



**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PLANNING, TRANSPORT  
AND CITY SERVICES**

(Reference: [Inquiry into Annual and Financial Reports 2022 - 2023](#))

**Members:**

**MS J CLAY (Chair)  
MS S ORR (Deputy Chair)  
MR M PARTON**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 24 NOVEMBER 2023**

**Secretary to the committee:  
Mr J Bunce (Ph: 620 50199)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

## **APPEARANCES**

<b>Environment, Planning and Sustainable Development Directorate .....</b>	<b>121</b>
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## **Privilege statement**

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*Amended 20 May 2013*

**The committee met at 1.00 pm.**

Vassarotti, Ms Rebecca, Minister for the Environment, Minister for Heritage, Minister for Homelessness and Housing Services and Minister for Sustainable Building and Construction

Environment, Planning and Sustainable Development Directorate

Ponton, Mr Ben, Director-General, Planning and Sustainable Development

Green, Mr Ben, Executive Group Manager, Planning and Urban Policy

Bennett, Mr James, Executive Branch Manager, Building, Design and Projects,  
Planning and Urban Policy

Marsh, Ms Lynette, Acting Executive Branch Manager, Development and  
Implementation

Major Projects Canberra

Geraghty, Ms Gillian, Chief Projects Officer

**THE CHAIR:** Good afternoon and welcome to the public hearings of the Standing Committee on Planning, Transport and City Services. Today we are hearing from the Minister for Sustainable Building and Construction.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event or watching from home.

Speak clearly into the microphone and one at a time so that Hansard can record you. We are recording, transcribing, broadcasting and live streaming today. If you take a question on notice please say, "I will take that question on notice," as it helps our secretariat track down the answers.

In this first session we will hear from the Minister for Sustainable Building and Construction. Welcome Ms Rebecca Vassarotti and officials from Environment, Planning and Sustainable Development Directorate and from Major Projects Canberra. I will remind all witnesses of the protections and the obligations afforded to you in the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. I will just get a verbal confirmation from everyone who is at the table right now that you have read and that you understand the implications of that privilege statement. Can you just say yes?

**Witnesses:** Yes.

**THE CHAIR:** That is excellent. If anybody else comes up to the table, please in your first statement say that you have read and you understand the privilege statement. We are not doing opening statements so we will go straight into questions, and I will jump in with the first question.

Minister, we are doing quite a lot to try and densify well in this city and as part of that we have permeability targets and trees targets. I am wondering how we are going in tying all that together to make sure we densify well whilst retaining those elements within our building and construction footprint.

**Ms Vassarotti:** It is a really important question. I note it is probably a question that is in an area I have been doing a lot of work in, and it probably strays over a couple of portfolios. In some of the work we have done in terms of the environment, we have been looking at from the planning perspective as well. In terms of building, there is probably a couple of areas where we have really been looking at the work which we are doing, primarily around being best practice in terms of building standards. I think particularly work that we can do in relation to living infrastructure and building in living infrastructure as part of our building fabric is a really important element of that. So a lot of work is happening within the living infrastructure team. Does that actually sit inside this portfolio?

**Mr Ponton:** Within your portfolio, minister?

**Ms Vassarotti:** Within my portfolio but not within this area.

**Mr Ponton:** No.

**Ms Vassarotti:** Okay, sorry, I just needed to check.

**THE CHAIR:** Is there any cross-over into building and construction? There would have to be quite a lot of consultation and cross-over I would imagine.

**Ms Vassarotti:** Yes. Certainly engaging with the sector, absolutely, but also in terms of looking at our building standards work and work we might want to do in terms of building fabric. We are doing the work in relation to the 10-year pathway for us to have world's best practice around building form. There has been quite a bit of work that has happened in that area that we are really happy to speak to, that sits within the building reform area and that would be able to capture some of that work. It is only a small element of that work but certainly how we use living infrastructure, in particular to do things like cool buildings, is one of the areas that we would look at in relation to that. I might look to Mr Bennett in terms of any specific things that have come up either in that work or in the NCC work as well.

**Mr Bennett:** In relation to some of those aspects about measures which are occurring on blocks in the ACT that relate to buildings, we have been progressing a project and doing some research and policy development around developing a 10-year pathway toward best practice for environmentally sustainable and climate ready buildings. Part of that work is looking at the building fabric, the particular aspects that go into the building, but also the immediate landscaping, the living treatments on the building and also in the landscaping around the building that contribute to shading, contribute to air flow and to air quality around the building. That is part of the work we are looking at there. We are very much engaged with our colleagues in the Environment Division, in Climate Change and Energy, to really explore what opportunities we have to entrench some of those provisions in the building code, and to look at where we can

find opportunities for living infrastructure and also landscaping and planting treatments on the block that support the built fabric.

**THE CHAIR:** In that 10-year pathway to sustainable buildings which elements might be delivered this term do you think?

**Ms Vassarotti:** In relation to the 10-year pathway, we have had a solid consultancy that has been working over the last five months to identify the different areas we could do and what are some of the low hanging fruit, or the no-regrets-type policies that we might be able to deliver. That work is happening right now. We are obviously working quite closely with government colleagues in relation to developing the 10-year pathway and testing what some of the things are that we might be able to do that are relatively quick, for example, amending appendix A of the Building Act might be one thing. Some of the work we have delivered, particularly through the new planning area, will be able to deliver some of those outcomes, but again it sits a little bit outside the sustainable building portfolio. I do not think we are in a position to identify specific activity, but we are certainly looking at the no-regrets activities we can do relatively quickly before the end of term.

**MS ORR:** Picking up on that line of questioning around improving buildings in densified areas and giving people confidence in those so we can move to a smaller footprint, what are we doing to give people more confidence around the quality of the construction of the build?

**Ms Vassarotti:** A lot! There is a lot of work. We have obviously been using this term to focus very heavily on this; on building quality and really building confidence within building quality. I think the first piece of work is around developing a much higher level of accountability in relation to the professionals that are working in this area, so we introduced the engineers registration program. That was introduced earlier this year and will be operational in a phased way from March 2024.

We have done a lot of work in relation to developer licensing and we will be introducing that legislation before the end of the year. That is nation-leading reform in relation to ensuring we have appropriate accountabilities across the chain and particularly looking at developers. A lot of work has gone into that, both in relation to identifying the sorts of activities need to be licensed and the nature of that licence. It is a significant piece of work that we are happy to speak to in a little bit more detail.

We have also been looking at the process of certification and looking at some of our commitments, particularly around public certification. This is a piece of work that is crystallising at the moment and we will be delivering outcomes in relation to it before the end of the term. We have also been doing a lot of work nationally, in relation to some key things about national registration schemes as well. I might look to officials, Mr Bennett again, as I feel I have probably missed a couple of items in terms of the quality reforms we have been doing.

**Mr Bennett:** You have covered a lot, minister. There are maybe a couple of others that I will talk to. There are two aspects to that work; one is the regulatory side of things and boosting our regulatory capacity in oversight. The other is improving the rules and the minimum rules that people need to meet in relation to regulations around

the quality of work that is being undertaken; engineer registration, developer licensing and work on public certification services. We have progressed an omnibus amendment bill to the Assembly that was introduced in September and will be debated shortly, which has a range of amendments in it that improve the overall regulatory system and the way that it operates. It has been informed by intelligence from compliance and also the developing trends in the industry, to make sure we are identifying risk areas; identifying those areas where problems and trends are occurring; and then moving amendments to the legislation to close some of those loopholes. That is before the Assembly at the moment.

**MS ORR:** Given you said you will introduce the developer licensing before the end of the year, and next week is the last sitting week of the year, I will hold tight for the time being on that one. I would like to ask for a little bit more on the public certifiers and what your current thinking is because you said by the end of the term, and I want to get a better insight into how that work is tracking along.

**Ms Vassarotti:** I am really happy to talk about certifiers. I would note that commitments that were made in relation to public certifiers—I think a number of parties had that as an election commitment—sits within appendix 3 of the PAGA.

What we have been doing is, again, we have been working with some expert consultants, really looking at the key issues around strengthening building certification and the role of the public sector in relation to this; looking to ensure we build and strengthen the confidence of the community; and also to deliver consumer protection. Again, I will look to Mr Bennett to talk about some of the work that has happened to date. Significant work has been undertaken, including engagement with representatives of the building and surveyor industry and the development industry, as well as community organisations. Quite a lot of research has been undertaken in terms of the current state of building certification in the ACT; what the role of government is at the moment, which is really an assurance model; looking at what is going on in other jurisdictions; and because we have been doing a number of reforms—particularly the developer licensing reform is a significant element of that—how some of these reforms might engage with each other. So we have been looking at the whole picture.

**MS ORR:** Before you throw to Mr Bennett, minister, picking up on what you said there about looking at what is the role of government within the certification process, can you give us any more of your thinking of where that is up to? If I put that question to you, minister: “What is the role of government in certification?”, what would your answer be?

**Ms Vassarotti:** Currently the role is primarily around assurance and auditing. What we are looking at, particularly in relation to the PAGA commitment, but also our policy intentions, is ensuring we have a really strong certification process, that there is confidence in that certification process, and that we are delivering confidence. There are a range of options and we are in a current conversation with government in terms of exactly how we might deliver on that.

**MS ORR:** Just for clarity, when you say a “current conversation,” are you saying the executive is currently still—

**Ms Vassarotti:** Yes.

**MS ORR:** Okay, so decisions have not been taken.

**Ms Vassarotti:** No. There are a range of options that we can take and we have a pretty clear understanding about what those options might look like.

**MS ORR:** Based on the conversations that have come up—I mean, this committee has done a fair bit on building quality and other committees I sit on have done a fair bit on building quality. It has been a long-term discussion, I think is fair to say, before this Assembly and the last Assembly, and probably assemblies before that as well.

**Ms Vassarotti:** Before that, yes.

**MS ORR:** My question to you though is—you said you have been out having the conversations—what is it that you are hearing? We have consistently heard that people do not have confidence in the certification process the way it stands now, particularly when developers—off plans, you can appoint a certifier before ownership changes to the person who ultimately purchases the property. They have questions around the number of hold points and the level of inspection that goes into looking at those hold points. Look, I can rattle them all off, but we would be here all day. I guess my question to you is—we have had another conversation—what is it you are hearing, and what is it you think needs to be responded to?

**Ms Vassarotti:** I think it is fair to say that those are exactly the kind of things that are being talked about. One of the things we have been really looking at is the issue of accountability, who holds the accountability and where certification sits in that process as well.

**MS ORR:** As in, should the certifier be accountable for any of the quality of the construction, or whether the builder or the developer are? Is that what you are looking at?

**Ms Vassarotti:** Yes, that is one of the key issues that we have been looking at, and that potentially shapes what—

**MS ORR:** Can you explain to me—you say it is a key issue. What are the factors that determine that as a key issue?

**Ms Vassarotti:** Key issue in terms of—sorry?

**MS ORR:** Who holds the responsibility.

**Ms Vassarotti:** Fundamentally what we want to do is we want to design a system to ensure that there are less defects. I think Mr Bennett has been talking recently around this issue in terms of identifying defects. If you find it in design, it costs a dollar. If you find it in construction, it costs \$10. If you are rectifying it, it costs \$100. We are looking in terms of the system, at how the system is actually identifying and reducing defects, and then we have an accountability in the circumstance in which defects are



found. So it is looking at the accountabilities, and that is some of the work that we are doing around the registration process, and where certification sits with—

**MS ORR:** But is not the point of certification to identify if the construction is complying with regulations? You think that that is one of the checks and balances in getting that assurance? I think that is fair enough to say.

**Ms Vassarotti:** Yes.

**MS ORR:** If that is one of the checks and balances, would you not be looking to make sure that your certifiers are holding builders and developers and whatnot accountable?

**Ms Vassarotti:** Yes.

**MS ORR:** When you say you are looking at it, what is it exactly you are looking at? In the sense of—do you need more hold points? Do you need more thorough investigation of what is going on when things are happening? Do you need to have someone more permanently on a site for a complex build, for example, where things change, rather than having six points where a person turns up? What are the things that you are actually looking at there, when you say from the point of view of putting in that confidence and making sure that we are catching these errors?

**Ms Vassarotti:** I think that is a key point in terms of if you look at a construction that is happening. Construction could happen over 200 days. A certifier will only be there for six days.

**MS ORR:** Potentially.

**Ms Vassarotti:** Yes, potentially, over a particular point. These are some of the key elements that we are looking at in terms of: what is the nature of the certification; when is this happening; and what is the role in which it is happening as well. All of that is being looked at. I am really trying to answer your question.

**Mr Green:** I might be able to jump in. I think one of the key points the minister is getting to is that certification is one part of the broader regulatory system. For the last two terms, the government has had a pretty ambitious agenda to try to resolve some of those building quality issues. Certification is of course one of those components, and Mr Bennett will go into some of the key actions that have occurred at this particular point in time.

The accountability question is right across industry. That is why there have been commitments made around developer regulation; it is why there have been commitments made around certification; but also around raising the bar. I think we have seen a shift potentially in the last couple of years, from an industry not necessarily recognising there was an issue, to an industry recognising there is an issue, to an acceptance that there needs to be more than just one silver bullet to resolve this issue. This has been very clear in terms of the *Building confidence* report that Bronwyn Weir contributed to and our own building quality report done some time ago.

We are looking at these things strategically. It is not just about, “Well, what does that particular reform piece about certification achieve?” What do we need to achieve more broadly? How do we make sure that we are getting the right and most appropriate level of regulatory response to that; whether that is through legislation, whether that is through policy, whether that is through the work that Access Canberra does in its regulatory compliance role. These are certainly elements that we have looked at in the context of certification and some of the improvements that Mr Bennett might want to expand on as well.

**MS ORR:** I am sorry, Mr Bennett. I know everyone was trying to throw to you and I cut you off before you could have your say. I want to pick up on some of the stuff that Mr Green said. I think it is fair to say that there is a quite large task and it is not just a one hit wonder in the sense of improving quality. I appreciate there is a lot going on. I have been going through this journey with you, Mr Green, and we have had lots of chats about this over the years. This kind of goes to my next question, though. On the certifiers, knowing that that is one aspect and acknowledging what you said about industry—and I thought it was interesting that industry did not really realise there was an issue but now accepts there is—what other gaps are you now seeing in the regulatory system that might not be answered by the initiatives that are underway?

**Mr Green:** I do not necessarily think there are any gaps. We need to recognise we are part of a whole national issue around consumer confidence in building and developers. Ultimately, the goal is to, first, improve consumer confidence in the development and construction industry and to get better outcomes for people. Our planning system is seeking to get better outcomes for people; our building regulatory system is seeking to get better outcomes for people. So, if we can improve confidence and make sure the right people are able to engage, the developers are appropriately regulated, certifiers are appropriately regulated and builders are appropriately regulated, I think that goes to the broader solution to some of these issues.

**MS ORR:** I have more questions, but Ms Castley has been sitting here quite patiently.

Mr Bennett, before I finish, if there is anything you want to say, please feel free before I throw to Ms Castley.

**Mr Bennett:** I was just going to add that, in relation to the policy work that we have been doing on certifiers, what we have heard from our conversations with stakeholders—community stakeholders and industry stakeholders—is that there is a level of confusion around the roles of different players in the building system: the role the builder has, the role trades have and the role the certifier has. The legislation provides a clear statutory description of the roles—how that plays out in practice and on development sites where you have a lot of different trades coming on and you have people involved in different parts of the process—who is accountable for each part of the process and where responsibility sits for particular parts of that process.

I will just touch on the sort of design documentation that is prepared. For example, there are building designers, architects and engineers who are engaged to design buildings. At that earliest stage of the commencement of the building project, that is when defects start to occur. It is about the buildability of the building as it is drawn by those relevant professionals. As the minister mentioned, we have moved to introduce

a registration scheme for professional engineers to be able to hold engineers accountable for their part of the process. We have further work underway that we will look at in the coming work program about the role that architects play in that and other building designers play in that.

The role of the building certifier is clear in that the building certifier issues the building approval and reviews the plans and says, “These plans, as drafted by other professionals, meet the requirements of the building code,” and then the certifier has the responsibility to come and check that the works, as built, meet the building approval and meet the requirements of the code.

There are other people whose responsibility it is to do that work, and they also have that obligation to do it in accordance with Australian standards and in accordance with the code, and the builder under our system has the ultimate responsibility to supervise that work. The certifier plays the important checking role to make sure that it has been done by those relevant industry professionals in accordance with the rules.

So several parties are involved and can contribute to problems which occur and each of them has a different role to play and different responsibilities. The work that we are doing is about looking through how our legislation plays out in practice and how the industry operates in practice, to make sure that the regulation, the powers and the tools that we have respond to that. Part of that work is to have regular conversations between the regulatory arm of government, the industry and the certifiers to talk about trends, where defects are occurring and common themes that are coming up, so that there is that communication back and forth to understand and allow industry to focus on the high-risk areas.

**THE CHAIR:** Thank you, Mr Bennett.

**MS CASTLEY:** I have questions about the Residential Building Dispute Administrator. Minister, I refer to Part 6A of the Building Act 2004, which establishes the Residential Building Disputes Scheme and the Statutory Office of the Residential Building Dispute Administrator, who is appointed by the Director-General of the EPSDD. I note that the scheme commenced on 24 June 2022. Since the scheme has been in place, how many disputes have come before the Residential Building Dispute Administrator?

**Ms Vassarotti:** Thank you very much for the question, Ms Castley. I might look to officials to provide a bit more detail in relation to that. In relation to the legislation that you point to from 2022, my understanding is that it establishes a head of power. I will need to look to officials in terms of the implementation of that.

**Mr Bennett:** Thank you, Minister. That scheme, as the minister mentioned, has passed a legislative framework for how residential disputes could be resolved within the system. Within EPSDD, we have been preparing some advice and options for the minister’s consideration on how to operationalise and bring that scheme to life. We continue to investigate and assess those options and we will be providing advice to the minister about the options that are available to do that.

**MS CASTLEY:** So it is not actually in place. There is no administrator yet, is there?

**Ms Vassarotti:** That is right. We are working through a very full work program, and that is on the work program for—

**MS CASTLEY:** Mr Ponton, would you be the one responsible for the appointment process of the administrator?

**Mr Ponton:** Given that you just noted in the question that the appointment is by the Director-General, the answer would be yes.

**MS CASTLEY:** Just checking. I understood that it was all up and running, but at the moment it is not. Do we know when things will kick off?

**Ms Vassarotti:** I am waiting for advice in relation to the options to operationalise. So, no.

**Mr Bennett:** I could add to that. That scheme provides a particular alternative dispute resolution mechanism and is designed to try to bring parties to a dispute, between the homeowner and a builder or another industry practitioner, together to provide a low-cost pathway to resolve that dispute. There is a range of other dispute options within the system already and the ability for aggrieved parties to complain to the regulator is there. At the moment, the complaints would be managed through complaints to the construction's occupations registrar if they relate to defective building work, or, if there are complaints around contracting issues, they can be made through fair trading. There are existing avenues and pathways where those complaints are dealt with. This framework will provide a building-industry-specific option, and we are looking at options about how to operationalise that.

**MS CASTLEY:** So this will be a third option.

**Mr Bennett:** Yes.

**MS CASTLEY:** Do we need three options?

**Mr Bennett:** Other jurisdictions have made some moves in this area. For issues that are unique and common to the building industry, there will be a particular pathway here that is unique and tailored to disputes that occur within the building industry and minor contracts that occur. There will be some expertise to deal with issues that relate to construction and building issues.

**MS CASTLEY:** Thanks.

**THE CHAIR:** Could I clarify: is the new option that will be available providing an avenue for people who did not previously have an option at all or is this just a better option that replaces one of the existing ones that is not a specialist?

**Mr Bennett:** This would be another low-cost option that would provide parties in dispute an option to get in front of a mediator, for example, to try to resolve an issue before that goes to a tribunal or you have to take action under breach of contract through a court process. We are trying to provide a lower cost, easier-to-access

dispute resolution mechanism.

**THE CHAIR:** But all the people who can access this new option would have been able to access one of those other options and this is just a better way to do it.

**Mr Bennett:** That is right. This is generally arising under the issue where there is a dispute in relation to a building contract. There are always the civil remedies that people could pursue for breach of contract through legal proceedings.

**THE CHAIR:** Sure.

**MS ORR:** That was essentially going to be my question. What are the avenues for taking action? Is it against the contract? Is it if you feel that, even though the building has been certified, the quality is not there and it is not performing? What are the sorts of cases that you could take to this place? And what are the sorts of remediation orders? And are there limits on what can be done—say, financial thresholds and those sorts of things?

**Mr Bennett:** I do not have those details in front of me. I will have to check whether they are in the legislation. This relates to building disputes between owners and parties that they have a contract with. If it is a regulatory matter and it relates to a defect, where something has not been built in accordance with the Building Code or in accordance with building approval, the avenue is to make a complaint to the regulator and the regulator can investigate and pursue that through regulatory orders. If it relates to a breach of contract, this will provide another avenue to try to get a breach of contract resolved without people having to take—

**MS ORR:** For example, if they have a deadline that says, “You will have X constructed by this date and you will have the concrete pour done by this date,” and it is not done by that date, then that is the sort of thing you would be taking—

**Mr Bennett:** Those sorts of disputes—yes.

**MS ORR:** If you said you would have certain appliances included and, suddenly, you do not have those appliances, so you take—

**Mr Bennett:** Yes—those sorts of minor disputes that can arise on the basis of what is in the contract. They are unique issues that commonly occur in the building industry. There are so many contracts that occur in the building industry, but it is different to where there is a failure to meet a regulatory obligation, which would go to the regulator.

**MS ORR:** Those are regulatory processes.

**Mr Bennett:** Yes.

**Mr Green:** I could probably provide some further context. The act, at section 127C, outlines those specifics: breach of warranty—that is, statutory warranties—contravention of section 42, which is about the requirements to carry out building work; failure to maintain the standard or quality of building work stated in the

contract; failure to complete building work required under a residential building work contract in accordance with the terms of the contract; failure to pay for residential building work carried out under a residential building work contract; and any other matter prescribed by regulation. I do not believe we have prescribed anything at this point in time.

**THE CHAIR:** Thank you, Mr Green. Minister, where are we up to on implementing our seven-star building standards?

**Ms Vassarotti:** Thanks very much for the question, Ms Clay. The National Construction Code 2022 includes updated energy efficiency and condensation and management requirements, which include the seven-star energy efficiency. We made a commitment that we would fully implement the new changes by 1 October 2023. Unfortunately, because of delays in the development of the Australian government's accreditation of software for the Nationwide House Energy Rating Scheme—NatHERS, as people know it—we had to delay the commencement of the energy efficiency and liveable housing design requirements until 15 January 2024. We were in the circumstance where the new tools that were needed to demonstrate compliance with the new provisions were not accredited at the time for industry to design and prepare for these changes. This was an extraordinarily disappointing development. It was something that was out of the ACT government's control. It was a process that was in the control of the commonwealth government. We had been very clear about when we would start implementing the provisions.

However, we will be commencing from 15 January 2024. As I noted, particularly given we had advocated very strongly for these changes, we were really disappointed, but we will still be the first jurisdiction to fully implement the 2022 provisions of the National Construction Code. I also note that, while it is not required until 2024, for buildings that are being currently designed—and we are getting pretty close to January—people can already exceed the existing requirements. The National Construction Code is a minimum standard.

I have been really clear that the homes that we are designing and building now are going to stand for many decades. Our officials have been working with commonwealth officials, and I understand that we are in the process of seeing those tools either accredited or almost accredited. Certainly, designers and builders have access to those tools, or are about to have access to those tools, so we are confident that we will be able to move forward in January. I will check that with Mr Bennett.

**Mr Bennett:** That is right. Our latest advice from the commonwealth is that things are progressing well in terms of accreditation. We also have a range of options available for people to comply in January if one or two of those tools do not make it, so we are in a good place to commence on 15 January.

**THE CHAIR:** Great. What will happen on 16 January that is not currently happening?

**Mr Bennett:** From 16 January, all new applications for building approval will need to meet the requirements of the National Construction Code 2022.

**THE CHAIR:** Great. That is very pleasing. How are we going with our accessibility building standards? Is that in the same situation?

**Ms Vassarotti:** It is the same thing. The same requirements will be in place from 15 January as well. We will, for the first time ever, have accessibility requirements in the design of buildings. Again, we are really excited about this. We are one of the first jurisdictions that are fully implementing this. These are minimum standards. We are looking at silver liveability standards. I think there are nine design standards required. That will mean that, particularly if homes need to be adapted in the future, it will be much cheaper. They will be really simple things like someone being able to get into a home if they are in a wheelchair. There will need to be one accessible entry for people. It will mean that corridors need to be slightly wider and there is the ability for someone to use a toilet on the ground floor.

**THE CHAIR:** We have a number of community groups and some experts that have been lobbying quite hard for these sorts of things. We have Advocacy for Inclusion, and I imagine ACTCOSS, the Commissioner for Sustainability and the Environment, and the Conservation Council. Have you been liaising with those groups? Do these new standards meet the standards that those groups have been asking for?

**Ms Vassarotti:** Certainly, we have worked really closely with community advocates that have been advocating for many decades to see some of these changes. I really want to acknowledge the incredibly hard work that they have done. I highlight that these are minimum standards. This is the first time we have had minimum standards within the Building Code. There will be a view across different community organisations about the need for us to continue to evolve those standards, but it is an incredibly significant initial step.

**MS ORR:** Picking up a little bit more on recourse and rectification for defects, if I had a constituent who is in a situation where they, say, had built off the plan, the building had been certified, the certificate of occupancy had been issued, they had moved in, and, 12 to 18 months down the line, the body corporate found that there are ingress issues on balconies and a few other bits and pieces that essentially go to the performance of the building not being what you would expect, given its age—and, apparently, it had all been certified and built correctly—what courses of action do they have to seek rectification or improvement?

**Ms Vassarotti:** This starts to go to some of the regulatory areas which sit more with Access Canberra. Certainly, we hold the legislative framework around some of those. I might again look to officials to talk particularly about some of those regulatory—

**MS ORR:** I think this is the one where Mr Bennett finally gets to—

**Ms Vassarotti:** Yes; I think so.

**Mr Bennett:** I will do my best.

**MS ORR:** It is not a pop quiz. Do not worry!

**Ms Vassarotti:** We like to see Mr Bennett shine in this. He has been working very

hard, so we like to give him some credit.

**Mr Bennett:** In terms of that initial period, after a building is completed and it is handed over from the developer to the new owner, and potentially an owners corporation, in the first few months there will be a—

**MS ORR:** A defect period.

**Mr Bennett:** A contractual warranty period. Under the contract, there will be a contractual warranty period where the builder/developer has in their contract that they will come back and fix defects. Once that contractual warranty period ends, there is a statutory warranty period. That statutory warranty period is two years for non-structural defects and six years for structural defects. There is an obligation on the builder to come back and fix any issues that occur within that statutory warranty period.

**MS ORR:** The obligation is on the builder to come back and fix defects. How do you prove it is a defect as a result of poor construction, given it has been through a process that has certified it as appropriate?

**Mr Bennett:** A lot of these defects are what we call latent defects, so they will not be material at the time of inspection or at the time of handover. They are things that may take some time to materialise. Sometimes that is a result of a failure in the certification process. At other times it is the result of it a latent defect and not yet visible or known at that time.

**MS ORR:** As in material might have malfunctioned over time which was not expected to—

**Mr Bennett:** Yes. And there are questions about whether that is a result of poor workmanship and poor build quality or the result of an incorrect material being used that was not suitable for that purpose. There is a range of reasons and causes. Sometimes the cause could be that the building has not been maintained and operated in accordance with the requirements for those types of products. There is a process that needs to occur to establish that something is a defect.

**MS ORR:** Who undertakes that process?

**Mr Bennett:** That is something that all parties who are in dispute would be seeking advice on to establish that—

**MS ORR:** Is it that the person who brings the claim has the obligation to prove that it is a defect? The builders are not the ones who have to prove it is not a defect; the owners have to prove it is?

**Mr Bennett:** Yes. There are two pathways: there is the civil pathway to try to sue someone and establish it as a defect and there is also the regulatory pathway where the regulator would take on the function of establishing it is a defect.

**MS ORR:** The regulator would essentially work as the mediator in large respect?



“Mediator” is probably not the correct word, but to do the check and balance and say that, on the balance of probabilities, it is or is not a defect.

**Mr Bennett:** Yes. If we are going down the statutory warranty avenue, an owner would allege that a defect has occurred, would present that information to the builder and the builder would either accept that it is a defect and fix it under the statutory warranty or there may be a dispute about the root cause of that defect and whether it is a construction issue or a maintenance issue.

**MS ORR:** If there is a dispute around it being about construction or maintenance, would the regulator then resolve that or is that when you have to start looking at civil action?

**Mr Bennett:** That would be the civil pathway. Separately, someone could make a complaint to the regulator, the regulator could investigate that and the regulator could issue statutory orders around that.

**MS ORR:** Is there any obligation in the settlement of properties and handovers for certified maintenance plans?

**Mr Bennett:** There is a set of information that needs to be handed over as part of the unit titles process and the registration of leases and handover. One key area of reform that we have been looking at through unit titles legislation but also through our work into developer regulation is work around the handover of a property and the handover of relevant documents about the operation and maintenance of the building. We are looking very closely at provisions and requirements for developers to hand over a building manual to make sure that the future owners have all the information necessary. Some of that is handed over proactively as part of the unit titles process at the moment. Some of it needs some additional regulatory support to make that happen.

**MS ORR:** What I take from that is that there is no obligation, but you find it happening on an ad hoc voluntary basis.

**Mr Bennett:** There are obligations around providing information around building management through the unit titles legislation. There is an additional opportunity to boost that through developer regulation.

**MS ORR:** This might be one that is better for the minister. That is something that is potentially coming forward as part of the developer—

**Ms Vassarotti:** Yes.

**MS ORR:** Let me think about that.

**MS CASTLEY:** I have questions about Mr Fluffy and the Loose Fill Asbestos Coordination team. Page 30 of the EPSDD annual report indicates that the Loose Fill Asbestos Coordination team—I am going to go with LFAC and please correct me if I am wrong—will be ceasing operation on 31 December this year. Is this because there are no more issues identified by the team?

**Ms Vassarotti:** At the moment, that is the end date for the team. It is fair to say that ongoing work will be happening in relation to loose fill asbestos. I think the team has been doing an absolutely fantastic job in relation to dealing with it. While we are at the end of the program, some of the builds and demolitions are some of the more complex ones. We have been working on that, so the coordination team will be required to continue their work.

**MS CASTLEY:** I believe that there are a number of properties on the Fluffy register that are required to have an asbestos management plan but do not. Is that the sort of work that this team will continue to do going forward?

**Ms Vassarotti:** Yes. Are you talking primarily about properties that are in private hands? That is an obligation for people that have a property that has been identified as having loose fill asbestos. Property owners have an obligation to have a management plan to ensure that visitors, tradespeople and the like know what they are entering. I look Ms Marsh to talk about some of the work in supporting private home owners to maintain their obligations under the legislation.

**Ms Marsh:** Thank you, Minister. I have read and understood the privilege statement. Ms Castley, the initial question was around the AMPs and who would be looking after the management of those. WorkSafe look after monitoring that progress for people who are applicable, but, as you noted, we keep awareness for the rest of the public up on that register so that tradespeople and others who might be interacting with those properties can be aware and can make an assessment prior to interacting with them.

**MS CASTLEY:** There is continued funding to keep this team going—I guess that is the point of my question—so that those that do not have those plans can—

**Ms Marsh:** Yes.

**MS CASTLEY:** I understand that the government has not updated property valuations since the scheme was announced by the government in 2014. Is that correct? The houses that are still on the register are valued at prices 10 years ago?

**Ms Vassarotti:** This is primarily around the buyback scheme. There were specific criteria in terms of how the buyback scheme was designed that relied on an evaluation at the time of the identification of the property. Certainly, new properties are identified. We saw a couple of properties last year that were identified as having loose fill asbestos, and we go through a process around valuation of the properties. There are sometimes cases in which there might have been a significant change of circumstance. Again, I might look to Ms Marsh to explain the way that eligibility has worked out and how that particularly relates to the valuation of properties.

**Ms Marsh:** Thank you, Minister. Properties that were identified back in 2014 as part of the original scheme had the valuation then. That buyback has closed at this point, but, should properties be identified, they obviously have a valuation done as at the day they are added to the register. If a property is identified, we go through the assessments to determine whether it is a Mr Fluffy loose fill asbestos affected property. We recommend to the minister to put it on the Affected Residential Premises Register. The valuation is then as at the date it is put on the register. If a

property is found today—by the time we actually determine that it is one—it is valued as at that date. It is not quite that they are 10-year old valuations; it depends on when the property is actually determined to be an affected property.

**MS CASTLEY:** Minister, you mentioned buybacks. I think you said there are a few still going that are complex. Is it an option that the government would consider compulsorily acquiring those?

**Ms Vassarotti:** Within the legislation there is the potential for compulsory acquisition by mid-2025. There is the clearly stated position of the ACT government that we want to eradicate loose fill asbestos within the community, and, while we continue to have properties that have been identified with loose fill asbestos, we recognise that there is a risk to community, and this is particularly why the identification of properties has been really important. There is a potential for that. We are very aware of the circumstances of people who are still in properties that are impacted by asbestos, and the commitment is to work with households and families to ensure that they are safe and that people who come into their properties are safe, and to work with them around a resolution about their property and how to deal with the fact that it does have loose fill asbestos.

**MS CASTLEY:** I have one last question. Yesterday we heard that some asbestos was found when they were raising London Circuit. I am wondering what your involvement with that is.

**Ms Vassarotti:** I do not think I have any involvement in that. This is a program that is specifically around loose fill asbestos in homes.

**MS CASTLEY:** That is it from me. Thanks.

**THE CHAIR:** Thank you, Ms Castley. You have made some changes about human safety in buildings—swimming pool renting regulations and medical gas fittings. Can you tell me where those are up to in implementation?

**Ms Vassarotti:** Yes; for sure. Thank you very much for that question. In relation to swimming pool barrier reforms, we have introduced and passed legislation to ensure that all pool fencing meets modern standards and contemporary requirements. These reforms will commence on 1 May 2024. However, there is a four-year transition phase for those. That is recognising that there will be a cost to people in relation to those reforms. While that transition process is in place, homeowners, when they are selling their properties or renting their properties, will be required to provide information on the compliance of their swimming pools over that period of time. That is happening. In relation to medical gases, that legislation was introduced in September this year, with debate of the bill expected to be very shortly. That is still in train.

**THE CHAIR:** What was the response to the phased-in approach for swimming pools? Have people been generally happy about that?

**Ms Vassarotti:** Yes. Certainly some people who have come forward have identified that, because of their particular circumstances, meeting the requirements will be quite challenging for them and potentially expensive. That is exactly why we have

introduced things such as a four-year transition phase. We continue to point consumers who are identifying particular challenges to some of options and ways that providers might be able to help them.

There is some ability within the legislation to grant exemptions and those will be primarily around individuals who have a disability and require a pool. We need to make sure that they are accessible. There is an ability to deal with exemptions, particularly for people that have compelling reasons why they should be exempted from the current obligations around standards.

**THE CHAIR:** Very interesting. What is the mechanism for someone to get an exemption?

**Ms Vassarotti:** I am not quite sure. We have not done one yet.

**Mr Bennett:** There are two processes under the legislation for exemption. One is a standing exemption with the particular circumstance, where we have set out that the legislation will not apply to certain situations. We are calling those standing exemptions. For example, where you have a spa with a lockable lid, that is a situation where safety is demonstrated. The other category is the ability for someone to apply and for the minister to issue a ministerial exemption. Again, there is a specified set of categories in which people can apply. Those relate to things like, as the minister said, where the current homeowner has a disability and an exemption can potentially be issued for the period that the homeowner remains in the house. There are other situations where there is a physical barrier or it requires demolition of part of the house or the building, and there may be an exemption granted from part of the requirements.

Exemptions will only be considered and granted where safety is achieved overall. There might be a departure from particular aspects of the standard or the requirements, but the applicant for an exemption will need to demonstrate that the alternative outcome is still safe in all relevant respects.

**THE CHAIR:** Does someone find the information on the website and then proceed with a form? Is that how they—

**Mr Bennett:** Yes. That is work that we have underway at the moment. Following the passage of the legislation, we are currently developing an extensive package of information for people that will go through a range of information about the scheme and how it will operate. It will have information about how to apply for an exemption and when those exemptions may or may not be available, and there will also be some really clear guidance for people, both in writing and in graphic form, about solutions to meet the new requirements.

We have also gone to the effort of looking at the history of the different standards and when pools were installed—what standards applied at the time—and we are developing a set of fact sheets about those different periods of time and what changes might need to be made, depending on when the pool was installed, to become compliant with the new modern safety requirements.

**THE CHAIR:** Thank you.

**Ms Vassarotti:** That is quite an important point. Most of the pools and spa pools from about 2013 are likely to meet the current safety standard, and for those since 2010 there are quite minimal changes. We are looking at pools that might have been installed prior to 2010 that we suspect will need to have some significant work in terms of bringing them up to the new standard. I also note that we are the last mainland jurisdiction to bring in this requirement, so it is really good that we have been able to get to this point.

**THE CHAIR:** We have certainly lagged on this one.

**Ms Vassarotti:** Yes.

**THE CHAIR:** Thank you, Minister. Ms Orr, do you have a one-minute question?

**MS ORR:** No, I am good, thanks. I probably have a two-hour question!

**THE CHAIR:** That takes us to the end of our time today. On behalf of the committee, I would like to thank the minister and officials for making themselves available and for coming to answer our questions. I thank broadcasting and Hansard staff for their excellent work, as always. Were there any questions on notice?

**Ms Vassarotti:** I think that there weren't.

**THE CHAIR:** I do not think there were any questions on notice. Members can lodge any within five business days.

**Ms Vassarotti:** Thank you so much.

**The committee adjourned at 1.59 pm.**