



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building and Construction Legislation Amendment Bill 2019

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Owners Corporation Network (OCN)

Submission

Building and Construction Legislation Amendment Bill 2019

The Owners Corporation Network for ACT (OCN) supports the intent of most parts of this proposed Bill in that it attempts to address issues that cause serious Defects in Buildings in the Strata Sector that were identified by the OCN and accepted by the current Government in 2010. Unfortunately the Government has not listened carefully to (or ignored) points the OCN has made in several submissions to reports during the following 9 years and most recently in the *OCN Submission to the Assembly Inquiry into building quality in the ACT (July 2018)*.

The OCN will attempt to make it's point again.

The general approach in this Bill, to inform the community of poor building practice so buyers can make more informed choice in their purchase of probably their biggest investment, is supported by us. Naming and Shaming builders (but adding **developers**) or the use of a Star Rating System is supported by us. An improved Disciplinary Register – Construction Occupation Licence, developed by Access Canberra is supported by us. These initiatives all help the consumer do their due diligence and possibly choose to pay a higher purchase price and minimise their risks of future significant pain and cost involved with litigation and often the direct costs of rectification as developers and their builder disappear or refuse to rectify.

The problem is this Bill moves the responsibility for costs of rectification to the Building Company Directors. The problem with Building Quality in Strata Complexes is more often the **Developer or initial owner** (who on-sells within a couple of years) who engages the builder. These companies and hence their **Directors** need to be held liable. They need to be Named and Shamed, Star Rated and recorded in a Publicly available **Developer Disciplinary Register**. While such named **developers and their Directors** have outstanding disciplinary action against them they should be excluded from purchasing Government owned development sites. These Government actions and loss of sales to the community will stop **developer poor behaviour**. The Builders are often not the greatest cause of the building problems.

To reinforce the OCN's point of view I have provided below extracts from our Submission to the Assembly Inquiry (July 2018).

Cultural Change for Developers

“The current Banking and Finance Royal Commission highlights the importance of good culture – away from greed and toward a more balanced approach to the needs of the community and customer service. Residential strata, now often mixed with commercial premises, is frequently created by **privately owned developer companies in the ACT**. Their usual intent is to completely sell all strata units within a couple of years of completion. As they usually do not intend to maintain ownership sustainable quality is not a high priority. They envisage future maintenance will be the responsibility of the new unwary owners.

Quality can be built in the ACT and a good example is our new airport and surrounds, largely still owned by the original developer.” Government and commercially owned (often office blocks) are often built to a sustainable quality standard. Why can’t consumer home buyers expect the same quality standards?

The Government needs to regulate that more complete detail design is provided as part of the Development Application Process and that the original architects and engineers responsible for this design detail are engaged on the project until it is completed and that financial backing of the developer is sufficient to protect future buyers. We understand **Chain of Responsibility Legislation** (as in Queensland) may address the issues of responsibility from developer, through architects/engineers and builders to sub-contractor/trades.

The following was also included in the July 2018 Submission.

The Government’s request for response:

4. *Processes and practices for the identification and rectification of defects including;*
 - a. *Current mechanisms available for defect identification and redress;*
 - b. *The effectiveness of those mechanisms to ensure rectification in instances where standards have not been met;*
 - c. *The adequacy and accessibility of those mechanisms especially for individuals or body corporates; and*
 - d. *The effectiveness of efforts to address “phoenixing” – the transfer of assets from an indebted building company to a new one to avoid paying its liabilities.*

OCN Response:

“The only mechanisms at this stage rely on OCs bringing expensive building consultant evidence to ACTPLA or Access Canberra or to the Supreme Court. These approaches provide a motivation for some developers and or builders (mostly publicly listed companies) to begin discussions on rectification. The minor rectifications some might carry out often involve the use of “temporary fix products” like silicon or simply using the same products and contractors who created the original defect.

Some private family owned businesses in Canberra do not consider loss of reputation a big issue and they would prefer to rely on fighting any legal battles. A “Naming and Shaming Register” that Minister Barr suggested worth considering in 2010 might help correct this attitude. Such arrangements or Buyer Information sources exist for many other less valuable products such as cars, white goods and restaurant services. The private companies understand that OCs are made up of large groups of people who may not all agree and in particular some of the owners involved may see legal action as reducing the value of their property. Some **developers** have also been known to maintain enough unit ownership to maintain control of OC and EC decisions and so prevent them taking timely action on building defects and in some instances, they have been supported by Real Estate Agent associated Strata Managers. In at least 4 recent cases in Canberra courts have found in favour of owners but some of these have taken 10 years of significant action and cost and in at least 1 case the developer/builder simply took one of their 53 companies into receivership and left the owners to rectify at their own cost. We understand this “phoenixing” may require Federal Government assistance.

Without this Federal Government action to address “phoenixing” the ACT Government could insist on greater transparency of Company arrangements at the time of Development Approval. The Directors of the development companies are usually well known and often their development history indicates where government restrictions to corporate arrangements should apply to protect the community.

In simple terms the **Directors** of these companies and their family relations are well known and with any reasonable Government watchdog authority such as ASIC or ATO there must be some way to protect the community. The Register mentioned above could provide useful research information for consumers where developers are involved in practices that are less than community friendly – Canberra does have several companies who use innovative techniques to increase their profits and maintain control as they see fit. Do we need a Royal Commission to get action from Government?

The Industry Awards and Promotional Schemes in ACT should be scrutinised as they are often misleading and may affect buyer decisions. Complexes should not receive awards until four years have passed since their completion. Lack of defects and sustainability of the complex will then be more evident.”

The OCN commends the Government for efforts to address the issues of Building Quality but the legislation needs to address the issues associated with some **developers**. We also wish to note these developers are spoiling the reputation of good developers and many good builders in Canberra. We need much more action to **Rebuild Confidence in the Strata Sector**, as this sector provides essential housing choice for affordable housing, home downsizing and reduction of land usage pressure.

Thank you for the opportunity to submit this submission.

Yours sincerely

Gary Petherbridge

President OCN(ACT)

8th November 2019.