



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
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Submission Cover Sheet

Inquiry into Property Developers Bill 2023

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Standing Committee on Planning, Transport and City Services

By email: LACommitteePTCS@parliament.act.au

RE: INQUIRY INTO THE PROPERTY DEVELOPERS BILL 2023

There are significant problems with construction in the ACT and this situation must stop. This Bill is a crucial element of improving building outcomes in the ACT.

The Property Developers Bill 2023 should be supported without amendment. The introduction of a licensing scheme for residential property developers in the ACT is a major step towards better assuring construction quality in the ACT.

Any Licensing Scheme needs rigorous administration and prompt action. The administration needs adequate funding to avoid unnecessary and costly delays in licencing, deregistration and facilitate the rectification of defects undertaken in a proper and timely manner.

Strong compliance of this new legislation, as well as existing legislation and regulations is essential if the desired objectives of the Act are to be achieved.

The cost of poor construction is exceptionally costly to the ACT economically, socially and health-wise. Those responsible for poor construction need to pay, not merely for rectification of defects but damages. And the regulator must perform its legislated functions properly.

I hope that the experience that I have summarised below provides sufficient explanation about the position that I urge the ACT Assembly to adopt.

I am a former owner of an apartment and member and Chair of the Executive Committee in a complex that experienced significant construction defects related predominantly to the structural integrity of the building and water ingress. Also, I was the head of the Australian Building Codes Board when the performance-based building code was introduced in 1996.

To provide a perspective of the extent of the problems we faced, our complex had over 250 props installed to assure the safety of the building.

At that time, the Executive Committee alleged that these defects resulted from poor construction practices and actions by the developer, construction company and building engineer.

The Executive Committee also alleged that the ACT Government failed to perform its legislative responsibilities to assure that the building complex was properly constructed.

Successive ACT Governments have considered numerous reports on the problems experienced in the construction industry; but little action to implement the recommendations of those reports has been taken.

The economic impacts on the ACT economy are debilitating but hidden from view because they are not properly identified. These impacts span the more than doubling of costs for construction, as work must be done twice and there is a degree of having to undo the defect before being able to rectify it. The special levies to fund procedures in the ACAT or the Courts impose significant financial burdens on owners. Further, the spending power of defect-affected owners in the ACT is reduced because owners must pay for the costs of bringing the culprits to account.

The harmful impacts that the building defects and attempts to have them rectified impact on the emotional and physical health and wellbeing of owners, including financial stress, who are decent people. For example: some owners use their life savings to purchase an apartment for their retirement; many are pensioners; and others experience illness. Also, the negative effects extend to family and friends.

The Bill's intent of making a criminal offence is critical to engendering compliance with the new law. Effectively, decisions taken by developers in the construction process, usually to reduce their costs and improve their profit margins, which lead to lesser outcomes (including non-compliance with legislation, regulations, codes and standards), can be described as fraud against citizens buyers.

Also, Section 6(1)(d) – *“providing for monitoring and enforcement of compliance”* - is essential to the objectives of the Act being achieved.

In this context, the ACT Government needs a special mention in the badly performing ACT construction sector. There is a good construction framework that should provide home and apartment buyers with a well-founded assurance of good construction. The problem is that the existence of the well-founded construction framework is given lip service during the construction process. The ACT Government building area has been an ineffective regulator.

The ACT Government has been complicit with developers and builders in failing their responsibilities to owners to construct buildings that meet the minimum requirements of building regulations, codes and standards. In our view, the ACT Regulator failed to reasonably assure itself about the compliance of the building in issuing the Certificate of Occupancy and Use (COU). Succinctly, based on our experience, the issuing of a COU for our building can only have been a 'rubber stamp' process, which did not meet duty-of-care standards.

Similarly, in attempting to get the defects rectified, the builder attempted to deny their existence and the ACT Government had to be dragged into accepting the defects existed. It is worth noting that the Executive Committee was so concerned about the initial engineering reports that it received, that it had them independently peer reviewed. The peer reviews supported the findings of the initial reports.

I respectfully suggest that the Regulator cannot be a friend of the industry. It must be prepared to enforce laws and regulations, particularly where there is systemic non-compliance. It has a responsibility to protect the vulnerable, in this case prospective owners.

Similarly, Ministers and senior public servants should not support developers and builders with histories of constructing shoddy residential buildings. They award them new construction projects. They provide photo opportunities. These actions condone disregard of ACT Government building and construction laws and regulations.

This legislation is a significant first step to make a positive difference for future residential developments in the ACT. Hopefully, fully implemented it will reduce incidents of decent people being fleeced by greedy developers and builders, who are empowered by an inept administration of the construction regulatory system.