



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),  
Ms Suzanne Orr MLA, Mr Mark Parton MLA

## Submission Cover Sheet

Inquiry into Building Quality in the ACT

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**Submission to the Standing Committee on Economic Development and  
Tourism inquiry into Building Quality in the ACT**

**30 November 2018**

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## **Introduction**

We, representing the Executive Committee (EC) of a small unit complex in the Inner North of Canberra, welcome the opportunity to make a submission to the Standing Committee on Economic Development and Tourism inquiry into Building Quality in the ACT. We wish to provide some observations from our own current experience attempting to seek redress and rectification of a range of defects causing serious water ingress to our complex. These experiences link to items 1, 3, 4, 5, 7 and 8 of the Inquiry's terms of reference.

## **Background**

The complex in question was constructed in the early 2010s, with initial defects and concerns identified within 1-2 years of completion. Initial engagement with the construction company led to some minor works, however the company then dissolved and the Director transferred his activities and building licence and is now a director of a much larger developer and construction group. This new company continues to rely on the individual's building licence.

Unfortunately, the dissolution of the builder's prior company, and the lack of any retained assets for the company, has resulted in limited avenues for owners to seek redress.

Over successive years the builder's new developer/construction group remained engaged, undertaking assessments of defects and providing minor works, while never agreeing liability for ongoing works. The organisation would repeatedly state that it felt a desire to provide support given the Director's previous business had been responsible for the complex, and acknowledged a reputational aspect, particularly noting the new company has a number of large projects in the ACT, including through contracts with the ACT Government. However, they have formally denied any responsibility for the defective works performed by one of the company's directors, and have now, after years of agreeing to support efforts to rectify the defects have largely ceased communications with the EC.

Following a number of complaints lodged through the ACT Government, the ACT Building and Planning Major Investigations Team have commenced an assessment of relevant issues, but to date have not commenced a formal investigation. Even should that proceed, there are few avenues that can be pursued to seek redress from the builder, without significant expense and with limited prospects for the owners to have the substantial defects repaired.

The lack of options has left all owners with a troubling quandary, whereby we are owners of a known defective property and are largely tied on the range of options we can pursue. We also can see the builder continuing on to have a very lucrative career with a well-known major developer, and we are left with very limited option on pursuing him to rectify his poor work. It has led to a black cloud over the perceived values of our properties and some tricky issues in

regards to owners trying to sell – and whether they are disclosing the known defects to new buyers. New owners of units in the complex have had to consider options to address questionable disclosure on the parts of former owners and real estate agents – however the current requirement to establish and quantify a loss figure associated with a failure to properly disclose known defects is challenging where the unit in question has not been sold again.

### **Options for consideration**

We as an EC have put together the following points for the Committee's consideration:

- It would be preferable to align responsibility to remedy defects to builder's licences rather than a company which is in some cases unregistered once construction has ended. If this was in place, builders would be able to be held to account for shoddy workmanship by transcending company structures.
- When building companies decide to use new products they must get certification from product suppliers that materials installed as per specs.
- Builders should be under an obligation to undertake testing if they have had issues raised with their workmanship; in addition, there should be a publicly available register of builders who have produced substandard work. This would make builders more accountable and suffer consequences for poor outcomes. It would also provide a consumer safeguard to be knowingly purchasing major assets that have been constructed by builders with a poor track record.
- Developers should also be responsible through legislation for defects as they manage design elements.
- Engineers and designers should assume responsibility if defects are linked to poor design or inappropriate use of materials. This would provide a level of protection for builders when they are following poorly laid out plans, as opposed to fault residing with them on these types of building quality issues.
- The ACT Government to conduct random inspections on building projects if a builder has had complaints registered against them. This may help to detect issues in construction that are able to be rectified before they become major issues. Prevention is always better than remediation.
- The ACT Government should further bolster resourcing to building and compliance monitoring areas and enforce compliance rectification orders and possibly remove licences from builders if they don't comply.

- The ACT Government should provide builders or developers with a show cause notice on why contracts should be awarded to them for construction if they are subject to investigation or have had established findings against them.
- Builders and developers who have findings established against them should be barred from tendering for Government contracts in the absence of clear actions to address the findings.
- Certifiers should be independent and if possible be selected by developers or purchasers. They should not be able to be aligned with any party with a vested interest with the certification proceeding.
- A building warranty guide should be developed for multiple unit developments. Home owners warranty covers individual units but what arrangements are there for the reporting and management of common area defects?
- There is also a need to further define what the responsibility of Agents who manage properties is, as sometimes these issues are exacerbated when they are in discovery stages by poor advice being provided to owners and tenants by managing agents of complexes.
- Consideration should be given to the possibility of establishing a building bond arrangement which provides some funds for owners to carry rectification if builders do not or are not able to carry out defect rectifications within a reasonable timeframe. This could be withheld so that owners have some consumer protection without having to engage in convoluted processes and could provide some protection against companies being deregistered in a short space of time following completion of building.
- There should be better education and advocacy avenues for owners to ensure they understand their responsibilities regarding identifying and rectifying defects with builders. Better support could be provided to assist in navigating building warranty insurance processes, to ensure that owners understand their rights and obligations and exercise their entitlements within appropriate timeframes.

Some further observations about building quality in the ACT:

- Our observations are that the majority of defects in building in The ACT relate to water ingress. Noting this, should there be specific certification related to waterproofing that builders need to produce from specialist waterproofing companies?

- It seems concerning that there has been a significant increase in defects in the ACT, despite the increase in regulations. This is not the outcome you would hope to achieve in a property market that is expanding rapidly (especially in medium-high level density housing).

We welcome the Committees recommendations on further processes what could be implemented to adequately address these issues in the future, and to assist owners of properties that are retrospectively trying to rectify poor quality properties in the ACT.