



Industry Bulletin 146

Building Amendment Regulations (No. 2) 2022: Changes for NCC 2022 and miscellaneous amendments

The Building Amendment Regulations (No. 2) 2022 (Amendment Regulations) were published in the Government Gazette on 23 September 2022 and commence operation on 1 May 2023

The Amendment Regulations clarify the commencement date of the 2022 edition of the National Construction Code (NCC 2022), amend various provisions in the Building Regulations 2012 (Building Regulations) to reflect changes to the volume and clause structure in the NCC 2022 and make miscellaneous minor amendments.

Commencement date of NCC 2022

The Amendment Regulations include a new definition of “Building Code” which means the Building Code of Australia which is Volumes One and Two of the NCC and makes clear that unless the contrary intention appears in the Building Regulations, a reference to the Building Code means the Building Code as amended from time to time (not the date of publication).

Hence, the Amendment Regulations put beyond doubt that the NCC 2022 that is published on 1 October 2022 will not commence operation in Western Australia until its adoption date on 1 May 2023.

Under the ongoing transitional provision in regulation 31A(2) of the Building Regulations, from 1 May 2023 to 30 April 2024 a building permit applicant can choose to comply with either the Building Code in effect 12 months before the application is made (NCC 2019 Amendment 1) or the latest edition of the Building Code as amended from time to time (NCC 2022).

NCC 2022 Volume and clause structure

The Amendment Regulations ensure that references in the Building Regulations to various Building Code performance requirements are updated to reflect the new volume and clause structure in the NCC 2022.

These amendments are made to various definitions in regulation 3, the Tables in regulations 31D(3) and 31D(4), regulation 31HA and the Table in Schedule 3.

Miscellaneous minor amendments

The Amendment Regulations also amend the following miscellaneous provisions in the Building Regulations:

Modifications to Building Code

Regulation 15C, is amended to clarify that its modifications only apply to the heating and cooling load limits in the 2019 edition of the Building Code.

Assessment methods for performance solutions

Regulation 18A(1)(c) is amended to put beyond doubt that a building surveyor who signs a certificate of design compliance in respect to building work for a Class 2 to Class 9 (commercial) building or associated incidental structure must comply with the assessment methods for performance solutions set out in the governing requirements in Volume One of the Building Code to establish compliance with each performance solution to a building standard that applies to the building work.

Swan Valley Planning Scheme consequential amendment

Consequential amendments are made to regulations 3 and 18(2) to provide that a building permit applicant must obtain any approval required under Part 9 of the *Swan Valley Planning Act 2020* in order for a permit to be granted.

This matches existing requirements for applicants for occupancy permits and building approval certificates in regulations 36(1)(e) and 37(e) respectively, which were introduced when the Commerce Regulations Amendment (Swan Valley Planning Scheme) Regulations 2021 came into effect on 1 August 2021.

New transitional provision

Importantly, regulation 31A is amended by inserting a new subregulation (4) to create a new generic transitional provision which clarifies that if any of the applicable building standards are set out in an edition of the Building Code that was in effect earlier than the edition which was last amended, any reference in the Building Regulations to a Volume, Section, Part, type, clause or Schedule in the Building Code is taken to be a reference to the corresponding provision in the earlier edition. This replaces the previous more limited transitional provision in regulation 3A, which was only applicable to certain applicable building standards in the 2019 edition of the Building Code, and is deleted.

This will provide clarity for a building permit applicant who may choose to use the ongoing transitional arrangement provided under regulation 31A(2).

Building Code governing requirements

Regulation 31A is amended by inserting a new subregulation (3) to put beyond doubt that the applicable building standards for building permit applications include the governing requirements set out in Volumes One and Two of the NCC.

Deletion of redundant transitional provisions

Regulation 31A is amended by deleting redundant transitional provisions in subregulations (2A) and (3).

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