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

ELEVENTH ASSEMBLY

Building and Construction Legislation Amendment Bill 2026

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004*, s 37)**

**Presented by
Chris Steel MLA
Minister for Planning and Sustainable Development
September 2026**

BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2026

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (**the HRA**).

OVERVIEW OF THE BILL

This explanatory statement relates to the Building and Construction Legislation Amendment Bill 2026 (**the Bill**) as presented to the ACT Legislative Assembly (**the Assembly**). It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The purpose of the Bill is to deliver reforms arising from the ACT's Construction Productivity Agenda, aiming to strengthen the framework that promotes high-quality design and construction, ensure compliance with building standards, reduce regulatory burden and uphold integrity and accountability within the ACT building and construction industry.

The Bill introduces amendments to the:

- *Building Act 2004*;
- *Building (General) Regulation 2008*;
- *Construction Occupations (Licensing) Act 2004*; and
- *Construction Occupations (Licensing) Regulation 2004*.

The amendments in the Bill include:

- Providing a pathway for substantially completed buildings with expired building approvals to complete construction under a new Building Approval (**BA**) issued in accordance with the version of the National Construction Code applicable at the time the original BA was granted;
- Simplifying the building approval pathway for commercial and multi-unit solar installations on class 2-9 buildings; and
- Providing the Construction Occupations Registrar with the ability to offer an alternative licence at time of renewal.

CONSULTATION ON THE PROPOSED APPROACH

Consultation on the Bill was conducted with ACT Government directorates and entities, including Access Canberra and the Construction Occupations Registrar within the City and Environment Directorate, and Digital Canberra to ensure the Bill would not negatively affect service delivery, supporting operational continuity.

Additionally, the Human Rights and Social Policy team within the Justice and Community Safety Directorate provided input during drafting to ensure human rights considerations were thoroughly addressed. Their insights informed the human rights statement included in this explanatory document, underscoring the government's commitment to upholding human rights standards throughout this reform process.

Targeted consultation has also been undertaken with key industry stakeholders, including the Australian Institute of Building Surveyors, Engineers Australia, Housing Industry Association, Master Builders Association, Property Council, and Strata Community Association.

A stakeholder raised concerns that the simplified approval process for solar installations on commercial buildings could create safety issues due to the removal of certifier oversight. However, the relevant Government inspectorates believe that this risk is manageable, demonstrated by the fact that the same requirements that ensure safe outcomes to a range of existing partially exempt building work will apply to this amendment. Furthermore, the requirement for an engineer's report will go beyond most of the other partial exemption requirements. Nevertheless, education and additional advice will be given to support the rollout of this new provision.

CLIMATE IMPACT

The ACT's building reform agenda prioritises the development of a climate-resilient and environmentally sustainable built environment for both current and future generations. While this Bill does not explicitly address climate change, it supports this goal by strengthening the ACT's building and construction regulatory system, ensuring it promotes sustainable building practices. In particular, the simplified building approval process for solar systems on commercial buildings will support cheaper and faster deployment of these technologies.

CONSISTENCY WITH HUMAN RIGHTS

The Bill introduces amendments to the *Building Act 2004* (the ***Building Act***), the *Construction Occupations (Licensing) Act 2004* and to associated regulations. The amendments are designed to streamline building processes, reducing unnecessary regulatory burden and costs, supporting innovation and productivity in the construction sector, and enabling more timely, efficient and diverse housing delivery while maintaining appropriate standards of quality and consumer protection.

In developing the Bill, due regard was given to the human rights set out in the HRA. Where rights are limited, the limitations are considered reasonable and demonstrably justified in accordance with section 28 of the HRA.

Rights engaged

The Bill engages the following rights under the HRA:

- Section 8 – Right to recognition and equality before the law (limited)
- Section 27C - Right to a healthy environment (limited)

Rights Limited

Right to recognition and equality before the law

1. Nature of the right and the limitation (s28(2)(a) and (c))

The Bill limits the right to recognition and equality before the law. In a regulatory context, this right is engaged where legislation establishes, modifies or preserves standards that affect equitable access to buildings, facilities and services, including accessibility requirements designed to facilitate participation by people with disability on an equal basis with others.

The Bill limits this right in a targeted way through amendments to the Building Act that allow certain substantially completed buildings with expired building approvals to obtain a further building approval and complete construction in accordance with the building code requirements that applied when the original approval was issued. This limitation would only apply to buildings that were unable to complete construction within the initial 3-year building approval period but have reached a substantial stage of construction as defined in clause 8 of the Bill, and that obtain a certificate for substantially completed building work as outlined in clause 11 of the Bill. This limitation would also only apply to buildings with initial approvals issued before 15 January 2024, that are able to complete construction under the 2019 version of the National Construction Code, rather than the 2022 (or later) version of the code.

The limitation arises because some of those buildings may not be required to comply with accessibility requirements that have been introduced or strengthened since the original approval was granted. As a result, a limited cohort of buildings may provide a lower standard of accessibility than would be required under the current regulatory framework. Strengthened accessibility requirements were adopted through the 2022 version of the National Construction Code which came into effect in the ACT on 15 January 2024. This includes minimum requirements in relation to dwelling access and entry, width of internal doors and corridors, location and size of bathrooms and reinforcement of bathroom walls.

The 2022 version of the National Construction Code mandates step free access to the front door, a step free entry into the home, wider corridors and doors throughout the home, a bathroom and toilet that more easily accommodates a wheelchair or other mobility aid and reinforced walls in the toilet and bathroom to allow the easy fitting of grabrail in the future. These measures are intended to improve accessibility and usability for people using a wheelchair or other mobility aid. Homes built to an earlier version code do not necessarily restrict or limit access and use of a home, depending on the design.

Approvals that were issued from 15 January 2024 require buildings to be constructed in line with this version of the code. Substantially completed buildings that were issued a building approval before 15 January 2024 that were unable to complete construction within the 3-year approval period, could be permitted to complete

construction without complying with the strengthened accessibility requirements in the 2022 version of the code.

To that extent, the Bill may result in a limited number of substantially completed buildings providing a lower level of accessibility than would otherwise be required under the current regulatory framework. This could affect the ability of some people, including people who use wheelchairs or other mobility aids, to access, move around or use those buildings as easily as they could if the buildings were required to comply with the accessibility provisions introduced in the 2022 National Construction Code.” The limitation is confined to buildings that are substantially completed under the older building code, which had lower accessibility requirements. It does not affect the application of current accessibility requirements to future developments or buildings that are not substantially completed.

2. Legitimate purpose (s28(2)(b))

The amendments serve several legitimate and interconnected purposes.

Firstly, the limitation serves the legitimate purpose of promoting regulatory certainty and supporting the efficient completion of building projects that have already substantially progressed. Requiring substantially completed developments to obtain a new building approval assessed against current legislative and building code requirements may impose significant costs, delays and administrative burdens on building owners and industry participants. It can even lead to partial demolition of completed sections of the building.

Secondly, the Bill promotes housing supply, economic efficiency and the timely delivery of development outcomes. Requiring redesign of substantially completed buildings, replacement of installed building elements, or procurement of specialised materials may result in unnecessary waste, disruption to supply chains, increased construction costs and delays in occupation and use of completed buildings.

3. Rational connection between the limitation and the purpose (s28(2)(d))

There is a clear rational connection between the limitation on recognition and equality before the law and the achievement of the Bill’s objectives. The amendments are intended to provide a practical and proportionate mechanism to address circumstances where building approvals have expired despite substantial completion of building work, while maintaining the broader operation of contemporary accessibility requirements for future developments.

Permitting substantially completed buildings with expired building approvals to obtain a further building approval assessed against the building code requirements that applied when the original approval was granted is directly connected to reducing unnecessary redesign, avoiding additional construction costs, minimising delays and supporting certainty within the building industry. The amendments therefore provide an effective mechanism for facilitating completion of substantially progressed developments while limiting the circumstances in which updated building

requirements will not be used. This promotes housing supply, economic efficiency and the timely delivery of development outcomes.

4. *Proportionality (s28(2)(e))*

The limitation is narrow in its operation and subject to clear conditions, as detailed in clauses 8 and 11 of the Bill. Access to the pathway is available only where a building is substantially completed and a substantial completion certificate has been obtained. The certificate requirement introduces an additional compliance obligation for applicants but serves as an important safeguard by ensuring that the alternative approval pathway is not available to developments that have not progressed beyond an advanced stage of construction. The certificate also ensures that the original work, which may have been done by a previous builder, was done properly, and that the building is in a suitable state to be completed.

The amendments apply only to buildings that are substantially completed and do not create a general exemption from contemporary requirements. Contemporary accessibility standards will continue to apply to all buildings first approved on or after 15 January 2024, and to older developments that have not substantially progressed. This includes minimum requirements in relation to dwelling access and entry, width of internal doors and corridors, location and size of bathrooms and reinforcement of bathroom walls which are intended to improve accessibility and usability for people who use a wheelchair or other mobility aid and make it easier for them to access and move around a home.

The requirement for a substantial completion certificate is also connected to the purpose of the amendments. It provides an objective basis for determining whether a building is sufficiently advanced to justify access to the new pathway. In doing so, it limits the operation of the amendments to buildings that have substantially progressed and ensures that developments that have not reached that stage continue to be assessed under the ordinary approval framework.

The substantial completion certificate requirement applies to all substantially completed buildings with an expired BA, whether the applicant seeks to complete construction under a one-year building approval or a standard building approval. This imposes an additional procedural step for applicants but ensures that the pathway is available only where building work has progressed to a sufficiently advanced stage.

An alternative approach would have been to make the pathway available without requiring verification of the extent of completed building work. That approach was not adopted because it would have increased the risk that buildings that were not substantially completed could avoid compliance with current requirements. Requiring a substantial completion certificate provides a clear and objective basis for eligibility and supports the integrity of the framework.

Other alternative approaches were considered, including requiring all expired approvals to comply fully with current legislative requirements and providing case-by-

case exemptions. These approaches were not adopted because they would either undermine the purpose of the amendments by imposing significant redesign costs and delays or introduce additional administrative complexity and uncertainty for applicants and decision-makers.

The limitation is confined to a discrete category of developments that have already been lawfully approved and substantially constructed. Specifically, buildings with a building approval issued before 15 January 2024 that were unable to complete construction within the initial 3-year approval period, but have reached a substantial stage of construction as defined in clause 8 of the Bill, and that obtain a certificate for substantially completed building work as outlined in clause 11 of the Bill. Any reduction in accessibility outcomes is therefore limited in scope and transitional in nature. The amendments preserve existing accessibility obligations applicable at the time the original approval was granted and do not diminish the Territory's broader commitment to progressively improving accessibility within the built environment.

The framework adopted by the Bill represents the least rights-restrictive means reasonably available to achieve regulatory certainty, avoid unnecessary economic waste and facilitate the completion of substantially completed developments, while ensuring that any limitation on the right to recognition and equality before the law is confined to a narrow and transitional class of developments and is reasonable, necessary and proportionate to the objectives pursued.

Right to a Healthy Environment

1. *Nature of the right and the limitation (s28(2)(a) and (c))*

The Bill limits the right to a healthy environment. In a regulatory context, this right is engaged where legislation establishes, modifies or preserves requirements relating to environmental sustainability, resource efficiency and building performance outcomes.

The Bill limits this right in a targeted and lawful manner through amendments to the Building Act that permit certain substantially completed buildings with expired building approvals to obtain a further building approval assessed against the building code requirements that applied at the time the original approval was issued. This limitation would only apply to buildings that were unable to complete construction within the initial 3-year building approval period but have reached a substantial stage of construction as defined in clause 8 of the Bill, and that obtain a certificate for substantially completed building work as outlined in clause 11 of the Bill. This limitation would also only apply to buildings with initial approvals issued before 15 January 2024, that are able to complete construction under the 2019 version of the National Construction Code, rather than the 2022 (or later) version of the code.

The limitation arises because building approvals under earlier regulatory settings may not be required to comply with sustainability requirements introduced after the original approval was granted, including updated standards relating to energy

efficiency, emissions reduction, water efficiency or environmental performance. Increased minimum energy efficiency standards were adopted through the 2022 version of the National Construction Code which came into effect in the ACT on 15 January 2024. This set a minimum energy efficiency level of 7 stars under the Nationwide House Energy Rating Scheme (NatHERS), where it was previously 6 stars. A 7-star home uses approximately 10-15% less energy to heat and cool compared to a 6-star house, meaning occupants need to use less energy to heat or cool the home and therefore spend less on energy bills.

Approvals that were issued from 15 January 2024 require buildings to be constructed in line with this version of the code. Approvals issued before 15 January 2024 for buildings that are unable to complete construction within the initial 3-year building approval period, and meet the other requirements outlined above, could be permitted to complete construction without complying with the strengthened sustainability requirements in the 2022 version of the code.

To that extent, the Bill may result in a limited number of buildings achieving lower sustainability outcomes than would otherwise be required under the current regulatory framework. The limitation is confined to buildings that are substantially completed, is transitional in nature, and does not affect the continuing application and progressive strengthening of sustainability requirements for future developments.

2. *Legitimate purpose (s28(2)(b))*

The amendments serve several legitimate and interconnected purposes.

The limitation serves the legitimate purpose of facilitating the completion and use of substantially completed buildings that have already been constructed in accordance with environmental requirements applying at the time approval was granted.

The amendments also seek to avoid unnecessary environmental impacts associated with redesign, reconstruction, demolition of completed works, replacement of installed building components and procurement of further materials. Retrospective application of contemporary sustainability requirements to substantially completed buildings may result in increased construction waste, inefficient use of resources, disruption to established supply chains, increased construction costs and delays in occupation and use of completed buildings.

The Bill also introduces a requirement for a substantial completion certificate to be obtained before a substantially completed building with an expired building approval can apply for a further building approval. This requirement applies whether the applicant seeks a one-year building approval based on the code requirements that applied to the original approval or a standard building approval assessed against current requirements. The requirement imposes an additional procedural step for applicants but ensures that the pathway is available only where building work has progressed to a sufficiently advanced stage.

3. *Rational connection between the limitation and the purpose (s28(2)(d))*

There is a clear rational connection between the limitation on the right to a healthy environment and the achievement of the Bill's objectives.

Building sustainability requirements are periodically strengthened to improve environmental outcomes, including energy efficiency, emissions reduction, water conservation and resource use. Without the proposed amendments, substantially completed buildings with expired approvals would be required to obtain new approvals and comply with contemporary sustainability standards, notwithstanding that significant building works may already have been lawfully undertaken in accordance with the requirements applying at the time the approval was granted.

Permitting substantially completed buildings with expired building approvals to obtain a further building approval assessed against the building code requirements that applied when the original approval was granted is directly connected to avoiding unnecessary waste, reducing resource consumption associated with redesign and reconstruction, and supporting the efficient completion of developments that have already substantially progressed. This promotes housing supply, economic efficiency and the timely delivery of development outcomes.

4. *Proportionality (s28(2)(e))*

The limitation is narrow in its operation and subject to clear eligibility requirements, as detailed in clauses 8 and 11 of the Bill. Access to the pathway is available only where a building is substantially completed and a substantial completion certificate has been obtained. Although the certificate requirement creates an additional compliance obligation for applicants, it serves as an important safeguard by ensuring that only buildings that have already progressed to an advanced stage of construction may rely on the alternative approval pathway.

The amendments apply only to buildings that are substantially completed and do not create a general exemption from sustainability requirements. Contemporary sustainability standards will continue to apply to all buildings first approved on or after 15 January 2024, and to older developments that have not substantially progressed. This includes minimum requirements in relation to energy efficiency which set a minimum energy efficiency level of 7 stars, meaning occupants need to use less energy to heat or cool the home and therefore spend less on energy bills.

The requirement for a substantial completion certificate provides an objective mechanism for verifying that a building has reached a substantial stage of completion before access to the pathway becomes available. By limiting the operation of the amendments to buildings that have already substantially progressed, the requirement supports the policy objective of avoiding unnecessary waste and resource consumption while ensuring that buildings that are not substantially completed remain subject to the ordinary approval framework and current sustainability requirements.

An alternative approach would have been to permit access to the pathway without requiring independent verification that a building was substantially completed. That approach was not adopted because it would have broadened the number of developments capable of proceeding under earlier regulatory requirements, including earlier sustainability standards. Requiring a substantial completion certificate provides an objective basis for eligibility and ensures that the operation of the amendments remains confined to the limited circumstances for which they are intended.

Other alternative approaches were considered, including requiring all expired approvals to comply fully with current legislative requirements and providing case-by-case exemptions. These approaches were not adopted because they may result in demolition of completed works, increased construction waste, additional consumption of resources and delays to building completion, while delivering only marginal improvements in environmental performance for a small number of developments.

The limitation is confined to a discrete category of developments that have already been lawfully approved and substantially constructed. Specifically, buildings with a building approval issued before 15 January 2024 that were unable to complete construction within the initial 3-year approval period, but have reached a substantial stage of construction as defined in clause 8 of the Bill, and that obtain a certificate for substantially completed building work as outlined in clause 11 of the Bill.

Furthermore, the CSIRO Australian Housing Data portal shows that the ACT had a high level of overcompliance with the energy efficiency requirements of the 2019 version of the National Construction Code. According to the star rating data collected by CSIRO for that period, new houses averaged 6.8 stars, and apartments averaged 7.4 stars, exceeding the minimum 6-star requirement.

Any reduction in environmental outcomes is therefore limited in scope, transitional in nature and does not represent a systemic weakening of environmental protections. The amendments preserve environmental requirements applicable at the time the original approval was granted and do not affect the Territory's broader commitment to progressively strengthening sustainability outcomes within the built environment.

The framework adopted by the Bill represents the least rights-restrictive means reasonably available to facilitate completion of substantially completed developments while ensuring that any limitation on the right to a healthy environment is reasonable, necessary and proportionate to the objectives pursued.

BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2026

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2026**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Building and Construction Legislation Amendment Act 2026*.

Clause 2 Commencement

This clause provides for commencement of the Act.

All provisions commence on the day after its notification day.

Clause 3 Legislation amended

This clause identifies the legislation that is amended by this Act. The legislation amended includes:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*

Part 2 Building Act 2004

This part makes amendments to the Building Act to support construction productivity, improve regulatory consistency and enable faster delivery of housing infrastructure without significantly compromising safety, structural integrity or building performance.

Clause 4 Overview—div 3.3 New section 25A (2) (da)

This clause inserts a new section (da) in section 25A (2) of the Building Act to provide a pathway for building approvals in relation to substantially completed building work.

Clause 5 Building approval applications Section 26 (1)

This clause substitutes "a certifier" for "the certifier". The amendment clarifies that the function may be exercised by any certifier authorised under the Building Act and is not limited to the certifier involved in the original building approval process.

Clause 6 Certifier not to consider certain applications
New section 27 (1) (ca)

This clause inserts a new section (ca) in section 27 (1) of the Building Act to ensure that certifiers not consider applications for building approvals for substantially completed building work without the relevant certificate issued by the construction occupations registrar.

Clause 7 Issue of building approvals
Section 28 (2) (a), note

This clause makes a minor amendment to clarify that the cross-reference is to section 29 (1) (g) of the Building Act itself.

Clause 8 New section 29A

This clause inserts a new section 29A to provide a building approval pathway for substantially completed building work. The definition of *substantially completed* in section 29A (3) uses the same stages of building work that are prescribed under section 33 of the *Building (General) Regulation 2008*. This promotes consistency with existing regulatory concepts and assessment processes.

Clause 9 Period for which approvals operate
New section 36 (1A)

This clause inserts a new section 36 (1A) to stipulate that building approvals issued for substantially completed building work operate for one year.

Clause 10 Complying with building code
Section 49 (6)

This clause substitutes section 49 (6) to facilitate compliance with the building code for substantially completed building work.

Clause 11 New section 72A

This clause inserts a new section 72A to require a building owner to obtain a substantial completion certificate before applying for a further building approval in relation to substantially completed building work as defined in new section 29A (3) where the original building approval has expired. This requirement applies regardless of the type of building approval sought and ensures that the pathway is limited to buildings that have progressed sufficiently to justify assessment against the requirements applicable to the original approval. The certificate will also ensure that the building work that has already been completed was performed to the prescribed requirements and that the substantially completed building is suitable for being completed.

Part 3 Building (General) Regulation 2008

This part makes amendments to the *Building (General) Regulation 2008* to amend the exemptions at Part 1.2.

Clause 12 Exempt buildings and building works Schedule 1, part 1.3, new item 24A

This clause inserts a new item 24A to exempt building work associated with photovoltaic panel and solar water heater installation from provisions in parts 3, 5, and 6 of the Building Act. It also sets a condition for utilising this partial exemption. A structural engineer's report is required to demonstrate that the building is structurally sufficient to take the proposed system.

Part 4 Construction Occupations (Licensing) Act 2004

This part makes amendments to the *Construction Occupations (Licensing) Act 2004* to reduce regulatory, administrative and cost burdens associated with licence renewal.

Clause 13 Licence renewal New section 25 (3A)

This clause inserts a new section 25 (3A) in the *Construction Occupations (Licensing) Act 2004* to enable the registrar to offer a licence class at renewal other than the licence class for which renewal is sought.

Part 5 Construction Occupations (Licensing) Regulation 2004

This part makes amendments to the *Construction Occupations (Licensing) Regulation 2004*, consequential to the amendments to the *Construction Occupations (Licensing) Act 2004* at Part 4.

Clause 14 Reviewable decisions Schedule 4, new item 9A

This clause inserts a new item 9A to Schedule 4 of the *Construction Occupations (Licensing) Regulation 2004* to provide for review of the decision of the registrar to offer a licence at renewal other than the licence that is seeking to be renewed.