette                                       | renum = renumbered  |
| hdg = heading                                       | reloc = relocated   |
| IA = Interpretation Act 1967                        | R[X] = Republication No   |
| ins = inserted/added                                | RI = reissue  |
| LA = Legislation Act 2001                           | s = section/subsection  |
| LR = legislation register                           | sch = schedule  |
| LRA = Legislation (Republication) Act 1996          | sdiv = subdivision  |
| mod = modified/modification                         | sub = substituted   |
| o = order   | SL = Subordinate Law  |
| om = omitted/repealed                               | <u>underlining</u> = whole or part not commenced or to be expired |



### 3 Legislation history

This regulation was originally the *Land (Planning and Environment) (Bushfire Emergency) Regulations 2003*. It was renamed under the *Legislation Act 2001*.

#### **Land (Planning and Environment) (Bushfire Emergency) Regulation 2003 SL2003-4**

notified LR 7 February 2003  
s 1, s 2 commenced 7 February 2003 (LA s 75 (1))  
remainder commenced 8 February 2003 (s 2)

as amended by

#### **Land (Planning and Environment) (Bushfire Emergency) Amendment Regulations 2003 (No 1) SL2003-7**

notified LR 20 February 2003  
s 1, s 2 commenced 20 February 2003 (LA s 75 (1))  
remainder commenced 21 February 2003 (s 2)

#### **Construction Occupations Legislation Amendment Act 2004 A2004-13 sch 2 pt 2.17**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.17 commenced 1 September 2004 (s 2 and see  
Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and  
CN2004-8)

#### **Heritage Act 2004 A2004-57 sch 1 pt 1.6**

notified LR 9 September 2004  
s 1, s 2 commenced 9 September 2004 (LA s 75 (1))  
sch 1 pt 1.6 commenced 9 March 2005 (s 2 and LA s 79)

### 4 Amendment history

#### **Preliminary**

pt 1 hdg ins SL2003-7 s 4

#### **Name of regulation**

s 1 am R4 LA

#### **Commencement**

s 2 om LA s 89 (4)

## Endnotes

### 4 Amendment history

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#### **Main object of regulation**

s 5 am SL2003-7 s 5

#### **Clearing land**

pt 2 hdg ins SL2003-7 s 6

#### **Fire-caused clearing developments exempted from Act, div 6.2**

s 7 hdg sub SL2003-7 s 7

s 7 am SL2003-7 s 8, s 9; SL2004-13 amdt 2.74; A2004-57  
amdt 1.51

#### **Endorsement of plans**

s 9 sub SL2004-13 amdt 2.75

#### **Rebuilding**

pt 3 hdg ins SL2003-7 s 10

#### **Fire-caused rebuilding developments**

s 10 ins SL2003-7 s 10

#### **Previous approval**

s 11 ins SL2003-7 s 10

#### **Rebuilding in accordance with previous approvals**

s 12 ins SL2003-7 s 10

#### **Exemption from public consultation requirements**

s 13 ins SL2003-7 s 10

#### **Dictionary**

dict

def **building code** om R4 LA

def **building controller** om R4 LA

def **dwelling** ins SL2003-7 s 11

def **fire-caused rebuilding development** ins SL2003-7 s 11

def **gross floor area** ins SL2003-7 s 11

def **height** ins SL2003-7 s 11

def **previously approved** ins SL2003-7 s 11

def **setback** ins SL2003-7 s 11

## 5 Earlier replications

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised replication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised replication are identical.

| Replication No and date | Effective                   | Last amendment made by | Replication for                                  |
|-------------------------|-----------------------------|------------------------|--|
| R1<br>10 Feb 2003       | 8 Feb 2003–<br>20 Feb 2003  | not amended            | new regulation                                   |
| R2<br>21 Feb 2003       | 21 Feb 2003–<br>31 Aug 2004 | SL2003-7               | amendments by<br>SL2003-7                        |
| R3<br>1 Sept 2004       | 1 Sept 2004–<br>3 Nov 2004  | SL2004-13              | amendments by<br>SL2004-13                       |
| R4<br>4 Nov 2004        | 4 Nov 2004–<br>8 Mar 2005   | <u>A2004-57</u>        | editorial<br>amendments under<br>Legislation Act |

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