

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2016

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management**

BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2016

Overview

The Building and Construction Legislation Amendment Bill 2016 (the Bill) amends a number of laws affecting how building and construction work can be carried out in the ACT.

This supplementary explanatory statement provides information on minor and technical amendments proposed by the Minister for Planning and Land Management.

Human Rights Implications

There are no human rights implications. Human rights implications of provisions in the Bill are addressed in the Explanatory Statement for the Bill.

Clause Notes

Amendments 1 and 2 Commencement of certain provisions

These clauses amend clause 2 of the Bill, which provides for commencement of different clauses of the Bill. The provisions relating to statutory warranties and any consequential amendments are intended to be commenced within 12 months of notification.

Amendment 1 substitutes a new first point in subsection (1) to include new clause 22A inserted by Amendment 3.

Amendment 2 inserts a reference to clauses 36 and 43 of the Bill (referred to as sections in the Bill). Those clauses make amendments as a result of the expansion of statutory warranties in the Bill and therefore should be subject to the same commencement provisions as those already listed in subsection (1).

Amendment 3 Proposed new clause 22A, Section 88 (2), Building Act

Section 88 of the *Building Act 2004* provides a statutory warranty for residential building work as defined in that Act. Subsection (2) outlines what a builder must warrant in relation to that work. Subsection (2) (a) uses the full defined term of residential building work, with subsequent subsections referring to the shortened ‘the work’, meaning the residential building work referred to in (2) (a).

With the expansion of warranties to a greater range of residential buildings and associated building work, some parties may read the provisions such that the warranties provided by subsections 88 (2) (b) onwards, which refer to ‘the work’ rather than ‘residential building work’ could be taken to mean all work covered by the contract, even non-residential building work.

To remove any doubt, this amendment omits existing subsections (2) and (2) (a) and substitutes new subsections to make clear that all parts of the warranty are in relation only to residential building work, regardless of whether other types of work may be included in the contract. This does not affect the application of the warranty to any non-residential part of the building that is included in the definition of residential building, for example a non-residential part of the building providing structural support.