# Inquiry into the Building and Construction Legislation Amendment Bill 2019

Standing Committee On Economic Development And Tourism

November 2019

Report 7

## The Committee

### Committee Membership

* Mr Jeremy Hanson MLA Chair
* Mr Michael Pettersson MLA Deputy Chair
* Mr Deepak-Raj Gupta MLA

### Secretariat

* Mr Hamish Finlay Secretary
* Ms Alice Houghton Senior Research Officer
* Ms Lydia Chung Administrative Support

### Contact Information

Telephone 02 6205 0129

Post GPO Box 1020, CANBERRA ACT 2601

Email [committees@parliament.act.gov.au](mailto:committees@parliament.act.gov.au)

Website [www.parliament.act.gov.au](http://www.parliament.act.gov.au)

### Resolution of appointment

On 13 December 2016 the ACT Legislative Assembly (the Assembly) agreed by resolution to establish legislative and general purpose standing committees to inquire into and report on matters referred to them by the Assembly or matters that are considered by the committees to be of concern to the community, including:

(g) a Standing Committee on Economic Development and Tourism to examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue, procurement, regional development, international trade, skills development and employment creation, and technology, arts and culture.[[1]](#footnote-1)

The Assembly agreed that each committee shall have power to consider and make use of the evidence and records of the relevant standing committees appointed during the previous Assembly.

On 26 October 2017 the Legislative Assembly resolved to amend the motion as follows:

Omit the words "market and regulatory reform, public sector management, taxation and revenue", substitute "Access Canberra".

### Terms of reference

On 24 October 2019 the Legislative Assembly referred the Building and Construction Legislation Amendment Bill 2019 to the Committee with a requirement to report back on, or before, 26 November 2019.[[2]](#footnote-2)

## Acronyms

|  |  |
| --- | --- |
| ACAT | ACT Civil and Administrative Tribunal |
| ANA | Authorised nominating authority |
| COLA | Construction Occupations (Licensing) Act 2004 |
| HIA | Housing Industry Association |
| MBA | Master Builders Association |

Table of Contents

[The Committee i](#_Toc25243757)

[Committee Membership i](#_Toc25243758)

[Secretariat i](#_Toc25243759)

[Contact Information i](#_Toc25243760)

[Resolution of appointment ii](#_Toc25243761)

[Terms of reference ii](#_Toc25243762)

[Acronyms iii](#_Toc25243763)

[Recommendations v](#_Toc25243764)

[1 Introduction 1](#_Toc25243765)

[Conduct of the Inquiry 1](#_Toc25243766)

[Structure of the report 1](#_Toc25243767)

[2 The Building and Construction Legislation Amendment Bill 2019 3](#_Toc25243768)

[Architects Act 2004 4](#_Toc25243769)

[Building Act 2004 4](#_Toc25243770)

[Building and Construction Industry (Security of Payment) Act 2009 6](#_Toc25243771)

[Construction Occupations (Licensing) Act 2004 and Construction Occupations (Licensing) Regulations 2004 7](#_Toc25243772)

[3 Issues raised in submissions 15](#_Toc25243773)

[Request for consultation and analysis of the Bill’s impact 15](#_Toc25243774)

[Requests for additional measures 16](#_Toc25243775)

[Objections to proposed amendments 18](#_Toc25243776)

[Drafting issues 23](#_Toc25243777)

[4 Conclusion 27](#_Toc25243778)

[Annex A – recommendation supported by Mr Hanson MLA but not adopted by the Committee 29](#_Toc25243779)

[Appendix A – Submissions 31](#_Toc25243780)

## Recommendations

[Recommendation 1](#_Toc25152478)

[3.9 The Committee recommends that the ACT Government continue to consult with stakeholders and the wider community.](#_Toc25152479)

[Recommendation 2](#_Toc25152480)

[3.29 The Committee recommends that the Minister for Building Quality Improvement provide additional information to the Assembly on the interaction between the Bill and Commonwealth legislative instruments referred to by submitters including the *Personal Liability for Corporate Fault Reform Act* (Cth) *2012*, the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017*, the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018 and the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No. 2) 2018.](#_Toc25152481)

[Recommendation 3](#_Toc25152482)

[3.34 The Committee recommends that the Minister for Building Quality inform the Assembly whether administrative staff and agents are intended to fall within the definition of “executive officer” in s26 of the Bill.](#_Toc25152483)

[Recommendation 4](#_Toc25152484)

[3.46 The Committee recommends that the Minister for Building Quality Improvement respond to the issues raised by submitters about the possible retrospective effect of the Bill.](#_Toc25152485)

[Recommendation 5](#_Toc25152486)

[3.49 The Committee recommends that the Minister for Building Quality Improvement explain to the Assembly how rectification orders will be applied where there are multiple entities (eg licensees, directors and the company itself) against which they could be issued.](#_Toc25152487)

[Recommendation 6](#_Toc25152488)

[3.55 The Committee recommends that the ACT Government clarify how director liability will interact with home warranty insurance or fidelity fund claims.](#_Toc25152489)

[Recommendation 7](#_Toc25152490)

[3.57 The Committee recommends that the ACT Government clarify whether the proposed new s35(6) of the *Construction Occupations (Licensing) Act 2004* could have the effect of extending the power to make rectification orders beyond 10 years from completion.](#_Toc25152491)

## Introduction

* 1. On 24 October 2019 the Assembly resolved that:

1. the Building and Construction Legislation Amendment Bill 2019 be referred to the Standing Committee on Economic Development and Tourism for inquiry and report, pursuant to standing order 174; and
2. the Standing Committee on Economic Development and Tourism report back to the Assembly on this inquiry by no later than the 26 November 2019.[[3]](#footnote-3)

### Conduct of the Inquiry

* 1. The Committee called for public submissions on 25 October 2019. The Committee issued a media release and the inquiry was announced through the Assembly’s internet and social media channels. The Committee Secretary wrote directly to relevant parties asking them to consider making a submission. The Committee requested submissions by 13 November 2019. The Committee received 12 submissions, and these have been published on the Assembly’s website at <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-economic-development-and-tourism/Inquiry-into-the-Building-and-Construction-Legislation-Amendment-Bill-2019>. A list of these submissions is available at Appendix A.
  2. The Committee notes that this inquiry had an exceptionally short turn-around. The Bill introduces amendments to technical areas of law and the timeframe made it difficult for interested parties to properly analyse the possible implications of the Bill and prepare submissions. Public hearings may have provided an opportunity to further explore issues but the Committee believed it was more important to provide as much time as was possible for the preparation of submissions.

### Structure of the report

* 1. Chapter 2 of this report is intended to be a factual summary of the Bill and its effects, drawing heavily upon the Bill and its Explanatory Statement. Chapter 3 examines some of the key issues raised in submissions.
  2. The Committee was unable to get full agreement on one recommendation. Annex A of the report contains a recommendation that not all members could agree upon.

## The Building and Construction Legislation Amendment Bill 2019

* 1. On 24 October 2019 the Minister for Building Quality and Improvement, Mr Gordon Ramsay MLA, presented the Building and Construction Legislation Amendment Bill 2019 (the bill) to the Legislative Assembly. The bill was referred by the Assembly to the Committee. The Explanatory Statement to the bill states that:

The bill amends laws under the policy responsibility of the Environment, Planning and Sustainable Development Directorate that apply to building, construction and related work in the Territory. [[4]](#footnote-4)

The bill amends the following legislation:

* *Architects Act 2004*
* *Building Act 2004*
* *Building and Construction Industry (Security of Payment) Act 2009*
* *Construction Occupations (Licensing) Act 2004*
* *Construction Occupations (Licensing) Regulation 2004[[5]](#footnote-5)*

The bill is intended to improve and refine the operation of these laws. The bill will also implement provisions that relate to the ACT Government’s Improving the ACT Building Regulatory System reform program <https://www.planning.act.gov.au/build-buy-renovate/reviews-and-reforms/building-reforms> and a National Review of Security of Payment Laws <https://www.ag.gov.au/industrial-relations/building-industry/Pages/review-of-security-of-payment-laws.aspx> (links current at the time of presentation). [[6]](#footnote-6)

* 1. During the presentation of the bill, the Minister for Building and Quality Improvement stated that:

The amendments in the bill are aimed at making sure the public protections in the laws can operate effectively and people involved in construction licences, including those working as part of a corporation, are accountable for work associated with their licence.[[7]](#footnote-7)

### Architects Act 2004

* 1. The first proposed amendment to the *Architects Act 2004*, under section 69A, stipulates the expansion of existing powers of delegation to the Architects Board. [[8]](#footnote-8) Currently, the decision to renew an architect’s registration may be delegated by the Board to the Registrar appointed under the Act.Under the proposed amendments, the Board may delegate additional functions to the registrar, such as deciding on applications for new registrations and managing complaints. [[9]](#footnote-9) The delegation of a function does not relieve the Board of their obligation to ensure that each function is exercised properly, in accordance with the *Legislation Act 2001,* Part 19.4.[[10]](#footnote-10)
  2. Currently, Board members are required to attend meetings in person. The second proposed amendment provides for members of the Architects Board to attend Board meetings other than in person. [[11]](#footnote-11) This may include teleconference or videoconference, if decided by the chairperson. [[12]](#footnote-12)The Board has indicated that meeting in person is not always practical or necessary for certain business meetings (for example, meeting to determine applications for registration). If a quorum of members cannot be reached during a meeting, decisions on applications are at risk of being delayed. The amended provisions are intended to ensure that alternative methods of communication are available for Board meetings, without requiring members to physically meet in person.[[13]](#footnote-13)

### Building Act 2004

* 1. Government building inspectors have a range of powers in relation to entering a site and inspecting building work, however, they do not have the authority to issue a direction to a builder/land-owner to correct non-compliant work and take immediate action to ensure a building is compliant and safe. [[14]](#footnote-14)
  2. Under the proposed amendments to the *Building Act 2004* under new Division 7.2A, government inspectors will have the authority to issue a direction to builders and landowners in relation to non-compliant and/or unsafe building work.[[15]](#footnote-15)
  3. This amendment is consistent with the powers of electrical inspectors, gas-fitting inspectors and plumbing inspectors, who can issue a written direction to make work safe or compliant. In these circumstances, written directions may be issued to a person who carried out work, or is the owner of an unsafe or uninspected building (under section 8 of the *Electricity Safety Act 1971,* section 32 of the *Water and Sewerage Act 2000,* and sections 50 and 51 of the *Gas Safety Act 2000*). [[16]](#footnote-16)
  4. The second proposed amendment to Section 47 (clause 12) of the *Building Act 2004,* allows building certifiers to request a broader range of certificates from engineers in relation to matters of health, safety, and amenity that may affect whether a building is fit for use. [[17]](#footnote-17) The amendment provides that the owner of the parcel of land where building work is being carried out must, if requested by the certifier, provide a certificate by a professional engineer about relevant matters.[[18]](#footnote-18) The engineer providing the certificate must be an engineer in the relevant field. Two new examples are provided:

*An engineer giving a certification about a matter mentioned in s 47 (1) (a)* [section relates to the structural sufficiency, soundness and stability of the building] *must be a structural engineer.*

*An engineer giving a certificate about a matter mentioned in s 47 (1) (b)* [section relates to matters of health, safety and amenity of the building] *that relates to fire protection and safety must be a fire engineer.[[19]](#footnote-19)*

* 1. The third proposed amendment to the *Building Act 2004* intends to clarify the intent of the law in relation to appointing a building certifier and ensuring compliance with building approvals. The bill amends sections 19 and 19A to clarify that owners must appoint a building certifier unless work is exempt. Section 42 (1) (d) is amended to clarify that if building approval is required for building work, work can only be undertaken when plans are approved; building work must not deviate from the approved plans. If plans have not been approved, then building work must not be carried out. [[20]](#footnote-20)
  2. The fourth proposed amendment seeks to give the Construction Occupations Registrar (the Registrar) the power to display signs notifying the issuance of a stop notice. Signs should be displayed on the basis that the Registrar is satisfied that a public stop-work sign is in the best interests of the public.[[21]](#footnote-21) Provisions require the Registrar to keep a register of stop notices,[[22]](#footnote-22) and to make this information available to the public, should this be appropriate or necessary to protect the public. [[23]](#footnote-23) However, the Registrar is not required to make public information in the register that may be inappropriate or illegal, or that will not be of benefit to the public. [[24]](#footnote-24)
  3. The final amendment intends to enable owners’ corporations to gain easier access to building plans for their building. [[25]](#footnote-25) Currently section 145 (1) (a) of the Act states that copies of building plans must not be given to anyone except the lessee or owner of the parcel of land where the building which the plans relate to will be erected; or, under section 145 (1)(b), if the plans relate to a unit within the meaning of the *Unit Titles Act 2001* – the proprietor of the unit.[[26]](#footnote-26) Under new provisions have been added under section 145 (2) and (3) to state that despite section 145 (1)(b), if the plans relate to the common property of a units plan, the owners’ corporation for the units plan, and/or the owners’ corporation manager (if the manager has received written authority from the owners corporation), are also entitled to copies of the plans, and any documents attached to the plans.[[27]](#footnote-27)

### Building and Construction Industry (Security of Payment) Act 2009

* 1. The *Building and Construction Industry (Security of Payment) Act 2009* (the Act) establishes an adjudication process to ensure that people carrying out construction work or supplying goods and services, can receive timely payment. If a person makes a payment claim and it is not paid in accordance with the Act, they may apply to an authorised nominating authority (ANA). In these circumstances, the function of an ANA is to appoint an adjudicator to hear disputes relating to account payments, instead of the matter being heard in court.[[28]](#footnote-28)
  2. The proposed amendment to the Act relates to recommendation 77 from the *National Review of Security of Payment Laws*, which states:

The legislation should require ANAs/adjudicators to provide the Regulator with such information as reasonably requested to enable the Regulator to monitor the operation of the legislation and activities of ANAs/adjudicators. [[29]](#footnote-29)

* 1. Current provisions require ANAs to report to the Minister on request. The report must include information about the activities undertaken by the ANA under the Act, and costs/expenses incurred charged by the authority for services relating to an adjudication application. [[30]](#footnote-30) The proposed amendment to the Act increases the powers granted to the Minister, by enabling the Minister to determine other information that must be reported on, should additional information be reasonably required for purposes related to the operation of that Act.[[31]](#footnote-31)

### Construction Occupations (Licensing) Act 2004 and Construction Occupations (Licensing) Regulations 2004

#### Enforceable undertakings for rectification

* 1. The first proposed amendment to the *Construction Occupations (Licensing) Act 2004* (COLA) is to include provisions for enforceable undertakings relating to the rectification of construction work (rectification undertakings). Where a contravention of the COLA or an operational Act has occurred, in order to ensure work is compliant, work may be required to rectify issues to ensure work is compliant. The bill includes provisions for licensees to enter enforceable rectification undertakings for rectification works, intending to lead to the rectification of non-compliant construction services.[[32]](#footnote-32)
  2. New provisions require the Registrar to keep a register of rectification undertakings, including a record of any withdrawal or variation to the undertaking. [[33]](#footnote-33) COLA provides for a public register of information about licensees. The bill proposes to amend section 107A to include new sections 107A (8) and (9), so that the public register must include:

1. Details about any order by the ACAT or a court in relation to a rectification undertaking given by a licensee that has been licensed in the period beginning on the day 10 years before the registrar most recently updates the register, and accepted by the registrar; and
2. may include any other details about the rectification undertaking if the registrar believes on reasonable grounds that it is necessary or desirable to protect the public.[[34]](#footnote-34)

The bill also details when a rectification undertaking must be removed from the public register:

1. when the undertaking has ended and the registrar no longer believes on reasonable grounds that its inclusion is necessary or desirable to protect the public; or
2. if the registrar receives a direction from the ACAT or a court, on application by the licensee who gave, or a person affected by, the undertaking, to remove the information. [[35]](#footnote-35)
   1. The bill amends section 19 and 25 of COLA, relating to the decision on licence applications and licence renewals, to include consideration of whether a person has contravened or is contravening a rectification undertaking under the COLA or a corresponding law. [[36]](#footnote-36) A licence may be refused only if necessary or desirable to protect the public, and a decision to refuse or condition a licence remains a reviewable decision. [[37]](#footnote-37)

#### Director and Executive officer liability

* 1. The bill includes new provisions on director and executive officer liabilities. The Explanatory Statement for the bill states that:

Directors of a corporation may avoid the corporation’s liabilities by closing the corporation in a variety of ways. In recent matters where the Registrar has moved to require rectification of defective building work, some corporations have responded by winding up. [[38]](#footnote-38)

* 1. The requirement for new provisions relating to liability comes from the *Improving the ACT Building Regulatory System* (reform 37). The reform is to consider the expansion of rectification and other relevant power to allow orders to be issued to people closely associated with an insolvent or disappeared corporate licensee.[[39]](#footnote-39)
  2. The Explanatory Statement states that:

To prevent the actions of directors undermining the intent and operation of the building regulatory system, the bill includes new provisions, which allow certain actions to be taken in relation to directors and executive officers of licenses corporations, and partners of licensed partnerships. [[40]](#footnote-40)

##### Executive officer liabilities – notifying of automatic suspension grounds

* 1. A licence becomes automatically suspended if an individual becomes bankrupt or personally insolvent, or if the corporation becomes the subject of a winding-up order, for example, or is found guilty of an offence that involves fraud, dishonesty or violence.[[41]](#footnote-41)
  2. Currently, the COLA requires licensees to provide written notice to the Registrar within 24 hours of an event, or becoming aware of a change in circumstance, that are linked to the eligibility to hold a licence and to automatic suspension grounds (e.g. loss of required insurance, bankruptcy, personal insolvency). Failure to notify the Registrar within this time is an offence with a maximum penalty of 100 penalty units (section 26B). [[42]](#footnote-42)
  3. The bill includes new provisions relating to notification requirements (section 26B) and the criminal liability of executive officers. An executive officer of a corporation is defined as a person who is concerned with, or takes part in, the corporation’s management. It is within reason to expect that executive officers may, or will, have knowledge of the corporation’s financial position, convictions against the corporation, and appointment of nominees.[[43]](#footnote-43)
  4. The new provisions state that an executive officer of a corporation is taken to commit an offence if:

1. the corporation commits an offence against section 26B; and
2. if the officer was reckless about whether the offence was committed; and
3. if the officer was in a position to influence the conduct of the corporation in relation to the offence; and
4. if the officer failed to take reasonable steps to prevent the commission of the relevant offence. [[44]](#footnote-44)
   1. A court must consider any action the officer took in deciding whether the executive officer took reasonable steps to prevent the commission of the offence. This includes:
5. That the corporation arranges regular professional assessments of the corporation’s compliance with section 26B;
6. That the corporation implements any appropriate recommendation arising from such an assessment;
7. That the corporation’s employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with section 26B;
8. Any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.[[45]](#footnote-45)

##### Liability for amounts - directors

* 1. The bill allows for rectification orders and occupational discipline to be made in relation to directors and partners of licensed corporations and partnerships.
  2. The bill includes new provisions to hold directors liable in the following scenarios (new section 126B) if:

1. A corporation is convicted of an offence against a provision of the COLA.
2. The ACAT requires a corporation to pay an amount and the amount is not paid with the required timeframe.
3. A corporation has a debt owing to the Territory under the COLA and the debt is not paid when it is due. [[46]](#footnote-46)
   1. Each individual who was a director/partner of the corporation at the time of the offence, when the act or omission for the occupational discipline happened, or when the debt was incurred, is attached to the liability to pay the amount owed. The liability is also attached to each individual who is a director of the corporation when the penalty is imposed, when the ACAT made the order for payment, or when the debt to the Territory is due. [[47]](#footnote-47)
   2. A liability to pay an amount applies regardless of the status of the corporation. This includes if a corporation is being, or has been, wound up. If a liability to pay an amount attaches to two or more people, each person is jointly responsible. [[48]](#footnote-48)
   3. These provisions are similar to those in the *Queensland Building and Construction Commission Act 1991* (section 111C). [[49]](#footnote-49)
   4. In some occupations, regulatory authorities can apply to ACAT to discipline licensees or registered persons. New provisions under section 58AA states that ACAT may also make an occupational discipline order to a director or partner of a corporation or partnership. [[50]](#footnote-50)

##### Rectification orders – winding-up orders

* 1. The bill includes new provisions relating to rectification orders issued before and after a corporation has wound up.
  2. If a rectification order is issued by the Registrar before the corporation becomes the subject of a winding-up order, then the order is taken to have been made in relation to each person who was a director of the entity at or after the time the they provided the service. Work may include arranging and paying for services to be undertaken, should the director not have the licence, skills or qualifications to undertake the work themselves. [[51]](#footnote-51)
  3. Similarly, the bill includes provisions that enable the Registrar to make a rectification order after the corporation becomes the subject of a winding up order, or is deregistered. The Registrar may make a rectification order in relation to a person who was a director of the entity at, or after, the time the construction service was provided, as each director may have had the ability to influence the corporation in relation to the contravention.[[52]](#footnote-52)

#### Rectification orders – period in which an order may be issued and content of order

* 1. Currently, registrars may issue a rectification order to a licensee or authorise another party to undertake rectification work at a cost to the licensee. The Registrar cannot issue the rectification order if they are satisfied that the contravention happened, or ended, more than 10 years ago. If a major defect becomes apparent at the end of the 10-year period, there is often insufficient time for the Registrar to investigate the matter.
  2. The proposed amendments to section 35 of the Act allows for the Registrar to issue a rectification order after the 10-year period expires. This is applicable only if the Registrar is made aware of a relevant breach of construction legislation within 6 months before the 10-year period within which the order can be issued expires. A rectification order can also be sent if a notice of intention has been issued before the 10-year period expires. The Registrar would then be required to make the rectification order within one year of becoming aware of the contravention. [[53]](#footnote-53)

##### Clarification on content of rectification orders

* 1. Under section 38, the COLA states that the Registrar may make a rectification order requiring an entity to rectify work done; demolish a building or part of a building; and to start or finish work that has been, is being or was proposed to be provided. Currently, there is some confusion, or misinterpretation of the Act, which has led to a misunderstanding that rectification orders prescribed by the Registrar are required to specify details for how work is to be rectified.
  2. The bill includes a new provision under section 38 (2A) to clarify that rectification orders are not intended to set out what, or how, work must be carried out. [[54]](#footnote-54) The bill states that a rectification order is not required to detail how a piece of work required is to be completed to ensure it is compliant.[[55]](#footnote-55)

#### Licence cancellation after automatic suspension

* 1. Division 5.1 of the COLA provides for the automatic suspension of an individual and corporate licence. A licence becomes automatically suspended if an individual becomes bankrupt or personally insolvent, or if the corporation becomes the subject of a winding-up order, for example, or is found guilty of an offence that involves fraud, dishonesty or violence.[[56]](#footnote-56)
  2. Currently, if the Registrar is aware of the grounds for the automatic suspension of a licence, and the matter is not resolved, the suspension lasts for three months. If a licence renewal decision is not made in this time, the Registrar would make an application to the ACT Civil and Administrative Tribunal (ACAT) for an occupational discipline order to continue a suspension or cancel the licence. [[57]](#footnote-57)
  3. The bill revises powers so that if after three months the grounds for the suspension still exist, the Registrar may cancel a licence.[[58]](#footnote-58) There is no requirement for the Registrar to cancel the licensee’s licence, but the Registrar may do so if they deem it appropriate to do so. The decision to cancel a licence is reviewable.

#### Corporations and partnerships – management of nominees and construction services

* 1. A corporation or partnership must have a nominee to be eligible to hold a licence. The COLA states that the functions of a nominee are to supervise construction services or the corporation/partnership, and ensure they comply with the relevant Acts. [[59]](#footnote-59) This description has led to a misconception that the nominee has sole responsibility for work carried out under the licence. [[60]](#footnote-60)
  2. A system of duel responsibility is outlined in the COLA under section 31 (2) and section 31 (4), whereby the nominee supervises the work and is held accountable for failures, but the corporation/partnership is also held responsible for the nominee and their failures.
  3. The bill includes new provisions under section 28 (3) (f) which states that the corporation or partnership has a written record of policies and procedures for effectively managing and supervising each nominee. The policies and procedures should also clearly state the obligations of the corporation or partnership. These obligations should also include the arrangements for regular communication with the nominee regarding the construction services provided by the corporation/partnership.[[61]](#footnote-61)
  4. To further outline this dual responsibility, new section 28 states that a failure of the corporation or partnership to hold a record of policies and procedures is not a reasonable excuse to prevent the following in relation to the corporation or partnership licence:

1. The making of a rectification order;
2. The taking of occupational discipline;
3. The imposition of a condition on the licence under section 21 (Licence conditions);
4. The recording of demerit points under section 91;
5. The taking of any other action under the COLA or an operational Act.[[62]](#footnote-62)

#### Description of qualifications for licence eligibility

* 1. The new provisions made to sections 17 and 18 of the COLA are intended to clarify existing provisions relating to mandatory academic and non-academic qualifications. [[63]](#footnote-63)
  2. Section 18 (2) lists two examples that demonstrate how an applicant satisfies a requirement in relation to an application. The first requires the applicant to hold a qualification, and the second requires the applicant to pass a practical or written test.[[64]](#footnote-64) The language used in the Act implies that to hold a qualification, one is not required to pass a practical or written test. [[65]](#footnote-65)
  3. The bill removes these examples under section 18 (2) to avoid the implication that qualifications exclude other forms of assessments for eligibility.
  4. The bill also relocates the provisions under section 18 (2) relating to what an applicant may or must demonstrate in relation to an application for a licence to section 17.

#### Offences and Penalties

The Explanatory Statement of the bill details new offences in relation to:

* Building Act, new section 53A,for moving, altering, damaging, defacing, covering or preventing access to a sign displayed on or near a parcel of land in relation to a stop notice without the authorisation of the Construction Occupations Registrar; a strict liability offence with a maximum penalty of 50 penalty units.
* Building Act, new section 133A, for failing to comply with a direction given by a building inspector, with a maximum penalty of 50 penalty units.
* Construction Occupations (Licensing) Act, new section 26C, which provides that an executive officer is taken to commit an offence in certain circumstances if the corporation commits an offence against section 26B Notification requirements for licensees for failing to notify the Registrar of certain circumstances that would make a licensee ineligible to hold a licence, with a maximum penalty of 100penalty units.
* Construction Occupations (Licensing) Act, new section 47J, for failing to comply with a Magistrate’s Court order in relation to an enforceable rectification undertaking with a maximum penalty of 2000 penalty units.[[66]](#footnote-66)

## Issues raised in submissions

* 1. Given the limited timeframe for this inquiry this report will primarily highlight matters raised in submissions. These have been divided into four categories:
     + Request for consultation and analysis of the Bill’s impact;
     + Requests for additional measures;
     + Objections to proposed amendments; and
     + Drafting issues.

### Request for consultation and analysis of the Bill’s impact

* 1. Industry associations expressed concern at a lack of consultation. The Housing Industry Association (HIA) stated:

It is disappointing that while the government has clearly been considering the measures outlined in this Bill for some time – the Minister first foreshadowed these laws at the Legislative Assembly Economics and Tourism Committee inquiry into building quality some months ago – there was no discussion with industry or the community prior to the Bills introduction in the Assembly.[[67]](#footnote-67)

* 1. The Master Builders Association (MBA) wrote in their submission:

In order to achieve genuine and optimal reform, significant and lengthy engagement, including a formal consultation period of not less than three (3) months, is required on this lengthy and complex Bill.[[68]](#footnote-68)

* 1. The Property Council of Australia supported the call for a three month consultation period and raised concerns that the Bill contributed to a fragmented approach to building quality in Australia and that the Act should be approaching reform in a manner consistent with the position adopted by the Building Minister’s Forum (BMF).[[69]](#footnote-69)
  2. Regarding consistency with national approaches, the ACT Government’s submission stated:

The Building Ministers' Forum (BMF) has agreed to national work in relation to the 24 recommendations in the report, and to introduce consistent provisions where appropriate. States and Territories have not committed to abandoning their reform programs, or reducing the scope of their reforms down to the scope of the Building Confidence Report. It was agreed at the BMF that this would not be required and that no States or Territory should slow down its reform program. States and Territories already have many of the suggested features in their regulatory systems, and some, including the ACT, have existing reform programs addressing issues in the industry.[[70]](#footnote-70)

* 1. The HIA also suggested that a regulatory impact statement should be carried out as some amendments would have a direct cost impact including:
     + Provisions enabling certifiers to request a broader range of certificates;
     + The introduction of an effective requirement to have a regular professional assessment of compliance with section 26B of the *Construction Occupations (Licensing) Act 2004*, implement resulting recommendations and ensure employees, contractors and agents understand requirements under the section; and
     + The requirement that companies and partnerships have a written record of policies and procedures for effectively managing and supervising the nominee and their obligations in relation to their licence eligibility*.[[71]](#footnote-71)*
  2. The Housing Industry Association highlighted enforceable rectification undertakings, directions for building work from inspectors and engineers certificates from building certifiers as areas that would benefit from further consultation.[[72]](#footnote-72)

##### Committee Comment

* 1. The Committee is aware of great community interest in urgent reform but is also aware of concern from submitters at the very short time frame for consultation.

Recommendation 1

The Committee recommends that the ACT Government continue to consult with stakeholders and the wider community.

### Requests for additional measures

* 1. Some submissions, particularly those from the Owners Corporation Network and executive committees, were supportive of aspects of the bill but advocated for additional measures.
  2. The most common measure advocated for were additional controls on, or liability for, developers.[[73]](#footnote-73) The CFMEU advocated for similar personal liability for developers as the Bill places on the directors of licensed construction entities.[[74]](#footnote-74) Other measures proposed included but were not limited to:
     + Greater responsibility for architects and engineers;[[75]](#footnote-75)
     + A requirement to provide additional information on building company directors on a public register;[[76]](#footnote-76)
     + Stricter requirements to provide, and scrutiny of, construction drawings and plans and other documentation;[[77]](#footnote-77)
     + Project Trust Accounts;[[78]](#footnote-78)
     + Increased penalties for non-compliance;[[79]](#footnote-79)
     + Changes in the building certification process;[[80]](#footnote-80)
     + Introduction of a “fit and proper person: test for builder licensing;[[81]](#footnote-81)
     + Registration or licensing of engineers and other trades;[[82]](#footnote-82) and
     + Additional work on “phoenixing”.[[83]](#footnote-83)

##### Committee comment

* 1. These issues have also been raised before the Committee as part of its ongoing inquiry into building quality. The Committee intends to consider these suggestions and make recommendations to the government in its report on that inquiry. There has been no suggestion from the government that the bill is intended to be the final legislative response to building quality issues and the Committee sees no reason why the government could not advance further legislation should it decide to act on any of the above proposals.
  2. The Committee notes that there was support from those both in support of and opposed to the Bill for strong action against illegal “phoenixing” activity. The Committee notes that additional strengthening of the law in this area may require federal action.

### Objections to proposed amendments

* 1. The Housing Industry Association opposes the Bill and does not believe that it will achieve the stated objective and will instead:

inappropriately tar all those operating in the residential building industry with the same ‘dodgy’ brush, stifle innovation, entrepreneurialism and building activity in the ACT.[[84]](#footnote-84)

* 1. The HIA was supportive of action against illegal “phoenixing” but noted that this was rarely the reason that building companies became insolvent. The HIA noted the various risks in the industry around cost and time overruns, design issues, ongoing responsibility for defects and warranties and the risk of non-payment by third parties.[[85]](#footnote-85) The HIA expressed concern that “many of the proposals contained in the Bill, if adopted, will contribute to the risk of insolvencies in the residential building industry, rather than reduce them.”[[86]](#footnote-86) The HIA’s position is that the regulatory framework around insolvencies and director accountability is sound but that the funding and operational performance of regulators is key to ensuring its effectiveness.[[87]](#footnote-87)
  2. The MBA limited itself, due to the short timeframe, to commenting on director and executive officer liability.[[88]](#footnote-88) In addition to specific concerns outlined below, the MBA felt the proposals would be ineffective, have unintended consequences and failed to take into consideration existing powers to hold licenced builders and companies to account.[[89]](#footnote-89)
  3. The MBA objected to the use of criminal provisions as a way to try and drive behavioural change. It argued:

any criminal liability attaching to executive officers (as proposed in the new section 26B) be removed from the Bill. It is possible for monetary penalties to be imposed without the need for criminal liability, and this should be considered by the ACT Government. Consideration also should be given to the timeframe after which criminal liability would apply, noting that twenty-four (24) hours may not be an adequate timeframe for an individual.[[90]](#footnote-90)

* 1. The Property Council of Australia stated that it:

strongly believes that the current and existing compliance and enforcement provisions contained within both the Building Act 2004 and the Construction Occupations (Licencing) Act 2004 are adequate to hold licenced entities, nominees and directors to account for non-performance or non-compliance a timely way which protects consumers and the broader community.[[91]](#footnote-91)

#### Consistency with Corporations law and Director liability

* 1. The most contentious issue raised in submissions was the proposed extension of director liability.
  2. The Housing Industry Association believed that the measure was unnecessary, targeted those not engaged in wrongdoing, adds to the risks of running a small company and ignores existing powers. They also described the proposals as:

at odds with the fundamental principle of company law in Australia (and elsewhere) that a company is a separate legal person, independent of its directors and shareholders.[[92]](#footnote-92)

* 1. The MBA wrote in their submission that s56 of the Bill “fundamentally conflicts with the principles of an incorporated entity espoused in the Corporations Act 2001 (Cth), and unnecessarily and arbitrarily pierces the corporate veil.”[[93]](#footnote-93)
  2. The MBA noted that the proposed amendments were modelled on similar ones in Queensland but suggested that they had been taken in isolation from the licensing requirements of that state.[[94]](#footnote-94) It noted that directors are often paid by salary and may not be the beneficiaries of the company’s financial performance. The Property Council of Australia made a similar observation about the Queensland approach, noting the resourcing in Queensland devoted to prepare a scope of liability.[[95]](#footnote-95)
  3. Regarding s41 of the Bill, which imposes liability on directors with regard to rectification orders, the MBA suggested the provisions could be in conflict with multiple commonwealth acts and regulations. In addition the MBA claimed that the provisions denies directors procedural fairness, discourages new entrants and increases costs.[[96]](#footnote-96) The MBA noted that the provisions impose:

a separate and far onerous responsibility on one category of persons only: directors of a licensed building entity. This obligation and personal liability does not extend to directors of developers, subcontractors or other trades.[[97]](#footnote-97)

* 1. The MBA raised particular concern about the potential of the Bill to:

conflict and contradict the Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017 and the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018 and the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No. 2) 2018.[[98]](#footnote-98)

* 1. The Property Council of Australia drew attention to the *Personal Liability for Corporate Fault Reform Act* (Cth) *2012* and the principles it enacted to reduce the regulatory burden on company directors.[[99]](#footnote-99)
  2. The ACT Government’s submission highlighted s5E of the Commonwealth *Corporations Act 2001* which allows Territory corporation law to act concurrently:

This section demonstrates, clearly, that the Commonwealth Parliament did not intend to cover the field in the regulation of the duties of directors or other officers of corporations - indeed, the Corporations Law is expressed to avoid exclusion or limitation of the operation of any law of a State or Territory where that law imposes additional obligations or liabilities on a director or other officer of a corporation.[[100]](#footnote-100)

* 1. The ACT Government submission states that the:

provisions relating to director and executive officers apply only in certain circumstances and not to all liabilities of the relevant corporation. Rectification and occupational discipline powers may be exercised only where appropriate to do so, and include review mechanisms. The limitations on the time periods in which actions may be taken in relation to a director, are the same as those for licensees.

In exercising existing powers to enforce the laws, it has become apparent that specific powers relating to directors are necessary. When directors choose to deliberately avoid the corporation's obligations to building owners and wind up or fail to comply with court and other orders it undermines the integrity of the regulatory system and confidence in the industry itself. This has flow on effects to the economy and investment in the Territory. [[101]](#footnote-101)

##### Committee Comment

* 1. The Committee notes the statements in the ACT Government submission about the power of the Territory law to have effect concurrently with the *Corporations Act 2001* but also notes that submitters have raised issues related to other acts and subordinate legislation.

Recommendation 2

The Committee recommends that the Minister for Building Quality Improvement provide additional information to the Assembly on the interaction between the Bill and Commonwealth legislative instruments referred to by submitters including the *Personal Liability for Corporate Fault Reform Act* (Cth) *2012*, the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017*, the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018 and the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No. 2) 2018.

#### Definition of Executive Officer

* 1. The Bill extends criminal liability in certain circumstances to executive officers. The Bill defines executive officers as follows:

executive officer, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation’s management.[[102]](#footnote-102)

* 1. The HIA believes that this definition is too broad as it extends to administrative staff and should be replaced with the definition of officer under the *Corporations Act 2001*.[[103]](#footnote-103) The MBA is also of the view that the definition is too wide and suggested that the proposed definition could extend to agents such as lawyers and accountants.[[104]](#footnote-104)
  2. The ACT Law Society shares the view that the Bill’s definition is too wide and may encompass more people than intended.[[105]](#footnote-105)

##### Committee comment

* 1. The Committee notes the concerns of submitters about the possible scope of the definition of “executive officer” and believes it would be beneficial for the ACT government to clarify its position.

Recommendation 3

The Committee recommends that the Minister for Building Quality inform the Assembly whether administrative staff and agents are intended to fall within the definition of “executive officer” in s26 of the Bill.

#### Failure to notify

* 1. The Bill introduces penalties for executive officers who fail to take reasonable steps to prevent offences under the notification provisions of the *Construction Occupations (Licensing) Act 2004* s26B.[[106]](#footnote-106) In determining whether an executive officer took reasonable steps the court can look at whether the executive officer took action to ensure that the “corporation’s employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with section 26B”.[[107]](#footnote-107)
  2. The HIA stated in their submission:

It is also unclear why an executive officer of a licensee should be responsible for ensuring that ‘contractors’ understand and have a reasonable knowledge of the requirements in section 26B. Presumably, either a contractor is not subject to the requirements of section 26B or, if they are, they too would have their own responsibilities under proposed section 26C. HIA recommend that ‘contractor’ be deleted from section 26C(2)(c).[[108]](#footnote-108)

#### Expansion of the public register

* 1. The Bill introduces a number of matters to be included on the Public Register. The HIA stated that it saw no justification for these inclusions.[[109]](#footnote-109)

#### Procedure for supervision

* 1. The Bill introduces a requirement for corporations or partnerships to have a “written record of policies and procedures for effectively managing and supervising” nominees and the company’s obligations under the *Construction Occupations (Licensing) Act 2004*. The HIA argues that this is unnecessary red tape but if it is to be introduced companies should be given 12 months to comply.

### Drafting issues

* 1. In addition to concerns raised about whether certain amendments were desirable from a public policy standpoint, submitters raised issues where they believed that the Bill’s amendments had unintended consequences or were unclear. The issues outlined below are areas where the ACT Government may wish to consider amendments to clarify the Bill’s effects or provide explanations to improve the understanding of stakeholders.

#### Retrospectivity

* 1. The Explanatory Statement states that:

There are no retrospective provisions in this bill. All provisions commence on the day or after the notification day for the provisions. The bill does not make conduct that was not a criminal offence or contravention under Territory law when it was carried out in the past, a criminal offence or contravention under this law.

All provisions in the bill apply prospectively. However, this does not mean that certain new powers, such as making rectification orders, giving written directions, and taking occupation discipline cannot be exercised in relation to contraventions of relevant laws that occurred prior to the notification day. The bill does not preclude action in accordance with the new provisions in relation to existing licensees. These actions may be perceived to be retrospective, but they are not retrospective.[[110]](#footnote-110)

* 1. The HIA raised the concern that:

The measures outlined in the Bill can be applied to building work carried out prior to the commencement of the reforms. Such laws are likely to be inconsistent with the general legal principle that a person cannot be expected to comply with a law that was incapable of being known and therefore unable to be complied with. It is simply unfair (and bad policy) to expect businesses to suffer consequences which were not know at the time of carrying out construction services.[[111]](#footnote-111)

* 1. The MBA drew attention to s56 of the Bill which would make directors who were in that role at the time of their corporation committing an offence under the *Construction Occupations (Licensing) Act 2004*, liable to pay any penalty imposed. The MBA called for this section to only apply to fines issued subsequent to the passing of the Bill.[[112]](#footnote-112)
  2. The HIA’s submission states that the

proposed section 26C makes executive officers criminally liable for a failure to notify the registrar of certain matters. Currently licensees are held responsible for such a failure. This is a new offence that applies to a group of individuals who were previously not subject to such arrangements.[[113]](#footnote-113)

* 1. The ACT Law Society identified in its submission four clauses that it considers will take effect retrospectively. This includes the imposition upon directors of personal liability for penalties and debts incurred by a corporation prior to the enactment of the Bill.[[114]](#footnote-114)

##### Committee comment

* 1. The Committee notes the contrast between the Explanatory Statement and submitters on the possible retrospective effect of the Bill and believes that further explanation is desirable.

Recommendation 4

The Committee recommends that the Minister for Building Quality Improvement respond to the issues raised by submitters about the possible retrospective effect of the Bill.

#### Interaction with existing regulatory arrangements

* 1. The HIA’s submission states:

Nothing in the Bill prevents individuals, licensees, former licensees, companies and partnerships targeted simultaneous for the same contravention. It is entirely possible that the licensee, a company director and the company itself could all be issued with rectifications orders. There is nothing to explain how these powers would work in practice.[[115]](#footnote-115)

##### Committee comment

* 1. The Committee agrees that further clarity on this issue would be useful.

Recommendation 5

The Committee recommends that the Minister for Building Quality Improvement explain to the Assembly how rectification orders will be applied where there are multiple entities (eg licensees, directors and the company itself) against which they could be issued.

#### The Fidelity Fund and home warranty insurance

* 1. Under the *Building Act 2004* a licensed builder must obtain home warranty insurance or a fidelity fund certificate before commencing work over $12,000. This insurance provides a last resort completion guarantee for consumers and can be accessed when the builder dies, disappears or becomes insolvent.
  2. The HIA raised concerns about the interaction between insurance or fidelity fund claims and rectification orders:

Under the Bill, notwithstanding the insolvency of a company, a director could be the subject of a rectification order personally, while that same work could be the subject of a HWI claim. Where a HWI claim is made the director can be subject to action by the insurer to recoup any losses incurred. If the insurance policy has been triggered and a claim accepted, the insurer must act in accordance with the policy, i.e. rectify the works. How is a person to act in accordance with a rectification order under these circumstances? If the insurer does not act, they could be in breach of the policy, however if the director does not act on the rectification order, there are significant consequences.[[116]](#footnote-116)

* 1. The MBA noted that:

a fundamental principle of these schemes that all necessary steps against the builder are taken before a claim is made. As the ACT Government would have the ability to take action against directors for rectification orders made, and penalties imposed, it is crucial that clarification is included in the legislation about whether this action should be taken before a home warranty insurance or fidelity fund claim is made.[[117]](#footnote-117)

* 1. The HIA has suggested that director liability only apply to projects above 3 stories as they are not covered by HWI.

##### Committee comment

* 1. The Committee agrees that clarification in this area is desirable.

Recommendation 6

The Committee recommends that the ACT Government clarify how director liability will interact with home warranty insurance or fidelity fund claims.

#### Time frame for issuing rectification orders

* 1. One of the effects of the Bill is to further define the 10-year period in which rectification orders may be issued. The HIA claims that the definition creates a lack of clarity and any rectification work could extend the power to make rectification orders.[[118]](#footnote-118) The Property Council also believe that the ten-year period lacks clarity, particularly when combined with the absence of an obligation upon building inspectors to investigate causes before ordering rectification.[[119]](#footnote-119)

Recommendation 7

The Committee recommends that the ACT Government clarify whether the proposed new s35(6) of the *Construction Occupations (Licensing) Act 2004* could have the effect of extending the power to make rectification orders beyond 10 years from completion.

## Conclusion

* 1. Given the limited timeframe available to the Committee, there is material that this report cannot cover. While this report highlights some of the key issues raised by submitters, there are other matters raised in the submissions that would benefit from further consideration. It should also be acknowledged that while this report focussed on objections to certain aspects of the Bill, there were other provisions that were widely supported.
  2. The Committee thanks all those who made contributions to this inquiry and trusts that their efforts will result in improved legislation.

Mr Jeremy Hanson MLA

Chair

20 November 2019

## Annex A – recommendation supported by Mr Hanson MLA but not adopted by the Committee

**Recommendation**

The Committee recommends that the ACT Government consult with stakeholders on the Bill and that it be considered in detail in the Assembly in 2020.

## Appendix A – Submissions

|  |  |  |
| --- | --- | --- |
| **Submission Number** | **Submitter** | **Received** |
| 1 | Hes | 03-Nov-19 |
| 2 | Owners Corporation Network | 11-Nov-19 |
| 3 | ACT Government | 11-Nov-19 |
| 4 | French | 12-Nov-19 |
| 5 | Kingston Place | 12-Nov-19 |
| 6 | HIA | 13-Nov-19 |
| 7 | Crestwood | 13-Nov-19 |
| 8 | Master Builders Association | 13-Nov-19 |
| 9 | ACT Law Society | 13-Nov-19 |
| 10 | Inner South Canberra Community Council | 14-Nov-19 |
| 11 | CFMEU | 15-Nov-19 |
| 12 | Property Council | 15-Nov-19 |

1. Legislative Assembly for the ACT, Minutes of Proceedings No. 2, 13 December 2016, pp. 13-16, accessible at <http://www.parliament.act.gov.au/in-the-assembly/minutes_of_proceedings>. [↑](#footnote-ref-1)
2. *Minutes of Proceedings*, No 119, 24 October 2019, p. 1748. [↑](#footnote-ref-2)
3. Minutes of Proceedings No. 119, 24 October 2019, p. 1748. Accessed 6 November 2019 <<https://www.parliament.act.gov.au/__data/assets/pdf_file/0011/1435745/MoP119F2.pdf>> [↑](#footnote-ref-3)
4. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.2. [↑](#footnote-ref-4)
5. Building and Construction Legislation Amendment Bill 2019, s 3. [↑](#footnote-ref-5)
6. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.2. [↑](#footnote-ref-6)
7. Minister Ramsay, *Hansard Proof* (24 October 2019), p. 4318. Accessed 29 October 2019 < <http://www.hansard.act.gov.au/hansard/2019/pdfs/P191024.pdf>> [↑](#footnote-ref-7)
8. Building and Construction Legislation Amendment Bill 2019, *Architects Act 2004,* s 69A. [↑](#footnote-ref-8)
9. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.3. [↑](#footnote-ref-9)
10. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.3. [↑](#footnote-ref-10)
11. Building and Construction Legislation Amendment Bill 2019, *Architects Act 2004,* new section 75 (4) and (5). [↑](#footnote-ref-11)
12. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.3. [↑](#footnote-ref-12)
13. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.3. [↑](#footnote-ref-13)
14. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.4. [↑](#footnote-ref-14)
15. Building and Construction Legislation Amendment Bill 2019, Building Act 2004, d 7.2A. [↑](#footnote-ref-15)
16. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p.4. [↑](#footnote-ref-16)
17. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, pp. 5-6. [↑](#footnote-ref-17)
18. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, pp. 5-6. [↑](#footnote-ref-18)
19. Building and Construction Legislation Amendment Bill 2019, s 47 (1) (b). [↑](#footnote-ref-19)
20. Building and Construction Legislation Amendment Bill 2019, s 42 (1) (d). [↑](#footnote-ref-20)
21. Building and Construction Legislation Amendment Bill 2019, s 53A. [↑](#footnote-ref-21)
22. Building and Construction Legislation Amendment Bill 2019, s 59A. [↑](#footnote-ref-22)
23. Building and Construction Legislation Amendment Bill 2019, s 59A. [↑](#footnote-ref-23)
24. Building and Construction Legislation Amendment Bill 2019, s 59A. [↑](#footnote-ref-24)
25. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 8. [↑](#footnote-ref-25)
26. Building Act 2004, s 145. [↑](#footnote-ref-26)
27. Building and Construction Legislation Amendment Bill 2019, Building Act 2004, s145 (2) and (3). [↑](#footnote-ref-27)
28. Security of payments, ACT Government ‘Build, buy or renovate’, accessed 4 November 2019. < <https://www.planning.act.gov.au/build-buy-renovate/for-industry/industry-resources/security-of-payments>> [↑](#footnote-ref-28)
29. National Review of Security Payment Laws (National Review), p. xxix. Accessed 4 November 2019 < <https://www.ag.gov.au/industrial-relations/industrial-relations-publications/Documents/review_of_security_of_payment_laws_-_final_report_published.pdf>> [↑](#footnote-ref-29)
30. Building and Construction Industry (Security of Payment) Act 2009, s35. [↑](#footnote-ref-30)
31. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 9. [↑](#footnote-ref-31)
32. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, pp. 10 - 11. [↑](#footnote-ref-32)
33. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 13. [↑](#footnote-ref-33)
34. Building and Construction Legislation Amendment Bill 2019, s 107A (8). [↑](#footnote-ref-34)
35. Building and Construction Legislation Amendment Bill 2019, s 107A (9). [↑](#footnote-ref-35)
36. Building and Construction Legislation Amendment Bill 2019, s 19 and s 25. [↑](#footnote-ref-36)
37. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 14. [↑](#footnote-ref-37)
38. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 14. [↑](#footnote-ref-38)
39. *Improving the ACT Building Regulatory System, p. 71. Accessed 4 November 2019. <* <https://www.planning.act.gov.au/__data/assets/pdf_file/0005/898682/Improving-the-ACT-Building-Regulatory-System-Consultation-Report.pdf>> [↑](#footnote-ref-39)
40. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 15. [↑](#footnote-ref-40)
41. Construction Occupations (Licensing) Act 2004, d 5.1. [↑](#footnote-ref-41)
42. Construction Occupations (Licensing) Act 2004, s 26B. [↑](#footnote-ref-42)
43. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 15. [↑](#footnote-ref-43)
44. Building and Construction Legislation Amendment Bill 2019, s 26C. [↑](#footnote-ref-44)
45. Building and Construction Legislation Amendment Bill 2019, s 26C. [↑](#footnote-ref-45)
46. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 16. [↑](#footnote-ref-46)
47. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 16. [↑](#footnote-ref-47)
48. Building and Construction Legislation Amendment Bill 2019, s 126B. [↑](#footnote-ref-48)
49. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 16. [↑](#footnote-ref-49)
50. Building and Construction Legislation Amendment Bill 2019, s 58AA. [↑](#footnote-ref-50)
51. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 19. [↑](#footnote-ref-51)
52. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 19. [↑](#footnote-ref-52)
53. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 21. [↑](#footnote-ref-53)
54. Construction Occupations (Licensing) Act 2004, s38. [↑](#footnote-ref-54)
55. Building and Construction Legislation Amendment Bill 2019, s 38 (2A). [↑](#footnote-ref-55)
56. Construction Occupations (Licensing) Act 2004, d 5.1. [↑](#footnote-ref-56)
57. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 22. [↑](#footnote-ref-57)
58. Building and Construction Legislation Amendment Bill 2019, s 53A (1) (2). [↑](#footnote-ref-58)
59. Construction Occupations (Licensing) Act 2004, s31 (1). [↑](#footnote-ref-59)
60. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 23. [↑](#footnote-ref-60)
61. Building and Construction Legislation Amendment Bill 2019, s 28. [↑](#footnote-ref-61)
62. Building and Construction Legislation Amendment Bill 2019, s 28 (3A). [↑](#footnote-ref-62)
63. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 10. [↑](#footnote-ref-63)
64. Construction Occupations (Licensing) Act 2004, s18. [↑](#footnote-ref-64)
65. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 25. [↑](#footnote-ref-65)
66. Explanatory Statement, Building and Construction Legislation Amendment Bill 2019, p. 27. [↑](#footnote-ref-66)
67. *Submission 06*, Housing Industry Association, p. 5. [↑](#footnote-ref-67)
68. *Submission 07*, Master Builders Association, p. 1. [↑](#footnote-ref-68)
69. *Submission 12*, Property Council of Australia, covering letter. [↑](#footnote-ref-69)
70. *Submission 03*, ACT Government, p. 3. [↑](#footnote-ref-70)
71. *Submission 06*, Housing Industry Association, p. 5. [↑](#footnote-ref-71)
72. *Submission 06*, Housing Industry Association, pp. 15-16. [↑](#footnote-ref-72)
73. *Submission 02*, Owners Corporation Network; *Submission 07*, Executive Committee, UP 3872; *Submission 10*, Inner South Canberra Community Council, *Submission 11*,CFMEU. [↑](#footnote-ref-73)
74. *Submission 11*, CFMEU, p. 2. [↑](#footnote-ref-74)
75. *Submission 02*, Owners Corporation Network. [↑](#footnote-ref-75)
76. *Submission 02*, Owners Corporation Network; *Submission 07*, Executive Committee, UP 3872; *Submission 10*, Inner South Canberra Community Council. [↑](#footnote-ref-76)
77. *Submission 05*, Executive Committee, Kingston Place Stage 2; *Submission 07*, Executive Committee, UP 3872. [↑](#footnote-ref-77)
78. *Submission 11*, CFMEU, p. 2. [↑](#footnote-ref-78)
79. *Submission 05*, Executive Committee, Kingston Place Stage 2; *Submission 07*, Executive Committee, UP 3872. [↑](#footnote-ref-79)
80. *Submission 05*, Executive Committee, Kingston Place Stage 2; *Submission 07*, Executive Committee, UP 3872. [↑](#footnote-ref-80)
81. *Submission 06*, Housing Industry Association. [↑](#footnote-ref-81)
82. *Submission 05*, Executive Committee, Kingston Place Stage 2; *Submission 11*, CFMEU. [↑](#footnote-ref-82)
83. *Submission 07*, Executive Committee, UP 3872; *Submission 10*, Inner South Canberra Community Council. [↑](#footnote-ref-83)
84. *Submission 06*, Housing Industry Association, p. 5. [↑](#footnote-ref-84)
85. *Submission 06*, Housing Industry Association, p. 9. [↑](#footnote-ref-85)
86. *Submission 06*, Housing Industry Association, p. 10. [↑](#footnote-ref-86)
87. *Submission 06*, Housing Industry Association, p. 11, 13. [↑](#footnote-ref-87)
88. *Submission 07*, Master Builders Association, p. 1. [↑](#footnote-ref-88)
89. *Submission 07*, Master Builders Association, p. 1. [↑](#footnote-ref-89)
90. *Submission 07*, Master Builders Association, p. 10. [↑](#footnote-ref-90)
91. *Submission 12*, Property Council of Australia, p. 4. [↑](#footnote-ref-91)
92. *Submission 06*, Housing Industry Association, p. 4. [↑](#footnote-ref-92)
93. *Submission 07*, Master Builders Association, p. 4. [↑](#footnote-ref-93)
94. *Submission 07*, Master Builders Association, p. 4. [↑](#footnote-ref-94)
95. *Submission 12*, Property Council of Australia, p. 7. [↑](#footnote-ref-95)
96. *Submission 07*, Master Builders Association, p. 6. [↑](#footnote-ref-96)
97. *Submission 07*, Master Builders Association, p. 7. [↑](#footnote-ref-97)
98. *Submission 07*, Master Builders Association, p. 6. [↑](#footnote-ref-98)
99. *Submission 12*, Property Council of Australia, p. 7. [↑](#footnote-ref-99)
100. *Submission 03*, ACT Government, p. 2. [↑](#footnote-ref-100)
101. *Submission 03*, ACT Government, p. 3. [↑](#footnote-ref-101)
102. *Building and Construction Legislation Amendment Bill 2019*, s26. [↑](#footnote-ref-102)
103. *Submission 06*, Housing Industry Association, p. 14. [↑](#footnote-ref-103)
104. *Submission 07*, Master Builders Association, pp. 2-3. [↑](#footnote-ref-104)
105. *Submission 09*, ACT Law Society, p. 3. [↑](#footnote-ref-105)
106. *Building and Construction Legislation Amendment Bill 2019*, s 26. [↑](#footnote-ref-106)
107. *Building and Construction Legislation Amendment Bill 2019*, s 26. [↑](#footnote-ref-107)
108. *Submission 06*, Housing Industry Association, p. 14. [↑](#footnote-ref-108)
109. *Submission 06*, Housing Industry Association, p. 16. [↑](#footnote-ref-109)
110. *Explanatory Statement, Building and Construction Legislation Amendment Bill 2019*, p. 37. [↑](#footnote-ref-110)
111. *Submission 06*, Housing Industry Association, p. 4. [↑](#footnote-ref-111)
112. *Submission 07*, Master Builders Association, p. 4. [↑](#footnote-ref-112)
113. *Submission 06*, Housing Industry Association, p. 4. [↑](#footnote-ref-113)
114. *Submission 09*, ACT Law Society, pp. 1-3. [↑](#footnote-ref-114)
115. *Submission 06*, Housing Industry Association, p. 13. [↑](#footnote-ref-115)
116. *Submission 06*, Housing Industry Association, p. 13. [↑](#footnote-ref-116)
117. *Submission 06*, Master Builders Association, p. 9. [↑](#footnote-ref-117)
118. *Submission 06*, Housing Industry Association, pp. 14-15. [↑](#footnote-ref-118)
119. *Submission 12*, Property Council of Australia, p. 5. [↑](#footnote-ref-119)