



Australian Capital Territory

# **Building (General) Regulation 2008**

**SL2008-3**

made under the

**Building Act 2004**

**Republication No 7**

**Effective: 1 December 2010 – 28 February 2011**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Building (General) Regulation 2008*, made under the *Building Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 December 2010. It also includes any amendment, repeal or expiry affecting the republished law to 1 December 2010.

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

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Building (General) Regulation 2008

made under the

**Building Act 2004**

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Australian Capital Territory

# Building (General) Regulation 2008

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## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Building (General) Regulation 2008*.

### 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.

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

### 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.

## Part 2 Important concepts

### 5 Meaning of *building work*—Act, s 6 (2)

For the Act:

*building work* includes building work that involves handling asbestos or disturbing friable asbestos.

#### Examples—handling asbestos or disturbing friable 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).

### 6 Exempt buildings and building work generally—Act, s 15, s 65, s 83 and s 152 (2)

- (1) A building or building work mentioned in schedule 1, part 1.2 is exempt from the application of the Act subject to any condition mentioned in column 3 for the building or building work.
- (2) A building or building work mentioned in schedule 1, part 1.3 is exempt from the application of the parts of the Act stated in column 3 subject to any condition mentioned in column 4 for the building or building work.
- (3) Also, a building or building work mentioned in schedule 1, part 1.3 is not exempt if building work at the building may affect—
  - (a) the structural integrity of any part of a building for which a certificate under the Act, part 5 (Building occupancy) has been issued; or
  - (b) a fire-rated wall, ceiling or floor; or

- (c) a ventilation or air-handling system, fire protection system or other mechanical service; or
- (d) a fire-escape, emergency lift, stairway, exit or passageway to an exit; or
- (e) the natural light or ventilation available to a building for which a certificate under the Act, part 5 (Building occupancy) has been issued; or
- (f) the building in a way that reduces its compliance with the building code to a level that is less than the minimum requirements of the code.

**Example—par (f)**

A house built in 1996 complies with the building code as in force in 1996 (the *1996 building code*). Although the house was not required to be energy-efficient under the 1996 building code, the house has an energy efficiency rating of 3 stars under the building code as currently in force. If building work on the house alters the house in a way that causes its energy efficiency rating to drop below 3 stars, the building work is not exempt under sch 1, pt 1.3.

*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) Also, a building or building work mentioned in schedule 1, part 1.3 is not exempt if—
  - (a) the building is being substantially altered; and
  - (b) the building work is required to ensure the building alteration complies with the Act and the building code as required by the Act, section 29 (1) (a).
- (5) Also, building work mentioned in schedule 1, part 1.3, items 1 to 24, is not exempt if the building work—
  - (a) involves—
    - (i) handling asbestos; or

- (ii) disturbing friable asbestos; and
  - (b) is not minor maintenance work.
- (6) In this section:

*minor maintenance* means all or any of the following done in relation to bonded asbestos:

- (a) low speed or hand drilling;
- (b) sealing;
- (c) painting;
- (d) coating;

*minor maintenance work* means minor maintenance on premises that is done personally by an individual who owns or occupies the premises.

*substantial alteration*—see section 23.

## **7 Minister may exempt buildings—Act, s 152 (2)**

- (1) The Minister may, in writing, exempt a building from the application of the Act, conditionally or otherwise, for a stated period of not longer than 1 year.

### **Example—conditions**

- 1 restricting the number of people allowed in a building
- 2 requiring work on the building to be done by a licensed builder
- 3 requiring the fire brigade to be present outside the building when it is used for a stated event

*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).

- (2) An exemption is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Part 3 Building work

### Division 3.1 Government certifiers

#### 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.

### Division 3.2 Building approvals

#### 9 Definitions—div 3.2

In this division:

*proposed building work* means building work proposed to be carried out under an application for building approval.

#### 10 Number of copies of plans—Act, s 26 (2) (a)

The number of copies is 3.

**11 General requirements for application for building approvals—Act, s 26 (3)**

- (1) The following requirements are prescribed for an application for building approval:
  - (a) the application must contain an estimate of the cost of the proposed building work worked out in accordance with a method determined by the construction occupations registrar;
  - (b) if the building work is proposed to be carried out at or near a street or place that is open to or used by the public—the application must contain details of the precautions proposed to be taken to protect the safety of people using the street or place while the building work is 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.

**12 Building erection and alteration—Act, s 26 (3)**

- (1) This section applies to an application for building approval involving the erection or alteration of a building.
- (2) The following information must be included in either the application or the 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 relating to the erection of a class 1 building—the site classification of the parcel of land;

- (d) for an application relating to the alteration of a class 1 building if the alteration will increase the building load carried by foundation material beyond the building load carried by the foundation before the alteration—the site classification of the parcel of land;
  - (e) for an application relating 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;
- Note* Fire-resisting construction type may not be applicable if an alternative solution under the building code is used.
- (f) the number of storeys of the building as proposed to be erected or altered;
  - (g) the number of new dwellings (if any) created by the proposed building work;
  - (h) the floor area of the proposed building or proposed new part of the building;
  - (i) the materials to be used in the frame, floor, walls and roof of the proposed building or proposed new part of the building;
  - (j) 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;



- (k) 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.

- (3) In this section:

*assessment method*—see the building code.

*performance requirement*—see the building code.

*site classification*—see the building code.

### **13 Removal or demolition of buildings—Act, s 26 (3)**

- (1) This section applies to an application for building approval involving the removal or demolition of a building.
- (2) The following information must be included in either the application or the plans accompanying the application:
  - (a) details of the methods to be used in carrying out the proposed building work, including a work plan stated or set out in AS 2601 (*Demolition of structures*), as in force from time to time;
  - (b) the number of dwellings (if any) to be demolished.

**14 Bonded asbestos removal—Act, s 26 (3)**

- (1) This section applies to an application for building approval involving the removal of bonded asbestos from a residential building.
- (2) The application must include a description of the method proposed to be used to remove the bonded asbestos sheeting from the building.
- (3) The method proposed must comply with the asbestos removal code.

**15 Other asbestos removal—Act, s 26 (3)**

- (1) This section applies to an application for building approval involving the removal of asbestos (other than bonded asbestos) from a residential building.
- (2) The application must include the following information:
  - (a) the method proposed to be used to remove the asbestos;
  - (b) the approximate amount 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 asbestos removal code, for monitoring airborne asbestos to be followed during the removal.

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

- (1) This section applies to plans accompanying an application for building approval.
- (2) The plans must—
  - (a) be drawn in accordance with AS 1100, unless the plans were drawn before the standard commenced; and

- (b) show any area covered by the plans that is marked on a certificate of title or deposited plan as an easement; and
  - (c) if the building work will require the connection of, or alteration of the connection of, a pipe to the sewerage system—show any point of connection of the pipe to the sewerage system; and
  - (d) if the building work will require the connection of, or alteration of the connection of, a pipe to a water main—show any point of connection of the pipe to the water main; and
  - (e) if the building work will require the connection of, or alteration of the connection of, a pipe to a stormwater drain—show any point of connection of the pipe to the stormwater system; and
  - (f) if the building work will, when finished, alter the surface stormwater drainage on the 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 where the work is to be done.
- (3) In this section:

***building work*** means building work to which the plans relate.

***stormwater system*** means a system of pipes, gutters, drains, floodways and channels 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.

**17 Requirements for plans for alteration and erection of buildings—Act, s 27 (1) (a)**

- (1) This section applies to plans that relate to the erection or alteration of a building.
- (2) 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 to allow—
  - (a) a certifier to work out if a building erected or altered in accordance with the plan would contravene the Act; and
  - (b) a competent builder to carry out the building work in accordance with the plans and the Act; and
  - (c) a certifier to work out if the building work, if carried out, complies with the plan and the Act.

**Examples—building work that complies with Act**

- 1 Plans accompanying an application for building approval relate to the erection of a house with a sheet metal roof. One of the conditions of the development approval for the house is that the roofing must not be white or off-white. The plans must show the proposed colour of the roof sheeting in sufficient detail to enable the certifier to decide if the colour complies with the development approval and the builder to erect a roof in a colour that complies with the development approval. Stating the name of a colour, for example, light grey, may not be sufficiently descriptive unless the plans are accompanied by a relevant colour chart, or manufacturer's product colour, or a reference to a standard colour in AS 2700 (*Colour standards for general purposes*).
- 2 A statement in plans accompanying an application for building approval to the effect that fire collars must be provided where pipes penetrate fire-rated walls may not be sufficient detail about fire collars if the statement does not include either the technical details of the collars or the name of the manufacturer and model designation of the collars.

- 3 A statement in the plans about the dimensions of bolts may not be sufficient detail if the statement does not include details about the technical characteristics of the bolts, for example, tensile strength and how tensile strength is tested for and measured, by reference to an applicable standard like AS/NZS 1252 (*High strength steel bolts associated with nuts and washers for structural engineering*).

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and the building code (see Legislation Act, s 104).

*Note 2* 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) The information in the plans under subsection (2) must—
- (a) be consistent with AS 1100; and
  - (b) be apparent from reading the drawing, so that someone using the plans need not take measurements from the drawing.
- (4) Plans are taken to satisfy subsection (2) 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—
    - (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—par (a) (ii)**

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

- (5) However, subsection (4) does not apply in relation to a matter mentioned in the subsection if the plans provide for an addition to, or variation from, the matter.

**Example**

A plan includes information on the extent, dimensions and main construction material for a building whose walls, floors and roof comply with AS 3623. However, the plans also show a service utility pipe that penetrates a fire-rated wall. Subsection (4) does not apply to the additional information required when a fire-rated wall is penetrated. The details required under s (2) for any fire collar would need to be included in the plan.

- (6) The plans may contain other information.
- (7) For this section, information is also taken to be contained in plans if the information is in something attached to the plans.
- (8) In this section:

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

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

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

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

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

- (1) Plans that accompany an application for building approval for building work involving the removal of bonded asbestos must show the location of the bonded asbestos sheeting.
- (2) Plans that accompany an application for building approval for building work involving the removal of asbestos (other than bonded asbestos) 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, under the asbestos code is proposed to be used during the building work—where the facility, filter or equipment is located.

**19 Some building approval applications to be referred—Act s 27 (1) (b)**

- (1) This section applies if the owner of land has applied to a certifier for building approval for building work to be carried out on the land.

- (2) The application must be referred to an entity mentioned in an item in schedule 2 if the building work involves something prescribed in schedule 2 in relation to the entity.
- (3) A referral under subsection (2) must be accompanied by a copy of the plans relating to the proposed building work.

**20 Building approval applications—requirement to give advice—Act s 30A (3)**

- (1) This section applies if a building approval application, including an amended application, is referred to an entity for advice.

*Note* An application may be required to be referred to an entity under s 19.

- (2) The entity must give advice in relation to the building approval application not later than 15 working days after the day the application is given to the entity.

*Note* For how documents may be given, see the Legislation Act, pt 19.5.

- (3) The advice—
  - (a) must be in writing; and
  - (b) must relate to the entity's area of authority; and
  - (c) must state whether the entity supports or opposes the application; and
  - (d) if the entity supports the application—may include conditions to which the support is subject; and
  - (e) if the entity opposes the application—must state the reasons for opposing the application.



- (4) If the advice includes a condition, the condition must not require the building work to be carried out in a way that is inconsistent with, or more burdensome than, the Act.

**Examples—requirement inconsistent with, or more burdensome than, Act**

- 1 If the building code includes a requirement about the safety of buildings in relation to fire and associated heat and smoke, including fires inside buildings, or bushfires outside buildings, an entity authorised to give advice in relation to fire safety must not recommend or require a building to be constructed in a way that is inconsistent with, or imposes more onerous requirements than, the code.
- 2 If the building code includes a requirement about the structural sufficiency of a building's footings, an entity to which a building approval is referred must not recommend or require the building to be constructed in a way that is inconsistent with, or impose more burdensome requirements than, the code. However, the advice may include a condition requiring the footing to provide piers on either side of a buried sewer main to prevent the loads of the building being applied to the main. This is because the building code does not require the footing to not load the main; the piers are to protect the main and are not for the structural sufficiency of the building.

*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).

- (5) For this section, advice relates to an entity's area of authority if the entity has authority under a legislative provision for the area.

**Example—entity having authority**

Under the *Utilities Act 2000*, an entity licensed to provide a utility service is required to comply with relevant industry codes relating to the protection of customers, consumers and the utility network. The entity may give advice on building work in relation to that requirement.

**21 Approvals and consent required in relation to proposed building work—Act, s 152 (3) (c)**

- (1) This section applies if the owner of land has applied to a certifier for building approval for building work to be carried out on the land.

- (2) The certifier must be satisfied on reasonable grounds that the following approvals or consents have been obtained in relation to the 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 development approval—development approval;
  - (c) if the land is in a designated area—approval under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 12;
  - (d) if the work involves the erection or alteration of a lift—a permit under the *Scaffolding and Lifts Regulation 1950*, section 17.
- (3) If a development approval mentioned in subsection (2) (b) contains a condition that must be complied with before the proposed building work may start, the certifier must be satisfied on reasonable grounds that the condition has been complied with.
- (4) In this section:

*designated area*—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 4.

**22 Consultation required in relation to proposed building work—Act, s 152 (3) (c)**

- (1) This section applies if the owner of land has applied to a certifier for building approval for building work to be carried out on the land.

- (2) The certifier must be satisfied on reasonable grounds that the following consultations have been undertaken in relation to the proposed building work:
- (a) if applicable, consultation with the chief executive responsible for municipal services and the chief executive responsible for registration and regulatory services in relation to—
    - (i) procedures to be used in the demolition of any class 2, class 3, class 4, class 5, class 6, class 7, class 8 or class 9 building; and
    - (ii) any waste management plan provided in the application; and
    - (iii) any asbestos removal control plan provided in the application;
  - (b) if it is proposed that the new building, or new part of the building, is to be used as licensed premises—consultation with the commissioner for fair trading in relation to—
    - (i) occupancy loading for public areas at the premises; and
    - (ii) kitchen facilities at the premises; and
    - (iii) liquor serving counters at the premises; and
    - (iv) toilet facilities and toilet rooms at the premises;
  - (c) if it is proposed that the new building, or new part of the building, is to be used as permitted premises—consultation with the commissioner for fair trading in relation to occupancy loading for public areas at the premises;
  - (d) 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;

- (e) consultation with the environment protection authority if—
- (i) 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 to be carried out in the new building or new part of the building.
- (3) The certifier has reasonable grounds to be satisfied that consultations mentioned in subsection (2) in relation to proposed building work have been undertaken if the certifier is satisfied on reasonable grounds that sufficient consultation in relation to the work has taken place as part of a development application under the *Planning and Development Act 2007*.
- (4) If subsection (3) applies to consultation with an entity in relation to proposed building work, the certifier must not require additional consultation with the entity.
- (5) The certifier may be satisfied on reasonable grounds that an entity has been consulted under subsection (2) in relation to an application for building approval if—
- (a) a copy of the application is given to the entity required to be consulted; and
  - (b) 10 working days have elapsed after the day the copy was given.
- (6) In this section:

***accredited code of practice*** means a code of practice 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, table 1.2.

***class B activity*** means an activity listed in the *Environment Protection Act 1997*, schedule 1, table 1.3.

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

*licensed premises*—see the *Liquor Act 2010*, dictionary.

*liquor serving counter*, at premises—see the *Liquor Regulation 2010*, dictionary.

*occupancy loading*, for a public area at licensed premises or permitted premises—see the *Liquor Act 2010*, dictionary.

*permitted premises*—see the *Liquor Act 2010*, dictionary.

*toilet facility*—see the *Liquor Regulation 2010*, schedule 1, section 1.1.

*toilet room*—see the *Liquor Regulation 2010*, schedule 1, section 1.1.

## **23 Substantial alteration—Act, s 29 (2) (a)**

- (1) An alteration of a building is a substantial alteration if, during the 3 years immediately before the day the application for building approval for the alteration is made—
  - (a) for a class 1 building—the total floor area of the proposed alteration, not including any internal alteration, is more than 50% of the floor area of the original building; and
  - (b) for a class 2, 3, 4, 5, 6, 7, 8 or 9 building—the total floor area of the proposed alteration, including any other alteration, is more than 50% of the floor area of the original building.
- (2) However, neither refitting a building nor replacing the internal elements of the building is an alteration of the building unless the layout and function of the internal spaces of the building are changed.

(3) In this section:

***floor area***, of a building, means the area of floor measured from the outer walls of the building, and includes the area on each storey of the building if there is more than 1 storey.

**Examples—effect of s 23**

- 1 The floor area of a house is extended by 51%. The whole house must comply with the Act and the building code, not just the extension (see s (1) (a)), other than the parts of the building code that do not apply to the unaltered part of the house because of s 24.
- 2 A 40m<sup>2</sup> sunroom is added to a building, adding only 10% floor area to the building. The sunroom must comply with the Act and the building code, but the rest of the building need not comply if no other floor area has been altered in the previous 3 years (see s (1) (a)).
- 3 A variety store and retail book shop (a class 6 building) are separated by a common wall in a shopping mall. The wall is removed to create a single larger room.

If the room were to be used mainly for class 6 retailing, the only alteration is of an internal element, and the only alteration to the floor area is the addition of the floor area that was occupied by the wall.

However, the room is converted for use as a carwash (making the building a class 8 building). Because of the change in function, the total floor area of the 2 shops and the floor area that was occupied by the wall have been altered for this section. The altered floor area is the floor area of the carwash. In the previous 3 years, other floor area alterations have taken place in the mall. These add up to 49.5% of the mall's total floor area on all levels. The floor area alteration to create the carwash area takes the total to 50.1%. The whole mall must comply with the Act and the building code, not just the carwash.

- 4 A warehouse has no internal walls. A wall is built to divide the warehouse into 2 spaces. This does not amount to a substantial alteration if both of the divided spaces continue to function as warehouse space.

However, if 1 of the divided spaces is to be used as a retail sales room, for this section the floor area of the space has been altered. If the floor area of the sales room and the area occupied by the wall is more than 50% of the total floor area of the warehouse, the change amounts to a substantial alteration and all of the warehouse must comply with the Act and building code.

- 5 A building contains a nightclub where a fire sprinkler system was installed 1 year ago. Plans now propose to upgrade the airconditioning system and floor coverings throughout the building. As the work does not alter the floor area or function of the building it would not amount to a substantial alteration.

*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).

## **24 Unaltered parts need not comply with building code—Act, s 29 (2) (b)**

- (1) The unaltered part of a substantially altered building that is a class 1 or class 10 building need not comply with the building code as a whole if the unaltered part complies with each of the following:
- (a) for glazing where there are human impact safety requirements—
    - (i) the building code, volume 2, part 3.6.4; or
    - (ii) the alternative glazing requirements mentioned in section 25;
  - (b) for installation of smoke alarms—the building code, volume 2, part 3.7.2;
  - (c) for building in bush fire areas—the building code, volume 2, part 3.7.4;
  - (d) for stair construction—
    - (i) the building code, volume 2, part 3.9.1; or
    - (ii) the alternative stair requirements mentioned in section 26;
  - (e) for construction of balustrades—
    - (i) the building code, volume 2, part 3.9.2; or
    - (ii) the balustrade compliance requirements mentioned in section 27;

- (f) for swimming pool access—the building code, volume 2, part 3.9.3;
  - (g) for sealing of roof lights—the building code, volume 2, part 3.12.3.2;
  - (h) for sealing external windows and doors—the building code, volume 2, part 3.12.3.3;
  - (i) for sealing exhaust fans—the building code, volume 2, part 3.12.3.4;
  - (j) for minimizing air leakage from roofs, walls and floors—the building code, volume 2, part 3.12.3.5;
  - (k) all requirements under the building code, volume 2, part 3.12.5.
- (2) In addition to the requirements under subsection (1), the unaltered part of a substantially altered building that is a class 1 or class 10 building need not comply with the building code as a whole if there is compliance with each of the following:
- (a) for the walls—
    - (i) the building code, volume 2, part 3.12; or
    - (ii) if that part cannot be complied with using the most common materials and techniques without damaging part of the building—the alternative energy efficiency requirement mentioned in section 28 (1) (a);
  - (b) for the roof—
    - (i) the building code, volume 2, part 3.12; or
    - (ii) if that part cannot be complied with using the most common materials and techniques without damaging part of the building—the alternative energy efficiency requirement mentioned in section 28 (1) (b);



- (c) for a suspended floor (excluding an intermediate floor in a building with more than 1 storey)—
  - (i) the building code, volume 2, part 3.12; or
  - (ii) if that part cannot be complied with using the most common materials and techniques without damaging part of the building—the alternative energy efficiency requirement mentioned in section 28 (1) (c) and (d);
- (3) The unaltered part of a substantially altered building that is a class 1 or class 10 building need not comply with the building code as a whole, or subsection (2), in the following circumstances:
  - (a) for walls in the unaltered part if—
    - (i) complying would require the removal of more than 10% of wall linings, or cladding, in the part; or
    - (ii) there is insufficient wall cavity space to accommodate enough thermal insulation material to achieve the total R-value mentioned in section 28 (1) (a);
  - (b) for the roof in the unaltered part if—
    - (i) complying would require the removal of more than 10% of the part's roofing; or
    - (ii) there is insufficient roof cavity space to accommodate enough thermal insulation material to achieve the R-value mentioned in section 28 (1) (b);
  - (c) for thermal insulation of a suspended floor (excluding an intermediate floor in a part with more than 1 storey) in the unaltered part if—
    - (i) complying would require the removal of more than 10% of the flooring in the part; or
    - (ii) there is insufficient sub-floor space to accommodate enough thermal insulation material to achieve the R-value

mentioned in section 28 (1) (c) while maintaining a gap of not less than 100mm between the insulation material and the ground;

- (d) for barriers to prevent convection between wall cavities and areas enclosed underneath a suspended floor (excluding an intermediate floor in a part with more than 1 storey) in the unaltered part if—
    - (i) complying would require the removal of more than 1m<sup>2</sup> of wall or flooring in the part to gain access to the sub-floor area; or
    - (ii) there is insufficient work space for a person to install the barrier;
  - (e) for insulation of any heating water piping service or heating or cooling ductwork service in the unaltered part that is inaccessible if—
    - (i) complying would require the removal of more than 1m<sup>2</sup> of roofing, ceiling, wall or flooring in the part to gain access to all the inaccessible services; or
    - (ii) there is insufficient work space for a person to install the insulation;
  - (f) for electric resistance space heating elements cast into concrete or set under tiles—complying would involve physical changes to the elements.
- (4) In this section:
- insufficient work space***—there is ***insufficient work space*** for a person to install a barrier or insulation unless—
- (a) there is space for the person to at least crawl along (on temporary support planks if necessary) and work in (lying flat if necessary) to safely install the barrier or insulation; and

- (b) the space is at least 600mm wide and 600mm high, apart from any obstacles intruding into the space; and

**Examples—obstacles**

access hatch, truss member, beam, pier

*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).

- (c) any obstacles intruding into the space do not reduce the dimensions of the space to less than 450mm wide and 450mm high and are reasonably negotiable by a person used to working in confined spaces; and
- (d) the space connects to inside or outside the building directly or with the removal of not more than 1m<sup>2</sup> of roofing, ceiling, wall or flooring.

**25 Unaltered parts need not comply with building code—  
alternative glazing requirements—Act, s 29 (2) (b)**

The unaltered part of a substantially altered building complies with the alternative glazing requirements if any intact glazing that would be required to be replaced for the part to comply with the building code, volume 2, part 3.6.4 is coated, and permanently bonded, on at least 1 side with a continuous polymeric coating, sheet or film.

**26 Unaltered parts need not comply with building code—  
alternative stair requirements—Act, s 29 (2) (b)**

- (1) The unaltered part of a substantially altered building complies with the alternative stair requirements if it complies with each of the following:
  - (a) the dimensions of goings and risers (other than winders and tapered treads in a spiral stair) are constant throughout each stair flight;
  - (b) winder dimensions are constant throughout the stair flight;

- (c) for a spiral stair—tapered tread dimensions are constant throughout the flight;
- (d) riser dimensions are not taller than 250mm;
- (e) if the stairway is more than 10m high or connects more than 3 storeys—the treads are of solid construction (for example, not mesh or other perforated material);
- (f) a 125mm ball cannot pass between the treads of a riser opening;
- (g) all treads have a slip-resistant finish or a suitable non-skid strip near the edge of the nosings;
- (h) if the stair flight is more than 1m high and does not comply with the building code, volume 2, part 3.9.1.4 (which is about riser and going dimensions), whether or not it is required to comply with the part—
  - (i) the stairway has handrails; and
  - (ii) the handrails comply with the building code, volume 1, part D2.17 (which is about handrails), whether or not they are required to comply with the part.

*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).

(2) In this section:

***flight*** means part of a stair with a continuous series of risers, including risers of winders, not interrupted by a landing or floor.

***going*** means the horizontal dimension from the front to the back of a tread, less any overhang from the next tread above.

***riser*** means the height between the consecutive treads.

***tapered tread*** means a stair tread with a walking area that becomes smaller towards 1 end of the stair.

*winders* means treads within a straight flight that are used to change the direction of the stair.

**27 Unaltered parts need not comply with building code—  
balustrade compliance requirements—Act, s 29 (2) (b)**

Each of the following is a balustrade compliance requirement for the unaltered part of a building:

- (a) the part would be required to have a balustrade under the building code, volume 2, part 3.9.2, and has none;
- (b) the part—
  - (i) would be required to have a balustrade under the building code, volume 2, part 3.9.2; and
  - (ii) has a balustrade that—
    - (A) does not comply with the building code, volume 2, part 3.9.2 and the requirements of any law applying to the construction of balustrades at the time the balustrade was constructed, whether or not the balustrade previously complied with the code or requirements; and
    - (B) is installed so that a person breaching the balustrade could fall more than 4m measured from the lowest part of the balustrade at the point where the balustrade is breached.

**28 Unaltered parts need not comply with building code—  
alternative energy efficiency requirements—Act,  
s 29 (2) (b)**

- (1) For section 24 (2), the alternative energy efficiency requirements for the unaltered part of a substantially altered building are as follows:

- (a) for the walls—the external walls in the unaltered part have a total R-value that complies with the applicable value stated in the building code, volume 2, part 3.12.1.4 (External walls);
  - (b) for the roof—the roof in the unaltered part has a total R-value that complies with the applicable value stated in the building code, volume 2, part 3.12.1.2 (Roofs), adjusted as required under that part to compensate for insulation loss associated with any exhaust fans, flues or recessed down lights;
  - (c) for a suspended floor—any suspended floor (excluding an intermediate floor in a building with more than 1 storey) in the unaltered part has a total R-value that complies with the applicable value stated in the building code, volume 2, part 3.12.1.5 (Floors);
  - (d) any interface between a wall cavity and a suspended floor (excluding an intermediate floor in a building with more than 1 storey)—
    - (i) is continuously bridged with bulk thermal insulation of loose mineral, glass or plastic fibres preventing convection air movement from the sub-floor area through the wall cavity to the roof space; or
    - (ii) otherwise has a convection barrier that complies with the building code, volume 2, part 3.12.1.5 (Floors).
- (2) In this section:

**R-value** means the thermal resistance ( $\text{m}^2\text{K}/\text{W}$ ) of a component worked out by dividing its thickness by its thermal conductivity.

**total R-value**, of walls or a roof, means the total of the R-values of each component of the walls or roof.

**29 Unaltered parts need not comply with building code—  
alternative energy efficiency requirements for external  
glazing—Act, s 29 (2) (b)**

- (1) External glazing in the unaltered part of a class 1 or class 10 building need not comply with the building code, volume 2, part 3.12.2 (External Glazing) if the transparent or translucent part of the glazing is coated, and permanently bonded, on at least 1 side with a continuous polymeric coating, sheet or film that achieves—
  - (a) a total U value of 5.0 or less; and
  - (b) a solar heat gain coefficient of 0.25 or less.
- (2) Isolated glazing in the unaltered part of a class 1 or class 10 building need not comply with the building code, volume 2, part 3.12.2 (External glazing).

**Example**

A house is to have a family room added, opening onto the existing kitchen, to form an integral kitchen-family room. External windows in the new family room must comply with the building code. There is to be no barrier between the kitchen and the new family room so the existing kitchen window is not an isolated window. Its impact on the new family room must be considered when considering how the new family room complies with the building code, volume 2, part 3.12.2. All other windows in the unaltered part of the house are in fully enclosed rooms, with close-fitting doors so they are isolated windows. In applying the building code to the new family room's windows, the isolated windows do not need to be considered.

*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) In this section:

***glazing*** includes frame assemblies and transparent and translucent roof lights.

*isolated glazing* means glazing in the unaltered part of a building that is thermally isolated from glazing in the altered part of the building by a barrier of—

- (a) unperforated floors, ceilings or walls; and
- (b) doors that are close-fitting (but not necessarily sealed).

**Example—par (b)**

internal French doors installed in ordinary door frames and to ordinary construction tolerances, without additional door seals or draft excluders

*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).

*solar heat gain coefficient* means the fraction of incident irradiance on glazing that adds heat to the space inside a building.

*total U value* means transmittance ( $W/m^2.K$ ) of the composite element allowing for the effect of any airspace and associated surface resistance.

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

A building (the *new building*) built to amended plans is significantly different from a building (the *old building*) built to the unamended plans if—

- (a) the floor area, roof area or volume of the new building has changed by more than 1% from the old building; or
- (b) the new building is not the 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 changed by more than 1% from the old building; 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% from the old building; or
- (e) the number of storeys or buildings in the new building is different from the number in the old building.

**Example—change of dimension**

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

*Note 1* The Act, s 42 requires building work to be carried out in accordance with approved plans.

*Note 2* 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).

## **Division 3.3 Carrying out building work**

### **31 Considerations for proper and skilful work—material and work standards—Act, s 42 (2)**

In deciding whether building work has been carried out in a proper and skilful 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—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—use**

Installing roof sheeting so it is level at any point is not carrying out building work in a proper way 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 suspect on reasonable grounds 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.

**32 Considerations for proper and skilful work—construction tolerances—Act, s 42 (2)**

- (1) In deciding whether building work has been carried out in a proper and skilful way, consideration must be taken of whether the work has been carried out—
  - (a) to meet or exceed the standards stated in the approved plans; or

- (b) if the approved plans do not vary reasonable minimum industry standards—to meet or exceed reasonable minimum industry standards.
- (2) In this section:

*reasonable minimum industry standards*—a matter covered by the tolerances guide meets *reasonable minimum industry standards* if the matter is not a defect under the guide.

*tolerances guide*—see schedule 3, section 3.1.

**Examples**

- 1 The approved plans for a building show a proposed floor bowing upward (*precambered*). The amount of precamber would be a defect under the provisions of the tolerances guide dealing with how flat or level a floor must be. If the completed floor complies with the approved plans, the precamber does not mean that the construction of floor was not done skilfully.
- 2 Specifications forming part of the approved plans for a prestigious building show that construction tolerances are stricter than the corresponding tolerances in the tolerances guide. The building work may not be considered proper and skilful if the work does not meet the standards stated in the plans, even though the work is not defective under the tolerances guide.

*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).

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

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

The 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; and
- (b) for a class 1 or class 10 building—
  - (i) completion of the structural framework before the placement of any internal lining; and

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

**34 Alternative document to 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*) as the original building.
- (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 under 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.

## **Division 3.4                      Completion of building work**

### **35                      Approvals on completion of building work—Act, s 48 (3) (g)**

On completion of building work, the following approvals are to be obtained:

- (a) if development approval for building work is subject to a condition that relates only to building work—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 chief officer (rural fire service);
- (c) approval under the *Scaffolding and Lifts Regulation 1950*, section 21.

#### **Examples—par (a)**

1 Development approval is given for a multi-unit townhouse development (including plans for landscaping and a driveway). The approval is subject to the following conditions:

- (a) stated shrubs, additional to those shown in the plans accompanying the application for development approval, are to be planted;
- (b) the driveway is to be relocated to another stated place;
- (c) the road adjacent to the development is to be widened to create on-street parking, in the way stated in the condition;
- (d) the plans are to be redrawn to show the townhouses with hipped roofs instead of gable-end roofs.

The conditions mentioned in pars (a), (b) and (c) relate to landscaping or site work. The condition in mentioned in par (d) relates only to the plans.

Because none of the conditions relate only to the building work, this section does not apply to the development approval.

- 2 The ACAT, on reviewing the decision to grant the development approval mentioned in example 1, remakes the decision to grant the development approval subject to the condition that the roofs of the townhouses are constructed as hipped roofs instead of gable-end roofs.

This section applies to the development approval as revised by the ACAT because the condition to which the approval is subject relates only to the building work.

*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).

## **Division 3.5 Fundamentally noncompliant building work**

### **36 Fundamentally noncompliant building work—Act, s 50 (4)**

- (1) An element of building work mentioned in an item in schedule 3, column 2 is fundamentally noncompliant in the circumstances mentioned in column 3 for the item.
- (2) An element of building work on, or in relation to, a class 10 building is fundamentally noncompliant if—
- (a) 1 or more elements not shown in the approved plans are added to the building; and
  - (b) the building as altered by the work is a different type of building to the building shown in the plans.

#### **Example—fundamentally noncompliant class 10 building**

Plans show a carport without walls. During the construction of the carport walls are added. This alters the building type from a carport to a garage, and means that the building is fundamentally noncompliant.

## Part 4 Residential buildings—statutory warranties, insurance and fidelity certificates

### 37 Building work to which pt 6 does not apply—Act, s 83 (1) (b)

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

### 38 End of statutory warranties—Act, s 88 (4)

- (1) The period for the end of a warranty is—
  - (a) for residential building work in relation to a structural element of a building—6 years after the completion day for the work; or
  - (b) for residential building work in relation to a non-structural element of a building—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) a load-bearing component of the building (whether internal or external) that is essential to the stability of the building or part of it; or

- (b) a component (including weatherproofing) forming part of the external walls or roof of the building.

**Examples—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).

**39 Minimum insurance for residential building work—Act, s 90 (1) (b)**

The amount for insurance cover is \$85 000.

**40 Period of insurance for residential building work—Act, s 90 (1) (c) and (d)**

The period is 5 years.

**41 Period of claims for residential building work—Act, s 90 (1) (i)**

The period is 90 days.

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

The amount is \$500.

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

The amount is \$10 000.



## Part 5 Building code

### 44 Application of building code to bushfire-prone area—Act, s 136 (4)

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

(2) In this section:

*non-urban land* means—

(a) territory land in 1 of the following zones under the territory plan:

(i) broadacre zone;

(ii) rural zone;

(iii) hills, ridges and buffer areas zone;

(iv) river corridor zone;

(v) mountains and bushlands zone;

(vi) transport and services zones TS1-TS2; or

(b) land other than land in an area identified under the national capital plan as—

(i) an urban area; or

(ii) the Central National Area.

## Part 5A Notification and review of decisions

### 44A Decision-makers—Act, s 142A, def *decision-maker*

An entity mentioned in schedule 4, column 3 for a reviewable decision is prescribed.

### 44B Reviewable decisions—Act, s 142A, def *reviewable decision*

A decision mentioned in schedule 4, column 2, under a provision mentioned in column 2 in relation to the decision is prescribed.

### 44C Right of review and notice—Act, s 142B and s 142C (a)

An entity (a *relevant entity*) mentioned in schedule 4, column 4 is prescribed.

## Part 6                      Miscellaneous

### 45                      **Non-application of Legislation Act, s 47 (5)**

The Legislation Act, s 47 (5) does not apply to the asbestos removal code or the tolerances guide.

### 47                      **Exempt building code—Act, s 152**

- (1) The Minister may, in writing, make an exempt building code for schedule 1.
- (2) The exempt building code is a disallowable instrument.

*Note*                      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 48                      **Occupations and qualifications—handling small amounts of bonded asbestos—Act, s 152**

- (1) The construction occupations registrar may declare an occupation for schedule 1, part 1.3, item 25 (which is about handling small amounts of bonded asbestos).
- (2) The construction occupations registrar may declare a qualification relevant to handling bonded asbestos for schedule 1, part 1.3, item 25.
- (3) A declaration is a notifiable instrument.

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

### 49                      **Certifier issuing building approval etc without development approval—Act, s 152**

- (1) A certifier who is a person commits an offence if—
  - (a) the certifier issues a building approval, or approves amended plans, for the building of a single dwelling on a block; and

- (b) the dwelling will be the first dwelling built on the block; and
- (c) there is no development approval for the site work proposed in the approved plans; and

*Note* **Approved plans** includes amended plans (see Act, dict).

- (d) the dwelling would not, if built in accordance with the approved plans, comply with—
  - (i) a relevant precinct code; or
  - (ii) to the extent that it is not inconsistent with the rules in a relevant precinct code—an applicable rule.

Maximum penalty: 10 penalty units.

*Note* **Applicable rule**—see s (8). See also s (6).

- (2) A certifier who is a person commits an offence if—
    - (a) the certifier issues a building approval, or approves amended plans, for the building of a single dwelling on a block; and
    - (b) the dwelling will be the first dwelling built on the block; and
    - (c) there is no development approval for the site work proposed in the approved plans; and
- Note* **Approved plans** includes amended plans (see Act, dict).
- (d) the approved plans are defective because they contain information that is false or inaccurate; and
  - (e) if the plans were not defective, the certifier would have contravened subsection (1).

Maximum penalty: 10 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that the defendant—
- (a) took all reasonable steps to find out whether the site work, if carried out in accordance with the approved plans, required development approval; and
  - (b) was satisfied on reasonable grounds that the development did not require development approval.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant—
- (a) took all reasonable steps to find out if the approved plans contained false or inaccurate information; and
  - (b) was satisfied on reasonable grounds that the plans did not contain false or inaccurate information.
- (5) To remove any doubt, if a building approval indicates that something is not to have work done in relation to it, or is not part of the building approval, the certifier does not commit an offence under this section in relation to the thing.
- (6) To remove any doubt, a relevant precinct rule is not inconsistent with an applicable rule only because one rule deals with a matter and the other does not.
- (7) An offence against this section is a strict liability offence.
- (8) In this section:
- applicable rule***, for a single dwelling, means a rule in any of the following:
- (a) for a dwelling in a suburban zone—
    - (i) the residential zones code, part A(1)-RZ1, other than rule R1 (Subdivision of blocks); or

- (ii) the residential zones code, part B (General development controls), other than rule R14 (Subdivision of existing residential leases (except RZ1 zone)); or
  - (iii) if the residential zones code, part C(3) (Single dwelling housing-compact blocks in new estates, RZ1-suburban and RZ2 suburban core zones) does not apply to the dwelling—the residential zones code, part C(1) (Single dwelling housing), other than rule R49 (a); or
  - (iv) if the residential zones code, part C(3) applies—the residential zones code, part C(3), other than rule R79;
- (b) for a dwelling in a suburban core zone—
- (i) the residential zones code, part A(2)-RZ2; or
  - (ii) the residential zones code, part B, other than rule R14; or
  - (iii) if the residential zones code, part C(3) does not apply to the dwelling—the residential zones code, part C(1), other than rule R49 (a); or
  - (iv) if the residential zones code, part C(3) applies—the residential zones code, part C(3), other than rule R79;
- (c) for a dwelling in an urban residential zone—
- (i) the residential zones code, part A(3)-RZ3; or
  - (ii) the residential zones code, part B, other than rule R14; or
  - (iii) the residential zones code, part C(1), other than rule R49 (a);
- (d) for a dwelling in a medium density residential zone—
- (i) the residential zones code, part A(4)-RZ4; or
  - (ii) the residential zones code, part B, other than rule R14; or

- (iii) the residential zones code, part C(1), other than rule R49 (a);
- (e) for a dwelling in a high density residential zone—
  - (i) the residential zones code, part A(5)-RZ5; or
  - (ii) the residential zones code, part B, other than rule R14; or
  - (iii) the residential zones code, part C(1), other than rule R49 (a).

***dwelling***—see the *Planning and Development Regulation 2008*, section 5.

***precinct code***—see the *Planning and Development Act 2007*, dictionary.

***residential zones code*** means the Residential Zones Single Dwelling Housing Development Code in the territory plan.

***zone***—see the *Planning and Development Act 2007*, dictionary.

## Part 21

# Transitional—Building Legislation Amendment Regulation 2010 (No 1)

### 110 Building code 2010 edition—delayed application of energy efficiency provisions—Act, s 136 (4)

- (1) Provisions of the 2010 edition of the building code that relate to energy efficiency do not apply to building work in relation to an exempt building if the work is completed before 1 January 2011.
- (2) Provisions of the 2010 edition of the building code that relate to energy efficiency do not apply to building work if—
  - (a) for building work that requires development approval under the *Planning and Development Act 2007*—application for the approval is made before 1 July 2010; and
  - (b) for building work that does not require development approval under the *Planning and Development Act 2007*—application for building approval for the work is made before 1 July 2010; and
  - (c) building approval for the work is issued before the applicable date.
- (3) Provisions of the 2009 edition of the building code that relate to energy efficiency apply to building work mentioned in subsection (1) or (2).
- (4) In this section:  
***applicable date*** for building work, means—
  - (a) 1 January 2011 if the work is for—
    - (i) a class 1 or class 10 building; or



- (ii) a class 2 building (other than a class 2 building mentioned in paragraph (b) (i)); and
- (b) 1 May 2011 if the work is for—
  - (i) a class 2 building and a change is required to the development approval, or the application for development approval, to comply with the 2010 edition of the building code; or
  - (ii) a class 3, class 4, class 5, class 6, class 7, class 8 or class 9 building.

**111 Expiry—pt 21**

This part expires on 1 May 2011.

## Schedule 1 Exempt buildings and building works

(see s 6)

### Part 1.1 Interpretation—sch 1

#### 1.1 Definitions—sch 1

In this schedule:

*AS 1742* means Australian Standard AS 1742 (*Manual of uniform traffic control devices*), as in force from time to time.

*AS/NZS 3845* means Australian and New Zealand Standard AS/NZS 3845 (*Road safety barrier systems*), as in force from time to time.

*demountable pool* means a swimming pool that has a water reservoir that can be taken apart and assembled by hand or with hand tools without damaging the pool's components.

*enclosed outbuilding* means a class 10a building that—

- (a) has—
  - (i) a nominal height of not higher than 3m; and
  - (ii) if the structure has a roof covering (including a sail or sail-like element)—a roof covering with an area not larger than 25m<sup>2</sup>; and
- (b) has 1 or more walls; and
- (c) includes any of the following:
  - (i) a greenhouse;
  - (ii) a storeroom;

- (iii) a conservatory;
- (iv) a cubbyhouse;
- (v) a gazebo;
- (vi) an outbuilding;
- (vii) a shed;
- (viii) a studio;
- (ix) a stable;
- (x) a workshop.

***exempt building code*** means the code made by the Minister under section 47 (Exempt building code—Act, s 152).

***heating appliance*** includes—

- (a) any component associated with the appliance; and
- (b) an open fireplace, chimney or flue.

***large building*** means a garage, outbuilding or enclosed outbuilding, identified in the exempt building code, if—

- (a) the structure is a class 10a building; and
- (b) the structure has—
  - (i) a nominal height of not higher than 3m; and
  - (ii) if the structure has a roof covering (including a sail or sail-like element)—a roof covering with an area larger than 25m<sup>2</sup>; and
  - (iii) if the structure has a floor—
    - (A) a floor with a nominal height not higher than 1m; and
    - (B) a floor area of not more than 36m<sup>2</sup> excluding areas underneath external walls; and

- (iv) framing that does not have an unsupported span, (including any cantilever) longer than 6m; and
- (c) for any timber element of roof framing for the structure—the nominal cross-sectional dimensions—
  - (i) are not more than 100mm x 250mm; or
  - (ii) comply with the exempt building code; and
- (d) for any steel element of roof framing for the structure—the cross-sectional thickness at any point is not more than 4mm; and
- (e) no masonry, clay or concrete component of the structure (other than cement sheet product) has a nominal height of more than 1.8m.

***nominal height*** means the height of a structure, building or object excluding any part of the structure, building or object that is in the ground.

***outbuilding*** means any of the following:

- (a) outdoor deck;
- (b) carport;
- (c) pergola;
- (d) porch;
- (e) verandah;
- (f) shelter;
- (g) gazebo;
- (h) shade structure;
- (i) hail protection structure.

***small open building*** means an outbuilding that has—

- (a) no walls; and
- (b) a nominal height of not more than 3m; and
- (c) if the structure has a roof covering (including a sail or sail-like element)—a roof covering with an area not larger than 25m<sup>2</sup>; and
- (d) if the structure has a floor—a floor with a nominal height not higher than 1m; and
- (e) a frame that does not have unsupported span (including any cantilever) longer than 4m.

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

***swimming pool***—

- (a) means—
  - (i) an excavation, structure or vessel that can be filled with water to a depth of more than 300mm; and
  - (ii) is principally used for swimming, wading, paddling or any other human aquatic activity; and
- (b) includes a bathing or wading pool and a spa; but
- (c) does not include, a bath or spa bath in a bathroom.

***temporary building*** means a building if—

- (a) the building is not a class 1, 2, 3 or 4 building; and
- (b) the building is erected on the site of building work for the erection or alteration of another building; and

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Section 1.1

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- (c) building approval has been obtained for the building work; and
- (d) the building is to be removed when the building work is completed.

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## **Part 1.2**                      **Exemption from application of Act**

<b>column 1 item</b>	<b>column 2 exempt building</b>	<b>column 3 condition on exemption</b>
1	temporary building	building work involving the handling of asbestos or disturbing of friable asbestos must not be done in or on the temporary building
2	bridge that does not encompass or extend a building to which the Act applies	
3	dam	
4	retaining wall associated with bridge, dam or road	
5	stile	
6	mesh fence with nominal height of not more than 3m	
7	prefabricated bus shelter	
8	prefabricated playground equipment	
9	road sign or other traffic device or system under AS/NZS 3845 or AS 1742	
10	electricity network distribution equipment	

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**Part 1.2**

Exempt buildings and building works  
Exemption from application of Act

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<b>column 1 item</b>	<b>column 2 exempt building</b>	<b>column 3 condition on exemption</b>
11	reservoir, other than—  (a) part of an on-site stormwater detention system designed to detain stormwater from building or group of associated buildings before water enters reticulated stormwater drainage network; or  (b) a water tank associated with building or group of associated buildings; or  (c) a swimming pool	
12	aqueduct	
13	water or sewage treatment works	
14	stormwater outfall	
15	pole or mast 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	

**Example—item 1**

Friable asbestos insulation is discovered in the roof of a temporary shed at a building site. Removal of the asbestos from the shed's roof must comply with the provisions of the Act applying to asbestos removal work.



**Example—item 2**

A pedestrian footbridge provides a link over a road between shopping centres either side of the road. If the bridge only functions as a bridge, it does not encompass or extend the shopping centres. If walls and a roof enclose the bridge so as the centres become contiguous at the bridge rather than the bridge being an intervening link, the bridge extends the shopping centres.

*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).

## Part 1.3 Exemption from part of Act

column 1 item	column 2 exempt building or building work	column 3 provision of Act exempt from	column 4 condition on exemption
1	fence or wall with nominal height of up to 1.8m, other than a fence or wall forming integral part of required enclosure for swimming pool	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
2	<p>fence or wall with nominal height of up to 2m if any masonry or concrete components (other than cement sheet products) have a nominal height of not more than 1.8m, not including—</p> <p>(a) part of roofed building; or</p> <p>(b) retaining wall; or</p> <p>(c) integral part of required enclosure for swimming pool</p>	<p>(a) pt 3 (Building work); and</p> <p>(b) pt 5 (Building occupancy); and</p> <p>(c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)</p>	

**Schedule 1** Exempt buildings and building works  
**Part 1.3** Exemption from part of Act

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
3	fence with nominal height of up to 3m if masonry or concrete components (other than cement sheet products) have nominal height of not more than 1.8m	(a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	fence must comply with exempt building code
4	retaining wall up to 1.2m high when measured from any point at top of retaining wall to lowest adjacent ground level	(a) pt 3 (Building work); and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
5	retaining wall up to 1.5m high when measured from any point at top of retaining wall to lowest adjacent ground level	(a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	retaining wall must comply with exempt building code
6	small open building	(a) pt 3 (Building work); and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	

**Schedule 1** Exempt buildings and building works  
**Part 1.3** Exemption from part of Act

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
7	large building	(a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	large building must comply with exempt building code
8	enclosed outbuilding	(a) pt 3 (Building work); and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
9	<p>antenna or aerial assembly—</p> <p>(a) that is a class 10b building; and</p> <p>(b) the height of which measured from highest to lowest part of assembly is not more than 6m (excluding any part of assembly that is in ground or part of another building or used for purpose other than supporting assembly or aerial)</p>	<p>(a) pt 3 (Building work); and</p> <p>(b) pt 5 (Building occupancy); and</p> <p>(c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)</p>	

**Schedule 1** Exempt buildings and building works  
**Part 1.3** Exemption from part of Act

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
10	artificial pool that can hold water no deeper than 300mm	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	
11	initial assembly of demountable pool, but not use of pool if no certificate for pool issued under Act, part 5	(a) s 42 (1) (e); and (b) s 42 (1) (f); and (c) ss 43, 44, 45 and 46; and (d) s 51, in relation to s 42 (1) (e) and s 42 (1) (f)	pool fencing and barriers required by Act to prevent access to water must be in place before the pool is able to hold water



<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
12	<p>assembling or taking apart reservoir of demountable pool (excluding fencing or barriers required by Act to prevent access to water)</p> <p><i>Note</i> See the example at the end of this table.</p>	<p>(a) pt 3 (Building work); and</p> <p>(b) pt 5 (Building occupancy); and</p> <p>(c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)</p>	<p>pool fencing and barriers required under Act to restrict access of young children to pool and immediate pool surrounds must be in place before the pool is able to hold water</p>

**Schedule 1** Exempt buildings and building works  
**Part 1.3** Exemption from part of Act

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<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
13	pool fencing and barriers required under Act to restrict access of young children to pool and immediate pool surrounds	pt 3 (Building work)	(a) fencing and barriers must comply with building code; and  (b) fencing and barriers must be constructed in a proper and skilful way; and  (c) fencing and barriers must be inspected and certified as compliant with the Act (other than pt 3) by certifier

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
14	<p>internal alteration if—</p> <p>(a) certificate under Act, part 5 issued for building before alteration; and</p> <p>(b) work does not—</p> <p>(i) change classification of building; or</p> <p>(ii) affect exterior; or</p> <p>(iii) affect a heating appliance</p>	<p>(a) pt 3 (Building work); and</p> <p>(b) pt 5 (Building occupancy); and</p> <p>(c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)</p>	<p>internal alteration must not cause aspect of building that complies with building code to not comply</p>

**Schedule 1**  
**Part 1.3**

Exempt buildings and building works  
Exemption from part of Act

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
15	external alteration if— (a) certificate under Act, part 5 issued for building before alteration; and (b) work involves— (i) doorway or window opening in class 1, 2 or 10 building with horizontal opening span of not more than 2m; or (ii) altering an energy-consuming appliance or fitting; or (iii) skylight with an area of not more than 4m <sup>2</sup>	(a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	(a) external alteration must comply with exempt building code (b) external alteration must not cause aspect of building that complies with building code to not comply

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
16	external alteration if—  (a) certificate under Act, part 5 issued for building before alteration; and  (b) work involves flue, or duct, outlet with nominal horizontal dimensions not larger than 600mm	(a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	external alteration must comply with exempt building code

**Schedule 1**  
**Part 1.3**

Exempt buildings and building works  
Exemption from part of Act

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<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
17	stairs forming part of building or structure mentioned in this schedule	(a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	
18	external pond that can hold water to a depth of not more than 1.2m	(a) pt 3 (Building work); and  (b) pt 5 (Building occupancy); and  (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	pond must not be used for swimming, wading or bathing

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
19	letterbox, barbecue, or similar structure, with plan area not larger than 2m <sup>2</sup> if height measured from highest point on structure to ground is not more than 1.8m (excluding any part in ground)	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	
20	water tank with capacity not more than 20kL if height measured from highest point on structure to ground is not more than 2.4m (excluding any part in ground)	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	

**Schedule 1**  
**Part 1.3**

Exempt buildings and building works  
Exemption from part of Act

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
21	amusement ride or device to which AS 3533 applies if erected for no more than 2 months	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	(a) design, construction and use must be consistent with AS 3533; and (b) the ride or device must be demolished or removed within 2 months after erected
22	class 6, class 7 or class 10a building or portable building or structure, including tent, marquee, stall or booth, if erected for no more than 2 months	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	(a) design, construction and use must be consistent with AS 3533; and (b) building or structure must be demolished or removed within 2 months after erected



<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
23	photovoltaic panel, or solar water heater, installed on class 1 or class 10a building	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	
24	airconditioning unit for class 1 or class 10a building, that is not main source of ventilation for room or building where installed	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	

**Schedule 1**  
**Part 1.3**

Exempt buildings and building works  
Exemption from part of Act

<b>column 1 item</b>	<b>column 2 exempt building or building work</b>	<b>column 3 provision of Act exempt from</b>	<b>column 4 condition on exemption</b>
25	handling not more than 10m <sup>2</sup> of bonded asbestos if handling incidental to work undertaken by person in occupation mentioned in column 4	(a) pt 3 (Building work); and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)	(a) handling must be carried out by person who— (i) works in an occupation declared by construction occupations registrar under s 47; and (ii) has qualification declared by construction occupations registrar under s 47  (b) handling must be in accordance with asbestos removal code

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**Example—item 12**

A certificate of occupancy is issued for a demountable swimming pool, including its required pool fencing. Doing any building work in relation to modifying the pool fence is not exempt from the application of the Act. However, the pool reservoir may be taken apart and packed away for winter, and assembled each summer, in accordance with this section, provided the re-erected pool reservoir and its fencing continue to comply with the pre-requisites to the certificate of occupancy being granted in respect of it. A substitute reservoir may also be erected to replace the original approved reservoir, if its arrangement and dimensions comply with this item.

*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).

## Schedule 2 Referral of building approval applications

(see s 19)

### Part 2.1 Interpretation—sch 2

#### 2.1 Definitions—sch 2

In this schedule:

**ActewAGL Distribution** means ACTEW Distribution Ltd ABN 83 073 025 224 and Alinta GCA Pty Ltd ABN 24 008 552 663 working in partnership as ActewAGL Distribution ABN 76 670 568 688.

**easement**—see the *Planning and Development Regulation 2008*, schedule 1, section 1.11.

**proposed easement**—see the *Planning and Development Regulation 2008*, schedule 1, section 1.11.

**supplied**—a service is taken to be **supplied** if service lines or pipes exist that connect a building to a service utility network, whether or not the service is in fact being provided to the building.

**utility infrastructure access or protection space**—see the *Planning and Development Regulation 2008*, schedule 1, section 1.11.

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## **Part 2.2**                      **Referral of building approval applications to particular entities**

<b>column 1 item</b>	<b>column 2 building work involved</b>	<b>column 3 entity to which building approval application is referred</b>
1	demolition of building to which water or sewerage services supplied or water meter connected	ActewAGL Distribution
2	erection of building, or new part of building, if building or new part encroaches on easement, proposed easement or utility infrastructure access or protection space	ActewAGL Distribution
3	disposal of non-domestic waste into sewerage system	ActewAGL Distribution
4	demolition of building to which electricity services supplied or electricity meter connected	ActewAGL Distribution
5	demolition of building to which gas services supplied or gas meter connected	ActewAGL Distribution
6	use of alternative building solution for a provision of the building code that deals with fire protection	chief officer (fire brigade) or chief officer (rural fire service)

**Schedule 2**  
**Part 2.2**

Referral of building approval applications  
Referral of building approval applications to particular entities

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<b>column 1 item</b>	<b>column 2 building work involved</b>	<b>column 3 entity to which building approval application is referred</b>
7	erection of building, or new part of building, if building, or new part—  (a) is not a class 1 or class 10 building; and  (b) has floor area larger than 500m <sup>2</sup>	chief officer (fire brigade) or chief officer (rural fire service)

## **Schedule 3**      **Fundamentally noncompliant building work**

(see s 36)

### **Part 3.1**      **Interpretation—sch 3**

#### **3.1**      **Definitions—sch 3**

- (1) In this schedule:

*defect tolerance*, for an element of building work, means the amount stated in the tolerances guide for the element as the amount by which the element may deviate from a stated dimension in the approved plans for the building work, or a result from working out a dimension using a method stated in the tolerances guide, for the element.

*tolerances guide* means the Guide to Standards and Tolerances 2007, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* The Legislation Act, s 47 (5) is disappplied in relation to the tolerances guide by s 45.

*Note 3* The tolerances guide can be viewed at, or downloaded from, [www.buildingcommission.com.au/publicationslibrary](http://www.buildingcommission.com.au/publicationslibrary).

- (2) For this schedule, approved plans that relate to building work show the dimension of an element of the building work if the dimension of the element can be—
- (a) worked out geometrically from the drawings in the approved plans; or

(b) deduced from diagrammatic information in the approved plans.

**Examples—s (2)**

- 1 Approved plans show a building's finished floor level and ceiling height with reference to a national height datum but do not include any other vertical dimensions that refer to a height datum. The plans also show a roof pitched from the ceiling level at a roof slope of 22.5°, rising to a single ridgeline at the uppermost part of the roof. It can be worked out, from the stated horizontal and vertical dimensions and slope, that the top of the ridge must be 5430mm above the finished floor level. Although the plans do not state the level of the top of the roof, the plans show what the level must be.
- 2 Approved plans show external doors and windows of a building to be approximately in the horizontal centre of the adjacent room wall. The plans do not show horizontal dimensions to locate the doors or windows. The plans are taken to show that the doors and windows must be located approximately in the horizontal centre of the relevant walls even though no dimensions are specified. A door or window wholly left or right of the horizontal centre of the room would not comply with the location shown on the plans.

*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).



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## **Part 3.2**                      **Fundamentally noncompliant building work**

<b>column 1 item</b>	<b>column 2 element of building work</b>	<b>column 3 when building work is fundamentally noncompliant</b>
1	horizontal set out of a building	the building's set out is more than 10 times the defect tolerance for horizontal set outs stated in the tolerances guide
2	a floor	(a) the level of the floor is more than 10 times the defect tolerance for floors stated in the tolerances guide;  (b) the total floor area exceeds the total floor area shown on the approved plans that relate to the building work by more than 10%
3	external dimensions of a building	the external dimensions of the building are more than 10 times the defect tolerance for external dimensions stated in the tolerances guide
4	a room	(a) the set out or a dimension of the room is more than 10 times the defect tolerance for rooms stated in the tolerances guide;  (b) the number of rooms is more than the number shown on the approved plans that relate to the building work
5	masonry work	a tolerance of a masonry component is more than 10 times the defect tolerance for the masonry component stated in the tolerances guide

**Schedule 3**  
**Part 3.2**

Fundamentally noncompliant building work  
Fundamentally noncompliant building work

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<b>column 1 item</b>	<b>column 2 element of building work</b>	<b>column 3 when building work is fundamentally noncompliant</b>
6	height of a building	(a) the top of the building is more than 500mm higher than shown on the approved plans that relate to the building work;  (b) the vertical distance from the ground to any point on the building is more than 500mm greater than shown on the approved plans that relate to the building work
7	number of storeys of a building	the number of storeys is more than the number shown on the approved plans that related to the building work
8	number of buildings	the number of buildings, residences or units is more than the number shown on the approved plans that relate to the building work
9	useless space in a building  <i>Note</i> See the example at the end of this table.	the approved plans that relate to the building work do not show a use for a space in the building and the space is constructed in a way that it could be reasonably used for human occupation
10	door or window	(a) the number of external doors or windows is more than the number shown on the approved plans that relate to the building work  (b) a door or window is located in an external wall even though the approved plans that relate to the building work shows no part of a door or window to be located in the wall

<b>column 1 item</b>	<b>column 2 element of building work</b>	<b>column 3 when building work is fundamentally noncompliant</b>
11	an enclosure	(a) a wall or roof encloses or partly encloses a building or space shown on the approved plans for the building work not to be enclosed or partly enclosed with the wall or roof;  (b) a wall or roof has an area of more than 2m <sup>2</sup>
12	artificial pool that is required under Act to have pool fencing or barrier to restrict access of young children to pool and immediate pool surrounds	the pool does not have the fencing or barrier required under the Act

**Examples—item 9**

- 1 Approved plans show a space between a ceiling and the roof above the ceiling (the *roof space*) but do not show a use for the roof space. The roof space is constructed in a way that it could reasonably be used as an attic bedroom.
- 2 Approved plans show a space between the ground and a floor above the ground (the *subfloor area*) but do not show a use for the subfloor area. The subfloor area is constructed in a way that it could reasonably be used as a home theatre.

*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).

## Schedule 4 Reviewable decisions

(see pt 5A)

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 decision-maker</b>	<b>column 4 relevant entity</b>
1	decision under the Act, s 19D (2) (a) to refuse to approve a certifier's resignation	constructions occupations registrar	entity appointed as certifier
2	decision under the Act, s 20 (4) to refuse to appoint a government certifier for building work	constructions occupations registrar	applicant for the appointment of a government certifier
3	decision under the Act, s 36 (2) to refuse to extend or further extend a period	government certifier	applicant for extension
4	decision under the Act, s 53 to issue a stop notice in relation to building work being, or to be, carried out	constructions occupations registrar, building inspector or government certifier	entity carrying out building work
5	decision under the Act, s 58 (2) or (4) to issue a notice	constructions occupations registrar	entity required by notice to carry out stated building work
6	decision under the Act, s 62 (1) to issue a notice	constructions occupations registrar	entity required by notice to carry out stated building work

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 decision-maker</b>	<b>column 4 relevant entity</b>
7	a decision under the Act, s 69 to refuse to issue a certificate of occupancy	constructions occupations registrar	applicant for the certificate
8	a decision under the Act, s 71 to refuse to issue a certificate for building work involving demolition	constructions occupations registrar	applicant for the certificate
9	a decision under the Act, s 72 to refuse to issue a certificate involving erection of a structure	constructions occupations registrar	applicant for the certificate
10	a decision under the Act, s 75 (1) to refuse to issue a certificate of regularisation	constructions occupations registrar	applicant for the certificate
11	a decision under the Act, s 77 (3) to refuse to give an approval	constructions occupations registrar	applicant for the approval
12	a decision under the Act, s 86 (1) (b) (ii) to work out the cost of building work	constructions occupations registrar	the builder
13	a decision under the Act, s 90 (1) (j) to refuse to give an approval for the form of the insurance policy	constructions occupations registrar	the applicant for approval
14	a decision under s 20 to give advice that does not support proposed building work	the entity giving the advice	applicant for advice

**Schedule 4**      Reviewable decisions

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<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 decision-maker</b>	<b>column 4 relevant entity</b>
15	a decision under s 20 to give advice that supports proposed building work, subject to compliance with stated conditions	the entity giving the advice	applicant for advice

## 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:

- ACAT
- chief executive (see s 163)
- commissioner for fair trading
- construction occupations registrar
- entity
- may (see s 146)
- national capital plan
- person
- territory plan
- 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
- asbestos removal control plan
- bonded asbestos
- building approval
- building code (see s 136 (1))
- building work
- certificate of regularisation (see s 75 (1))
- certifier
- class
- completion day
- development approval
- dwelling
- easement

- exempt building (see s 12)
- land
- owner
- residential building work
- structure (see s 8)
- waste management plan.

**ActewAGL Distribution**, for schedule 2 (Referral of building approval applications)—see schedule 2, section 2.1.

**AS 1100** means Australian Standard 1100 (which is about technical drawing) as in force from time to time, and includes AS/NZS 1100.501.

**AS 1742**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**AS/NZS 3845**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

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

**asbestos removal code** means a code of practice for the safe removal of asbestos approved by the Minister under the Act, section 139B.

**defect tolerance**, for schedule 3 (Fundamentally noncompliant building work)—see schedule 3, section 3.1.

**demountable pool**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**easement**, for schedule 2 (Referral of building approval applications)—see schedule 2, section 2.1.

**enclosed outbuilding**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**exempt building code**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**heating appliance**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.



**large building**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**nominal height**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**outbuilding**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**proposed building work**, for division 3.2 (Building approvals)—see section 9.

**proposed easement**, for schedule 2 (Referral of building approval applications)—see schedule 2, section 2.1.

**small open building**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**solar water heater**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**supplied**, for schedule 2 (Referral of building approval applications)—see schedule 2, section 2.1.

**swimming pool**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**temporary building**, for schedule 1 (Exempt buildings and building works)—see schedule 1, section 1.1.

**tolerances guide**, for schedule 3 (Fundamentally noncompliant building work)—see schedule 3, section 3.1.

**utility infrastructure access or protection space**, for schedule 2 (Referral of building approval applications)—see schedule 2, section 2.1.

## 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

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

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### 3 Legislation history

**Building (General) Regulation 2008 SL2008-3**

notified LR 3 March 2008  
s 1, s 2 commenced 3 March 2008 (LA s 75 (1))  
remainder commenced 31 March 2008 (s 2 and see Building  
Legislation Amendment Act 2007 A2007-26, s 2, Planning and  
Development Act 2007 A2007-24, s 2 and CN2008-1)

as amended by

**ACT Civil and Administrative Tribunal Legislation Amendment  
Act 2008 A2008-36 sch 1 pt 1.8**

notified LR 4 September 2008  
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
sch 1 pt 1.8 commenced 2 February 2009 (s 2 (1) and see ACT Civil  
and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.10**

notified LR 1 September 2009  
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))  
sch 3 pt 3.10 commenced 22 September 2009 (s 2)

**Building Legislation Amendment Regulation 2010 (No 1) SL2010-15  
pt 2**

notified LR 3 May 2010  
s 1, s 2 commenced 3 May 2010 (LA s 75 (1))  
pt 2 commenced 4 May 2010 (s 2)

**Building Legislation Amendment Regulation 2010 (No 2) SL2010-21  
pt 2**

notified LR 31 May 2010  
s 1, s 2 commenced 31 May 2010 (LA s 75 (1))  
pt 2 commenced 1 June 2010 (s 2)

## Endnotes

4 Amendment history

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### **Liquor (Consequential Amendments) Act 2010 A2010-43 sch 1 pt 1.3**

notified LR 8 November 2010

s 1, s 2 commenced 8 November 2010 (LA s 75 (1))

sch 1 pt 1.3 commenced 1 December 2010 (s 2 (4) and see Liquor Act 2010 A2010-35, s 2 (3) (as am by A2010-43 amdt 1.19) and CN2010-14)

## 4 Amendment history

### **Commencement**

s 2 om LA s 89 (4)

### **Exempt buildings and building work generally—Act, s 15, s 65, s 83 and s 152 (2)**

s 6 am SL2010-15 s 4, s 5; ss renum R5 LA

### **Carrying out building work**

div 3.3 hdg

**orig div 3.3 hdg**

om SL2010-15 s 6

**pres div 3.3 hdg**

(prev div 3.4 hdg) renum as div 3.3 hdg SL2010-15 s 19

### **Consultation required in relation to proposed building work—Act, s 152 (3) (c)**

s 22 am A2009-20 amdt 3.24; A2010-43 amdt 1.4, amdt 1.5; pars renum R7 LA

### **Exempt buildings and building work generally—Act, s 15, s 65, s 83 and s 152 (2)**

s 24 am SL2010-15 ss 7-15; pars renum R5 LA

### **Unaltered parts need not comply with building code—alternative energy efficiency requirements—Act, s 29 (2) (b)**

s 28 am SL2010-15 s 16

### **Unaltered parts need not comply with building code—alternative energy efficiency requirements for external glazing—Act, s 29 (2) (b)**

s 29 am SL2010-15 s 17, s 18

### **Completion of building work**

div 3.4 hdg

**orig div 3.4 hdg**

renum as div 3.3 hdg

**pres div 3.4 hdg**

(prev div 3.5 hdg) renum as div 3.4 hdg SL2010-15 s 19

### **Approvals on completion of building work—Act, s 48 (3) (g)**

s 35 am A2008-36 amdt 1.66

- Fundamentally noncompliant building work**  
 div 3.5 hdg      **orig div 3.5 hdg**  
                              renum as div 3.4 hdg  
                              **pres div 3.5 hdg**  
                              ins SL2010-15 s 20
- Notification and review of decisions**  
 pt 5A hdg      ins A2008-36 amdt 1.67
- Decision-makers—Act, s 142A, def *decision-maker***  
 s 44A      ins A2008-36 amdt 1.67
- Reviewable decisions—Act, s 142A, def *reviewable decision***  
 s 44B      ins A2008-36 amdt 1.67
- Right of review and notice—Act, s 142B and s 142C (a)**  
 s 44C      ins A2008-36 amdt 1.67
- Review by AAT—Act, s 146 (5)**  
 s 46      om A2008-36 amdt 1.68
- Transitional**  
 pt 20 hdg      exp 31 March 2010 (s 106)
- Definitions—pt 20**  
 s 100      exp 31 March 2010 (s 106)  
                              def ***commencement day*** exp 31 March 2010 (s 106)  
                              def ***new scheme*** exp 31 March 2010 (s 106)  
                              def ***old scheme*** exp 31 March 2010 (s 106)
- Transitional—application for building approval under old scheme**  
 s 101      exp 31 March 2010 (s 106)
- Transitional—information not included but required for building approval**  
 s 102      exp 31 March 2010 (s 106)
- Transitional—floor area if building application before commencement day**  
 s 103      exp 31 March 2010 (s 106)
- Transitional—floor area if building application on or after commencement day and before 1/1/2009**  
 s 104      exp 31 March 2010 (s 106)
- Legislation repealed**  
 s 105      om LA s 89 (3)
- Expiry—pt 20**  
 s 106      exp 31 March 2010 (s 106)
- Transitional—Building Legislation Amendment Regulation 2010 (No 1)**  
 pt 21 hdg      ins SL2010-15 s 21  
                              exp 1 May 2011 (s 111)

## Endnotes

### 5 Earlier republications

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**Building code 2010 edition—delayed application of energy efficiency provisions—Act, s 136 (4)**

s 110 ins SL2010-15 s 21  
am SL2010-21 s 4; pars renum R6 LA  
exp 1 May 2011 (s 111)

**Expiry—pt 21**

s 111 ins SL2010-15 s 111  
exp 1 May 2011 (s 111)

**Exempt buildings and building works**

sch 1 am SL2010-15 ss 22-24

**Reviewable decisions**

sch 4 hdg sub A2008-36 amdt 1.69

**Dictionary**

dict am A2008-36 amdt 1.70; A2009-20 amdt 3.25

## 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. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 31 Mar 2008	31 Mar 2008– 1 Feb 2009	not amended	new regulation
R2 2 Feb 2009	2 Feb 2009– 21 Sept 2009	A2008-36	amendments by A2008-36
R3 22 Sept 2009	22 Sept 2009– 31 Mar 2010	A2009-20	amendments by A2009-20
R4 1 Apr 2010	1 Apr 2010– 3 May 2010	A2009-20	commenced expiry
R5 4 May 2010	4 May 2010– 31 May 2010	SL2010-15	amendments by SL2010-15

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<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R6 1 June 2010	1 June 2010– 30 Nov 2010	SL2010-21	amendments by SL2010-21

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