



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building and Construction Legislation Amendment Bill 2019

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Introduction

The Executive Committee of UP3872 Crestwood, on behalf of the Owners Corporation, wish to thank the Standing Committee for the opportunity to offer this submission to the Building and Construction Legislation Amendment Bill 2019.

We firstly commend the ACT Government for preparing these amendments in an effort to respond to the disgraceful state in which the building industry in the ACT finds itself.

We would also like to make the observation that our legislators must carry a share of the fault for this decline in our building industry standards, with poorly written legislation a significant contributing factor in allowing poor practices to continue, rather than preventing them occurring at all.

We support the newly written amendments highlighting ultimate responsibility for rectification works, but implore you for an inclusion to treat developers with ratings, in the same way that you propose for builders - naming and shaming. This amendment has the potential to assist future property owners in the ACT and must not be watered down due to pressure from within the industry.

We highlight this because in many cases the original owner of the lease and the developer (whether an individual or a company), are equally as responsible for the quality of a build as the actual builder.

Making the necessary changes

These proposed amendments are being touted as *maintaining public protections*. In recent times, protecting the public has clearly not been front of mind when it comes to our ACT building legislation. Many submissions from previous building enquiries have highlighted the poor outcomes for homebuyers in the ACT, but the conditions leading to these have not changed.

Our recommendations, based on our own experiences are outlined on the following pages, for your crucial consideration and integration into new and amended legislation.

Assigning responsibility for rectification works

Too often, assigning responsibility for rectification works has necessitated that the property owner or Owners Corporations embark on expensive court proceedings in order to facilitate the relevant directions and decisions.

Responsibility must ultimately rest with the original owner of the lease, along with developer and the builder; how that responsibility translates beyond these people should be of no concern to the property owner/s.

Identifying responsibility

To assist with identifying responsibility for rectification works, the name/s of the initial owner, the developer and the builder need to be included on the Certificate of Occupancy and kept on the building file. This will enable ongoing access to that vital information for future owners of that build.

In parallel, the development of a publically available Disciplinary Register would be key in helping to eliminate poor practices within the industry and we recommend that individual Director names be included on this register.

Eradicating “phoenixing”

The widely practiced phenomenon of “Phoenixing” (emerging with a new business after deliberate insolvency) in the ACT building industry must also be addressed. Builders, including that of our own defect-riddled complex, continue to practise building development (albeit no longer always directly as a builder) despite insolvency, incompetency and negligence in his previous work.

Enabling access to individual names associated with the businesses involved, as recommended above, would be of great benefit to future property owners, and also facilitate tracking of repeat perpetrators of this practice.

In conjunction, the legislation addressing this practice of “phoenixing” is manifestly inadequate and we encourage the ACT Government to rectify this through specific legislative reference and direct consequence for perpetrators.

Legislative language

We note that poorly drafted legislation must cease to be an opportunity for those responsible for poor building practices to avoid rectifying defects, as has been the case to date.

As an example of such, current legislation related to the work of building inspectors and certifiers, uses the somewhat polite language “may request” and “is requested”, leading to a potential inference of *optional* activity.

We believe it is this weak wording that has contributed to poor reporting by inspectors and certifiers in the ACT. The language should reflect a need for mandatory site inspections, occurring more frequently at appropriate stages of construction, with inspectors and certifiers forbidden to simply rely on documentation to approve builds.

Strong, decisive language inciting mandatory behaviours and outlining consequences must be employed in the amended legislation in an effort to re-instil community trust in the industry, the regulators and the Government.

Assurance: accountability for inspections and independent audits

The current system of so-called building certification has been proven to do nothing to adequately ensure building quality.

Regular professional inspections, by qualified architects and engineers during construction, along with final certification by government-employed certifiers should be mandated by the legislation and enforcing bodies. These skilled and accountable certifications would assist in preventing a large percentage of defect- associated problems.

Then in support of these, the ACT Government should appoint a truly independent auditing body to assess the quality of building and the inspection work to give the industry and the community the assurances we need for our investments and safety.

Assuring “Alternative solutions”

“Alternative solutions” to building plans should be either banned, or extremely closely monitored through a formal and visually / physically certified approvals system, to ensure defects are not built-in after the building plans have been approved.

Records and audit trails

The Government must consider investment in accessible cloud or other technology for the management and storage of all approved building and development records.

The building files should include all drawings required in the course of a build (electrical, irrigation, landscape, data, hydraulic etc.), and should be readily accessible to owners and Owners Corporations should the need to do so eventuate.

Dishonest ongoing cost advice

The practice of under-quoting the costs of ongoing strata fees related to building maintenance must be stopped through clear reporting and honest advertising by developers selling off-the-plan units.

In support of this, Preventative Maintenance Contracts must be in place for all assets at the complex *before* a Certificate of Occupancy is issued; this should not be made the responsibility of the builder-appointed Strata Manager and the new, usually inexperienced, Executive Committee.

Deviations from Development Plan

To further protect the financial interests of those who purchase off the plan, all deviations from the approved Development Application for the property must be disclosed in full to owners and records kept on the building file for access in the future by owners and the Executive Committee.

Penalties

Harsh penalties must be imposed on those who deliver negligent practises such as those outlined in this submission, including auditors and inspectors who approve negligent building work.

Government Support

Greater clarity and information on how and when ACT Government support and assistance for those who feel they have a claim against a builder, or a concern about building quality and work, must be established.

Insurance claims

Significant changes to the building insurance system to ensure that claims for building works and resultant damage can still be made and supported while relevant legal claims around rectification costs are pending.

Waterproofing

To prevent future defects associated with water ingress as a result of inadequate waterproofing:

- Mandatory qualifications and licensing for waterproofing contractors must be legislated.
- Inspection and certification of all waterproofing for balconies, courtyards and tiled areas must be mandated.
- Leak testing of roofs must also become part of legislation and require certification.

Multi-unit specific building licensing

The complexities and interdependencies of multi-unit builds must be reflected in a higher standard of licensing and qualifications necessary for builders undertaking construction of these complexes in the ACT.

Fidelity Fund scheme reform

The insurance or compensation recourse for owners and Owners Corporations in situations where building defects are apparent must be clear and available as tangible payments, not fought for through interpretation of legislation that is not written under the Insurance Act.

Executive Committee standing

There must also be acknowledgement of the legitimate standing of an Owners Corporation and its Executive Committee to act on behalf of its owners' written into ACT legislation.

This is all evidence that legislative checks and balances to prevent this flagrant disregard for people's livelihood and safety by builders and developers alike, are grossly inadequate.

These proposed amendments are a step forward in repairing the standing of the building industry and improving the outlook for future property owners in the ACT. Once amendments are made the ACT Government must have the courage to enforce the new legislation.

John Keeley OAM
Chair Executive Committee UP 3872
13th November 2019