

## Appendix E: Additional Comments by Mr Mark Parton MLA

- 1.1. This Bill responds to a genuine problem experienced by many in the ACT community. Over a period of years, we've seen many ACT residents heavily impacted by building defects. The buck passing and legal wrangling that has eventuated from these cases has resulted in heartbreak and extensive financial impacts on a number of our citizens. The government has responded to those ongoing problems with the creation of this Bill, which does follow the lead set by some other jurisdictions but goes several steps further in constructing regulations around 'property developers' in the ACT which are more far reaching than the rest of the nation. The Bill sets out to provide significant public benefits, but, in its current form could have several unintended consequences, the biggest being reduced investment by property developers in the ACT, which will result in less homes being built at a time when they are desperately needed.
- 1.2. It must be said that the vast majority of work completed by our construction sector is done so without the hint of building defects and additionally that previous inquiries in this space have pointed towards our building certification regime as being problematic as well as an inability for the ACT Government to enforce its own rules. I fear that in its haste to find somebody to blame, and to be seen to coming up with a solution, this Bill lands on the 'progressively populist' position, that all of the problems are the fault of the person who took the risk to build something in the first place.
- 1.3. Laws are drafted to have consequences and if I believed that these laws would do nothing other than to protect ACT residents from the pain of costly defects, then I'd be wholeheartedly supporting the Bill in its current form. A change of this magnitude will likely have additional consequences and we heard much evidence during the hearings to support that view.
- 1.4. Many of those unintended consequences would likely play out in the community based and not-for-profit housing sector and I'm pleased that this committee has arrived several recommendations designed to rectify the Bill in that space. It goes without saying that I thoroughly support those recommendations, and that if those changes were not made, then I would not support this legislation passing.
- 1.5. There are other potential unintended consequences around retrospectivity, but one of the things that became clear during the hearings is that those retrospectivity clauses remain unclear and it's up to the government to definitively state its position on these matters. Again, I would say that until such time as the retrospectivity issues are cleared up by the government, it would be difficult for me to support the Bill.
- 1.6. By far and away, the biggest unintended consequence of this Bill is likely to be reduced investment by developers in Canberra and the complete failure of the government to achieve its housing targets. In the middle of a housing unaffordability and supply crisis this could have extreme consequences on many Canberrans. Additionally, as we see a national

construction labour shortage and with a number of building firms becoming insolvent in and around our jurisdiction, it's likely that the imposition of these laws will further slow housing construction at a time when it's desperately needed.

- 1.7. We also heard evidence and received submissions during the hearings pertaining to exposure to subcontractors and suppliers who are not targeted by this Bill. We're left with a situation whereby 'the developer' will be liable for defects that were clearly the fault of subcontractors and suppliers. It would seem just for developers to be able to pursue subcontractors and/or suppliers or other entities who actually caused problems. Surely responsibility should rest with those who cause the defect in the first place.
- 1.8. The ACT Government is one of the largest property developers in the territory and as such it's baffling that it's left itself out of this Bill. Surely if these important law changes apply to all property developers, they should apply to the ACT Government. The government should explain why the provisions in this Bill don't also apply to senior bureaucrats or indeed with Ministers themselves. If the government doesn't wish to itself drink from this chalice, does it suggest that the drink is poisoned somewhat.
- 1.9. Concerns were raised during the hearings about the reverse onus of proof provision on building defects in the first two years. I have major concerns with the procedural fairness of a clause which creates a presumption that any defect identified by the affected party within the first two years post completion, are automatically the builders liability unless proven otherwise.
- 1.10. And there are concerns about the definition of 'property developer' which is extremely broad in the context of this Bill. The government needs to specify who the intended target of the Bill is because the current definition is so wide that captures almost everyone in the chain and could well be applied to 'Mum and Dad developers who were simply doing a dual occy on their RZ1 block.
- 1.11. And finally, I have some concerns with the core element of this Bill, that is the direct personal liability component. Although there are many in the community who are quite pleased with the prospect of 'piercing the corporate veil,' I think genuine modelling needs to be conducted to determine what impact this major change to the law will likely have on the construction landscape in the ACT. At a time when housing supply is the largest issue effecting housing affordability, it would surely not be wise to push developers interstate. And those who choose to continue building in the ACT will surely secure additional insurance protection against this Bill which inevitably will increase the cost of each dwelling they complete.
- 1.12. And so, I make these additional recommendations.

## Recommendations

### Recommendation 1

That the ACT Government explore legal mechanisms to allow for the transfer liability from directors to other parties in cases where fault lies elsewhere

### Recommendation 2

That the ACT Government consider whether the Code of Conduct and regulatory system should immediately apply to all property developers, including government agencies that undertake property development.

### Recommendation 3

That, regarding the reverse onus of proof clause, 89F, the government consider adding qualifiers or limitations such as requiring that the identified defect must be substantial or meet specific criteria to trigger the presumption. Additionally, the government should consider how to prevent vexatious claims and establish a fair process for builders and developers to present evidence to contest these claim

### Recommendation 4

That the government refine the definition of 'property developer' and consider giving exemptions for already licensed builders, those projects which are already captured under home warranty insurance and 'small scale' developments.

- 1.13. I fall just short of recommending that the Bill not pass, but until such time as these recommendations, and the recommendations made by the committee as a whole are given genuine consideration and acted upon by the government it would be extremely difficult for me to support it.

Mr Mark Parton MLA

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