

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Building Quality Improvement)

Building and Construction Legislation Amendment Bill 2020

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(As presented)

(Minister for Building Quality Improvement)

Building and Construction Legislation Amendment Bill 2020

A Bill for

An Act to amend legislation about building and construction

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Building and Construction Legislation Amendment Act*
4 *2020*.

5 **2 Commencement**

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

- 8 • sections 3 and 4
9 • part 3
10 • section 18.

11 *Note* The naming and commencement provisions automatically commence on
12 the notification day (see [Legislation Act](#), s 75 (1)).

13 (2) The remaining provisions commence on a day fixed by the Minister
14 by written notice.

15 *Note* A single day or time may be fixed, or different days or times may be
16 fixed, for the commencement of different provisions (see [Legislation Act](#),
17 s 77 (1)).

18 (3) If a provision of this Act has not commenced within 2 years beginning
19 on this Act's notification day, it automatically commences on the first
20 day after that period.

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

23 **3 Legislation amended**

24 This Act amends the following legislation:

- 25 • [Building Act 2004](#)
26 • [Building \(General\) Regulation 2008](#)
27 • [Construction Occupations \(Licensing\) Act 2004](#).

1 Part 2 Building Act 2004

2 4 Certificates of occupancy 3 Section 69 (4), new note

4 *insert*

5 *Note 2* Unless prescribed by regulation, the construction occupations registrar is
6 not required to conduct a physical inspection of a building or a detailed
7 audit of the approved plans or other submitted documents in deciding
8 whether to issue a certificate of occupancy.

9 5 New part 6A

10 *insert*

11 Part 6A Residential building disputes

12 Division 6A.1 Objects and important concepts

13 127A Definitions—pt 6A

14 In this part:

15 *building practitioner* means an entity—

- 16 (a) that holds, or has held, a builders licence; or
- 17 (b) that is a party to a residential building work contract with
18 obligations under the contract to—
- 19 (i) carry out, or arrange for someone else to carry out,
20 residential building work; or
- 21 (ii) sell a residential building, or part of a residential building;
22 or
- 23 (c) prescribed by regulation.

24 *developer*—see the *Unit Titles Act 2001*, dictionary.

1 ***related building activity*** means work in relation to building 1 or more
2 of the following structures in connection with a residential building:

- 3 (a) a driveway;
- 4 (b) external paving;
- 5 (c) a swimming pool;
- 6 (d) a structure prescribed by regulation.

7 ***residential building***—see section 84.

8 ***residential building work***—see section 84.

9 ***residential building work contract***—see section 89B (1).

10 **127B Meaning of *residential building dispute*—pt 6A**

11 In this part:

12 ***residential building dispute*** means a dispute, about a residential
13 building matter, between—

- 14 (a) a building owner; and
- 15 (b) either—
- 16 (i) a building practitioner; or
- 17 (ii) a developer.

18 **127C Meaning of *residential building matter*—pt 6A**

19 In this part:

20 ***residential building matter***—

- 21 (a) means any matter in relation to—
- 22 (i) a residential building work contract; or
- 23 (ii) the carrying out of residential building work; or

- 1 (iii) the carrying out of a related building activity; and
- 2 (b) includes any of the following:
- 3 (i) breach of a warranty set out in division 6.2 (Statutory
- 4 warranties);
- 5 (ii) contravention of section 42 (1) (a) to (d) (which are about
- 6 requirements for carrying out building work);
- 7 (iii) failure to maintain the standard or quality of building work
- 8 stated in a residential building work contract;
- 9 (iv) failure to complete the residential building work required
- 10 under a residential building work contract in accordance
- 11 with the terms of the contract;
- 12 (v) failure to pay for residential building work carried out
- 13 under a residential building work contract;
- 14 (vi) a matter prescribed by regulation; but
- 15 (c) does not include a matter prescribed by regulation to not be a
- 16 residential building matter.

17 **127D Residential building dispute resolution process—purpose**

- 18 (1) The purpose of a dispute resolution process under this part is to enable
- 19 parties to a residential building dispute to do 1 or more of the
- 20 following:
- 21 (a) resolve a residential building dispute;
- 22 (b) agree an amount to be paid to a party or the basis upon which an
- 23 amount is payable to a party;
- 24 (c) if a residential building dispute is not resolved—narrow the
- 25 matters in dispute and, as far as practicable, agree on the future
- 26 progress of the dispute.

- 1 (2) Parties engaged in a dispute resolution process must make a genuine
2 effort to resolve the dispute.

3 **127E Prescription of dispute resolution processes**

4 A regulation may prescribe the following:

- 5 (a) kinds of dispute resolution for residential building disputes,
6 including requirements for a form of dispute resolution;
- 7 (b) a kind of dispute resolution that may or must be used for a
8 residential building dispute about a particular residential
9 building matter;
- 10 (c) particular residential building disputes that must not be resolved
11 by a dispute resolution process under this part.

12 **Division 6A.2 Residential building dispute**
13 **administrator**

14 **127F Residential building dispute administrator—appointment**

- 15 (1) The director-general may appoint a public servant as the Residential
16 Building Dispute Administrator to oversee dispute resolution in
17 relation to residential building disputes (the *administrator*).

18 *Note 1* For the making of appointments (including acting appointments), see the
19 [Legislation Act](#), pt 19.3.

20 *Note 2* In particular, a person may be appointed for a particular provision of a
21 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
22 naming a person or nominating the occupant of a position (see [Legislation](#)
23 [Act](#), s 207).

- 24 (2) However, the director-general—

- 25 (a) may only appoint a person as administrator if satisfied that the
26 person—
- 27 (i) is qualified in alternative dispute resolution and mediation;
28 and

1 (ii) has an understanding of disputes in the building and
2 construction industry; and

3 (iii) satisfies any requirement prescribed by regulation; but

4 (b) must not appoint a person as administrator if the person is
5 appointed to a statutory office prescribed by regulation.

6 (3) The appointment must not be for longer than 5 years.

7 *Note* A person may be reappointed to a position if the person is eligible to be
8 appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1,
9 def *appoint*).

10 **127G Dispute resolution officers**

11 (1) The administrator may appoint a public servant to be a dispute
12 resolution officer for this Act.

13 *Note 1* For the making of appointments (including acting appointments), see the
14 [Legislation Act](#), pt 19.3.

15 *Note 2* In particular, an appointment may be made by naming a person or
16 nominating the occupant of a position (see [Legislation Act](#), s 207).

17 (2) A person must not be appointed under this section unless the
18 administrator is satisfied that the person is competent to exercise the
19 functions of a dispute resolution officer under this Act.

20 (3) A regulation may prescribe matters that the administrator must
21 consider in relation to a person's competency for subsection (2).

22 (4) A dispute resolution officer has the functions of a dispute resolution
23 officer under this Act and any other function given to the officer by
24 the administrator.

25 (5) A dispute resolution officer must exercise the officer's functions in
26 accordance with—

27 (a) the instrument of appointment; and

28 (b) any directions the administrator gives the officer.

1 **127H Technical building assessors**

2 (1) The administrator may appoint a person to be a technical building
3 assessor.

4 *Note 1* For the making of appointments (including acting appointments), see the
5 [Legislation Act](#), pt 19.3.

6 *Note 2* In particular, an appointment may be made by naming a person or
7 nominating the occupant of a position (see [Legislation Act](#), s 207).

8 (2) A person must not be appointed under this section unless the
9 administrator is satisfied that the person is competent to exercise the
10 functions of a technical building assessor under this Act.

11 (3) A regulation may prescribe matters that the administrator must
12 consider in relation to a person's competency for subsection (2).

13 **127I Consultants and contractors**

14 (1) The administrator may engage consultants and contractors.

15 (2) However, the administrator must not enter into a contract of
16 employment under this section.

17 **127J Other arrangements for staff and facilities**

18 The administrator may arrange with the head of service to use the
19 services of a public servant or territory facilities.

20 *Note* The head of service may delegate powers in relation to the management
21 of public servants to a public servant or another person (see [Public Sector
22 Management Act 1994](#), s 18).

23 **127K Delegation by administrator**

24 The administrator may delegate the administrator's functions under
25 this Act or another territory law to a public servant.

26 *Note* For the making of delegations and the exercise of delegated functions,
27 see the [Legislation Act](#), pt 19.4.

1 **127L Protection from liability**

2 The administrator, dispute resolution officers and technical building
3 assessors are not personally liable for anything done or omitted to be
4 done honestly and without recklessness—

- 5 (a) in exercising a function under this Act; or
6 (b) in the reasonable belief that the act or omission was in the
7 exercise of a function under this Act.

8 **Division 6A.3 Dispute resolution process**

9 **127M Referral of dispute**

- 10 (1) A residential building dispute may be referred to the administrator
11 by—
12 (a) the Australian Capital Territory Construction Occupations
13 Registrar under the *Construction Occupations (Licensing)*
14 *Act 2004*, section 123 (1) (ba); or
15 (b) the Commissioner for Fair Trading under the *Fair Trading*
16 *(Australian Consumer Law) Act 1992*.
17 (2) The administrator may refuse a referral if satisfied, on reasonable
18 grounds, that the dispute is more appropriately addressed by another
19 entity.

20 **127N Lodgment of dispute**

- 21 (1) A party to a residential building dispute may, in writing, lodge a
22 dispute with the administrator for resolution.
23 (2) The lodging party must—
24 (a) state their name and address; and
25 (b) identify each party to the dispute; and
26 (c) state each residential building matter in dispute; and

1 (d) include any information prescribed by regulation.

2 **Example—par (b)**

3 providing a business name and ABN or ACN number

4 *Note 1* The [Legislation Act](#), s 170 deals with the application of the privilege
5 against self-incrimination.

6 *Note 2* It is an offence to make a false or misleading statement, give false or
7 misleading information or produce a false or misleading document (see
8 [Criminal Code](#), pt 3.4).

9 (3) The administrator may ask the lodging party to give the administrator,
10 within a stated reasonable time, information about any party to the
11 dispute or a residential building matter in dispute that the
12 administrator reasonably needs to understand the dispute.

13 (4) The administrator may accept a dispute as lodged even if the lodging
14 party does not comply with subsection (2), if the administrator is
15 satisfied it is reasonable in all the circumstances to do so.

16 **127O Administrator may dismiss lodgement in certain**
17 **circumstances**

18 (1) The administrator may decide not to undertake dispute resolution in
19 relation to a dispute referred to or lodged with the administrator if
20 1 or more of the following applies:

21 (a) the lodging party does not comply with a requirement in the
22 request made under section 127N (3);

23 (b) the administrator is satisfied the lodging party failed, without
24 reasonable excuse, to take reasonable steps to resolve the dispute
25 before lodgement;

26 (c) the dispute relates to a security of payment dispute under the
27 [Building and Construction Industry \(Security of Payment\)](#)
28 [Act 2009](#);

29 (d) the dispute relates to a decision of an authorised insurer or
30 fidelity fund manager under this Act;

- 1 (e) the administrator believes on reasonable grounds there is no
2 reasonable likelihood of the dispute being settled by dispute
3 resolution;
- 4 (f) the dispute is frivolous, vexatious, or was not made in good
5 faith;
- 6 (g) the lodging party has, in writing, withdrawn the dispute;
- 7 (h) the dispute has been resolved.
- 8 (2) However, the administrator must dismiss a dispute if the dispute is a
9 kind prescribed by regulation as a residential building dispute that
10 must not be resolved by dispute resolution.
- 11 (3) If the administrator dismisses a dispute, the administrator must give
12 the lodging party a statement of reasons for the decision.
- 13 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
14 [Act](#), s 179.

15 **127P Administrator may refer dispute in certain circumstances**

- 16 (1) The administrator may refer a residential building dispute to another
17 entity if the administrator believes on reasonable grounds the dispute
18 is more appropriately addressed by the other entity.
- 19 (2) However, the administrator may only refer a residential building
20 dispute lodged with the administrator under section 127N with the
21 written agreement of the party who lodged the dispute.

22 **127Q Commencing dispute resolution**

- 23 (1) This section applies to a residential building dispute if the
24 administrator does not dismiss the dispute under section 127O or refer
25 the dispute under section 127P.
- 26 (2) The administrator must decide—
- 27 (a) the kind of dispute resolution process to be undertaken; and

- 1 (b) the dispute resolution officer to conduct the dispute resolution
2 process.
- 3 (3) The administrator must tell each party to the residential building
4 dispute, in writing—
- 5 (a) the parties to the dispute; and
- 6 (b) the dispute resolution officer who will conduct the dispute
7 resolution process; and
- 8 (c) the kind of dispute resolution process that will be undertaken;
9 and
- 10 (d) the expectation on parties participating in that kind of dispute
11 resolution process.

12 **127R Information required for dispute resolution**

- 13 (1) A dispute resolution officer may ask a party to a residential building
14 dispute to give the officer, within a stated reasonable time,
15 information about a residential building matter in dispute that the
16 officer reasonably needs to conduct the dispute resolution process.
- 17 (2) The administrator may, in writing, direct a technical building assessor
18 to determine 1 or more of the following in relation to the residential
19 building dispute:
- 20 (a) if residential building work or a related building activity has
21 been carried out;
- 22 (b) if residential building work or a related building activity is
23 defective or incomplete;
- 24 (c) if residential building work or a related building activity satisfies
25 the conditions set for payment of an amount under this Act or a
26 residential building work contract;
- 27 (d) a matter prescribed by regulation.

- 1 (3) A technical building assessor must give a dispute resolution officer a
2 report that details anything determined for subsection (2).

3 **127S Record of resolution**

- 4 (1) This section applies if a residential building dispute is resolved.
- 5 (2) The dispute resolution officer must prepare a written record of the
6 resolution agreed by the parties setting out—
- 7 (a) the terms of agreement; and
- 8 (b) any action a party to the dispute has agreed to undertake and the
9 time within which the action must be undertaken.
- 10 (3) The record of resolution is confirmed when each party to the
11 residential building dispute and the administrator signs the record.

12 **127T Dispute resolution—confidentiality**

- 13 (1) A person exercising a function under this part and the parties to a
14 residential building dispute must not disclose to anyone not involved
15 in the dispute resolution process any information or document
16 produced during the dispute resolution process unless—
- 17 (a) required by law to make the disclosure; or
- 18 (b) each party and the dispute resolution officer agree, in writing, to
19 the disclosure.
- 20 (2) Any information disclosed to the administrator, a dispute resolution
21 officer or a building dispute assessor by a party in private must be
22 treated by the officer as confidential, unless the party making the
23 disclosure expressly states otherwise.

1 **Division 6A.4** **Dispute resolution trust account**

2 **127U** **Dispute resolution trust establishment**

3 The director-general may keep an account (a *dispute resolution trust*
4 *account*) for this part.

5 **127V** **Interest on amounts in trust account**

6 (1) This section applies to interest from the investment of any amount
7 paid to the credit of the dispute resolution trust account under this
8 part.

9 (2) The director-general must pay the interest into the dispute resolution
10 trust account.

11 (3) Interest paid into the dispute resolution trust account may be applied
12 for the following purposes:

13 (a) providing dispute resolution services for residential building
14 matter disputes;

15 (b) reimbursing the costs incurred by the administrator in
16 instituting, defending or taking over proceedings in relation to
17 residential building matter disputes;

18 (c) reimbursing the Territory the cost of administering this part;

19 (d) any other purpose prescribed by regulation.

20 **6** **Dictionary, note 2**

21 *insert*

- 22 • statutory office-holder

7 Dictionary, new definitions

insert

administrator—see section 127F (1).

building practitioner, for part 6A (Residential building disputes)—see section 127A.

developer, for part 6A (Residential building disputes)—see section 127A.

dispute resolution officer means a person appointed under section 127G to be a dispute resolution officer.

related building activity, for part 6A (Residential building disputes)—see section 127A.

8 Dictionary, definition of *residential building*

substitute

residential building—

(a) for part 6 (Residential buildings—statutory warranties, standard conditions, insurance and fidelity certificates)—see section 84; and

(b) for part 6A (Residential building disputes)—see section 127A.

9 Dictionary, new definitions

insert

residential building dispute, for part 6A (Residential building disputes)—see section 127B.

residential building matter, for part 6A (Residential building disputes)—see section 127C.

- 1 **10 Dictionary, definitions of *residential building work* and**
2 ***residential building work contract***
- 3 *substitute*
- 4 ***residential building work***—
- 5 (a) for part 6 (Residential buildings—statutory warranties, standard
6 conditions, insurance and fidelity certificates)—see section 84;
7 and
- 8 (b) for part 6A (Residential building disputes)—see section 127A.
- 9 ***residential building work contract***—
- 10 (a) for division 6.2A (Standard conditions)—see section 89B; and
11 (b) for part 6A (Residential building disputes)—see section 127A.
- 12 **11 Dictionary, new definition of *technical building assessor***
- 13 *insert*
- 14 ***technical building assessor*** means a person appointed under
15 section 127H to be a technical building assessor.

1 **Part 3** **Building (General)**
2 **Regulation 2008**

3 **12** **General requirements for application for building**
4 **approvals—Act, s 26 (3)**
5 **Section 11 (1) (d)**

6 *omit*

7 an alternative solution

8 *substitute*

9 a performance solution

10 **13** **Section 11 (1) (d) (ii)**

11 *omit*

12 the alternative solution

13 *substitute*

14 the performance solution

15 **14** **Building erection and alteration—Act, s 26 (3)**
16 **Section 12 (2) (b) note and (2) (e) note**

17 *omit*

18 an alternative solution

19 *substitute*

20 a performance solution

1 **15 General requirements for plans—Act, s 27 (1) (a)**
2 **Section 16 (2) (h)**

3 *omit*
4 an alternative solution
5 *substitute*
6 a performance solution

7 **16 Section 16 (2) (h)**

8 *omit*
9 the alternative solution
10 *substitute*
11 the performance solution

12 **17 Referral of building approval applications to particular**
13 **entities**
14 **Schedule 2, part 2.2, item 6, column 2**

15 *omit*
16 alternative building solution
17 *substitute*
18 performance solution

1 **Part 4** **Construction Occupations**
2 **(Licensing) Act 2004**

3 **18** **New section 104A**

4 *insert*

5 **104A** **Ministerial statement of expectations**

- 6 (1) The Minister may—
- 7 (a) make a statement setting out the Minister's expectations in
8 relation to the registrar's functions (a *statement of*
9 *expectations*); and
- 10 (b) give the statement of expectations to the registrar.
- 11 (2) Before making a statement of expectations, the Minister must consult
12 the registrar.
- 13 (3) The statement of expectations—
- 14 (a) may—
- 15 (i) relate to any function of the registrar; and
- 16 (ii) include any information the Minister believes will assist
17 the registrar in responding to the statement of
18 expectations; but
- 19 (b) must not include a direction about—
- 20 (i) the way in which a function is exercised; or
- 21 (ii) the exercise of a function in relation to an individual or
22 class of person.
- 23 (4) A statement of expectations is a notifiable instrument.

24 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

- 1 (5) The registrar must, within 6 sitting days after the reporting period,
2 give a report to the Minister that details—
- 3 (a) any action taken by the registrar to respond to the statement of
4 expectations in effect during the reporting year; and
- 5 (b) if no action, or only part action, was taken in response to the
6 statement of expectations during the reporting year—reasons
7 why no action, or only part action, was taken in response to the
8 statement of expectations.

- 9 (6) In this section:

10 *Minister* means the Minister responsible for the regulatory functions
11 of the registrar (however described) under the administrative
12 arrangements under the *Public Sector Management Act 1994*,
13 section 13.

14 *reporting period*, for a statement of expectations, means the
15 12-month period after the day the Minister gives the registrar the
16 statement of expectations.

17 **19 Action after investigating complaint**
18 **New section 123 (1) (ba)**

19 *insert*

- 20 (ba) if satisfied that the subject of the complaint is a residential
21 building dispute—refer the complaint to the residential building
22 dispute administrator; or

23 **20 Section 123 (3) and note**

24 *substitute*

- 25 (3) The registrar refers the complaint to an entity mentioned in
26 subsection (1) (ba) or (c) by giving the entity—
- 27 (a) a copy of the complaint or summary of the information provided
28 in the complaint; and

1 (b) any information relating to the complaint that the registrar
2 considers may be helpful to the entity; and

3 (c) a statement about why the registrar considers that the entity is
4 more appropriate to deal with the complaint than the registrar.

5 *Note* The registrar need not notify the complainant under subsection (1) if the
6 complainant has withdrawn the complaint (see s 119).

7 (4) In this section:

8 *residential building dispute*—see the *Building Act 2004*,
9 section 127B.

10 *residential building dispute administrator* means the Residential
11 Building Dispute Administrator appointed under the *Building*
12 *Act 2004*, section 127F.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 May 2020.

2 Notification

Notified under the [Legislation Act](#) on 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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