

**2020**

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

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON  
ECONOMIC DEVELOPMENT AND TOURISM REPORT 9 –  
Inquiry into Building Quality in the ACT**

**Presented by  
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## Introduction

The ACT Government welcomes the opportunity to respond to the Standing Committee on Economic Development and Tourism's report Inquiry into Building Quality.

The Government recognises the importance of compliance with building standards for health, safety, amenity and sustainability in maintaining our quality of life, and the extensive work undertaken to date to improve the ACT's building regulatory system and lift practices across the construction industry.

A comprehensive review of the ACT *Building Act 2004* and the associated building regulatory system was undertaken in 2012-13. Changes commenced during the review including a pilot builders' exam for class C builder licence applicants and increasing scrutiny of licence applicants claims of experience.

Three legislation amendment Acts over 2013 and 2014 included new powers for the Construction Occupations Registrar to refuse to grant or renew a licence, request a skills assessment and direct licensees training. Amendments in these Acts also increased the penalties for major offences for failing to comply with the building code, with requirements for carrying out building work and / or with a rectification order. They also established the public register of information about licensees.

After the review was complete, from late 2015 to early 2016 the public and industry were consulted on further reforms targeting the most common building-related issues raised during the review, as well as concerns about payment arrangements between contractors.

The result of that work was the program of 43 integrated reforms, chosen to target the cause of problems and help improve the integrity of the building regulatory system and practices in the building and construction industry.

Reforms completed early in the current program included important changes. These include extending statutory warranties to all new residential building work and giving the Registrar powers to help prevent people from 'phoenixing' and shifting their operations between licences and avoiding their obligations.

These earlier reforms also established the foundation for the more detailed reforms in the program, creating powers related to licensing qualifications and eligibility, codes of practice, guidelines and residential building contracts.

By the end of June 2020, 41 of the 43 reforms were complete including:

- a code of practice for building surveyors;
- documentation guidelines for building approval applications for apartment and commercial buildings;
- exams for class A, B and C builder licence applicants;
- regulations that prevent residential building contracts from including an authorisation for the builder to act as the landowner's agent to appoint the building certifier;

- considering expansion of rectification and other relevant powers to allow orders to be issued to people closely associated with corporate licensees, which resulted in new legislation applying to directors and partners of corporate and partnership licensees;
- completed a new training course for building surveyors and people operating under the ACT's building regulatory system;
- released guidelines for licensed builders that will form the basis of a new code of practice to be introduced by 1 July 2021;
- introduced legislation to implement an alternative dispute resolution scheme for residential building work;
- reviewed the ACT security of payment system against the recommendations of the national review of security of payment laws;
- developed information sheets for people entering into a residential building contract or purchasing off the plan, with explanations of common terms, things to look for and consider, and rights and obligations; and
- enacted a regulation to commence in 2021 requiring building certifiers to supply information about stage inspections on houses and buildings that include residential apartments shortly after the inspection is complete.

A new inspection and auditing tool was also developed. The tool supports pro-active auditing of practitioners, documentation and buildings currently under construction against obligations in the Building Act, the building code, the documentation guideline and the Building Surveyors' Code of Practice. Purpose-built from scratch specifically for the ACT, the project has recently been awarded an international Special Achievement in Geographic Information Systems Award. The award recognises innovation in using data from various sources and for the tool's potential to help mitigate risks to the community from failure to meet building standards.

Further information about the reforms can be found at

<https://www.planning.act.gov.au/build-buy-renovate/reviews-and-reforms/building-reforms>.

A second stage of reforms will include completing the two remaining reforms and other work arising from the reforms already completed, including; addressing issues of licensing and accountability for people designing, building, certifying and contracting for building work off-the-plan; insurance and other protections for clients and building owners; the final residential building dispute resolution model and security of payment issues. This work has, or will, address many of the issues raised during the Inquiry into Building Quality.

In addition, the Government has committed in this term of Government to:

- Establish an expert team of publicly funded building certifiers within the ACT Public Service.

- Set up an Australia-first licensing scheme for property developers, including the creation of a “fit and proper person” test and rigorously enforced penalty scheme.
- Introduce a registration scheme for engineers.

The Government will carry out public and industry consultation on these commitments and the best schemes for the ACT.

## Recommendations

No.	Recommendations
Recommendation 1	The Committee recommends that the ACT Government implement the outstanding recommendations of the 2016 Improving the ACT Building Regulatory System report and the Shergold-Weir report.
Recommendation 2	<p>The Committee recommends that the Minister for Building Quality, as part of the ACT Government response to this report, continue to publish:</p> <ul style="list-style-type: none"> <li>• a list of all recommendations in the 2016 Improving the ACT Building Regulatory System report and the Shergold-Weir report;</li> <li>• the action taken by the ACT Government to date to implement those recommendations; and</li> <li>• the timeline for further action on those recommendations.</li> </ul>
Recommendation 3	<p>The Committee recommends that the ACT Government establish a Building Commissioner as an independent statutory officer with a remit to ensure building code and standards compliance by:</p> <ul style="list-style-type: none"> <li>• performing audits;</li> <li>• enforcing site inspections during the various phases of a build;</li> <li>• managing license compliance of professionals;</li> <li>• managing the allocation of certifiers to developments; and</li> <li>• managing the Notices of Dispute and Arbitration processes and make decisions enforceable on both parties.</li> </ul>
Recommendation 4	The Committee recommends that the ACT Government and/or

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Building Commissioner establish a comprehensive audit scheme that:

- applies to all who hold a license or registration;
- underpins the accreditation and licensing system which applies to all professionals and other practitioners;
- deals with processes, procedures, and work performed;
- includes all trades, practitioners, and professionals involved in the building and construction process; and
- include both randomised audit inspections and scheduled inspections of high-risk work.

Recommendation 5 The Committee recommends that the ACT Government, noting that plumbing, electrical, waterproofing and drainage works are frequent sources of building quality issues, review the current level of inspection of these works and report back to the Assembly.

Recommendation 6 The Committee recommends that the ACT Government review funding for enforcement staff within Access Canberra, so that all building, design and development complaints can be responded to, and disputes resolved, in a timely and consistent manner.

Recommendation 7 The Committee recommends that the ACT Government have an appropriately staffed shop front for Access Canberra's building regulatory activities, with sufficient staff for a mobile/response unit able to enforce regulatory actions at short notice.

Recommendation 8 The Committee recommends that Access Canberra continue to promote and work on the "build, buy or renovate" website to make it easier for the public to locate information on their rights and responsibilities and disciplinary action against building practitioners.

Recommendation 9 The Committee recommends that the ACT Government implement a mechanism where recurring problems or findings of certifiers and inspectors are conveyed to industry including through training or information sessions for industry to highlight problems and best practice methods.

Recommendation 10 The Committee recommends that the ACT Government strengthen processes to ensure that developers lodge plans "as built", with an

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initial focus on large multi-unit developments.

- Recommendation 11 The Committee recommends that the ACT Government require developer lodged plans to provide a minimum standard of detailed design drawings/specifications for areas that are commonly defective.
- Recommendation 12 The Committee recommends that the ACT Government consider establishing an ACT Building advice line to inform consumers about the processes involved including available dispute mechanisms.
- Recommendation 13 The Committee recommends that the ACT Government:
- provide information to consumers, including Owners' Corporation Executive Committees, on their rights and processes to seek redress when building quality issues take place, including by developing tool kits to support those taking legal action; and
  - require builders to supply information on that material at the quote or draft contract stage.
- Recommendation 14 The Committee recommends that the ACT Government consider making it mandatory for the regulator to inform the public of any rectification orders not completed or addressed within the required timeframe.
- Recommendation 15 The Committee recommends that the Minister responsible for Fidelity Funds established under the *Building Act 2004* provide audited accounts and an annual report to the Assembly on their performance.
- Recommendation 16 The Committee recommends that the ACT Government ensure that, if not already in place, appropriate prudential standards are set for fidelity funds under Part 6 of the *Building Act 2004* (and section 103, in particular) and further, that once set, such prudential standards are maintained and enforced.
- Recommendation 17 The Committee recommends that the ACT Government review the fidelity fund and report the findings of that review to the Assembly.
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- Recommendation 18 The Committee recommends that, as part of its review of the fidelity fund, the ACT Government consider expanding the scope to allow Owners' Corporation Executive Committees to make claims for common areas.
- Recommendation 19 The Committee recommends that the ACT Government report to the Assembly on:
- action taken to date to address "phoenixing" in the building industry;
  - any further actions planned; and
  - how the Commonwealth legislation passed in June 2020 will affect action against phoenixing in the ACT.
- Recommendation 20 The Committee recommends that the ACT Government consider restricting the use of special purpose vehicles for the acquisition, development and sale of property.
- Recommendation 21 The Committee recommends that the ACT Government amend the Unit Title legislation to make it mandatory, upon occupancy and creation of the Owners' Corporation (OC), that an agreement be established between the developer and the OC for addressing all common property (building and landscape) issues.
- Recommendation 22 The Committee recommends that the ACT Government publish a standard building contract that incorporates best practice.
- Recommendation 23 The Committee recommends that the ACT Government implement a standard contract requirement that the display unit of a project dwelling have the same building quality as intended for and used in the development it represents.
- Recommendation 24 The Committee recommends that standard building contracts contain minimum specifications for seals or membranes, as some products used for waterproofing are unsuitable for Canberra's climate.
- Recommendation 25 The Committee recommends that the ACT Government establish a building standards and disputes tribunal with the power to:
- oversee the rectification of defects that have not been
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remedied in the contracted time;

- impose a time frame for rectification of defects, monitor rectification progress and make enforcement orders as necessary;
- adjudicate complaints; and
- call for documents, people or other things, in order to reach its decision.

Recommendation 26 The Committee recommends that, should a building standards and disputes tribunal not be established, that the ACT Government consider for building matters amending the *ACT Civil and Administrative Tribunal Act 2008* to increase the amount of money that can be claimed through the tribunal above \$25,000 and to enable ACAT to hear contract disputes that arise.

Recommendation 27 The Committee recommends that the *Unit Titles (Management) Act 2011* be amended to prevent strata management companies being contracted for longer than 12 months during the period of developer control.

Recommendation 28 The Committee recommends that the ACT Government amend the *Constructions Occupations (Licensing) Act 2004* to expand the breadth of licensing in the ACT to license Architects, Engineers, Designers, Water Proofers, Fire Proofers, Carpenters, Painters and Concreters to cover trades associated with the more critically building issues in line with the Shergold-Weir report.

Recommendation 29 The Committee recommends that the ACT Government review the link between builders' licences and associated companies, so licences can be reviewed where associated with companies that have failed to honour contracts.

Recommendation 30 The Committee recommends that the ACT Government ensure that vocational education and apprenticeship schemes are funded appropriately to ensure the production of sufficient high-quality licensees to meet market demand.

Recommendation 31 The Committee recommends that the ACT Government review barriers to accessing current copies of the Building Code of Australia (BCA) and Australian Standards to assist licenced builders to have access without facing punitive costs.

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- Recommendation 32 The Committee recommends that the ACT Government provide more transparent statistics regarding disciplinary action against licensees.
- Recommendation 33 The Committee recommends that the ACT Government consider the imposition of more significant penalties for breaches on building licences.
- Recommendation 34 The Committee recommends that the ACT Government review the criteria for renewing building licences.
- Recommendation 35 The Committee recommends that the ACT Government complete the objects of the *ACT Architects Act 2004* by:
- requiring adherence to a code of conduct upon registration;
  - requiring the holding of professional indemnity insurance; and
  - mandating continuing professional development.
- Recommendation 36 The Committee recommends, noting the Minister for Building Quality's announcement of a possible requirement to use public certifiers, that the ACT Government also consider, for multi-unit developments (where the developer or builder is also the owner) the Building Commissioner or regulator establish a panel of certifiers and that developers be required to choose their certifier from a rotating subset of that panel.
- Recommendation 37 The Committee recommends that the ACT Government ensure building plans (detailed rather than concept plans) are reviewed and assessed by certifiers from the beginning of the development.
- Recommendation 38 The Committee recommends that the ACT Government consider make it mandatory for the first action of an Executive Committee in a multi-storeyed apartment development to be to obtain a Building Code of Australia Audit Report from an independent certifier so as to provide assurances on the buildings compliance with the Deemed-to-Satisfy (DTS) requirements of the Building Code of Australia (BCA) as well as the ACT's Building Act 2004 and Building Regulation 2008.
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- Recommendation 39 The Committee recommends that the ACT Government consider adding additional hold points for certification in the building process including:
- waterproofing of balconies, courtyards, and tiled areas; and
  - leak testing of roofs.
- Recommendation 40 The Committee recommends that Certificates of Occupancy should not be issued on a building until:
- a representative of the unit responsible for achieving and storing the drawings (and the certifier) has signed a document to verify that the drawings issued to the department are all of the relevant 'work as executed' structural (including shop drawings and precast drawings), architectural, mechanical, electrical, hydraulic, fire and landscape drawings;
  - detailed and accurate plans are lodged with the ACT government, and lodgement verified by the responsible officer; and
  - all documents are also lodged with corporate bodies.
- Recommendation 41 The Committee recommends that the ACT Government investigate a building bonds scheme for multi-unit residential buildings requiring a percentage of the contract value of a property be withheld in a Trust until all defects and warrant issues are addressed satisfactorily.
- Recommendation 42 The Committee recommends that the ACT Government consider amending legislation to make developers, in addition to builders, liable for breaches of statutory warranties under the *Building Act 2004*.
- Recommendation 43 The Committee recommends that the ACT Government review statutory warranties to extend cover for longer term issues including waterproofing, façade cracking and fire protection.
- Recommendation 44 The Committee recommends that the ACT Government consider broadening the application of the implied warranties under Division 2.9.3 of the *Civil Law (Property) Act 2006* by removing the requirement of knowledge of defects on the part of the seller of newly built units.
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- Recommendation 45 The Committee recommends that the ACT Government report back to the Assembly within 6 months of the tabling of this report with information on the regulation of building materials, the respective responsibilities between the Commonwealth and the States and Territories and what position the ACT Government is taking in Building Ministers' Forum discussions on building material regulation.
- Recommendation 46 The Committee recommends that the ACT Government make representations to the Australian Building Codes Board to expand Part 3.9.2.3 (c) of the National Construction Code to investigate and make specific recommendations on the maximum safe distances a balustrade can be set out and away from a floor or balcony, specifically taking into consideration balustrades in high rise developments.
- Recommendation 47 The Committee recommends that the ACT Government review minimum requirements for multi-unit buildings to make them suitable for those with disabilities, with a focus on safety and common areas.
- Recommendation 48 The Committee recommends that the ACT Government draw on the Territory's experience dealing with loose-fill asbestos risks and prepare mechanisms for:
- the owners of buildings with flammable cladding to produce detailed plans on how the risk will be managed;
  - those renting or purchasing buildings with flammable cladding to be informed of the risks; and
  - appropriate fire management plans to be created taking into account the risks posed by the cladding.
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# **ACT Government Response to the Standing Committee on Economic Development and Tourism Report No. 9 – Inquiry into Building Quality**

## **Recommendation 1**

*The Committee recommends that the ACT Government implement the outstanding recommendations of the 2016 Improving the ACT Building Regulatory System report and the Shergold-Weir report.*

## **Response**

### **AGREED IN PRINCIPLE**

In relation to the Improving the ACT Building Regulatory System reforms, the 2019-20 mid-year budget appropriation included funding over two years for a second stage of reforms. This stage includes completing the two remaining reforms (already underway) and other work arising from the reforms already completed, including; addressing issues of licensing and accountability for people designing, building, certifying and contracting for building work off-the-plan; insurance and other protections for clients and building owners; the final residential building dispute resolution model and security of payment issues.

In relation to the recommendations in the Building Confidence Report (colloquially known as the 'Shergold-Weir Report'), many of the recommended features in the report are already in place in the ACT. For example, ACT building legislation has long included conflict of interest provisions and relevant powers for building surveyors (recommendations 9 and 11) and clear requirements for ongoing approval of amended documentation by the building surveyor throughout a project (recommendation 16). Work the ACT has undertaken as part of our reform program has completed work against other recommendations such as a code of practice for building surveyors (recommendation 10), and additional regulatory powers for the regulator (recommendation 6).

Four of the recommendations are for the Building Ministers' Forum (now Building Ministers' Meeting) as a collective and not for individual states and territories to implement separately at this stage. Of the 20 recommendations that relate to state and territory systems, seven require no further action for implementation in the ACT as the recommended features are already in place and a further eight recommendations are already partially in place. Two recommendations (5 and 15) are of limited relevance to the ACT. Recommendation 5 relates to formal coordination mechanisms for states with multiple regulatory agencies and 15 relates to retrospective approvals, which are not permitted under ACT building legislation. A further recommendation about consistency in licensing systems (recommendation 2) cannot be implemented by the ACT unilaterally.

The Building Ministers' Forum agreed to the Australian Building Codes Board (ABCB) establishing the Building Confidence Report Implementation Team to consider the report's recommendations, noting that it remained up to each state and territory as to how they implemented the recommendations. The ACT is participating in this work and can consider whether any further refinements to our current framework are necessary or desirable following completion of national work. In the interim, the ACT will continue with its reform program.

## **Recommendation 2**

*The Committee recommends that the Minister for Building Quality, as part of the ACT Government response to this report, continue to publish:*

- *a list of all recommendations in the 2016 Improving the ACT Building Regulatory System report and the Shergold-Weir report;*
- *the action taken by the ACT Government to date to implement those recommendations; and*
- *the timeline for further action on those recommendations.*

## **Response**

### **AGREED IN PRINCIPLE**

The ACT Government continues to publish a list of all the reforms in the 2016 Improving the ACT Building Regulatory System report on the [Build, Buy, Renovate](#) website. The list includes the status of each reform and the action taken by the ACT Government to implement those reforms. The ACT Government has completed 41 of the 43 reforms in the *Improving the ACT Building Regulatory System* reform program, with work on the remaining two underway. The remaining reforms include a review of the effectiveness of ACT procurement arrangements for security of retentions held by contractors and progress payments on government projects (reform 27), and the implementation of mandatory qualifications for corporate and partnership licences (reform 32). These reforms will be completed in the second stage of reforms.

The Building Ministers' Meeting (previously the Building Ministers' Forum) periodically publishes implementation updates on the Building Confidence Report recommendations from all states and territories on its [webpages](#). The update includes a summary table indicating the status of each jurisdiction's system and position in relation to the recommendations as well as a more detailed report on recent work in each jurisdiction. The ACT will continue to provide updates via this mechanism and will update the Build, Buy, Renovate website accordingly.

It is important to note that as the ACT's building regulatory system already includes many of the features recommended in the Building Confidence Report that no action is planned at present in relation to some recommendations.

In addition, the timing of work in the ACT for some recommendations is dependent on work at a national level and decisions at the Building Ministers' Meeting.

Further, not all ACT reforms correspond to a recommendation in the Building Confidence Report. That report includes recommendations concerning compliance and enforcement systems as they relate to the National Construction Code, whereas the ACT's reform program has a broader scope and includes other issues identified in the ACT review as important in developing an effective regulatory scheme, such as dispute resolution, protections for building owners, contracting, and comprehensive documentation and practice standards for a range of practitioners.

### **Recommendation 3**

*The Committee recommends that the ACT Government establish a Building Commissioner as an independent statutory officer with a remit to ensure building code and standards compliance by:*

- *performing audits;*
- *enforcing site inspections during the various phases of a build;*
- *managing license compliance of professionals;*
- *managing the allocation of certifiers to developments; and*
- *managing the Notices of Dispute and Arbitration processes and make decisions enforceable on both parties.*

### **Response**

#### **NOT AGREED**

The ACT Government notes that the Construction Occupations Registrar (Registrar), the existing independent statutory officer, is tasked with many of the responsibilities listed in the recommendation, including performing audits, enforcing site inspections during the various phases of a build, and managing licence compliance of practitioners. The Registrar's functions also include an education role, including to provide construction practitioners with information about developments in the construction industry. The Registrar's remit extends beyond building codes and standards to a variety of plumbing, gasfitting, gas appliance, electrical work, energy efficiency assessments and other inter-related work.

A commission is a body created to perform a particular function, whether it be administrative, legislative, or judicial in nature. Renaming the Construction Occupations Registrar to 'Building Commissioner' does not in itself create a separate commission. Given the Registrar's increased profile because of recent regulatory activity, renaming the role may also be potentially confusing. Creating a new officer with effectively the same remit as the Construction Occupations Registrar would duplicate existing functions.

The important thing is that the regulator is known to industry members and that the regulator is effective in addressing issues, not what they are called. However, the Government considers the continuing independence of statutory officers is critical. Under the ACT Parliamentary & Governance Agreement for the 10th Legislative Assembly, the Government will undertake a review of statutory office holder independence to make sure they continue to be able to operate as intended.

The role of the regulator in relation to allocation of certifiers will be determined during development of a new certification model (see response to recommendation 36). In July 2020, the ACT Government announced it would implement a team of public certifiers to operate on a fee for service basis, which would allow landowners the option to choose to appoint either a public sector certifier or a private sector certifier. The Government is also considering whether public sector certifiers may be required for certain types of development.

The new legislation for alternative dispute resolution (see the [Building and Construction Legislation Amendment Act 2020](#)) creates a separate statutory officer to oversee disputes, which extend beyond the scope of building regulation. The Government will consult further with the public and industry to finalise the details of the scheme ahead of the commencement of the new legislative provisions in June 2022. At this stage it is not proposed the Registrar/technical building regulator manages or makes decisions in relation to all building disputes, but would continue to be able to investigate complaints about breaches of building standards and take regulatory actions as appropriate including to make rectification orders.

#### **Recommendation 4**

*The Committee recommends that the ACT Government and/or Building Commissioner establish a comprehensive audit scheme that:*

- *applies to all who hold a license or registration;*
- *underpins the accreditation and licensing system which applies to all professionals and other practitioners;*
- *deals with processes, procedures, and work performed;*
- *includes all trades, practitioners, and professionals involved in the building and construction process; and*
- *include both randomised audit inspections and scheduled inspections of high-risk work.*

#### **Response**

##### **AGREED**

Audits and inspections of building work are undertaken as part of a risk-based system. The current audit scheme has expanded in recent years and will continue to be refined and

improved. The framework encompasses all licence types and the results of audits and inspections are recognised as grounds for further action if required.

Audit programs are targeted and can cater for auditing licensees with respect to their legislative obligations which can include processes, procedures, and work performed. They include randomised audit as well as targeted and risk-based programs and can cover compliance with administrative and regulated processes as well as physical work.

While it is not feasible to individually audit every practitioner involved in the industry, particularly those that are not required to be licensed, the auditing system does include audits of other practitioners' work, such as the documentation produced for building approval applications and installations in work supervised by licensees.

The 2019-20 ACT Budget included ongoing funding for eight additional building inspectors to undertake an extra 1,000 pro-active site inspections/audits each year, particularly of residential buildings. The August 2020 Economic and Fiscal update included funding for a further two specialist technical officers.

The ACT Government will make sure that the ability for the regulator to operate a comprehensive audit scheme covering the work of all licensed practitioners working in the Territory is not compromised under any national or cross-jurisdictional reforms it adopts.

#### **Recommendation 5**

*The Committee recommends that the ACT Government, noting that plumbing, electrical, waterproofing and drainage works are frequent sources of building quality issues, review the current level of inspection of these works and report back to the Assembly.*

#### **Response**

#### **AGREED IN PRINCIPLE**

The ACT Government notes that some issues identified as plumbing, electrical and drainage issues may not be associated with breaches of technical safety standards, but may be because the plumbing and electrical systems are designed based on specifications that do not take into account future uses of the building, particularly in apartment buildings. This issue is being considered as part of current building and unit titles reforms.

All new plumbing, drainage, gas and electrical installations are currently required to be inspected for compliance with relevant standards, noting that there are some aspects of the work that cannot be visually inspected. 100% of this work is inspected by inspectors appointed by the Construction Occupations Registrar.

In the 2019-20 financial year, Access Canberra undertook more than 28,000 electrical inspections, over 16,500 plumbing and drainage inspections, and approximately 4,200 gas



inspections. The inspections showed high levels of compliance with technical standards and do not indicate systemic failures to warrant a review of this matter.

Electrical, plumbing, drainage and gasfitting statistics will continue to be reported in the Construction Occupations Registrar's Annual Report.

In relation to building matters, such as waterproofing, as noted in the response to recommendation 4, the auditing system continues to expand. In 2019-20 Access Canberra undertook 1,816 inspections and audits of building work.

The 2019-20 Budget included \$8.9 million to fund 1000 additional audits and inspections annually as well as improved data analytics. Further funding for two additional specialist technical officers was also provided in the August 2020 Economic and Fiscal Update. The new auditing and inspection tool, which records details of audits and inspections, will also help to report on the different types of inspections undertaken.

The ACT Government will provide more detailed statistics on building-related inspections and how the auditing system responds to areas of higher-risk by the end of June 2021. The Construction Occupations Registrar will also release an auditing strategy showing the areas of particular focus for auditing and inspections in the coming year. As point-in-time inspections of waterproofing cannot identify all issues that lead to defects, the ACT Government will continue to work to lift design, installation and supervision practices in the industry (see also response to recommendation 39).

### **Recommendation 6**

*The Committee recommends that the ACT Government review funding for enforcement staff within Access Canberra, so that all building, design and development complaints can be responded to, and disputes resolved, in a timely and consistent manner.*

### **Response**

#### **AGREED IN PRINCIPLE**

The Rapid Regulatory Response Team was formed in 2018-2019 as a pilot and was highly successful in responding to complaints about building and planning matters within 5 working days. Funding for responding to complaints was recently increased. The funding for additional inspectors in the 2019-20 ACT Budget included ongoing funding for the Rapid Regulatory Response Team. This is in addition to funding for other regulatory and enforcement staff.

The role of the Rapid Regulatory Response Team is to undertake preliminary assessments of complaints including undertaking a site inspection where required. Detailed investigation and enforcement activities under planning and construction legislation, including the Building Act, are undertaken by a small team of investigators.

In the 2019-20 financial year Access Canberra received approximately 760 complaints relating to planning matters and 440 complaints relating to building matters. This includes complaints from more than one party about the same issue, which are treated and investigated as a single case. Over the year, the Rapid Regulatory Response team resolved 246 cases. The team referred a further 185 to other officers for further investigation or monitoring.

The ACT Government notes that the main focus of many building regulatory reforms is to reduce the incidence of major building defects and therefore, the need for people to instigate complaints and find themselves in dispute.

The Government will review funding for managing complaints in 2022 following the longer-term operation of the Rapid Regulatory Response Team and new building reforms.

The ACT Government notes the Building and Construction Legislation Amendment Bill 2020 introduced as part of the Government's regulatory reform program, includes provisions to establish a residential building dispute resolution scheme in the ACT by regulation at a later date. Further detail of the operation of the scheme will be set by regulations following comprehensive public consultation. Funding for that scheme will be considered as part of developing the regulations.

### **Recommendation 7**

*The Committee recommends that the ACT Government have an appropriately staffed shop front for Access Canberra's building regulatory activities, with sufficient staff for a mobile/response unit able to enforce regulatory actions at short notice.*

### **Response**

#### **AGREED IN PRINCIPLE**

Access Canberra offers several ways for people to engage. This includes digitally, telephone and face-to-face via its Service Centres, as required.

In addition to the Rapid Regulatory Response Team, which responds to new complaints (see also response to Recommendation 6), other staff in Access Canberra undertake investigations, compliance monitoring and audit functions in specialised teams where required. As an example, in the 2019-20 financial year officers issued 59 stop notices for works underway. These officers need not be attached directly to the shopfront.

### **Recommendation 8**

*The Committee recommends that Access Canberra continue to promote and work on the "build, buy or renovate" website to make it easier for the public to locate information on their rights and responsibilities and disciplinary action against building practitioners.*

## Response

### **AGREED**

The [Build, Buy, Renovate](#) website is hosted by the Environment, Planning and Sustainable Development Directorate (EPSDD) and content was jointly developed by EPSDD and Access Canberra. It also provides a portal to information held on other sites, such as the Access Canberra website. The Build, Buy, Renovate website outlines rights and responsibilities of people building and renovating as well as people buying off-the-plan and into unit titled buildings. The disciplinary register can be accessed through the portal on Access Canberra's website. It is included on the page holding the lists of construction licensees. Both agencies will continue to revise and add to content as required and based on feedback from site users.

In late 2019 EPSDD ran a public campaign to promote the website. Access Canberra also promotes the website to the public and to industry in its education and compliance work.

### **Recommendation 9**

*The Committee recommends that the ACT Government implement a mechanism where recurring problems or findings of certifiers and inspectors are conveyed to industry including through training or information sessions for industry to highlight problems and best practice methods.*

## Response

### **AGREED**

The 2019-2020 budget included ongoing funding Access Canberra for the equivalent of four full-time staff for public and industry education and data analysis to support its building regulatory compliance functions. This will include conveying information about problems and good practice identified through its compliance work effectively to industry.

To assist this work, an audit and inspection tool was developed to support staff in pro-active auditing of practitioners and buildings allows audit and inspection data to be readily compiled and analysed to identify emerging trends.

### **Recommendation 10**

*The Committee recommends that the ACT Government strengthen processes to ensure that developers lodge plans "as built", with an initial focus on large multi-unit developments.*

## Response

### **AGREED IN PRINCIPLE**

Building work must be constructed in accordance with the approved building plans. This means that the eventual building should reflect what is in the approved plans. The final

documentation provided to the Registrar should contain the information being suggested as 'as built' plans.

Even where there are departures from the approved plans and additional documents for the building work, section 48 of the Building Act 2004 outlines a range of documentation that the building certifier must give to the Construction Occupations Registrar, including all plans and drawings relating to the building work. The ACT Government will consider corresponding obligations on builders, design practitioners (including engineers) and landowners (developers) in relation to provision of documentation at the completion of work.

The additional site inspections and audits of documentation undertaken as a result of ongoing increased funding for building inspectors in the 2019-20 Budget will help to identify departures from approved plans and unapproved changes.

### **Recommendation 11**

*The Committee recommends that the ACT Government require developer lodged plans to provide a minimum standard of detailed design drawings/specifications for areas that are commonly defective.*

### **Response**

#### **AGREED**

The [Building Minimum Documentation and Information for Building Approval Applications – Class 2-9 Buildings Guideline](#) (the Guideline) outlines the minimum information that must be included in an application for a building approval for apartment and non-residential buildings. There is also a checklist for minimum documentation for class 1-10 buildings (houses, townhouses etc and non-habitable structures) based on the requirements in the Building Act 2004 and Building (General) Regulation 2004.

The Guideline outlines the detail required for drawings of different building elements and alerts designers to elements that may be more commonly found to be defective, such as external weatherproofing, water proofing and water ingress in residential buildings.

The Building Act also requires that any amendments to the approved plans that affect building work requiring a building approval must be approved by the certifier before the work is undertaken.

## **Recommendation 12**

*The Committee recommends that the ACT Government consider establishing an ACT Building advice line to inform consumers about the processes involved including available dispute mechanisms.*

### **Response**

#### **AGREED IN PRINCIPLE**

Access Canberra's Contact Centre can provide general advice and refer callers to other areas of government. The ACT Government notes that through its Build, Buy, Renovate website, the mechanism exists for people to obtain information on their rights and obligations when building, buying or renovating property in the ACT.

The ACT Legislative Assembly passed the Building and Construction Legislation Amendment Act 2020, which included amendments that allow for the introduction of a residential building dispute resolution scheme in the ACT by regulation. Further detail of the operation of the scheme, including support and advice mechanisms, will be determined following comprehensive public consultation. An advice line could be an extension of existing services, but would not provide specific technical or legal advice.

## **Recommendation 13**

*The Committee recommends that the ACT Government:*

- *provide information to consumers, including Owners' Corporation Executive Committees, on their rights and processes to seek redress when building quality issues take place, including by developing tool kits to support those taking legal action; and*
- *require builders to supply information on that material at the quote or draft contract stage.*

### **Response**

#### **AGREED IN PRINCIPLE**

The ACT Government's [Build, Buy, Renovate](#) website is a valuable resource designed to provide information to consumers when building, buying or renovating property in the ACT.

The website provides information on approvals, understanding the different roles of people in the building industry, what to consider before signing building contracts, what to expect when land becomes a building site, buying into unit living, and buying land or an existing house. The website also provides quick links to information on disputes and complaints, the disciplinary register, and checklists that include information in downloadable form.

The ACT Government does not agree that it is the appropriate body for providing toolkits to support people taking legal action. General information about ACT court and tribunal processes and forms can be found on the ACT Courts and Tribunals website

[www.courts.act.gov.au](http://www.courts.act.gov.au)); however, specific advice on taking legal action should be provided independently. There are independent bodies to assist people in pursuing legal options.

The recommendation that the ACT Government require builders at the quote or draft contract stage to supply consumers information on their rights relates to reform 22 of the *Improving the ACT Building Regulatory System* reform program. Under that reform, the ACT Government has released two new fact sheets ([located here](#)) for people entering into a residential building contract or purchasing off the plan, with explanations of common terms, things to look for, and rights and obligations. Further work, including the development of an updated guide for potential homeowners, and requiring provision of the fact sheets or other guides is being considered under the second stage of the reform program.

#### **Recommendation 14**

*The Committee recommends that the ACT Government consider making it mandatory for the regulator to inform the public of any rectification orders not completed or addressed within the required timeframe.*

#### **Response**

##### **NOTED**

Section 107A of the Construction Occupations (Licensing) Act 2004 came into effect in 2014. That section requires the Construction Occupations Registrar to publish certain information about construction licensees in the 'public register'.

This includes details of rectification orders recorded in the register under section 108 (Recording rectification orders) and the details of any contravention of a rectification order recorded in the register under section 109 (Recording contravention of rectification orders).

Section 109 outlines the process for recording contraventions. Both this section and section 107A include procedural fairness, as there may be reasons for the work not being completed in the specified timeframes that are beyond the licensee's control.

Information on rectification orders and disciplinary actions can be found on the Disciplinary Register (public register). The ACT Government will consider whether the format of the register can be improved to also list the action type so people can see which kinds of actions have been taken without opening individual entries.

#### **Recommendation 15**

*The Committee recommends that the Minister responsible for Fidelity Funds established under the Building Act 2004 provide audited accounts and an annual report to the Assembly on their performance.*

## Response

### **NOT AGREED**

The Building Act allows for approval of fidelity fund schemes in addition to approval of residential building insurance policies.

At present, the only approved fidelity fund scheme is the Master Builder's Fidelity Fund (the Fund), which was established in 2002 to provide an alternative to insurance providers after the collapse of the HIH insurance group. The Fund provides limited insurance-like coverage for certain issues relating to residential building work, where the landowner is unlikely to be able to pursue other options due to a builder's death, disappearance or insolvency. Under the arrangements for the Fund there are requirements for financial reporting and independent auditing of the Fund.

The Fund is a discretionary fund operating under a Trust Deed. The Fund is, and operates as, a wholly private sector commercial business, competing with the insurance industry. It is not a government business enterprise or agency. As such, any requirement to provide commercially sensitive audited accounts would place the Fund at a commercial disadvantage relative to its competitors. It is noted that the Inquiry did not consider the operation of the insurer operating under the scheme or suggest that other people operating under the provisions should be subject to public reporting. Any requirements applied to entities approved under the Building Act should apply consistently.

The Government considers it appropriate and sufficient that the entities entrusted by law under the Building Act to administer the provisions for insurance and fidelity funds continue to administer them and that they provide a public report annually on the general operation of insurers and fidelity funds, including an overview of the numbers of claims and amounts paid, and compliance with reporting obligations.

### **Recommendation 16**

*The Committee recommends that the ACT Government ensure that, if not already in place, appropriate prudential standards are set for fidelity funds under Part 6 of the Building Act 2004 (and section 103, in particular) and further, that once set, such prudential standards are maintained and enforced.*

## Response

### **AGREED**

The Master Builders Fidelity Fund is not an insurance scheme and as such is not subject to the Insurance Act 1973 (Cth) and the Insurance Contracts Act 1984 (Cth) so the Building Act 2004 establishes appropriate prudential standards to govern the operation of fidelity fund schemes approved under that Act.

Divisions 6.4 and 6.5 of the Building Act 2004 contain provisions for fidelity fund schemes that provide consumer protection under the Act. Section 103 of the Act allows the Minister administering the Act to determine prudential standards for a scheme and sets out topics that may be provided for.

The [Building \(Prudential Standards\) Determination 2005](#) establishes prudential standards under section 103 of the Act. The prudential standards are concerned with the sound financial management of a fidelity fund scheme. They set out the eligibility of the trustees for a scheme, and of the auditor and actuaries, the duties of the auditor and actuary, and risk management requirements. These include the regular calculation of liabilities, requirements for capital adequacy, the preparation of compliance and contingency plans, the acceptable investment of the funds held by the scheme and reporting to the trustees and the government. The Trustees of the Master Builders Fidelity Fund provide audited reports in accordance with the prudential standards.

### **Recommendation 17**

*The Committee recommends that the ACT Government review the fidelity fund and report the findings of that review to the Assembly.*

#### **Response**

#### **AGREED**

The ACT Government will review provisions relating to fidelity funds in the Building Act 2004, including in relation to the Federal Court decision referred to in the Inquiry report.

Issues of the scope of the fund also relate to residential building insurance products. The ACT Government is intending to undertake public consultation in relation to potential changes to the overall insurance and fidelity fund system that could be made while keeping the system viable in the long term, such as potential increases in the minimum amounts policy and certificate fund holders may be entitled to.

### **Recommendation 18**

*The Committee recommends that, as part of its review of the fidelity fund, the ACT Government consider expanding the scope to allow Owners' Corporation Executive Committees to make claims for common areas.*

#### **Response**

#### **AGREED IN PRINCIPLE**

The source of legal rights and entitlements in respect of fidelity fund certificates and residential building insurance policies are found in the Building Act 2004 and related legislative and legal instruments. As the successor in title to the common areas, an owners corporation is not necessarily precluded from making a claim in relation to common areas covered by the provisions of the Act. However, the relevant laws and instruments do not



include specific provisions for the treatment of claims for common areas or methods for determining the amount the owners corporation is entitled to. The ACT Government agrees that this should be clarified in legislation.

### **Recommendation 19**

*The Committee recommends that the ACT Government report to the Assembly on:*

- *action taken to date to address “phoenixing” in the building industry;*
- *any further actions planned; and*
- *how the Commonwealth legislation passed in June 2020 will affect action against phoenixing in the ACT.*

### **Response**

#### **AGREED**

The ACT Government notes that as the Commonwealth Government has responsibility for corporations law, any state or territory government is limited in what its laws can do to combat illegal phoenixing but it will continue to do what it can to reduce problems in the local industry.

#### **Actions taken to date to address “phoenixing’ in the building industry**

The Building and Construction Legislation Amendment Act 2016 made amendments to the Construction Occupations (Licensing) Act 2004 to further assist to reduce phoenixing. The amendments:

- expanded the capacity for the Construction Occupations Registrar to consider an applicant or licensee’s history, including the history of directors, partners and nominees, under other licences;
- introduced the ability for the Registrar and ACAT to consider whether a breach is relevant to multiple associated licences and take appropriate action in relation to those licences as well; and
- increased reporting requirements for automatic suspension grounds including insolvency.

The Building and Construction Legislation Amendment Act 2019 included amendments to improve and refine the operation of the building regulatory system, and to prevent corporations from undermining the system and deliberately avoiding their regulatory obligations by winding up their company.

It amended the Construction Occupations (Licensing) Act 2004 to introduce director and executive officer liability provisions. To prevent the actions of directors undermining the intent and operation of the law, the new provisions allow certain actions to be taken in relation to directors and executive officers of licensed corporations, and partners of licensed

partnerships. The provisions include liabilities in relation to notifying automatic suspension grounds, liability for amounts regardless of the status of the corporation, rectification orders and occupational discipline.

In 2018, a national review of security of payment laws led to 86 recommendations to enhance security of payment systems across Australia. The Environment, Planning and Sustainable Development Directorate (EPSDD) has undertaken a review of the ACT Security of Payment System against the recommendations of the national review of security of payment laws. EPSDD has also considered and [reported on](#) recommendations from recent reviews and inquiries on insolvencies and payment protection reforms in the construction industry in relation to the ACT's own reform program, and found the relevant recommendations for states and territories are either already addressed, or are being considered under ACT reforms and in national work under the Building Ministers' Meeting.

#### Any further actions planned

Planned actions include consulting on:

- Potential new licensing obligations for people contracting to construct or sell a new residential building off the plan.
- Licensing eligibility requirements, including mandatory qualifications for corporate and partnership licences, potentially including financial assessment.
- Protections for building owners and greater accountability for design and building practitioners.
- A property developer licensing scheme.
- Ways security of payments laws can be improved to help make the building industry fairer.
- Continuing to advocate for strong enforcement of relevant Commonwealth laws.

#### Potential effect of new Commonwealth law on phoenixing in the ACT

The ACT Government notes that the key reforms relevant to phoenixing as listed in the inquiry report [at 5.38] relate to two separate legislative packages in the Federal Parliament; the package of five bills referred to in the report, together known as the Registries Modernisation Law, and the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 (Cth) which was passed by Federal Parliament and received royal assent in February 2020.

The Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020 (Cth), part of the package of five bills passed in June 2020, introduced the requirement for all Australian company directors to have a "Director Identification Number" (DIN). The implementation of the DIN scheme will help make sure that the use of fictitious identities is prevented and directors' involvement with different companies can be better tracked and identified.

The other important reforms in the report such as creditor-defeating dispositions and the restriction on the last remaining director resigning were introduced by the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 (Cth). The legislation also extends the director penalty regime to GST liabilities, and provides the Australian Securities and Investment Commission with greater power to order the return of property or an equal monetary value from the person that received the property as part of illegal phoenix activity.

The introduction of director penalty notices in respect to GST may have the biggest short-term impact, especially where systemic illegal phoenix activity has seen common directors proliferate. The legislation allows for a pause in liquidating companies and incorporating new entities to continue the common business where there are unmet GST liabilities. These legislative reforms will put further pressure and emphasis on directors to ensure they comply with their obligations.

### **Recommendation 20**

*The Committee recommends that the ACT Government consider restricting the use of special purpose vehicles for the acquisition, development and sale of property.*

#### **Response**

#### **AGREED IN PRINCIPLE**

The ACT Government will consider this matter as part of its work on creating a property developer licensing scheme and other licensing and accountability reforms. The Government notes that licensing reforms, and other anti-phoenixing measures outlined in the response to recommendation 19, may address concerns about the ability to phoenix or avoid regulatory obligations.

Special purpose vehicles can be used successfully and fairly and are used on ACT Government projects. It is important to recognise that any corporation, including those that have been running for some time, can attempt to wind up to avoid their obligations.

### **Recommendation 21**

*The Committee recommends that the ACT Government amend the Unit Title legislation to make it mandatory, upon occupancy and creation of the Owners' Corporation (OC), that an agreement be established between the developer and the OC for addressing all common property (building and landscape) issues.*

#### **Response**

#### **AGREED IN PRINCIPLE**

The Unit Titles Legislation Amendment Act 2020 (the Amendment Act) makes a number of changes to the administration and governance of unit titled buildings. It commenced on 1 November 2020. Several of these amendments are intended to improve the management

of issues particularly in mixed use buildings, such as the management of common property and rectification of building defects. The objective of recommendation 21 has effectively been met by certain changes introduced by the Amendment Act and would be complemented by other reforms to make developers accountable for addressing any issues in buildings they have sold, such as property developer licensing.

From 1 November 2020, an owners corporation is required to prepare a maintenance plan for the common property, taking into account the developer's maintenance schedule (if any). A developer is required to prepare a developer's maintenance schedule for units plans registered after 1 July 2021 and present it at the owners corporation's first annual general meeting. Owners corporations are also required to consider key matters, including building maintenance, at every meeting. This measure is designed to ensure that maintenance issues are addressed, and maintenance plans remain current.

The developer's maintenance schedule must include a schedule for maintenance and inspection of, warranties and manuals for, and the names and contact details of the manufacturer and installer of systems, equipment, structures and other things on the common property. The new requirements regarding maintenance plans and schedules are intended to provide greater transparency to buyers and owners about ongoing maintenance requirements of the common property and their estimated costs, and to ensure common property assets are maintained in a timely manner.

The Amendment Act also introduced new requirements regarding the ongoing management of unit titled buildings. From 1 November 2020, multi-lease buildings will be able to adopt a Building Management Statement, a binding agreement that requires all lease owners to help manage and maintain the building on an ongoing basis. From 1 July 2021, a Building Management Statement will be mandatory for new multi-lease buildings.

Voting rules have been amended, including requiring 75 per cent of votes in favour for a special resolution to pass, to align the ACT with other states such as NSW. Special resolutions will apply to matters including granting special use of common property. Further, developers, builders and other parties involved in a development will no longer be able to vote on matters relating to building defects, including potential litigation, unless they are permitted to do so via a special resolution passed by other owners or through a declaration from the ACT Civil and Administrative Tribunal (ACAT). This amendment is intended to improve the ability of owners corporations to have building defects rectified.

The Amendment Act has provided additional dispute resolution mechanisms, allowing owners to apply to ACAT to resolve a broader range of disputes, such as when there is a dispute with an owners corporation's executive committee member or current manager.

## **Recommendation 22**

*The Committee recommends that the ACT Government publish a standard building contract that incorporates best practice.*

### **Response**

#### **NOTED**

This matter was considered in the ACT Building Act review and it was concluded that issues related to residential building contracts could be adequately addressed by provisions prohibiting certain clauses and potentially by prescribing certain standard terms, rather than developing and mandating the use of a range of standard contracts to cover all relevant situations. A range of contracts would be required as one contract would not necessarily be appropriate to cover all the different types of arrangements for building and purchasing residential building work, including off-the-plan purchases. Further, any standard contract would also need to allow for special conditions and other matters to be negotiated between parties, rather than restricting the rights of parties to negotiate. A recent research report found that where standard form contracts are used, overwhelmingly they are amended by the parties from the published form, with 84% of the forms reported on being amended <sup>1</sup>.

Reform 20 in the Improving the ACT Building Regulatory System program is “Amend the Building Act to allow regulations to prescribe requirements for contracts for residential building work.” These amendments were made in the Building and Construction Legislation Amendment Act 2016 and included provisions for regulating standard conditions, prescribing the meaning of a particular term when used in a residential building contract, prohibiting conditions and requiring certain documents to be attached to the building work contract. In 2019 a new regulation prohibited conditions in a contract that would give builders agency to select and appoint a building certifier.

Reform 22 is to “Develop and consult on standard terms, and standard information for a building contract including explanations on common variation clauses and their meaning.” EPSDD has developed two new fact sheets for people entering into a residential building contract or purchasing off the plan, with explanations of common terms, things to look for, common areas of dispute, and rights and obligations. As part of the second stage of reforms the ACT Government will consider and consult on the potential for standard and further prohibited conditions for residential building contracts.

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<sup>1</sup> Page 5, Professor John Sharkey, Matthew Bell, Wayne Jovic, Rami Marginean, ‘Standard Forms of Contract in the Australian Construction Industry’ 2014, Research Report.

### **Recommendation 23**

*The Committee recommends that the ACT Government implement a standard contract requirement that the display unit of a project dwelling have the same building quality as intended for and used in the development it represents.*

### **Response**

#### **NOT AGREED**

From a quality perspective, display units are designed to be temporary and would not generally meet relevant standards for apartment buildings, particularly those constructed as a single unit on site, which provide little more than a façade showing the expected fit out. Those units would generally be a lower build quality overall than the eventual product.

For other units, laws are already in place to protect purchasers from being misled about the products and services they buy. Section 30 of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)) (ACL) deals specifically with false and misleading statements made to buyers in connection with the sale (or possible sale) of a property. The ACL is administered by the Australian Competition and Consumer Commission and state and territory consumer protection agencies (Access Canberra in the ACT) and is enforced by all Australian courts and tribunals, including the courts and tribunals of the States and Territories.

It is also an offence under Territory law for an estate agent or agents' representative to mislead or deceive by their conduct or representations. 'Representations' can include any verbal or written advice, advertising or other statements. Businesses cannot make false claims about quality or any other characteristic of a property and an offence can occur whether or not the seller intended to mislead or deceive.

If a buyer was made promises prior to entering into the contract that have not been delivered, the buyer may be able to terminate the off the plan contract. From 1 November 2020, developers of buildings that will be unit titled will be required to give owners buying off the plan a disclosure statement as a part of the contract. This document will provide greater information at the point of sale about proposed levies, maintenance and mixed uses throughout the building as well as information regarding the development and its progress. Developers will also need to provide update statements to notify buyers of any significant changes to the development, including any material changes made since the contract was signed.

These extra steps provide buyers with the information they need to rescind a contract if the unit or unit plan is not as described. Previously, there were no regulatory requirements for a developer to disclose any changes that occur during construction, and buyers may not become aware of these changes, which can sometimes be substantial, until just prior to settlement.

These new requirements give buyers clearer rights to terminate a contract of sale where the end product (i.e. what is actually built) is significantly different to the plan they bought off.

#### **Recommendation 24**

*The Committee recommends that standard building contracts contain minimum specifications for seals or membranes, as some products used for waterproofing are unsuitable for Canberra's climate.*

#### **Response**

##### **NOT AGREED**

A contract is not the appropriate mechanism to impose technical standards, if required. The ACT Government notes that in some cases products may generally be suitable for use in the ACT, but have specific requirements for application that can be difficult to meet in the Territory's colder months, or that the product is not suitable for a particular building given other design and construction issues.

The building code provides that materials, products and systems used in a building must meet relevant requirements, including those used for external weatherproofing and internal waterproofing. There are 'deemed-to-satisfy' provisions for houses and townhouses, which include Australian Standards for materials and products. Deemed-to-satisfy standards are also being considered for other buildings. At this stage all other buildings require a performance solution for external weatherproofing, which requires detailed assessment of the suitability of the proposed solution.

Section 42 of the Building Act 2004 applies in addition to the building code and requires, amongst other things, that:

- materials used in the building work must comply with the standards under the building code for the materials in buildings of the kind being built or altered,
- the way the materials are used in the building must comply with their acceptable use under the building code for buildings of the kind being built or altered, and
- the building work must be undertaken in a proper and skilful way.

The Building (General) Regulation outlines things to be taken into account in deciding whether building work is carried out in a proper and skilful manner, which include:

- whether the work uses a product or system in accordance with any accessible instructions, directions, guidelines or suggestions of the maker or seller of the product or system; and
- how reasonable it is in all the circumstances for the user of a product or system to rely on the maker's statement that the product or system complies with a stated standard.

Both the building code and the Building Act also require documentation and evidence of suitability to confirm that products are ‘fit for purpose’.

### **Recommendation 25**

*The Committee recommends that the ACT Government establish a building standards and disputes tribunal with the power to:*

- *oversee the rectification of defects that have not been remedied in the contracted time;*
- *impose a time frame for rectification of defects, monitor rectification progress and make enforcement orders as necessary;*
- *adjudicate complaints; and*
- *call for documents, people or other things, in order to reach its decision.*

### **Response**

#### **NOTED**

The system for residential building disputes and its interaction with relevant regulatory systems and existing powers to make rectification orders was considered as part of the ACT Government’s *Improving the ACT Building Regulatory System* regulatory reform program.

The ACT Government has passed new laws, the Building and Construction Amendment Act 2020, to allow a scheme to be introduced in the ACT that helps homeowners and the building industry resolve residential building disputes earlier and at less cost.

The Building and Construction Amendment Act 2020 establishes a new statutory officer – the Residential Building Dispute Administrator (the Administrator) – for the purpose of assessing and mediating disputes, supported by public servants appointed as dispute resolution officers and technical building assessors, which may be public servants or other suitably qualified persons. Other provisions allow for prescribing the types of disputes in regulation; provide for the referral, assessment and mediation of disputes; allow the regulations to prescribe the particular processes or types of dispute resolution; and allow for the establishment of a trust account to hold payments subject to dispute or to an order.

More detailed aspects of the scheme, such as the scope of matters that may be subject to a complaint, will be finalised following consultation. The scheme will not commence until the detailed regulations are made. The ACT Government will consult further with the public and industry to finalise the details of the scheme, and how the scheme relates to other mechanisms such as the ACT Courts and Tribunals.

### **Recommendation 26**

*The Committee recommends that, should a building standards and disputes tribunal not be established, that the ACT Government consider for building matters amending the ACT Civil*



and Administrative Tribunal Act 2008 to increase the amount of money that can be claimed through the tribunal above \$25,000 and to enable ACAT to hear contract disputes that arise.

#### Response

#### **AGREED IN PRINCIPLE**

The expansion of the role of ACT Civil and Administrative Tribunal (ACAT) for building matters would better facilitate resolution of lower-cost matters and complement the new residential dispute resolution scheme in development. However, this will require significant consultation with the ACT Courts and Tribunal on proposed powers and responsibilities and commensurate funding. Any additional powers would also require consideration of ACAT accommodation, changes to IT systems, ensuring the ACAT has Members with the right expertise and the time required to implement any reforms.

#### **Recommendation 27**

*The Committee recommends that the Unit Titles (Management) Act 2011 be amended to prevent strata management companies being contracted for longer than 12 months during the period of developer control.*

#### Response

#### **AGREED IN PRINCIPLE**

The *Unit Titles (Management) Act 2011* currently provides that an owners corporation must not enter a management contract with a manager for longer than three years (section 51). This provision was not amended as part of the Unit Titles Legislation Amendment Act 2020, however this issue will be considered as part of stage two of the unit titles reforms considered in 2021-2022.

Any proposed changes to contractual terms will be the subject of consultation with relevant stakeholders, including the ACT Unit Titles Reform Consultative Group, which is comprised of industry and community representatives. There is no statutory maximum timeframe for a developer control period and in cases where the developer control period exceeds 12 months, restricting the term of the contract of a strata management company to 12 months may disrupt the finalisation of sale and transfer of units in a units plan.

The response to Recommendation 21 provides further information on changes that have been already been made to unit titles legislation, which may help alleviate some of the building quality issues arising in relation to the terms of contracting strata management companies.

#### **Recommendation 28**

*The Committee recommends that the ACT Government amend the Constructions Occupations (Licensing) Act 2004 to expand the breadth of licensing in the ACT to license*

*Architects, Engineers, Designers, Water Proofers, Fire Proofers, Carpenters, Painters and Concreters to cover trades associated with the more critically building issues in line with the Shergold-Weir report.*

#### Response

#### **NOTED**

The Building Confidence Report made recommendations in relation to certain practitioners, but did not recommend registration (licensing) of waterproofers, carpenters, painters and concreters.

As part of its second stage of reforms the ACT Government will be developing regulation for engineers, and will consult further on potential licensing categories for practitioners in the ACT including engineers, architects and other building designers, as well as mechanisms for the accountability of a range of practitioners in the building industry. We will also consider the national work under the Building Confidence Report in relation to developing a National Registration Framework for Building Practitioners, which is expected to be completed in 2021.

#### **Recommendation 29**

*The Committee recommends that the ACT Government review the link between builders' licences and associated companies, so licences can be reviewed where associated with companies that have failed to honour contracts.*

#### Response

#### **NOTED**

As part of the second stage of the Improving the ACT Building Regulatory System reform program, the Government will consult on measures for regulating people contracting to build or sell new residential buildings off the plan. This will include consideration of potential sanctions for those with unacceptable contracting and business practices. The Government will also consult on security of payment issues and ways to make the industry fairer.

For other licences that authorise only technical work, sanctions imposed by other regulators and formal bodies that would affect the licensee's ability to undertake work authorised by the licence could be a ground for considering whether a licensee should be subject to conditions or can continue to operate.

However, it is not the intention that the licensing process becomes a process for determining, regulating or remedying breaches of building contracts in place of other regulatory and civil systems.

### **Recommendation 30**

*The Committee recommends that the ACT Government ensure that vocational education and apprenticeship schemes are funded appropriately to ensure the production of sufficient high-quality licensees to meet market demand.*

#### **Response**

#### **AGREED IN PRINCIPLE**

The Forecasting of Industry Needs and Entitlement (FINE) Model has been updated to improve skills needs list development and inform training subsidies. The updated FINE model and expanded consultation with industry is expected to improve the ACT Skills Needs List (SNL), which identifies all priority courses required to meet industry needs. All courses on the SNL attract the highest training subsidy. The process is repeated annually to allow for changes due to economic conditions. Construction and building occupations feature prominently on the SNL list at the Certificate III, IV and Diploma levels.

The Building and Construction Training Fund Authority, the statutory body responsible for providing funding for the training of eligible workers in the ACT building and construction industry, provides additional support through a levy on building and construction projects that is used to support both existing worker training and entry level training.

These help to ensure adequate funding is available to train workers entering the industry as well as for existing workers looking to upgrade and update their skills.

### **Recommendation 31**

*The Committee recommends that the ACT Government review barriers to accessing current copies of the Building Code of Australia (BCA) and Australian Standards to assist licenced builders to have access without facing punitive costs.*

#### **Response**

#### **NOTED**

The ACT Government does not consider there are material barriers to accessing the Building Code of Australia. The Commonwealth, States and Territories collectively fund the development and publication of the National Construction Code, which includes the Building Code of Australia (BCA) and the Plumbing Code of Australia.

The National Construction Code has been available for free online since 1 February 2015. People can view or download the current and previous versions of the BCA by registering on the Australian Building Codes Board website at [www.abcb.gov.au](http://www.abcb.gov.au) .

The ACT Government notes that the availability of Australian Standards is a national issue and primarily a matter for the Australian Government, which has a memorandum of understanding with the owner of the Australian Standard trademark, Standards Australia

Limited. However, the ACT Government also notes Standards Australia Limited has been working towards more economical access to Australian Standards including exploring alternative methods of distribution. The ACT building minister will consult with colleagues in other jurisdictions on whether these alternatives may be workable for access to building and construction industry standards referred to or adopted in regulation, but it is unlikely to be feasible for the Government to fully subsidise the cost of access to all relevant standards.

### **Recommendation 32**

*The Committee recommends that the ACT Government provide more transparent statistics regarding disciplinary action against licensees.*

#### **Response**

#### **AGREED**

The 2019-20 ACT Budget includes funding for the equivalent of four full-time staff in Access Canberra for increased data analytic capacity and public and industry education and communication, which will allow more detailed general statistics on the number and types of compliance issues and associated regulatory actions to be provided. This data may be deidentified for privacy reasons, such as where no formal action was considered appropriate in relation to a particular matter.

The Construction Occupations Registrar will also continue to publish information about individual disciplinary actions on the public website and include information about occupational discipline in the annual report to the Minister in accordance with the Construction Occupations (Licensing) Act and Regulation.

### **Recommendation 33**

*The Committee recommends that the ACT Government consider the imposition of more significant penalties for breaches on building licences.*

#### **Response**

#### **NOTED**

There is a wide range of powers that can be exercised in relation to breaches of construction licensing and building laws from educational actions through to criminal offences with substantial penalties. This allows the decision-maker to apply what they consider proportionate and appropriate in the circumstances.

Licence sanctions are primarily imposed by the Construction Occupations Registrar, an independent statutory officer, and the ACT Civil and Administrative Tribunal. The imposition of criminal penalties is a matter for the courts. It would not be appropriate for the ACT Government to instruct these bodies to impose certain penalties in relation to licence

breaches. However, the increased funding for building regulation from 2019-20 will help the regulator take more serious actions where appropriate.

#### **Recommendation 34**

*The Committee recommends that the ACT Government review the criteria for renewing building licences.*

#### **Response**

##### **NOTED**

The series of reforms resulting from the ACT Building Act Review included a range of new grounds in the Construction Occupations (Licensing) Act 2004 for the Construction Occupations Registrar to refuse to renew a licence or impose conditions at renewal based on the licensee's compliance history and the compliance history of other licences they are associated with. Licence renewal forms and associated processes have also been revised to include reconfirming eligibility to hold a licence on personal and financial probity grounds. In addition, the Registrar can require any licensee to undertake an assessment to determine if they continue to have the skills and knowledge necessary to carry out work authorised under before their licence can be renewed. The operation of the new requirements will be evaluated in the second half of 2021. The evaluation will determine whether any further amendments are required.

#### **Recommendation 35**

*The Committee recommends that the ACT Government complete the objects of the ACT Architects Act 2004 by:*

- *requiring adherence to a code of conduct upon registration;*
- *requiring the holding of professional indemnity insurance; and*
- *mandating continuing professional development.*

#### **Response**

##### **NOTED**

The Architects Act 2004 provides for a voluntary system of registration for practitioners who wish to use the title of 'architect'. The objects of the Architects Act 2004 are to:

- (a) to establish a board to regulate the provision of architectural services by architects;
- (b) to ensure that architects provide services to the public professionally and competently;
- (c) to provide ways to discipline architects who are found to have acted unprofessionally or incompetently;
- (d) to ensure that the public has access to information about the qualifications and competence of architects; and

(e) to establish a register of architects to provide that information.

The Architects Act 2004 is not linked to the mandatory licensing framework for other licensees in the Construction Occupations (Licensing) Act 2004 and does not specifically regulate compliance with building standards.

As part of the current building regulatory reform program the ACT Government is considering the most appropriate way to regulate design practitioners, including architects, to improve the quality and compliance of designs with building standards. We will consult further with industry and will also consider the work in relation to the Building Confidence Report to develop a National Registration Framework for Building Practitioners, which includes design practitioners.

### **Recommendation 36**

*The Committee recommends, noting the Minister for Building Quality's announcement of a possible requirement to use public certifiers, that the ACT Government also consider, for multi-unit developments (where the developer or builder is also the owner) the Building Commissioner or regulator establish a panel of certifiers and that developers be required to choose their certifier from a rotating subset of that panel.*

### **Response**

#### **AGREED**

In July 2020, the ACT Government announced it would implement a team of public certifiers to operate on a fee for service basis, which would allow landowners the option to choose to appoint either a public sector certifier or a private sector certifier. The Government is also considering whether public sector certifiers may be required for certain types of development. As part of this work, the Government will consider all feasible models, including, but not limited to a panel mechanism.

### **Recommendation 37**

*The Committee recommends that the ACT Government ensure building plans (detailed rather than concept plans) are reviewed and assessed by certifiers from the beginning of the development.*

### **Response**

#### **AGREED**

The Building Act 2004 and Building (General) Regulation 2008 outline requirements for building approval application documentation, including that plans “contain sufficient information about the proposed finished dimensions, arrangement, locations and inherent characteristic of materials making up every element of the proposed building work to allow—

- a. a building certifier to work out if a building erected or altered in accordance with the plan would contravene the Act;
- b. a competent builder to carry out the building work in accordance with the plans and the Act;
- c. a building certifier to work out if the building work, if carried out, complies with the plan and the Act; and
- d. a building certifier to work out if the building work is exempt from all or part of the Act.”

To further support this concept the [Building \(Minimum Documentation and Information for Building Approval Applications – Class 2-9 Buildings\) Guideline 2019](#) (the Guideline) came into effect from 1 September 2019.

The Guideline covers minimum documentation and information for building approval applications for class 2-9 buildings, including information on the maintenance requirements for essential safety systems in the building, such as the fire protection systems. It covers apartment buildings, commercial accommodation and other commercial buildings.

The Guideline confirms to designers and applicants the expectations for the minimum information to be included in an application for building approval.

The guidelines have two sections:

1. Important concepts that relate to the ACT building approval system and information about how the guidelines will apply.
2. The minimum required information for applications, including examples of plans and drawings showing relevant detail.

The Guideline also encourages landowners (developers) and designers to consult with the project’s building certifier throughout the design process.

However, while a licensed building surveyor can provide advice on whether a building complies and any issues that need to be addressed, if they are engaged to provide design solutions during the design stage, they can’t be appointed as the building certifier for the project. If a person who has prepared, or intends to prepare, drawings (including plans, specifications and other technical documents) to be used in relation to the construction of the building has an interest in the work under the Act, they can’t be appointed. A building certifier must be independent and therefore cannot approve their own designs.

The Guideline is supported by complementary provisions in the Building Surveyors Code of Practice 2019, which also commenced on 1 September 2019. Both the Guideline and the Code have been incorporated into the new auditing tool developed under the reform program to help inspectors identify compliance requirements and record audit results.

### **Recommendation 38**

*The Committee recommends that the ACT Government consider make it mandatory for the first action of an Executive Committee in a multi-storeyed apartment development to be to obtain a Building Code of Australia Audit Report from an independent certifier so as to provide assurances on the buildings compliance with the Deemed-to-Satisfy (DTS) requirements of the Building Code of Australia (BCA) as well as the ACT's Building Act 2004 and Building Regulation 2008.*

### **Response**

#### **NOTED**

The ACT Government notes that this recommendation is intended to respond to concerns about conflict of interest, and the potential for the independent building certifier appointed for the work failing to competently certify a building because of that conflict. The second certifier proposed to be engaged by the Executive Committee would effectively be 'auditing' the statutorily appointed certifier because of a lack of trust of the original certification. There is only a small group of qualified building surveyors that could carry out this task, which would be the same group of people currently acting as building certifiers, meaning that to avoid conflicts of interest in relation to their own work licensed building surveyors would effectively be auditing their competitors.

The Building Code of Australia is a performance-based code. One of the ways to comply with the performance requirements of the code is by what is known as the 'deemed-to-satisfy' or DTS provisions of the code. However, it is not mandatory to use the DTS provisions and they should not be used as the only determiner of compliance. There is also a limit as to what can be determined by visual inspection after the occupation of the building.

The ACT Government considers that other mechanisms would potentially be of greater benefit to minimise non-compliance than to duplicate the existing certification function post-occupancy, including improvements to the certification system currently being considered as well as increased auditing and oversight throughout the construction process.

However, as it may be many months between the final building certification and the eventual occupation of the building, and building certifiers do not consider contractual issues or certain 'quality' issues as part of their certification the engagement of a third party or parties to assist owners corporations to determine what may need to be addressed by the developer will be considered as part of stage two of the unit titles reform project in 2021-2022. It is noted that there may be cost implications for owners corporations in obtaining this documentation, which will be passed on to unit owners. The effectiveness of the suite of reforms in the Unit Titles Legislation Amendment Act 2020 to address this issue could also be considered.



The response to Recommendation 21 provides further information on changes that have been made to unit titles legislation, which may assist with the ability of the owners corporation and executive committee to deal with building quality issues.

### **Recommendation 39**

*The Committee recommends that the ACT Government consider adding additional hold points for certification in the building process including:*

- *waterproofing of balconies, courtyards, and tiled areas; and*
- *leak testing of roofs.*

### **Response**

#### **AGREED IN PRINCIPLE**

The ACT Government will continue to consider ways to address areas of common defects but notes that mandatory inspection stages for waterproofing may have limited effectiveness in addressing waterproofing issues. The ACT Building Act Review found that many application issues, such as whether the method of application met manufacturer's instructions, cannot be determined by visual inspection. Further, many waterproofing issues are not caused solely by the application of the product but may be caused by other design and construction issues, including those that happen after application, such as failing to protect the waterproofing from damage during the remainder of construction.

This is similar to the finding of an independent review of the Queensland building laws and certification in that state, which did not recommend mandatory inspections for waterproofing or wet areas.

The Minimum Documentation and Information for Building Approval Applications –Class 2-9 Buildings Guideline requires a building approval application to include the detailed specifications of weatherproofing and waterproofing systems as well as the detailed method of protection once installed during construction. The Building Surveyors Code of Practice 2019 includes provision for determining the inspections that should be carried out for class 2-9 buildings and the new [Guideline for Licensed Builders](#) outlines expectations for selecting appropriately qualified people to undertake work, for supervision of work and for verification and testing of compliance for waterproofing in internal wet areas and external weatherproofing. The Guideline for Licensed Builders will form the basis of a new mandatory code of practice for builders to be introduced by 1 July 2021.

### **Recommendation 40**

*The Committee recommends that Certificates of Occupancy should not be issued on a building until:*

- *a representative of the unit responsible for achieving and storing the drawings (and the certifier) has signed a document to verify that the drawings issued to the*

*department are all of the relevant 'work as executed' structural (including shop drawings and precast drawings), architectural, mechanical, electrical, hydraulic, fire and landscape drawings;*

- *detailed and accurate plans are lodged with the ACT government, and lodgement verified by the responsible officer; and*
- *all documents are also lodged with corporate bodies.*

#### Response

#### **AGREED IN PRINCIPLE**

Section 48 of the Building Act 2004 outlines a range of documentation that the building certifier must give to the Construction Occupations Registrar within seven days of the certifier being satisfied the work building work is completed, including all plans and drawings relating to the building work. The ACT Government will consider corresponding obligations on builders, design practitioners (including engineers) and landowners (developers) in relation to provision of documentation at the completion of work.

Some landscaping works are not building work and would not be documented under the Building Act. Provision of plans for landscaping works should not prevent the issue of a certificate of occupancy for the building, noting that some landscaping cannot be completed until the building work is finished and there are subsequent processes for unit titles buildings to demonstrate compliance with broader planning requirements.

For a new building that will be unit titled, the unit title application cannot be approved until a certificate of occupancy is issued for the building. Therefore, the owners corporation will not exist at the time the certificate is issued and provision of documents to the owners corporation would need to occur later.

#### **Recommendation 41**

*The Committee recommends that the ACT Government investigate a building bonds scheme for multi-unit residential buildings requiring a percentage of the contract value of a property be withheld in a Trust until all defects and warrant issues are addressed satisfactorily.*

#### Response

#### **NOTED**

The ACT Government will consider the effectiveness of the NSW bonds scheme after it has been operating for a longer period. EPSDD will consult with NSW Government agencies on the implementation of its scheme.

The ACT Government notes that the NSW scheme applies to defects identified during a limited period after construction rather than to resolution of all defect and warranty issues. It is not expected that a bond scheme will be able to address all building issues.

### **Recommendation 42**

*The Committee recommends that the ACT Government consider amending legislation to make developers, in addition to builders, liable for breaches of statutory warranties under the Building Act 2004.*

#### **Response**

#### **AGREED**

The ACT Government will consider the application of statutory warranties to commercial developers as part of stage 2 of the building regulatory reform program.

### **Recommendation 43**

*The Committee recommends that the ACT Government review statutory warranties to extend cover for longer term issues including waterproofing, façade cracking and fire protection.*

#### **Response**

#### **NOTED**

The ACT Government will be consulting on potential changes to statutory warranty provisions as part of the second stage of the building regulatory reform program.

However, the ACT Government notes that under the existing provisions the statutory warranty operates for:

- six years after the completion day for the work for residential building work in relation to a structural element of a building, and
- two years after the completion day for the work for residential building work in relation to a non-structural element of a building

In the ACT a structural element of a building means a load-bearing component of the building (whether internal or external) that is essential to the stability of the building or part of it, or a component (including weatherproofing) forming part of the external walls or roof of the building.

This means that certain components mentioned in the recommendation may already be subject to the longer 'structural' warranty provisions in the Territory.

### **Recommendation 44**

*The Committee recommends that the ACT Government consider broadening the application of the implied warranties under Division 2.9.3 of the Civil Law (Property) Act 2006 by removing the requirement of knowledge of defects on the part of the seller of newly built units.*

## Response

### **AGREED**

The Government will consider this in the context of stage 2 building reforms, which includes addressing protections for building owners. While addressing defects is being considered under other building reforms it will be important that other relevant laws do not conflict with or otherwise prevent civil action being pursued as intended.

### **Recommendation 45**

*The Committee recommends that the ACT Government report back to the Assembly within 6 months of the tabling of this report with information on the regulation of building materials, the respective responsibilities between the Commonwealth and the States and Territories and what position the ACT Government is taking in Building Ministers' Forum discussions on building material regulation.*

## Response

### **AGREED IN PRINCIPLE**

The ACT Government will report back to the Assembly, but given the timing of the response proposed by the recommendation has been affected by the election and associated caretaker period, the report would be due when the Assembly is not sitting.

Also, it is expected the Building Ministers' Meeting (renamed from the Building Ministers' Forum) will be considering work related to building products in the first half of 2021. Therefore, the ACT Government proposes to report back to the Assembly within 12 months of the report being tabled – that is by 23 July 2021.

The ACT Government has maintained a position that building materials and regulation of building products is a national issue and should be addressed nationally.

### **Recommendation 46**

*The Committee recommends that the ACT Government make representations to the Australian Building Codes Board to expand Part 3.9.2.3 (c) of the National Construction Code to investigate and make specific recommendations on the maximum safe distances a balustrade can be set out and away from a floor or balcony, specifically taking into consideration balustrades in high rise developments.*

## Response

### **AGREED IN PRINCIPLE**

Part 3.9.2.3 (c) of the National Construction Code is in Volume 2 of the Building Code of Australia, which applies to houses, townhouses and similar structures. Volume 1 applies to apartment buildings. The ACT Government notes that the current provisions of the code are

not clear on the maximum allowable gap between the barrier and the floor of the balcony in relation to protection from falls. The ACT Australian Building Codes Board representative will raise this matter with the Board for its consideration.

#### **Recommendation 47**

*The Committee recommends that the ACT Government review minimum requirements for multi-unit buildings to make them suitable for those with disabilities, with a focus on safety and common areas.*

#### **Response**

##### **AGREED IN PRINCIPLE**

The current disability access standards are established under the Commonwealth Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards). Corresponding technical standards are included in the Building Code of Australia, which also references relevant Australian Standards.

The relevant Commonwealth minister in consultation with the Attorney-General of Australia is required to review the Premises Standards every 5 years. The 2020 Premises Standards review is underway and expected to be completed in May 2021. The ACT Government notes that some issues raised in submissions may be compliance and maintenance issues, but improvements in some compliance pathways could also be considered.

The ACT Government will raise this matter with the Commonwealth to consider in the Premises Standards review.

While not directly related to the recommendation additional work is underway that is seeking to increase the supply of accessible houses in the ACT. The ACT Government, through the National Building Ministers' Meeting and the Australian Building Codes Board is participating in work considering the introduction of minimum accessibility standards for housing to be set in the National Construction Code. The ACT Government has also committed to set a proportion of new residential properties in the ACT built to meet Universal Design standards.

#### **Recommendation 48**

*The Committee recommends that the ACT Government draw on the Territory's experience dealing with loose-fill asbestos risks and prepare mechanisms for:*

- *the owners of buildings with flammable cladding to produce detailed plans on how the risk will be managed;*
- *those renting or purchasing buildings with flammable cladding to be informed of the risks; and*
- *appropriate fire management plans to be created taking into account the risks posed by the cladding.*

## Response

### **AGREED IN PRINCIPLE**

The ACT Government will develop further measures for the management of issues relating to combustible cladding but notes that combustible cladding is a significantly different material to loose-fill asbestos. There are ways that cladding can be used safely that pose minimal risk to occupants, and any requirements for building owners would need to take into account the different uses and risks from building to building.

Funding was allocated in the August 2020 Economic and Fiscal Update to support private building owners with the establishment of a voluntary support scheme in relation to potentially combustible cladding. Through this scheme, the ACT Government will facilitate financial support in the form of concessional loans to assist with testing and assessment of potentially combustible cladding material for eligible applicants. Eligibility criteria will be finalised over the next six months, with interested parties able to apply for the scheme in the first half of 2021.

In relation to ACT-Government owned buildings, \$19m has been allocated to rectify 23 sites within the ACT Government portfolio of assets as an outcome of a recently completed property audit. Procurement is underway to obtain further technical design advice and to undertake further onsite investigations which will then be used as the basis for rectification works.