

**Australian Capital Territory
Legislative Assembly**

Property Developers Bill 2023

Amendments to be moved by the Minister for Sustainable Building and Construction

1

Clause 2

Page 2, line 4—

omit clause 2, substitute

2

Commencement

(1) The following provisions commence on the day after this Act's notification day:

- part 1 (Preliminary)
- section 12 (Meaning of *associated entity* and *key person*)
- part 6 (Rectification orders, stop work orders and undertakings) (other than section 63 (1) (b) and (6), definition of ***relevant provision***)
- part 7 (Enforcement)
- part 10 (Information sharing)
- part 11 (Notification and review of decisions)
- part 12 (Miscellaneous)
- part 13 (Transitional)
- schedule 1 (Reviewable decisions)
- dictionary.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The following provisions commence on a day fixed by the Minister by written notice:

- (a) the licence requirement provisions;
- (b) the remaining provisions.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(3) However—

- (a) if the licence requirement provisions have not commenced within 3 years beginning on this Act's notification day, they automatically commence on the first day after that period; and
- (b) if the remaining provisions have not commenced within 2 years beginning on this Act's notification day, they automatically commence on the first day after that period.

(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

(5) In this section:

licence requirement provisions means—

- (a) section 11 (Purpose—pt 3); and
- (b) section 63 (1) (b) and (6), definition of ***relevant provision***; and
- (c) the following provisions in schedule 2:
 - (i) amendments 2.1 to 2.4;
 - (ii) amendment 2.6;
 - (iii) parts 2.2 to 2.6.

2
Clause 6 (2) (c)
Page 4, line 19—

before
residential buildings
insert
regulated

3
Part 2
Page 5, line 1—

omit

4
Clause 11 (c)
Page 7, line 13—

before
residential property
insert
certain

5
Clause 12 (4), definition of *professional*, example
Page 9, line 9—

omit
accountants, engaged
substitute
accountants engaged

6
Clause 13 (1) (a)
Page 9, line 25—

omit clause 13 (1) (a), substitute
(a) the applicant's character;

7

Clause 13 (1) (g)

Page 10, line 20—

omit clause 13 (1) (g), substitute

- (g) if the applicant is an individual, whether the applicant has been—
- (i) an insolvent under administration under the Corporations Act, section 9; or
 - (ii) an executive officer of a corporation within 2 years before the corporation was placed into administration, receivership or liquidation; or
 - (iii) disqualified from managing a corporation under the Corporations Act;

8

Clause 15 (2) (b)

Page 11, line 23—

omit clause 15 (2) (b), substitute

- (b) if requested by the registrar—include a rating report or any other report prescribed by regulation; and

9

Clause 23 (2), example 1

Page 16, line 11—

omit

3 units

substitute

10 units

10
Clause 24 (b) (ii)
Page 17, line 7—

omit
division 5.1
substitute
division 5.2

11
Clause 25 (1) (b)
Page 17, line 15—

omit
division 5.1
substitute
division 5.2

12
Clause 27 (1) (e)
Page 19, line 17—

omit clause 27 (1) (e), substitute

- (e) the licensee, or an associated entity, doing the earliest of the following:
- (i) entering into an off-the-plan contract for the sale of a regulated residential building;
 - (ii) applying for a development approval in relation to residential building work;
 - (iii) applying for a building approval in relation to residential building work;

13

Clause 27 (3), proposed new definition of *off-the-plan contract*
Page 19, line 25—

insert

off-the-plan contract—see the *Civil Law (Sale of Residential Property) Act 2003*, section 19A (1).

14

Proposed new clause 27A
Page 19, line 25—

insert

27A Registrar may request rating report

- (1) The registrar may request a licensee to provide a rating report if the licensee—
 - (a) applies to vary a licence under section 26; or
 - (b) notifies the registrar about a matter under section 27.
- (2) The registrar may refuse to consider an application under section 26 that does not comply with subsection (1).

15

Clause 28 (2) (d)
Page 20, line 12—

after

names

insert

and director identification numbers

16
Proposed new clause 28 (6)
Page 21, line 15—

insert

(6) In this section:

director identification number means a director identification number under the Corporations Act, section 9.

17
Clause 35, definition of *regulatory action*, paragraph (b) (ii)
Page 28, line 5—

omit

building

substitute

development

18
Clause 41 (1) (a)
Page 31, line 19—

omit

division 5.1

substitute

division 5.2

19
Clause 47
Page 36, line 4—

omit clause 47, substitute

47 **Application—pt 6**

(1) This part applies to residential building work for which a development approval is given on or after the day this section commences.

(2) In this section:

development approval—see the *Planning Act 2023*, dictionary.

20

Clause 49 (1), definition of *property developer*, paragraph (b)

Page 37, line 8—

omit paragraph (b), substitute

- (b) the owner of the land on which the building work is undertaken when the building work is undertaken;
-

21

Clause 49 (1), definition of *property developer*, paragraph (d)

Page 37, line 11—

before

residential building

insert

regulated

22

Clause 49 (3), definition of *commencement notice*

Page 37, line 18—

before

commencement notice

insert

building

23

Clause 49 (3), definition of *principal builder*

Page 37, line 22—

before

commencement notice

insert

building

24
Clause 51 (1) (b)
Page 39, line 26—

before
residential building
insert
regulated

25
Clause 52 (5)
Page 41, line 12—

- omit clause 52 (5), substitute*
- (5) A copy of the rectification order must be given to—
- (a) the owner of the land on which the residential building work is undertaken; or
 - (b) for a regulated residential building under a units plan—the unit owner and the owners corporation.

26
Clause 52 (6), definition of 10-year period
Page 41, line 21—

omit the definition, substitute

10-year period means the period within which a building action may be brought in relation to the residential building work under the *Building Act 2004*, section 142 (1).

27
Clause 53 (3)
Page 42, line 23—

- omit clause 53 (3), substitute*
- (3) An emergency rectification order must—
- (a) state a period not less than 24 hours in which the required rectification work must be done; and

- (b) contain a detailed written statement of the reasons for making the order, or a summary of reasons.

28

Proposed new clause 54 (3A)

Page 43, line 30—

insert

- (3A) Subsection (3) does not apply to a property developer given a rectification order only because of section 52 (5) (a).

29

Proposed new clause 55 (4) and (5)

Page 45, line 8—

insert

- (4) This section does not apply to—
 - (a) a person who was a director of a territory entity or a Commonwealth or State entity; or
 - (b) a person excluded by regulation.
- (5) In this section:

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

30

Clause 63 (1) (a) (i)

Page 49, line 9—

before

residential building

insert

regulated

31
Clause 63 (5) (a)
Page 50, line 15—

omit
done
substitute
undertaken

32
Clause 63 (5) (b)
Page 50, line 16—

omit

33
Clause 63 (6), definition of *relevant provision*
Page 50, line 21—

omit the definition, substitute
relevant provision means—
(a) the *Planning Act 2023*, section 162A; or
(b) the *Building Act 2004*, section 27 (1) (ca), section 28AA and section 69 (1) (c); or
(c) the *Civil Law (Sale of Residential Property) Act 2003*, division 2A.2.

34
Clause 64 (1) to (3)
Page 51, lines 6, 11 and 16—

after all mentions of
stop work order
insert
under section 63 (2)

35
Clause 65 (1)
Page 52, line 3—

omit clause 65 (1), substitute

- (1) The registrar may accept a written undertaking (a ***compliance undertaking***) given by the following in relation to residential building work:
- (a) a property developer;
 - (b) a director of a property developer that is a corporation if the developer—
 - (i) becomes the subject of a winding-up order; or
 - (ii) is placed into administration, receivership or liquidation;
or
 - (iii) is deregistered.

36
Clause 65 (2)
Page 52, line 7—

after

property developer

insert

or director

37
Clause 67 (1)
Page 53, lines 21 and 23—

omit all mentions of

property developer

substitute

person

38
Clause 67 (2)
Page 54, line 1—

omit everything before paragraph (a), substitute

- (2) The registrar may give the person a written notice (a ***compliance cost notice***) requiring the person to pay all or any reasonable costs incurred by the Territory (including remuneration and other administrative costs) relating to—

39
Clause 68
Page 54, line 18—

[oppose the clause]

40
Clause 75 (4), proposed new definition of *property developer*
Page 60, line 20—

insert

property developer—see section 49.

41
Clause 75 (4), definition of *relevant person*, proposed new paragraphs (ca) and (cb)
Page 60, line 26—

insert

- (ca) a property developer; or
- (cb) a person who may have information, a document or other thing that is relevant to determining whether this Act has been contravened; or

42
Clause 109 (1), example
Page 83, line 25—

omit

construction occupations registrar,

43
Clause 93 (3)
Page 73, line 17—

omit
subsection (2)
substitute
subsection (2) (a), (b) or (c)

44
Clause 110 (2)
Page 84, line 10—

omit
division 5.1
substitute
division 5.2

45
Proposed new clause 110 (3)
Page 84, line 10—

insert
(3) In this section:
ground for regulatory action—see section 36.

46
Schedule 1, part 1.2, new items 8A to 8D
Page 98—

insert

8A	52 (2)	give rectification order to property developer	person given order
8B	55 (2)	give rectification order to director	person given order
8C	63 (2)	give stop work order	person given order

8D	67 (2)	give compliance cost notice	person given notice
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47
Schedule 2, part 2.1
Proposed new amendment 2.1A
Page 99, line 3—

insert

[2.1A] Section 6 (1), definition of *building work*, note

omit

(Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)

substitute

(Residential building work—warranties, conditions, insurance etc)

48
Schedule 2, part 2.1
Amendment 2.2
Proposed new section 27 (1A)
Page 99, line 14—

omit proposed new section 27 (1A), substitute

(1A) Subsection (1) (ca) does not apply to the following:

(a) the Territory, the Commonwealth or a State;

Note **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

(b) a territory entity or a Commonwealth or State entity;

(c) a person, or an application under section 26, excluded by regulation.

49

Schedule 2, part 2.1

Amendment 2.3

Section 27 (2), proposed new definition of *Commonwealth or State entity*

Page 99, line 17—

insert

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

50

Schedule 2, part 2.1

Amendment 2.3

Section 27 (2), proposed new definitions of *residential building* and *residential building work*

Page 100, line 1—

omit the definitions, substitute

residential building work—see the *Property Developers Act 2023*, dictionary.

territory entity means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

51

Schedule 2, part 2.1

Amendment 2.9

Page 102, line 18—

omit the amendment

omit amendment 2.12, substitute

[2.12] Section 84, new definitions

insert

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

property developer, in relation to residential building work—

- (a) means—
 - (i) a person who contracts or arranges for, or facilitates or otherwise causes (whether directly or indirectly) the building work to be carried out; or
 - (ii) the owner of the land on which the building work is carried out when the building work is carried out; or
 - (iii) a person prescribed by regulation; but
- (b) does not include—
 - (i) the Territory, the Commonwealth or a State; or

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

 - (ii) a territory entity or a Commonwealth or State entity; or
 - (iii) a person excluded by regulation.

territory entity means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

53
Schedule 2, part 2.1
Amendment 2.13
Proposed new section 88 (2A)
Page 104, line 5—

after

carried out

insert

, for any part of the work that is residential building work as defined in the *Property Developers Act 2023*

54
Schedule 2, part 2.1
Amendment 2.17
Proposed new section 89F (1)
Page 105, line 11—

omit proposed new section 89F (1), substitute

- (1) This section applies to residential building work carried out by a builder, or arranged to be carried out by a property developer, that is—
- (a) claimed to be defective; and
 - (b) able to be rectified.

55
Schedule 2, part 2.1
Amendment 2.17
Proposed new section 89F (4)
Page 105, line 23—

omit proposed new section 89F (4), substitute

- (4) Nothing in this section affects the right of an affected party to claim from the builder, and any property developer, damages for any loss or damage to the affected party resulting from the defect that is reasonably foreseeable as a result of the defect (including a limitation period applying to the claim).

56

Schedule 2, part 2.1

Amendment 2.17

Proposed new section 89F (8), definition of *residential building work*

Page 106, line 19—

omit the definition, substitute

residential building work—see the *Property Developers Act 2023*, dictionary.

57

Schedule 2, part 2.1

Amendment 2.18

Proposed new section 95A (2), definition of *residential building work*

Page 107, line 12—

omit the definition, substitute

residential building work—see the *Property Developers Act 2023*, dictionary.

58

Schedule 2, part 2.1

Proposed new amendment 2.18A

Page 107, line 12—

insert

[2.18A] Dictionary, note 2

insert

- territory authority
- territory instrumentality
- territory-owned corporation

59

Schedule 2, part 2.1

Amendment 2.20

Dictionary, proposed new definition of *Commonwealth or State entity*

Page 108, line 10—

insert

Commonwealth or State entity, for part 6 (Residential building work—warranties, conditions, insurance etc)—see section 84.

60

Schedule 2, part 2.1

Amendment 2.20

Dictionary, proposed new definition of *territory entity*

Page 108, line 12—

insert

territory entity, for part 6 (Residential building work—warranties, conditions, insurance etc)—see section 84.

61

Schedule 2, part 2.2

Amendment 2.23

Page 109, line 13—

omit amendment 2.23, substitute

[2.23] Part 4 heading

substitute

Part 4

**Residential building work—
warranties, conditions, insurance
etc**

[2.23A] Section 37

omit

(Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)

substitute

(Residential building work—warranties, conditions, insurance etc)

[2.23B] New section 37A

insert

37A People who are not property developers—Act, s 84, def *property developer*, par (b) (iii)

- (1) The following people are excluded:
 - (a) a professional who contracts or arranges for, or facilitates or otherwise causes the residential building work to be carried out only because they provide professional advice in relation to the building work;
 - (b) a subcontractor engaged to carry out the residential building work by the principal builder of the building work;
 - (c) the owner-builder of the residential building work.
- (2) In this section:

professional—

 - (a) means a person who provides professional advice to more than 1 client; but
 - (b) does not include a person who provides professional advice to a client in their capacity as an employee of the client.

Example

a consultant, employed in that capacity by a firm of consultants engaged by a property developer to give the developer advice in relation to residential building work

[2.23C] Schedule 1, part 1.3, table, column 3

omit

(Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)

substitute

(Residential building work—warranties, conditions, insurance etc)

62

Schedule 2, part 2.4

Amendment 2.25

Proposed new section 9 (1) (ja)

Page 110, line 6—

omit

section 19AC (1) (but not including paragraph (d))

substitute

section 19AD (1) (but not including paragraph (b))

63

Schedule 2, part 2.4

Amendment 2.27

Proposed new section 19AA (1), definition of *off-the-plan contract*

Page 110, line 23—

omit the definition, substitute

***off-the-plan contract*—**

- (a) means a contract for the sale of—
 - (i) a unit for residential use before the units plan for the unit is registered; or
 - (ii) a residence (other than a unit) on land identified in the contract before the certificate of occupancy for the residence is issued; and
 - (b) for division 2A.4—includes a contract for the sale of vacant land for residential use identified in the contract before the Crown lease for the land is registered.
-

64

Schedule 2, part 2.4

Amendment 2.27

Proposed new section 19AA (1), new definition of *regulated residential building*

Page 111, line 6—

insert

regulated residential building—see the *Property Developers Act 2023*, dictionary.

65

Schedule 2, part 2.4

Amendment 2.27

Proposed new section 19AB (1) (a)

Page 111, line 23—

after

contract

insert

for the sale of a regulated residential building

66

Schedule 2, part 2.4

Amendment 2.27

Proposed new section 19AB (2) (a), new note

Page 112, line 8—

insert

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

67

Schedule 2, part 2.4

Amendment 2.27

Proposed new section 19AC (1) (a)

Page 112, line 15—

omit

premises

substitute

a regulated residential building

68

Schedule 2, part 2.4

Amendment 2.27

Proposed new section 19AC (3) (a)

Page 113, line 2—

omit

premises

substitute

a regulated residential building

69

Schedule 2, part 2.4

Proposed new amendment 2.31A

Page 115, line 5—

insert

[2.31A] Section 50

substitute

50 Existing off-the-plan contracts

- (1) Division 2A.4 applies to an off-the-plan contract in force immediately before the day the *Civil Law (Sale of Residential Property) Amendment Act 2021* commenced.

(2) In this section:

off-the-plan contract—see section 19AA (1).

70

Schedule 2, part 2.4

Amendment 2.36

Page 116, line 1—

omit amendment 2.36, substitute

[2.36] Dictionary, new definitions

insert

property developer licence, for part 2.A (Off-the-plan contracts)—see section 19AA (1).

regulated residential building, for part 2.A (Off-the-plan contracts)—see the *Property Developers Act 2023*, dictionary.

related entity, of a seller, for part 2.A (Off-the-plan contracts)—see section 19AA (1).

71

Schedule 2, part 2.4

Amendment 2.38

Page 116, line 9—

omit the amendment

72

Schedule 2, part 2.5

Amendment 2.41

Proposed new section 162A (2A)

Page 117, line 16—

insert

(2A) This section does not apply if the applicant is—

(a) the Territory, the Commonwealth or a State; or

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

(b) a territory entity or a Commonwealth or State entity.

73

Schedule 2, part 2.5

Amendment 2.41

Proposed new section 162A (4), new definitions of *Commonwealth or State entity* and *regulated residential building*

Page 117, line 19—

insert

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

regulated residential building—see the *Property Developers Act 2023*, dictionary.

74

Schedule 2, part 2.5

Amendment 2.41

Proposed new section 162A (4), definitions of *residential building* and *residential building development*

Page 117, line 24—

omit the definitions, substitute

residential building development means—

- (a) building or altering a regulated residential building on land; and
- (b) another development prescribed by regulation.

75

Schedule 2, part 2.5

Amendment 2.41

Proposed new section 162B (5), definition of *residential building*

Page 119, line 6—

omit the definition, substitute

residential building development—see section 162A (4).

76
Schedule 2
Proposed new part 2.6
Page 120, line 17—

insert

Part 2.6 Property Developers Act 2023

[2.45] Section 27 (3), definition of *off-the-plan contract*

omit

section 19A (1)

substitute

section 19AA (1)

77
Dictionary, definition of *registrar*
Page 123, line 28—

omit the definition, substitute

registrar means the construction occupations registrar.

78
Dictionary, proposed new definition of *regulated residential building*
Page 123, line 28—

insert

regulated residential building—

- (a) means a class 1 or class 2 building, or a building that contains a class 2 building, constructed as part of a project to construct 3 or more dwellings; but
- (b) does not include a building excluded by regulation.

Examples

- 1 Eddy and Ann engage Darcy Constructions to demolish their house and replace it with 2 duplex-style houses. Five years later they engage Darcy Constructions to construct a smaller house in the backyard. None of the houses are regulated residential buildings.

- 2 Poppy Projects buys a large infill site. They construct 20 detached class 1 houses on the site as part of a development project. The houses are sold off-the-plan and constructed over 2 years. Each house is a regulated residential building.
- 3 Vivienne Developments buys 6 small adjoining blocks in a greenfield suburb. They engage an architect, builder and other professionals to construct matching class 1 row houses on the blocks. The houses are regulated residential buildings.

79

Dictionary, definition of *residential building*
Page 124, line 20—

omit the definition

80

**Dictionary, definitions of *residential development activities* and
*residential building work***
Page 125, line 1—

omit the definitions, substitute

residential building work—

- (a) means building work in relation to a regulated residential building; but
- (b) does not include building work excluded by regulation.

Examples

- 1 Anthony and Lisa engage Fowler Build to demolish their house and replace it with a building containing 4 apartments and a shared basement. The project involves residential building work.
- 2 Cooney-Cross Constructions is engaged to alter an existing class 2 building by adding 2 more dwellings. The project does not involve residential building work.

residential development activities includes—

- (a) undertaking residential building work, or arranging for residential building work to be undertaken; and
- (b) marketing and selling regulated residential buildings including off the plan.

81
Dictionary, definition of *show cause notice*
Page 125, line 11—

omit

division 5.1

substitute

division 5.2
