



Australian Capital Territory

# **Building Regulation 2004**

**SL2004-34**

made under the

**Building Act 2004**

**Republication No 3**

**Effective: 4 November 2004 – 26 July 2005**

Republication date: 4 November 2004

Last amendment made by SL2004-46  
(republishing includes editorial amendments  
under Legislation Act)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Building Regulation 2004*, made under the *Building Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 4 November 2004. It also includes any amendment, repeal or expiry affecting the republished law to 4 November 2004.

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 includes 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

# Building Regulation 2004

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**Building Act 2004**

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Australian Capital Territory

# Building Regulation 2004

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made under the

**Building Act 2004**

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**1 Name of regulation**

This regulation is the *Building Regulation 2004*.

**2 Dictionary**

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

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

For example, the signpost definition ‘*asbestos*—see the *Dangerous Substances Act 2004*, section 47A.’ means the term ‘asbestos’ is defined in that section and the definition applies to this regulation.

*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)).

**3 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.

**4 Offences against regulation—application of Criminal Code etc**

Other legislation applies in relation to offences against this regulation.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).



*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**4A Meaning of *building work*—Act, s 6 (2) (a) and (b)**

- (1) ***Building work*** includes building work that involves the handling of asbestos or disturbance of loose asbestos.
- (2) The handling of asbestos, or disturbance of loose asbestos, by an inspector, for the purpose of taking a sample under the *Dangerous Substances Act 2004*, chapter 3A (Asbestos) is not ***building work***.

**Examples of handling of asbestos or disturbance of loose asbestos**

- 1 removal of asbestos
- 2 cutting a hole in a sheet of asbestos

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) This section expires on 1 September 2006.

**4B Meaning of *specialist building work*—Act, s 9 (b)**

- (1) ***Specialist building work*** includes building work that involves the handling of asbestos or disturbance of loose asbestos.
- (2) For subsection (1), the handling of asbestos does not include the handling of stable asbestos cement sheeting that forms part of a residential building.
- (3) This section expires on 1 September 2006.

**5 Exempt buildings—Act, s 12**

- (1) Each of the following is an exempt building:
  - (a) a fence or wall if—

- (i) the height measured from any point on the fence or wall to the ground is not more than 1.8m, excluding any part of the structure that is in the ground; and
- (ii) it does not form an integral part of an enclosure for a swimming pool;
- (b) a retaining wall if the height measured from any point at the top of the retaining wall to the lowest adjacent ground level is not more than 1.2m, excluding any part of the wall that is in the ground;
- (c) an outdoor deck, carport, pergola, porch, veranda, shelter, gazebo, shade structure or hail protection structure if—
  - (i) it has no wall; and
  - (ii) if it has a covering (including a sail or sail-like element)—the total covering area is 25m<sup>2</sup> or less; and
  - (iii) the height measured from any point on the structure to the ground is not more than 3m, excluding any part of the structure that is in the ground; and
  - (iv) the height measured from any point on top of any flooring of the structure to the ground is not more than 1m, excluding any part of the structure that is in the ground; and
  - (v) its framing does not have an unsupported span, including any cantilever, longer than 4m; and
- (d) a shed, gazebo, greenhouse or similar structure the roof area of which does not exceed 10m<sup>2</sup>;

**Examples of similar structure**

conservatory, cubbyhouse, store, workshop, studio, outbuilding or class 10a building

*Note* An example is part of this regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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- (e) an antenna or aerial assembly, if—
    - (i) the height measured from the highest part of the assembly to the lowest is 5m or less, excluding any part of the assembly that is in the ground or is part of the building the assembly is mounted on; and
    - (ii) the assembly is a class 10b building;
  - (f) an artificial pool, other than a bathtub, used, or for use, mainly for swimming, wading or bathing, that cannot hold water to a depth of more than 300mm;
  - (g) an internal alteration to a building for which a certificate under the Act, part 5 (Building occupancy) has been issued, if the alteration does not change the classification of the building;
  - (h) an outdoor pond if—
    - (i) it is not used, or for use, mainly for swimming, wading or bathing; and
    - (ii) the height measured from any point on the wall of the pond to the lowest point on the base of the pond is not more than 1.2m, excluding any part of the wall that is in the ground;
  - (i) a structure (for example, a barbeque or letterbox) if—
    - (i) it has a plan area not exceeding 2m<sup>2</sup>; and
    - (ii) the height measured from any point on the structure to the ground is not more than 1.8m, excluding any part of it that is in the ground;
  - (j) a water tank if—
    - (i) it has a capacity not exceeding 17kL; and
    - (ii) the height measured from any point on the tank to the ground is not more than 2.4m, excluding any part of the tank that is in the ground;

- (k) an amusement ride, device to which AS 3533 applies or a portable building or structure, including a tent, marquee, stall or booth, erected at a place if—
  - (i) the building or structure is erected and used only in accordance with any applicable provision of AS 3533; and
  - (ii) if the building code applies to the building—the building or structure is a class 6, class 7 or class 10a building; and
  - (iii) the building or structure is not intended to be, and has not been, at the place for longer than 2 months.
- (2) Subsection (1) does not apply if—
  - (a) the building work in relation to the exempt building affects—
    - (i) the structural sufficiency, soundness or stability of part of a building for which a certificate under the Act, part 5 (Building occupancy) has been issued; or
    - (ii) a fire-rated wall, ceiling or floor; or
    - (iii) a ventilation or air-handling system, fire protection system or other mechanical service; or
    - (iv) a fire-escape, emergency lift, stairway, exit or passageway to an exit; or
  - (b) the building proposed to be built adversely affects the provision of natural light or ventilation to a building for which a certificate under the Act, part 5 has been issued.
- (3) In this section:

*assembly*, in relation to an antenna or aerial, means the antenna or aerial and its mast, tower and footing.

## **6 Buildings to which Act does not apply—Act, s 13 (2)**

- (1) The Act does not apply to the following buildings:

- (a) bridges;
  - (b) dams;
  - (c) retaining walls associated with bridges, dams or roads;
  - (d) stiles;
  - (e) mesh fences less than 3m high measured from the top of the fence to the ground, excluding any part of the fence that is in the ground;
  - (f) prefabricated bus shelters;
  - (g) prefabricated playground equipment;
  - (h) road signs;
  - (i) electricity network distribution equipment;
  - (j) reservoirs that are not part of an on-site stormwater detention system;
  - (k) aqueducts;
  - (l) water and sewage treatment works;
  - (m) stormwater outfalls.
- (2) The Act does not apply to poles and masts owned by—
- (a) the Territory; or
  - (b) the Commonwealth; or
  - (c) a territory authority; or
  - (d) a body established under a Commonwealth law; or
  - (e) the provider of an electricity supply or telephone service.

**7 Exempt building work—Act, s 15 (b) and s 83 (b)**

- (1) The installation, alteration or removal of the following is exempt building work for part 3 (Building work) and part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates):
- (a) an externally mounted photovoltaic panel or solar water heater for a class 1 or class 10a building, if the building work—
    - (i) does not involve any alteration that would affect the structural sufficiency or stability of the building; and
    - (ii) does not affect the building complying with the building code;
  - (b) an externally mounted airconditioning unit for a class 1 or class 10a building, if—
    - (i) the building work does not involve any alteration that would affect the structural sufficiency or stability of the building; and
    - (ii) the building work does not affect the building complying with the building code; and
    - (iii) the unit is not the main source of ventilation—
      - (A) if the unit is installed for a particular room—for the room; or
      - (B) if the unit is installed for a building—for that building.

*Note* The building code includes standards for load bearing and waterproofing.

- (2) In this section:

***solar water heater***, for a building, means a solar water panel designed to be mounted externally, together with any hot-water tank that holds water heated by the panel.

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**8 Criteria for appointment of government certifier—Act, s 20 (4)**

The criteria for the appointment of a government certifier for building work are—

- (a) a building approval for the work is in force; and
- (b) a licensed builder has started the work; and
- (c) the owner of the land where the work is being carried out cannot, after making reasonable efforts, appoint a certifier for the work.

**9 Copies of plans for building approval applications—Act, s 26 (2) (a)**

The prescribed number of copies is 3.

**10 General requirements for building approval applications—Act, s 26 (3)**

- (1) The following requirements are prescribed for an application:
  - (a) the application must contain an estimate of the cost of the building work calculated in accordance with a method determined in writing by the construction occupations registrar;
  - (b) if building work is proposed to be carried out at or near a street or place that is open to or used by the public—an application must contain details of the precautions proposed to be taken to protect the safety of people using the street or place when the building work is to be carried out;
  - (c) the application must state the area of the parcel of land.
- (2) A determination under subsection (1) (a) is a notifiable instrument.

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

**11 Building approval for building erection or alteration—Act, s 26 (3)**

(1) For an application in relation to building work that involves the erection or alteration of a building, the following information must be included in the application and plans accompanying the application:

- (a) the class of the building according to the intended use of the building as proposed to be erected or altered;
- (b) what fire-resisting construction type (under the building code) the building as proposed to be erected or altered will be, if applicable to the building;

*Note* Fire-resisting construction type may not be applicable if an alternative solution under the building code is used.

- (c) for an application that relates to the erection or alteration of a class 1 or class 10a building—the site classification of the parcel of land in accordance with the classification provided by the building code;
- (d) for an application that relates to the alteration of a building—
  - (i) the class and type of fire-resisting construction of the existing building classified under the building code; and
  - (ii) the materials used in the existing building;
- (e) the number of storeys of the building as proposed to be erected or altered;
- (f) the number of new dwellings (if any) created by the building work;
- (g) the floor area of the proposed building or proposed new part of the building;
- (h) the materials to be used in the frame, floor, walls and roof of the proposed building or proposed new part of the building;



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- (i) if a performance requirement of the building code is to be complied with by use of an alternative solution under the code—
    - (i) the performance requirement; and
    - (ii) the alternative solution; and
    - (iii) each assessment method used to show that the alternative solution complies with the performance requirement;
  - (j) if the building code does not state a standard of work in relation to any part of the proposed building work and it is intended to carry out that part of the proposed building work in accordance with a standard of work stated in another document—
    - (i) the nature of the proposed building work; and
    - (ii) the title of the document; and
    - (iii) each assessment method used to show that the proposed building work complies with the standard of work stated in the document.
- (2) In this section:
- assessment method*—see the building code.
- performance requirement*—see the building code.

## **12 Building approval for removal or demolition of buildings—Act, s 26 (3)**

For an application in relation to building work that involves the removal or demolition of a building, the following information must be included in the application and plan accompanying the application:

- (a) details of the methods to be used in the execution of the building work including a work plan stated or set out in AS 2601 as in force on the commencement of this section;
- (b) the number of dwellings demolished (if any).

**12A Building approval for asbestos removal—Act, s 26 (3)**

- (1) For an application in relation to building work that involves the removal of stable asbestos cement sheeting from a residential building, the application must describe the method proposed to be used to remove the sheeting from the building.
- (2) For an application in relation to building work that involves the removal of asbestos (other than stable asbestos cement sheeting) from a residential building, the following information must be included:
  - (a) the method proposed to be used to remove the asbestos;
  - (b) the approximate quantity and kind of asbestos to be removed;
  - (c) the equipment proposed to be used to remove the asbestos, including any personal protective equipment;
  - (d) details of a program (prepared in accordance with the building code) for monitoring airborne asbestos.
- (3) This section expires on 1 September 2006.

**13 General requirements for plans—Act, s 27 (1) (a)**

- (1) The plans must—
  - (a) be drawn in accordance with AS 1100 as in force on the commencement of this section, unless—
    - (i) the plans were drawn before the commencement of the standard; or

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- (ii) the plans complied with the standard at the time they were drawn; and
  - (b) show any area marked on a certificate of title or deposited plan as an easement; and
  - (c) if the building work to which the plan relates will require the connection of a pipe to, or alteration of the connection of a pipe to the sewerage system—show any point of connection of a pipe on the parcel of land to the sewerage system; and
  - (d) if the building work to which the plan relates will require the connection of a pipe to, or alteration of the connection of a pipe to a water main—show any point of connection of a pipe on the parcel of land to the water main; and
  - (e) if the building work to which the plan relates will require the connection of a pipe to, or alteration of the connection of a pipe to a stormwater drain—show any point of connection of a pipe on the parcel of land to the stormwater system; and
  - (f) if the building work to which the plan relates will, when finished, alter the surface stormwater drainage on parcel of land where the work is to be done—show the proposed surface stormwater drainage on the parcel at the completion of the work; and
  - (g) include a site plan on a scale of not less than 1:200 showing the block, section, boundaries and dimensions of the parcel of land.
- (2) In this section:

*Australian Standard 1100* includes AS/NZS 1100.501:2002.

*easement*—see the Act, section 52.

*stormwater system* means a system of pipes, gutters, drains, floodways and channels that are designed to collect or carry

stormwater in or through an urban area, other than for a single parcel of land.

**utility service**—see the *Utilities Act 2000*, dictionary.

**water main** means a conduit or pipeline—

- (a) owned, controlled or maintained by a utility service; and
- (b) designed to carry drinking water supplied by the service.

**14 Requirements for plans for alteration or erection of building—Act, s 27 (1) (a)**

- (1) For plans that relate to the erection or alteration of a building, the plans must contain sufficient information about the proposed finished dimensions, arrangement, locations and inherent characteristic of materials making up every element of the proposed building work—
  - (a) to allow a certifier to work out if a building erected or altered in accordance with the plan would contravene the Act; and
  - (b) to allow a competent builder to carry out the building work in accordance with the plans and the Act; and
  - (c) to allow a certifier to work out if the building work, if carried out, complies with the plan and the Act.
- (2) The information included on the plans under subsection (1)—
  - (a) must be consistent with AS 1100 (which is about technical drawing); and
  - (b) must be apparent from reading the drawing, rather than having to take measurements from the drawing.
- (3) Plans are taken to satisfy subsection (1) to the extent that they contain the following information:
  - (a) the extent, overall dimensions and main construction material of a wall, partition, floor or roof if—

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- (i) AS 1684 or AS 3623 applies to the framing for the wall, partition, floor or roof; or
  - (ii) the framing is of the same scale and kind of arrangement as the framing to which those standards apply;
- (b) the location, overall dimensions and description or name of the proprietary product that is sufficient to identify a truss product type for mass-produced proprietary trusses if—
- (i) the manufacturer publishes a written span table that states the spanning capability of the truss; and
  - (ii) the table applies directly to a truss and its span stated in the plan;
- (c) for masonry work to which AS 3700 applies—the overall extent and dimensions of the masonry work and structural details of reinforcement (if any);
- (d) for concrete work to which AS 2870 (which is about slabs and footings) applies—the overall extent and dimensions of the concrete work and structural details of reinforcement (if any).

**Example of same scale and kind of arrangement for par (a) (ii)**

AS 1684 applies to houses only. However, under par (a) (ii), it can be used for a fit-out that has the same proportions as a house or for part of a building with the same loads and requirements as a house.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The plans may contain other information.

**14A Requirements for plans for asbestos removal—Act, s 27 (1) (a)**

- (1) Plans that accompany an application that relates to building work involving the removal of stable asbestos cement sheeting must show the location of the sheeting.

- (2) Plans that accompany an application that relates to building work involving the removal of asbestos (other than stable asbestos cement sheeting) from a residential building must include the following information:
- (a) the location of the asbestos proposed to be removed;
  - (b) the boundary of the area where people removing the asbestos will be working;
  - (c) if asbestos removed from the building is to be stored on the parcel of land where the building is—where the asbestos is to be stored;
  - (d) if a decontamination facility, air filter or air supply equipment is proposed to be used during the building work on the parcel of land—where each is located.
- (3) In this section:
- air filter*—see the building code.
- air supply equipment*—see the building code.
- decontamination facility*—see the building code.
- (4) This section expires on 1 September 2006.

**15 Consultation and consent—Act, s 27 (1) (b)**

- (1) The following consultations must take place or consents or approvals be obtained in relation to proposed building work:
- (a) any consent or approval required under a territory law in relation to the work;
  - (b) if the work is, or forms part of, a development requiring approval under the Land Act, part 6.2—approval of the development;

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- (c) if the approval mentioned in paragraph (b) contains conditions precedent to starting the building work—compliance with those conditions;
  - (d) if the parcel of land is in a designated area—approval under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 12;
  - (e) if the work involves the erection or alteration of a lift—a permit under the *Scaffolding and Lifts Regulation 1950*, section 17;
  - (f) consultation with ACTEW Corporation Limited in relation to—
    - (i) the demolition of any building to which electricity, water or sewerage services are supplied or to which an electricity or water meter is connected; and
    - (ii) any encroachment of the proposed building or proposed new part of the building onto an easement; and
    - (iii) the disposal of any non-domestic waste into the sewerage system;
  - (g) consultation with the chief officer (fire brigade) or chief officer (rural fire service) in relation to—
    - (i) any use of an alternative solution in relation to a provision of the building code which deals with fire protection; and
    - (ii) any proposed building, or proposed new part of a building with a floor area exceeding 500m<sup>2</sup> that is not a class 1 or class 10 building;
  - (h) consultation with the chief executive responsible for urban services in relation to—
    - (i) procedures to be used in the demolition of any building of class 2, class 3, class 4, class 5, class 6, class 7, class 8 or class 9; and

- (ii) any waste management plan provided in the application;
  - (i) if it is proposed that the new building or new part of the building is to be used for the sale or supply of liquor—consultation with the registrar of liquor licences in relation to occupancy loading and kitchen, bar and toilet facilities;
  - (j) consultation with the chief health officer in relation to the application of any health law to the proposed new building or new part of the building;
  - (k) consultation with the environment protection authority if—
    - (i) it is proposed that the new building or new part of the building is to be used to conduct a class A or class B activity; or
    - (ii) an accredited code of practice applies to an activity intended to be carried out in the new building or new part of the building.
- (2) It is sufficient compliance with the obligation to consult under subsection (1) (f), (g), (h), (i), (j) or (k) if—
- (a) notification of the details of an application for a building approval is given to the person with whom consultation is to take place; and
  - (b) 10 working days have elapsed since it has been given.
- (3) In this section:

***accredited code of practice*** means a code accredited under the *Environment Protection Act 1997*, section 31 (1).

***class A activity*** means an activity listed in the *Environment Protection Act 1997*, schedule 1, section 2.

***class B activity*** means an activity listed in the *Environment Protection Act 1997*, schedule 1, section 3.



*designated area*—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth).

*health law* means a territory law that has as 1 of its objects or purposes the protection of public health.

## 16 Substantial alteration—Act, s 29 (2)

An alteration of a building is a substantial alteration if—

- (a) the aggregate volume of the proposed alteration and any other alteration made to the building during the 3 years immediately before the day the application for building approval of the alteration is made is more than 50% of the volume of the original building; and
- (b) the volume of a building is measured by reference to roof and outer walls.

### Example of effect

- 1 A house is extended by 70%. The whole building must comply with this Act, not just the extension (see par (a)).
- 2 A sunroom is added to a building, adding only 10% to the building. The sunroom must comply with this Act, not the rest of the building (see par (b)).
- 3 Two shops in a mall are to be combined to form a café. The building work involves replacing all the shops' fitout, including all fixtures, the glazed shopfront walling and ceiling and removal of the common wall. In the 3 years immediately before the date the application for building approval is made, other shops in the mall have been altered similarly. The total volume of the refitted shops, with the volume of the café, is more 50% of the volume of the mall. The whole mall must comply with this Act, not just the café.
- 4 A photocopier room is to be added to an office building. In the 3 years immediately before the date the application for building approval is made the building has often had parts of its fitout altered. Open plan cubical workstations were moved, enclosed meeting rooms were converted to open plan cubical workstations, 3 walls of another enclosed office were moved to make a hallway and new enclosed offices were created where open plan cubical workstations originally were.

- the 1st alterations to the cubical workstations did not involve altering or erecting fixtures, so the alterations do not need to be included when working out the total volume of alterations to the building
- the cubicle work stations erected in place of the enclosed meeting rooms were fixtures, so the volume of each workstation, worked out by multiplying its usable floor area by the height of the floor or roof above, must be included in working out to the total volume of alterations to the building
- the removal of the 3 walls of the enclosed office to make a hallway prevent the room functioning as a room, so the volume of the room must be included in working out the total volume of the alterations to the building
- the walls erected to form a room or substantially enclosed space must be included to work out the total volume of the alterations to the building

However, the total of the volumes of the alterations made to the building, when added to the volume of the proposed photocopier room, amounted to 45% of the building, so only the proposed room has to comply with this Act, not the whole building.

- 5 A building contains a nightclub where a fire sprinkler system was installed 1 year ago. Plans now propose to upgrade the airconditioning system throughout the building. The volume of the sprinkler pipework and proposed airconditioning ducts are included in working out the total volume of alterations to the building, but the volume of the spaces they can sprinkle or ventilate is not included.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 17 **Significantly different from plan amendment—Act, s 32 (4)**

- (1) A building built to amended plans (the *new building*) is significantly different from a building built to the unamended plans (the *old building*) if—
- (a) the floor area, roof area or volume of the new building has increased or decreased by more than 1%; or

- (b) the new building is not same class of building as the old building; or
- (c) if the old building had parts that are not of the same class of building—
  - (i) the position of the parts in the new building has changed; or
  - (ii) the floor area, roof area or volume of the parts in the new building has increased or decreased by more than 1%; or
- (d) any dimension of the perimeter of the new building, including the perimeter of the building's footprint or an elevation, has changed by more than 1%; or
- (e) the type of material to be used in the new building to form a structural element, roof, floor or external wall cladding has changed; or
- (f) the number of storeys or buildings in the new building has changed.

**Example of change of dimension**

The height of the building increases from 3m to 3.5m. The change of the dimension is more than 1%.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**18 Considerations about whether work done in proper way—  
Act, s 42 (2)**

In deciding whether building work has been done in a proper way, the following considerations must be taken into account:

- (a) whether the work uses a product or system in accordance with any accessible instructions, directions, guidelines or suggestions of the maker or seller of the product or system;

**Examples of instructions that are not accessible**

- 1 instructions not in English
- 2 an information leaflet printed 10 years ago that is now unavailable

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) whether the work is in accordance with any relevant rules or guidelines published by Standards Australia;
- (c) whether, as part of the work, a product or system is being, or has been, used in a way that a reasonable person would expect is contrary to the intended use of the product or system;
- (d) whether, as part of the work, a product or system is being, or has been, used in a way that the maker has given written notice will void the maker's warranty;

**Example of use**

Installing roof sheeting so it is level at any point is use in a way that a reasonable person would expect to be contrary to the intended use of the sheeting if the manufacturer's published literature indicates that the sheeting's warranty is voided if the sheeting is installed at a fall of less than 1° off level.

- (e) whether a reasonable person doing the work would know or reasonably suspect that the use of a product or system in a particular way would cause more instability, or affect the durability or soundness of the product or system or of the building work than if the product or system were used appropriately;
- (f) how reasonable it is in all the circumstances for the user of a product or system to rely on the maker's statement that the product or system complies with a stated standard;
- (g) whether the building work contravenes the Act or another territory law.

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**19 Considerations about whether work done in skilful way—  
Act, s 42 (2)**

In deciding whether building work has been done in a skilful way, consideration must be taken of whether the work has been carried out to completion with enough care so that it does not have to be redone to adequately serve its intended purpose or comply with the Act.

**Examples**

- 1 A timber stairway was built. Its elements were glued and nailed together permanently. The top step was too high to comply with a relevant provision of the building code. The step had to be disassembled or removed to rectify that noncompliance. The building of the step was not done in a skilful way.
- 2 The potential noncompliance in the step mentioned in example 1 was noticed before the components of the step were permanently fastened together. It was adjusted to ensure it complied with the building code without having to undo or redo any completed building work. That noncompliance and adjustment do not indicate that the building of the stair was not done in a skilful way.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**20 Stages of building work—Act, s 43 (1)**

*Note* The Act, s 43 (2) requires certain things to be done before building work proceeds beyond the dampcourse level of a building.

The prescribed stages of building work are—

- (a) completion of excavation, placement of formwork and placement of steel reinforcing for the footings before any concrete for the footings is poured;
- (b) completion of the structural framework and, for a class 1 or class 10 building, before the placement of any internal lining;  
and

- (c) for a class 1 or class 10 building—completion of placement of formwork, and placement of steel reinforcing, for any reinforced concrete member before any concrete for the member is poured; and
- (d) for a building other than a class 1 or class 10 building—completion of any reinforced concrete member, before any concrete for the member is poured, stated by the certifier in the relevant building approval; and
- (e) completion of the building work approved in the relevant building approval.

**21 Alternative to new survey plan—Act, s 43 (2) (a) (ii)**

- (1) This section applies to building work if—
  - (a) the work is only in relation to an extension or alteration of an existing class 1 or class 10 building (the *original building*); and
  - (b) any building resulting from the work is to be located completely on the same parcel of land (the *original land*) where the original building is.
- (2) A plan (the *original survey plan*) signed by a registered surveyor is prescribed in relation to building work if—
  - (a) the original survey plan contains sufficient information to allow the certifier to form an accurate opinion about whether the building work complies with the Act, section 43 (2) (b); and
  - (b) the arrangement of the boundaries of the original land, and location and levels of the original building, have not changed since the original survey plan was made; and
  - (c) no building on which the work is to be carried out is, or building resulting from the work is to be, situated closer than 100mm away from the boundary of the parcel of land.

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**22 Consent or approval on completion of building work—  
Act, s 48 (2) (d)**

The following consents or approvals are prescribed:

- (a) if an approval for building work given under the Land Act is subject to a condition—the approval of the chief planning executive to the way in which the condition has been satisfied;
- (b) approval of the installation of any fire appliance in the new building or new part of the building by the chief officer (fire brigade) or the chief officer (rural fire service);
- (c) approval under the *Scaffolding and Lifts Regulation 1950*, section 21.

**23 Residential building work to which Act, pt 6 does not  
apply**

The Act, part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates) does not apply in relation to residential building work if the cost of the work is less than \$12 000.

**24 End of statutory warranties—Act, s 88 (4)**

- (1) The prescribed period for the end of a warranty is—
  - (a) for residential building work in relation to a structural element—6 years after the completion day for the work; and
  - (b) for residential building work in relation to a non-structural element—2 years after the completion day for the work.

- (2) In this section:

*non-structural element*, of a building, means a component of the building that is not a structural element.

*structural element*, of a building, means—

- (a) an internal or external load-bearing component of the building that is essential to the stability of the building or any part of it; or
- (b) any component (including weatherproofing) forming part of the external walls or roof of the building.

**Examples for par (a)**

a foundation, floor, wall, roof, column or beam

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**25 Residential building work minimum insurance—Act, s 90 (1) (b)**

The prescribed amount for insurance cover is \$85 000.

**26 Residential building work period of insurance—Act, s 90 (1) (c) and (d)**

The prescribed period is 5 years.

**27 Residential building work period for claims—Act, s 90 (1) (i)**

The prescribed period is 90 days.

**28 Amount insurer not liable for—Act, s 91 (1)**

The prescribed amount is \$500.

**29 If builder defaults and work less than deposit paid—Act, s 93 (3) (b)**

The prescribed amount is \$10 000.



**29A Building code—Act, s 136 (4)**

(1) For the building code, an area of non-urban land is a bushfire-prone area.

(2) In this section:

*national capital plan* means the national capital plan under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), part 3.

*non-urban land* means—

(a) territory land subject to 1 or more of the following land use policies under the territory plan, part B (Land use policies):

- (i) broadacre;
- (ii) rural;
- (iii) hills, ridges and buffer areas;
- (iv) river corridors;
- (v) mountains and bushlands;
- (vi) plantation forestry;
- (vii) major roads; or

(b) land that is not subject to any of the following land use categories under the national capital plan:

- (i) urban area;
- (ii) industrial centre;
- (iii) Lake Burley Griffin and foreshores.

**30 Appealable decisions and relevant people—Act, s 146 (5)**

(1) The following decisions of the construction occupations registrar are *appealable decisions*:

- (a) refusing to approve a certifier's resignation under the Act, section 19 (3) (a); or
  - (b) refusing to appoint a government certifier for building work under the Act, section 20 (4); or
  - (c) refusing to extend or further extend a period under the Act, section 36 (2) (Period for which approvals operate); or
  - (d) issuing a stop notice under the Act, section 53; or
  - (e) issuing a notice under the Act, section 58 (2) or (4) (Further notices relating to stop notices) or section 62 (1) (Notice to carry out building work); or
  - (f) refusing to issue a certificate of occupancy under the Act, section 69 (1), (2) or (3) or a certificate under the Act, section 71 (Certificate for building work involving demolition) or section 72 (Certificate for building work involving erection of structure); or
  - (g) refusing to issue a certificate of regularisation to a person other than the Territory or the Commonwealth under the Act, section 75; or
  - (h) refusing to give an approval under the Act, section 77 (3) (Use of buildings restricted); or
  - (i) working out the cost of building work under the Act, section 86 (1) (b) (ii); or
  - (j) refusing to give an approval under the Act, section 90 (1) (j) (Complying residential building work insurance).
- (2) Each of the following is the *relevant person* for the appealable decision to which it relates:
- (a) for a decision mentioned in subsection (1) (a)—to the certifier; or

- (b) for a decision mentioned in subsection (1) (b)—to the applicant for the appointment of a government certifier; or
- (c) for a decision mentioned in subsection (1) (c)—to the applicant for the extension; or
- (d) for a decision mentioned in subsection (1) (d)—to the person carrying out the building work; or
- (e) for a decision mentioned in subsection (1) (e)—to the person required to carry out the stated building work; or
- (f) for a decision mentioned in subsection (1) (f) or (g)—to the applicant for the certificate; or
- (g) for a decision mentioned in subsection (1) (h) or (j)—to the applicant for approval; or
- (h) for a decision mentioned in subsection (1) (i)—the builder.

### **31 Expiry of definition of *asbestos***

- (1) The definition of *asbestos* in the dictionary expires on 1 September 2006.
- (2) This section expires on 1 September 2006.

### **32 Modifications of Act, pt 11—Act, s 179**

The Act is modified by inserting the following sections:

#### **164A Certificate of regularisation**

A certificate of regularisation issued under the *Building Act 1972* as in force at any time is taken to be a certificate of regularisation issued under this Act, section 75.

#### **164B Application of s 88 (2) (b)**

- (1) In the application of section 88 (2) (b) to building work done after 9 September 2004 but before 9 September 2005, the reference to

‘plans approved for the work by the construction occupations registrar’ is taken to be a reference to the ‘approved plans’.

- (2) This section expires on 9 September 2005.

**164C Prudential standards**

The prudential standards under the *Building Act 1972* (repealed) are taken to be the prudential standards under this Act.

## Dictionary

(see s 2)

*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:

- chief executive
- may (see s 146)
- person
- under.

*Note 3* Terms used in this regulation have the same meaning that they have in the *Building Act 2004* (see Legislation Act, s 148). For example, the following terms are defined in the *Building Act 2004*, dict:

- alteration
- building code
- building work
- certificate of regularisation
- class
- Land Act
- structure.

**AS 1684** means the Australian Standard 1684 (Residential timber-framed construction—design criteria) as in force from time to time.

**AS 2870** means the Australian Standard 2870 (Residential slabs and footings—construction) as in force from time to time.

**AS 3533** means the Australian Standard 3533 (Amusement rides and devices—design and construction) as in force from time to time.

**AS 3623** means the Australian Standard 3623 (Domestic metal framing) as in force from time to time.

**AS 3700** means the Australian Standard 3700 (Masonry structures) as in force from time to time.

**asbestos**—see the *Dangerous Substances Act 2004*, section 47A.

## 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 made as part of the *Building Act 2004* (see A2004-11, s 177 and sch 1).

This regulation was originally the *Building Regulations 2004*. It was renamed under the *Legislation Act 2001*.

#### **Building Regulation 2004 SL2004-34**

taken to have been notified LR 26 March 2004 (A2004-11, s 177 (3) (a))

s 1 taken to have commenced 26 March 2004 (LA s 75 (1))

remainder commenced 1 September 2004 (A2004-11, s 177 (3) (b))

as amended by

#### **Emergencies Act 2004 A2004-28 sch 3 pt 3.2**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

sch 3 pt 3.2 commenced 1 September 2004 (s 2 (2) and see Building Act 2004 A2004-11, s 2 and Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

#### **Dangerous Substances (Asbestos) Amendment Act 2004 A2004-66 sch 1 pt 1.2**

notified LR 31 August 2004

s 1, s 2 commenced 31 August 2004 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 September 2004 (s 2 (2))

#### **Building Amendment Regulations 2004 (No 1) SL2004-46**

notified LR 8 September 2004

s 1, s 2 commenced 8 September 2004 (LA s 75 (1))

remainder commenced 9 September 2004 (s 2)

### 4 Amendment history

#### **Name of regulation**

s 1 am R3 LA

#### **Meaning of *building work*—Act, s 6 (2) (a) and (b)**

s 4A ins A2004-66 amdt 1.2  
exp 1 September 2006 (s 4A (3))

## Endnotes

### 4 Amendment history

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**Meaning of *specialist building work*—Act, s 9 (b)**

s 4B ins A2004-66 amdt 1.2  
exp 1 September 2006 (s 4B (3))

**Exempt buildings—Act, s 12**

s 5 am SL2004-46 s 4

**Building approval for asbestos removal—Act, s 26 (3)**

s 12A ins A2004-66 amdt 1.3  
exp 1 September 2006 (s 12A (3))

**Requirements for plans for asbestos removal—Act, s 27 (1) (a)**

s 14A ins A2004-66 amdt 1.4  
exp 1 September 2006 (s 14A (4))

**Consultation and consent—Act, s 27 (1) (b)**

s 15 am A2004-28 amdt 3.2

**Consent or approval on completion of building work—Act, s 48 (2) (d)**

s 22 am A2004-28 amdt 3.3

**Building code—Act, s 136 (4)**

s 29A ins A2004-28 amdt 3.4

**Expiry of definition of *asbestos***

s 31 ins A2004-66 amdt 1.5  
exp 1 September 2006 (s 31 (2))

**Modifications of Act, pt 11—Act, s 179**

s 32 ins SL2004-46 s 5

**Dictionary**

dict def ***asbestos*** ins A2004-66 amdt 1.6  
def ***asbestos*** exp 1 September 2006 (s 31 (1))



## 5 Earlier republications

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

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

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Sept 2004	1 Sept 2004– 8 Sept 2004	A2004-66	new regulation and amendments by A2004-28 and A2004-66
R2 9 Sept 2004	9 Sept 2004– 3 Nov 2004	SL2004-46	amendments by SL2004-46

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