

**2023**

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

**TENTH ASSEMBLY**

**Building and Construction Legislation Amendment Bill 2023**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by  
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Minister for Sustainable Building and Construction  
November 2023**

# **BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2023**

This supplementary explanatory statement relates to the Government amendments (the amendments) to the Building and Construction Legislation Amendment Bill 2023 (the Bill). It has been prepared to assist the reader of the Bill and the amendments and to help inform debate. It does not form part of the Bill or the amendments.

The statement is to be read in conjunction with the Bill and the explanatory statement prepared in support of the Bill, as introduced in the Legislative Assembly on 14 September 2023. It is not, and is not meant to be, a comprehensive description of the amendments.

## **OVERVIEW OF THE GOVERNMENT AMENDMENTS**

The Government amendments are minor or technical in nature and respond to feedback from stakeholders on the Bill and the comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 35.

The Government amendments:

- ensure that the amendments to the *Building and Construction Industry (Security of Payment) Act 2009* deliver the intent of the amendments to set statutory timeframes for payment that apply where contracts are silent or provide for a period of time for payment longer than the statutory timeframe;
- remove amendments in the Bill to the *Building and Construction Industry (Security of Payment) Act 2009* that resulted in consequences contrary to the above intent; and
- change the form of instrument by which distributed energy resources are declared from a notifiable instrument to a disallowable instrument in response to comments from the Committee.

## **CONSULTATION ON THE PROPOSED APPROACH**

Consultation has been undertaken with key industry stakeholders on the Government amendments.

Consultation with the community, industry and key stakeholders will continue throughout implementation.

## **CONSISTENCY WITH HUMAN RIGHTS**

There are no human rights implications arising from the Government amendments.

## **CLAUSE NOTES**

### **Amendment 1 Clause 2 (1), second dot point Page 2, line 9—**

This clause substitutes the second dot point in the commencement provisions in the clause 2 (1) of the Bill to adjust commencement of provisions consequential on amendments 2 and 3.

### **Amendment 2 Clause 2 (2), first dot point Page 2, line 25—**

This clause substitutes the first dot point in the commencement provisions in clause 2 (2) to make a minor and technical amendment.

### **Amendment 3 Proposed new clause 2 (2A) Page 3, line 2—**

This clause inserts new clause 2 (2A) to adjust the commencement provisions for the Bill as a result of the decision to adopt the energy efficiency provisions in the 2022 edition of the National Construction Code (NCC) in the ACT on 15 January 2024.

### **Amendment 4 Clause 27 Page 16, line 21—**

This clause substitutes clause 27 to make it clear that the statutory timeframe established by the clause applies except in circumstances where the contract provides for a timeframe for payment that is shorter than the statutory timeframe. This amendment is designed to support contractors being paid on time and in full.

### **Amendment 5 Clause 32 Page 17, line 16—**

This clause omits this amendment. This amendment created the unintended consequence of contract timeframes relating to payments being able to be set beyond the statutory timeframes.

### **Amendment 6 Clause 33 Page 17, line 20—**

This clause omits this amendment. This amendment created the unintended consequence of contract timeframes relating to payments being able to be set beyond the statutory timeframes.

**Amendment 7**  
**Clause 44**  
**Proposed new section 31D (4)**  
**Page 23, line 2—**

This clause makes a minor and technical amendment to change the form in which the Minister will declare a thing to be a distributed energy resource. In response to comments from the Committee, this declaration will now be in the form of a disallowable instrument not a notifiable instrument.