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

ELEVENTH ASSEMBLY

GOVERNMENT AMENDMENT

**BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2025
(NO 2)**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Chris Steel MLA
Minister for Planning and Sustainable Development
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BUILDING AND CONSTRUCTION LEGISLATION AMENDMENT BILL 2025 (NO 2)

This supplementary explanatory statement relates to a Government amendment (the **amendment**) to the Building and Construction Legislation Amendment Bill 2025 (No 2) (the **bill**). It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill or the amendment.

The information provided in this supplementary explanatory statement also responds to comments made the Standing Committee on Legal Affairs (Legislative Scrutiny Role) in its Scrutiny Report 13.

The statement must be read in conjunction with the bill and the explanatory statement prepared in support of the bill, as introduced in the Legislative Assembly on 23 October 2025. It is not, and is not meant to be, a comprehensive description of the bill or the amendment. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE GOVERNMENT AMENDMENT

The amendment to the bill relates to the commencement provision for clauses 3 and 56 to 59. It was intended that clauses 3 and 56 to 59 would commence in concert with the commencement of section 25 of the *Property Developers Act 2024* (the **PD Act**). When the bill was presented on 23 October 2025, section 25 of the PD Act had not yet commenced. However, since the introduction of the bill, the relevant provision of the PD Act has commenced.

As a result, the related commencement clause has been superseded. This amendment updates the commencement provision so that clauses 3 and 56 to 59 commence on the day after notification.

CONSULTATION ON THE PROPOSED APPROACH

The Government consulted with the Parliamentary Counsel's Office and the Human Rights Scrutiny team in the Justice and Community Safety Directorate on the Government amendments.

CLIMATE IMPACT

This amendment has no impact on climate change.

CONSISTENCY WITH HUMAN RIGHTS

While due regard was given to the compatibility with human rights as set out in the *Human Rights Act 2004* (the **HRA**) during the development of the bill, the further analysis of the rights engaged has been included in this supplementary explanatory statement for completeness.

The below discussion relates to the limitation on rights in criminal proceedings under section 22 of the HRA. In particular, the amendments to sections 83M and 83OB of the *Building Act 2004*, as proposed by this bill.

The amendments in this bill do not expand the scope of existing strict liability offences. Rather, they primarily update terminology to reflect current practice and clarify what documentation can be used to demonstrate compliance with swimming pool safety requirements. These changes make the process less cumbersome for pool owners and occupiers, ensuring obligations are clear and compliance can be demonstrated more easily through specified documents, such as compliance status certificates for all safety barriers.

A human rights assessment has been undertaken in accordance with section 28 of the HRA. The Government considers that while the amendments engage and limit the right to be presumed innocent under section 22, the limitation is reasonable and demonstrably justified.

Limitation on rights in criminal proceedings (s 22 HRA) – strict liability offences

Nature of the right and the limitation (s 28 (a) and (c))

Section 22 (1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. This presumption of innocence requires the prosecution to prove all elements of an offence beyond reasonable doubt.

The amendments in this bill engage and limit this right because they relate to strict liability offences under the *Building Act 2004*. Strict liability offences remove the need for the prosecution to prove a fault element (such as intention, knowledge, recklessness, or negligence).

The amendments make minor changes to the elements of existing strict liability offences at:

- Section 83M of the *Building Act 2004*; and
- Section 83OB, inserted by the *Building (Swimming Pool Safety) Legislation Amendment Act 2023* (due to commence 1 May 2028).

The amendments introduce a definition for “relevant documents” to clarify the manner in which a person is able to demonstrate compliance. These changes do not expand the scope of the offences beyond their original intent but ensure clarity and enforceability.

Legitimate purpose (s 28 (2) (b))

The legitimate objective of this limitation is to support the objective of the bill, which is to promote the right to life by:

- Protecting the public by ensuring home swimming pools and spas in the ACT are fenced in accordance with modern safety standards, and

- Upholding safety standards for home swimming pools and spas in the ACT.

Rational connection between the limitation and the purpose (s28 (d))

The limitation is rationally connected to the purpose because the amendments directly support the effectiveness of the swimming pool safety framework. By introducing a definition and updating terminology, the amendments increase the range of documents that can be used to demonstrate compliance. This ensures that pool owners and occupiers clearly understand what evidence is acceptable to prove compliance with safety requirements.

Without these clarifications, there is a risk of uncertainty or inconsistency in compliance processes, which could undermine enforcement and compromise safety outcomes. By making compliance pathways clearer and more practical, the amendments help achieve the legitimate purpose of protecting life and preventing accidental drownings. In short, the limitation (strict liability) ensures accountability for compliance obligations, and the amendments make those obligations easier to understand and meet.

Proportionality (s 28(2)(e))

The limitation is proportionate because it achieves an essential public safety objective while imposing only a minimal restriction on rights. These offences concern administrative compliance obligations—such as lodging documentation to confirm pool safety—rather than inherently criminal conduct. The penalties are modest and consistent with the regulatory framework, reflecting the seriousness of the safety risk without being punitive.

Pool owners and occupiers are directly engaged in a regulated activity that carries significant safety risks. It is reasonable to expect them to understand and comply with documentation requirements, particularly as the amendments clarify what documents can be used to demonstrate compliance. This clarity reduces ambiguity and makes compliance less burdensome.

Importantly, the amendments do not create new substantive obligations or expand the scope of the offences. They simply update terminology and introduce a definition to make compliance clearer and more practical. Safeguards remain in place, including the defence of honest and reasonable mistake of fact, ensuring that individuals are not penalised for genuine errors.

By improving clarity and certainty around compliance requirements, the amendments strengthen enforcement of pool safety standards, which are critical to preventing accidental drownings and protecting life. On balance, the limitation is minimal, clearly justified by the legitimate purpose of protecting life, and accompanied by safeguards that prevent unfair outcomes. It is therefore reasonable and demonstrably justified under section 28 of the HRA.

CLAUSE NOTE

Government Amendment 1

Clause 2 (4)

The amendment updates the commencement provision in clause 2 (4) of the Building and Construction Legislation Amendment Bill 2025 (No 2). The original provision linked the commencement of clauses 3 and 56 to 59, with the commencement of section 25 of the PD Act.

As section 25 of the PD Act commenced following the introduction of this bill, the current drafting no longer aligns with the intended timing. The amendment substitutes clause 2 (4) to provide that clauses 3 and 56 to 59 commence on the day after the notification day of the Act. This is a minor and technical change to ensure timely commencement and consistency with legislative intent.