



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
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Submission Cover Sheet

Inquiry into Property Developers Bill 2023

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Owners Corporation Network (ACT)

Submission to the Inquiry into Property Developers Bill 2023

Since 2010 the Owners Corporation Network (ACT) (a community volunteer association) has contributed multiple submissions to various parts of Government and participated in numerous meetings on the issues surrounding building quality. There are many actions the Government needs to take to address the building defect issues in the strata sector. This Bill will be a cornerstone piece in these actions - as former Minister Ramsay said “the fish rots from the top” when referring to the need to address the significant role and influence Developers in Canberra have on building quality as it relates to common problems like water ingress, structural faults through minimal steel and poor concrete curing and non-compliant fire safety features.

The government’s own estimate that building defects in the residential strata sector are costing the community about \$50m per year is *extremely* conservative. OCN is aware of single complexes that have required as much as \$20m and many in the range \$6m to \$10m to cover rectification costs. The recent rectification costs for removing combustible cladding will have inflated the impact of building defects by hundreds of millions. Strata Owners have borne the brunt of these costs - the Government who provided the Occupancy Certificates has avoided liability, and the developers have typically contributed zero.

As part of this Submission the OCN wishes to refer you to some of the more recent Submissions we have made on Building Defects:

1. Report to the Assembly September 2010
2. Regulation of Design and Inspection Practitioners in the Construction Industry Discussion Paper and OCN Submission December 2013
3. Improving the ACT Building Regulatory System Consultation Report and OCN Submission November 2015
4. ACT Legislative Assembly Inquiry into Building Quality in the ACT and OCN Submission July 2018 and Government Response 2020
5. Building and Construction Legislation Amendment Bill 2019 and OCN Submission November 2019
6. Inquiry into Planning Bill 2022 and OCN Submission November 2022
7. Developer Regulation Discussion Paper and OCN Submission February 2023

Within each of these the Developer’s role and responsibility is a key issue, and Registration of Developers is part of the solution. These documents should be available to the Inquiry committee members. However, if they are not, I could make copies available.

In summary I also refer you to an Opinion Piece from OCN recently published in the Canberra times:

“The Property Council claims that this licensing scheme could make housing construction more expensive. However, there has been abundant evidence over the past thirteen years that home buyers have incurred significant additional costs for rectifying defects arising from sub-standard construction practices. Such remediation costs add more to the overall cost of home ownership than building to a quality standard from the outset – especially in the strata sector where defects can be multi-million-dollar problems and affect many owners and renters.

Better building standards to well-documented, peer-tested designs and greater care by property developers in managing and resourcing the delivery of construction could significantly reduce these defects and achieve a positive impact on home affordability.

The Government sees making property developers more responsible by licensing the Directors of these companies as one of several measures to address the problem. In a recent Canberra Times poll, 90% of community respondents agreed that such measures were necessary. However, the Property Council argues it is not reasonable to hold Company Directors personally responsible and liable for rectification of defects.

One of the core objectives of the Government's proposed approach is to address the problems that result when development companies are voluntarily dissolved or go into liquidation. There are plenty of instances where the Directors responsible have "vanished" along with their company – leaving home buyers and the community to pick up enormous costs.

The Directors of development companies have several legitimate ways to protect their personal interests. These have been identified by the ACT Owners Corporation Network (OCN ACT) in many of the submissions it has made since 2010 when building quality/defects was first identified as a serious problem for the community.

Capable and trustworthy developers can:

1. Create better design quality by using peer reviews;
2. Select builders and tradespeople that they trust and who have delivered quality for them in the past;
3. Engage the same architects and engineers on the project from design to occupancy;
4. Use independent certifiers and clerks of work to supervise building workmanship; and
5. There is also a potential opportunity for the developer to take out Latent Defect Insurance or Decennial Insurance as further protection for themselves as well as the purchaser.

Some developers in Canberra already follow these approaches.

OCN (ACT) agrees with the Property Council that the ACT Government should have comprehensive licensing of key professionals and extra trades (such as water proofers and roofers) in place.

OCN (ACT) also supports the need for more homes in Canberra - but these homes must be free of costly problems (like structural defects, water ingress, black mould, fire safety issues and use of products 'not fit for purpose' etc) and is confident that builders and tradesman can rise to the challenge of delivering quality outcomes. Even if these homes cost a small amount more to purchase, the reduced added costs within the first few years will make them much more affordable for both owners and renters in the longer term.

Gary Petherbridge December 2023

This Opinion Piece clearly supports the legislation given that up to now self-regulation has clearly not worked with many of our Canberra Developers. Community feedback on the proposed legislation suggests some stronger provisions should be included. Recommended additional measures include:

1. Extending the period where the onus of proof falls on the Developer/Builder to demonstrate that a problem was not due to construction defects from 2 to 10 years. Two years is a surprisingly short period and was not expected from our past discussions. This would allow for Latent Defects to become evident. At worst until Decennial Insurance is introduced make it 6 years to match the Statutory Warranty Period for Structural Defects.

2. Although I understand Engineering Registration is about to be implemented, OCN and comments from the community suggest there is agreement with MBA that further licensing/registration is needed across the full chain of responsibility. This should include architects/designers, water proofers, roofers, window fitters, concreters, tilers, fire safety related trades and any others which could impact the Defects that occur most often. It is accepted that there may be some reasonable exemptions for trivial/minor works.
3. Insist on Developers engaging the same Architects, Engineers for the complex building (Class 2) projects from Design to Occupancy in all but the most exceptional circumstances. This would move away from the problematic approach of using a concept architect who subsequently has no role for supervision. It would also support the difficult task of an Independent Certifier.
4. Developers should *not* be allowed to commit future Owners Corporations to long term contracts that reduce developer's costs but impose significant costs on subsequent unit owners. Examples of this practice includes setting up an embedded utility arrangement for energy provision, or vesting ownership of certain common property infrastructure in third parties, unbeknown to unit buyers. This practice can add significant costs to the future owners – for example, if they wish to implement environmental initiatives. The OC should be able to reasonably expect that the complete building is under their ownership and control – and should not be faced with unwelcome discoveries of third parties making claims over key elements (for example, hot water meters).

The OCN (ACT) would be pleased to be interviewed and participate in the Inquiry Consultation Meeting on the 7th March to address the ideas expressed above.

Gary Petherbridge
President Owners Corporation Network (ACT)