

2024

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

TENTH ASSEMBLY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES

REPORT NO. 17 - INQUIRY INTO THE PROPERTY DEVELOPERS BILL 2023

GOVERNMENT RESPONSE

Presented by

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Minister for Sustainable Building and Construction

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Introduction

The ACT Government welcomes the opportunity to respond to the Standing Committee on Planning, Transport, and City Services (the Committee) Inquiry report into the Property Developers Bill 2023 (the Bill). The Bill was introduced to the ACT Legislative Assembly on 30 November 2023 by the Minister for Sustainable Building and Construction, Rebecca Vassarotti MLA.

The Committee resolved to undertake an Inquiry into the Bill on 14 December 2024. The Committee's report was provided to the Assembly on 5 April 2024. It made two findings and seven recommendations. This Government response addresses each of the committee's findings and recommendations.

Background to the Bill

The Bill:

- Establishes a licensing scheme for individuals and entities that engage in residential development activity.
- Establishes a regulatory scheme to bring property developers into the regulatory chain of accountability for building work they are involved in.
- Imposes obligations on individuals and entities that undertake residential development activity.
- Creates a statutory presumption that a claimed defect is a defect unless the builder and/or property developer prove to the contrary for a time-limited period.
- Extends the application of existing statutory warranties for residential building work to property developers to provide consumers with legal recourse directly to both the property developer and the builder if there are defects in residential building work to which the warranties apply that amounts to a breach of statutory warranties.

The scheme proposed by the Bill will apply to individuals and entities that engage in residential development activity and mixed-use residential development activity, that is the development of a mixed-use building that contains a residential component.

The objects of the Bill are to:

- Protect the public by ensuring that residential development activities are carried out by people that are competent and have the capacity and capability to undertake those activities.
- Protect the public by ensuring property developers engaged in residential development activity are held responsible and accountable for development activities they carry out.
- Promote public confidence in the standard of residential development activities undertaken by property developers.

Responses to findings and recommendations

Finding 1 & 2

The Committee finds that in developing the regulations, the ACT Government should give consideration to exemptions from property developer licensing and the personal liability provisions of the Property Developers Bill 2023 to not-for-profit developing organisations that will own and rent the development for a period no less than 10 years.

The Committee finds that in relation to developing the regulations to exempt certain developing organisations from the scheme, the ACT Government should consult thoroughly with the various parts of the sector to ensure that they receive the certainty required to undertake complex, long-term residential developments.

Agreed

Prior to and following the introduction of the Bill the Government consulted closely with key stakeholders from a range of organisations including the not-for-profit sector.

Following this consultation and further consideration of these provisions as they relate to not-for-profits, the Government is considering changes for Aged Care and Community Housing providers and other not-for-profit entities.

Recommendation 1

The Committee recommends that in the five-year review of the legislation, ACT Government consider whether the Code of Conduct and regulatory system should apply to all property developers, including Government agencies that undertake property development.

Agreed

The proposed Code of Practice and regulatory system will apply to all property developers including the ACT Government.

Recommendation 2

The Committee recommends that the ACT Government introduce amendments to this Bill that amend Part 6 as appropriate to accurately reflect the stated policy position that rectification orders will not be retrospective in application.

Agreed

The Government will introduce amendments to the Bill to clarify that the provisions in Part 6 of the Bill will not be retrospective in application.

The proposed amendments will seek to modify the commencement provision (s2) and application of Part 6 (s47) to make it clear that the regulatory powers will only apply to residential development activities undertaken after the commencement of the Bill.

Recommendation 3

The Committee recommends that the ACT Government clearly establish the administrative arrangements for running the scheme prior to commencement of the Property Developers Bill 2023.

Agreed

The Government agrees with the need for the necessary administrative arrangements to be in place prior to the commencement of the scheme to ensure its effective implementation and administration. Should the Bill be passed by the Assembly, it is intended that the Bill will commence by written notice to allow for transition to the new scheme and for the administrative arrangements for the running of the scheme to be established. In addition, the Bill has been drafted to include a transition period that will provide industry with the time to prepare for and comply with the new requirements.

Recommendation 4

The Committee recommends that the ACT Government review the arrangements for appointing the registrar with a view to introducing amendments to provide for the appointment to be made by Cabinet or pursuant to statute.

Not agreed

The Government makes statutory appointments in accordance with the *Legislation Act 2001* and the ACT Government *Governance Principles – Appointments, Boards and Committees* and appointments are taken to Cabinet in accordance with those principles and the ACT Government *Cabinet Handbook*. The intention is that the Property Developer Registrar will be occupied by the same person appointed as the Construction Occupations Registrar to avoid potential regulatory overlap between the Property Developers regulatory framework and other relevant legislation. This approach is consistent with that taken in the ACT's Professional Engineers Registration Scheme in the *Professional Engineers Act 2023*.

Recommendation 5

The Committee recommends that the ACT Government consider amendments to the Bill that will facilitate the use of ACAT in contesting orders made by the Registrar before resorting to the Supreme Court, and if amendments are not introduced provide a clear policy rationale for bypassing ACAT.

Agreed

The Government intends to move amendments to the Bill to include decisions of the registrar to issue rectification orders will also be reviewable by ACAT in addition to other licensing decisions already proposed in the Bill to be reviewable by ACAT. This approach aligns with the *Construction Occupations (Licensing) Act 2004*.

Recommendation 6

The Committee recommends that the ACT Government introduce amendments to the Property Developers Bill 2023 to include a requirement for the Bill to be referred to the relevant Legislative Assembly committee to consider the conduct of an inquiry as part of the five-year review of the Act's operation.

Not Agreed

The Standing orders for the Legislative Assembly outline that any standing committee may inquire into and report on any matter it considers merit in investigating¹. It is unnecessary to prescribe a requirement in legislation on a future Assembly committee. The Bill appropriately mandates that a statutory review of the legislation to be undertaken as soon as practicable after the end of the Act's fifth year of operation.

Recommendation 7

The Committee recommends that, after considering and responding to the recommendations in this report, the Legislative Assembly pass the Property Developers Bill 2023.

Noted

The Government will move amendments to the Bill at the Debate stage to address the findings and recommendations of the Committee and to address other matters identified as part of ongoing stakeholder consultation.

¹ Legislative Assembly for the ACT (2023) Standing orders and continuing resolutions of the Legislative Assembly for the Australian Capital Territory. Available online at https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2425931/Standing-Orders-as-at-21-March-2024.pdf. See standing orders 215 and 216, which set out the procedures relating to the establishment and referral of matters to standing committees, and standing order 217, which provides for the Assembly to establish select committees.