



Australian Capital Territory

# Building and Construction Legislation Amendment Regulation 2023 (No 1)

Subordinate Law SL2023-7

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The Australian Capital Territory Executive makes the following regulation under the *Building Act 2004*, the *Construction Occupations (Licensing) Act 2004*, the *Unit Titles Act 2001* and the *Water and Sewerage Act 2000*.

Dated 28 April 2023.

ANDREW BARR  
Chief Minister

REBECCA VASSAROTTI  
Minister





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## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Building and Construction Legislation Amendment Regulation 2023 (No 1)*.

### 2 Commencement

- (1) This regulation (other than section 7) commences on 1 May 2023.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Section 7 commences on 1 October 2023.

### 3 Legislation amended

This regulation amends the following legislation:

- [Building \(General\) Regulation 2008](#)
- [Construction Occupations \(Licensing\) Regulation 2004](#)
- [Water and Sewerage Regulation 2001](#).

*Note* This regulation also amends the [Unit Titles Regulation 2001](#) (see sch 1).

## Part 2                      Building (General) Regulation 2008

### 4                      Sections 24 to 29

*substitute*

#### 24                      Unaltered parts need not comply with building code if alternative requirements met—Act, s 29 (2) (b)

- (1) An unaltered part of a substantially altered class 1, class 10a or class 10b building (an *unaltered part*) need not comply with the building code as a whole if the unaltered part complies with the alternative requirements determined under subsection (2).
- (2) The Minister may determine alternative requirements for an unaltered part.
- (3) An alternative requirement may—
  - (a) require an unaltered part to comply with—
    - (i) a stated provision of the building code; or
    - (ii) any other requirement; and
  - (b) relate to anything in relation to an unaltered part, including—
    - (i) glazing; or
    - (ii) smoke alarms; or
    - (iii) stairs; or
    - (iv) barriers and handrails; or
    - (v) an unaltered part in a bushfire-prone area; or
    - (vi) swimming pool access; or
    - (vii) energy efficiency; or

(viii) livable housing design.

(4) A determination under subsection (2) is a disallowable instrument.

## **5 Section 33A**

*substitute*

### **33A Stage inspections for dwellings and buildings containing dwellings—Act, s 44 (7) (a) and (b) (ii)**

- (1) This section applies in relation to building work for a dwelling or a building containing a dwelling.
- (2) A certifier must give a copy of any of the following certificates or notices to the construction occupations registrar as soon as practicable (but in any case within 2 working days) after issuing the certificate or giving the notice:
  - (a) a certificate for the building work issued under the [Act](#), section 44 (2) (b) or (5);
  - (b) a notice given to a building licensee in relation to the building work under the [Act](#), section 44 (2) (a) or (6).

## **6 Section 43A**

*substitute*

### **43A Documents forming part of building code—Act, s 136 (1), def *building code*, par (b)**

The following documents published by the Australian Building Codes Board from time to time are prescribed:

- (a) each volume of the National Construction Code series that includes a notation that it forms part of the Building Code of Australia;

(b) the Housing Provisions Standard.

*Note* The National Construction Code and the Housing Provisions Standard do not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) does not apply (see [Act](#), s 136A and [Legislation Act](#), s 47 (7)). The National Construction Code and the Housing Provisions Standard are accessible at [www.ncc.abcb.gov.au](http://www.ncc.abcb.gov.au).

## **7 Section 44AA**

*substitute*

### **44AA Energy efficiency provisions—Act, s 139C (3)**

The following provisions are prescribed:

- (a) for a class 1 and associated class 10a building—
  - (i) the building code, volume 2, clause S42C2 (Heating and cooling loads); and
  - (ii) the building code, volume 2, clause S42C3 (Net equivalent energy usage);
- (b) for a class 2 building or a class 4 part of a building—
  - (i) the building code, volume 1, clause J3D3 (Reducing heating and cooling loads of sole occupancy units of a class 2 building or class 4 part of a building using house energy rating software); and
  - (ii) the building code, volume 1, clause J3D15 (Net equivalent energy usage for a sole occupancy unit of a class 2 building or class 4 part of building—home energy rating software).



## Part 3 Construction Occupations (Licensing) Regulation 2004

### 8 Schedule 2, part 2.1, items 2.1.1 to 2.1.15

*substitute*

2.1.1	<p>fail to comply with building code, vol 1, cl B1P1 or vol 2, cl H1P1 in that building did not resist actions reasonably subject to—local damage not minimised as demonstrated by deformation in single element of brickwork, blockwork, or stonework, laid in mortar causing crack or split in joint if—</p> <p>(a) crack or split wider than 3mm; or</p> <p>(b) face of element on either side of crack or split out of alignment with opposite face across crack or joint by more than 3mm</p>	creation of defective single masonry element—cracked or split more than 3mm	1
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2.1.2	fail to comply with building code, vol 1, cl B1P1 or vol 2, cl H1P1 in that building did not resist actions reasonably subject to—local damage not minimised as demonstrated by deformation in single element concrete floor or structural concrete element causing crack or split in joint if— (a) crack or split wider than 5mm; or (b) face of element on either side of crack or split out of alignment with opposite face across crack or joint by more than 5mm	creation of defective single concrete element—cracked or split more than 5mm	1
2.1.3	fail to comply with building code, vol 1, cl B1P1 or vol 2, cl H1P1 in that building did not resist actions reasonably subject to—local damage not minimised as demonstrated by deformation in wall, wall render, wall lining, wall tiling, ceiling lining or cornice causing crack or split in joint	creation of defective wall or wall render, lining or tiling, or ceiling lining or cornice—cracked or split	1

2.1.4	fail to comply with building code, vol 1, cl B1P1 or vol 2, cl H1P1 in that building did not resist actions reasonably subject to—local damage not minimised as demonstrated by possibility of instability or collapse of primary building element susceptible to termite attack because not provided with code-compliant termite risk management system	failure to protect primary building element with compliant termite management system	2
2.1.5	fail to comply with building code, vol 1, cl F1P2, F1P4, F2P1 or F3P1 or vol 2, cl H2P1 (2), H2P2 or H2P3—surface water, water or dampness could occur in building other than under code	failure to protect a building from water or dampness	3
2.1.6	fail to comply with building code, vol 1, cl F1P1 or vol 2, cl H2P1 (1)—surface water collected or concentrated by building not disposed of in code-compliant way that avoids damage or nuisance to another property, or likelihood of damage or nuisance	creation of building with defective surface water collection or concentration disposal that damaged or caused nuisance or likelihood of either to other property	2

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2.1.7	fail to comply with building code, vol 1, cl F1P3 or vol 2, cl H2P1 (3)—drainage system for disposal of surface water did not, in code-compliant way— (a) carry water to appropriate outfall; or (b) avoid entry of water to building; or (c) avoid water damaging building	creation of building with defective drainage system— failure to carry water to appropriate outfall, avoid entry of water to building or avoid water damaging building	3
2.1.8	fail to comply with building code, vol 1, cl E2P1 or vol 2, cl H3P2— building without code-compliant automatic warning on smoke detection	creation of building without effective smoke alarm	3
2.1.9	fail to comply with building code, vol 1, cl F2P2 or vol 2, cl H4P1— water not stopped from penetrating behind fittings, linings or concealed spaces of sanitary facilities, bathrooms, laundries and other wet area facilities	creation of building with defective wet area waterproofing or water containment	3
2.1.10	fail to comply with building code, vol 1, cl F5P1 or vol 2, cl H4P2— height of room or other space more than 50mm less than code requires	creation of building with ceiling height more than 50mm too low	3

2.1.11	fail to comply with building code, vol 1, cl F7P1 to F7P4 or vol 2, cl H4P6—floor, wall or floor or wall penetration do not comply with code sound transmission and insulation requirements	creation of building with defective sound transmission or insulation arrangements	2
2.1.12	fail to comply with building code, vol 1, cl D1P2 (c) (v) or vol 2, cl H5P1 (b) (iii)—geometry of stairway risers or goings do not satisfy code safe passage requirements	creation of unsafe step or stairway	3
2.1.13	fail to comply with building code, vol 1, cl D1P3 or vol 2, cl H5P2—barrier required under code to prevent people falling not provided	creation of building with defective or no safety barrier	3
2.1.14	fail to comply with building code, vol 1, cl G1P2 or vol 2, cl H7P1 or H7P2—swimming pool over 300mm deep without code compliant safety barrier or water recirculation system	creation of swimming pool with defective or no safety barrier, or water recirculation system with defective or no safety measures to avoid entrapment or injury	3
2.1.15	fail to comply with building code, vol 1, cl C1P2 or vol 2, cl H3P1—building with element that does not comply with code to avoid spread of fire to exit, sole occupancy unit or public area or between buildings or in building	creation of building with defective or no fire spread avoidance measures	2

**9 Schedule 2, part 2.1, item 2.1.29, column 2**

*omit*

s 42 (1) (e)

*substitute*

s 42 (1) (f)

**10 Schedule 2, part 2.3, items 2.3.1 to 2.3.9**

*substitute*

2.3.1	fail to comply with <a href="#">Water and Sewerage Regulation 2001</a> , s 6 (1), performance requirement under plumbing code cl C2P1—sanitary drainage system that does not ensure sewage is transferred from a sanitary plumbing system to an approved disposal system	creation of sanitary drainage system that does not ensure sewage conveyed from sanitary plumbing system to approved disposal system	1
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2.3.2	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C2P6—sanitary drainage system that does not avoid blockage or uncontrolled discharge	creation of sanitary drainage system that does not avoid blockage or uncontrolled discharge	1
2.3.3	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C2P7—sanitary drainage system that does not avoid— <ul style="list-style-type: none"> <li>(a) damage from root penetration, superimposed loads or ground movement; or</li> <li>(b) damage to existing buildings or siteworks; or</li> <li>(c) damage to the Network Utility Operator’s sewerage system another approved disposal system.</li> </ul>	creation of sanitary drainage system that does not avoid damage	1
2.3.4	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C2P3—sanitary drainage system that does not ensure access for maintenance or clearing blockages	creation of sanitary drainage system that does not ensure access for maintenance or clearing blockages	1

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2.3.5	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C2P4 (1)—sanitary drainage system designed, constructed or installed in way that failed to provide ventilation to avoid likelihood of foul air or gases accumulating in the sanitary drainage system or sewerage system	creation of sanitary drainage system without adequate ventilation of foul air or gases	1
2.3.6	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C2P5—sanitary drainage system that— <ul style="list-style-type: none"><li>(a) does not ensure protection against internal contamination; or</li><li>(b) does not avoid the entry of water, foul air and gases from the system into a building; or</li><li>(c) does not avoid the entry of surface water, subsurface water and stormwater into the system</li></ul>	creation of sanitary drainage system that does not ensure protection from internal contamination, or avoid entry of water or gases	1



2.3.7	<p>fail to comply with <i>Water and Sewerage Regulation 2001</i>, s 6 (1), performance requirement under plumbing code cl D1P1 or D1P2—sanitary drainage system that—</p> <ul style="list-style-type: none"> <li>(a) creates undue noise; or</li> <li>(b) does not reduce the transmission of airborne or impact generated sound; or</li> <li>(c) compromises the required sound insulation of a floor or wall by incorporation or penetration of the system.</li> </ul>	sanitary drainage system that creates undue noise, does not reduce transmission of sound or compromises required sound insulation	1
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**11 Schedule 2, part 2.4**

*substitute*

**Part 2.4 Electricians licence demerit grounds for occupational discipline—Act, s 55 (1) (a)**

column 1 item	column 2 demerit grounds for occupational discipline	column 3 short description	column 4 demerit points
2.4.1	fail to comply with <i>Electricity Safety Act 1971</i> , s 4	connection of electrical installation to network before installation inspected, tested and passed	2
2.4.2	fail to comply with <i>Electricity Safety Act 1971</i> , s 5	electrical wiring work not compliant with electrical wiring rules	3

column 1 item	column 2 demerit grounds for occupational discipline	column 3 short description	column 4 demerit points
2.4.3	fail to comply with <i>Electricity Safety Act 1971</i> , s 6	failure to test electrical wiring work or give required test report	2
2.4.4	fail to comply with <i>Electricity Safety Act 1971</i> , s 8 (7)	failure to comply with direction to make installation or work safe and compliant	3
2.4.5	fail to comply with <i>Electricity Safety Act 1971</i> — (a) s 12 (1) (a) (ii) and (b); or (b) s 12 (2) (a) (ii) and (b); or (c) s 13 (a) (ii) and (b).	installation or connection of unsafe prescribed article of electrical equipment to electrical installation	3

**12 Schedule 2, part 2.6, items 2.6.1 to 2.6.9**

*substitute*

2.6.1	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C1P4—sanitary plumbing system that does not avoid blockage or uncontrolled discharge	creation of sanitary plumbing system that does not avoid blockage or uncontrolled discharge	2
2.6.2	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C1P6—sanitary plumbing system that does not avoid— (a) entry of water, sewerage and sullage from the system into a building; or (b) entry of foul gases from the system into a building inconsistent with code; or (c) entry of surface water, subsurface water and storm water into the system	creation of sanitary plumbing system that does not avoid entry of water, sewerage, sullage or foul gases into a building, or entry of outside water into the system	2

2.6.3	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C1P2—sanitary plumbing system that does not ensure access for maintenance of mechanical components, operational controls or for clearing blockages	creation of sanitary plumbing system that does not ensure access for maintenance of mechanical components, operational controls or clearing blockages	1
2.6.4	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 6 (1), performance requirement under plumbing code cl C1P7—sanitary plumbing system that does not avoid damage from superimposed loads, ground movement or root penetration	creation of sanitary plumbing system that does not avoid damage from loads, ground movement or root penetration	1
2.6.5	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 18 (1), performance requirement under plumbing code cl B5P1—water service designed, constructed or installed in way that does not avoid contamination	creation of water service that does not avoid contamination	2

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2.6.6	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 18 (1), performance requirement under plumbing code cl B1P3—cold water service that—  (a) does not ensure access for maintenance of mechanical components and operational controls; or  (b) does not ensure the system, appliances and devices can be isolated for testing and maintenance	creation of cold water service that does not ensure access for maintenance, or does not ensure the system, appliances and devices can be isolated for testing and maintenance	2
2.6.7	fail to comply with <i>Water and Sewerage Regulation 2001</i> , s 18 (1), performance requirement under plumbing code cl B1P6—cold water service that does not avoid failure or uncontrolled discharge	creation of cold water service that does not avoid failure or uncontrolled discharge	1
2.6.8	fail to comply with <i>Water and Sewerage Act 2000</i> , s 11 or s 15 (1) and <i>Water and Sewerage Regulation 2001</i> , s 17—  (a) installed or fitted sprinkler system or part of fire sprinkler service without giving required notice of start to registrar; or  (b) provided a water supply plumbing service without giving required notice of start to registrar or without required approval of plan	failure to give required notice of intention to start sprinkler or fire sprinkler work or give required notice of intention to start, or to get approval for plan for, water supply plumbing service	1

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2.6.9	fail to comply with <i>Water and Sewerage Act 2000</i> , s 15 (2) or (3)— (a) contravened direction of registrar about how water supply plumbing service is to be provided; or (b) installed a thing to which the plumbing code, part A5 applies and the thing was not certified under the part	failure to provide service as directed by registrar or installed thing not certified under plumbing code, part A5	2
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**13 Dictionary, note 2**

*insert*

- building code

**14 Dictionary, definitions of AS 3000 and AS 3017**

*omit*

**15 Dictionary, new definition of *plumbing code***

*insert*

*plumbing code*—see the [Water and Sewerage Act 2000](#), section 44C.



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## Part 4 Water and Sewerage Regulation 2001

### 16 Part 4 heading

*substitute*

## Part 4 Certificates of compliance

### 17 New part 5 heading

*after section 25, insert*

## Part 5 Notification and review of decisions

### 18 New part 6

*insert*

## Part 6 Plumbing code

### 28 Documents forming part of plumbing code—Act, s 44C (1), def *plumbing code*, par (b)

A volume of the National Construction Code series is prescribed if the volume—

- (a) is published by the Australian Building Codes Board from time to time; and
- (b) includes a notation that it forms part of the Plumbing Code of Australia.

*Note* The National Construction Code does not need to be notified under the [Legislation Act](#) because s 47 (5) and (6) does not apply (see [Act](#), s 44D and [Legislation Act](#), s 47 (7)). The National Construction Code is accessible at [www.ncc.abcb.gov.au](http://www.ncc.abcb.gov.au).

## Schedule 1 Unit Titles Regulation 2001— Technical amendment

(see s 3)

### [1.1] Dictionary, definition of *building code*

*omit*

#### Explanatory note

This amendment omits a definition that is not used in the regulation.

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### Endnotes

**1 Notification**

Notified under the [Legislation Act](#) on 28 April 2023.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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