

2023

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Sustainable Building and Construction)

# Property Developers Bill 2023

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J2023-370

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THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Sustainable Building and Construction)

## Property Developers Bill 2023

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### A Bill for

An Act to regulate residential development activities by property developers, and for other purposes

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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 *Property Developers Act 2023*.

4 **2 Commencement**

5 (1) This Act (other than the licence requirement provisions) commences  
6 on a day fixed by the Minister by written notice.

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

9 *Note 2* A single day or time may be fixed, or different days or times may be  
10 fixed, for the commencement of different provisions (see [Legislation Act](#),  
11 s 77 (1)).

12 (2) If this Act (other than the licence requirement provisions) has not  
13 commenced within 2 years beginning on its notification day, it  
14 automatically commences on the first day after that period.

15 (3) The licence requirement provisions commence on a day fixed by the  
16 Minister by written notice.

17 (4) If the licence requirement provisions have not commenced within  
18 3 years beginning on this Act's notification day, they automatically  
19 commence on the first day after that period.

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

22 (6) In this section:

23 *licence requirement provisions* means the following provisions in  
24 schedule 2:

25 (a) amendments 2.1 to 2.4;

26 (b) amendment 2.6;

27 (c) parts 2.2 to 2.5.

1   **3       Dictionary**

2       The dictionary at the end of this Act is part of this Act.

3       *Note 1*   The dictionary at the end of this Act defines certain terms used in this  
4               Act, and includes references (*signpost definitions*) to other terms defined  
5               elsewhere.

6               For example, the signpost definition ‘*building work*—see the *Building*  
7               *Act 2004*, section 6.’ means that the term ‘building work’ is defined in  
8               that section and the definition applies to this Act.

9       *Note 2*   A definition in the dictionary (including a signpost definition) applies to  
10               the entire Act unless the definition, or another provision of the Act,  
11               provides otherwise or the contrary intention otherwise appears (see  
12               *Legislation Act*, s 155 and s 156 (1)).

13   **4       Notes**

14       A note included in this Act is explanatory and is not part of this Act.

15   **5       Offences against Act—application of Criminal Code etc**

16       Other legislation applies in relation to offences against this Act.

17       *Note 1*   *Criminal Code*  
18               The *Criminal Code*, ch 2 applies to all offences against this Act (see  
19               Code, pt 2.1).

20               The chapter sets out the general principles of criminal responsibility  
21               (including burdens of proof and general defences), and defines terms used  
22               for offences to which the Code applies (eg *conduct*, *intention*,  
23               *recklessness* and *strict liability*).

24       *Note 2*   *Penalty units*  
25               The *Legislation Act*, s 133 deals with the meaning of offence penalties

- 1     **6           Objects of Act**
- 2           (1) The objects of this Act are to—
- 3               (a) protect the public by ensuring—
- 4                     (i) residential development activities are undertaken by
- 5                         property developers that are competent and have the
- 6                         capacity to undertake those activities; and
- 7                     (ii) property developers are responsible and accountable for
- 8                         the residential development activities they undertake; and
- 9               (b) promote public confidence in the standard of residential
- 10                  development activities undertaken by property developers.
- 11          (2) The objects are to be achieved by—
- 12               (a) establishing a licensing scheme that ensures certain residential
- 13                  development activities are only undertaken by licensed property
- 14                  developers; and
- 15               (b) imposing standards of practice and competency for the
- 16                  residential development activities undertaken by licensed
- 17                  property developers; and
- 18               (c) requiring property developers to rectify serious defects, or
- 19                  possible serious defects, in residential buildings they arrange to
- 20                  be constructed; and
- 21               (d) providing for the monitoring and enforcement of compliance
- 22                  with this Act.
- 23           *Note*     Other legislation applies to residential development activities to help
- 24                     achieve this Act’s objects and to ensure property developers are
- 25                     accountable for the residential development activities they undertake. See
- 26                     the following:
- 27                         • [Building Act 2004](#)
- 28                         • [Civil Law \(Sale of Residential Property\) Act 2003](#)
- 29                         • [Planning Act 2023](#)
- 30                         • [Unit Titles \(Management\) Act 2011](#).

## 1 **Part 2** Registrar and deputy registrars

### 2 **7 Appointment of Property Developer Registrar**

- 3 (1) The director-general must appoint a public servant as the Australian  
4 Capital Territory Property Developer Registrar (the *registrar*).

5 *Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

- 6 (2) A person must be appointed for a term not longer than 5 years.  
7 (3) An appointment is a notifiable instrument.

### 8 **8 Delegation by registrar**

9 The registrar may delegate their functions under this Act or another  
10 territory law to a public servant.

11 *Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

### 12 **9 Appointment of deputy registrars**

- 13 (1) The registrar may appoint a public servant as a deputy registrar.  
14 (2) A person must be appointed for a term not longer than 5 years.  
15 (3) An appointment is a notifiable instrument.

### 16 **10 Functions of deputy registrars**

- 17 (1) A deputy registrar may exercise the functions of the registrar other  
18 than the power to delegate a function.  
19 (2) However, the registrar may—  
20 (a) in writing, limit the functions a deputy registrar may exercise;  
21 and  
22 (b) give the deputy registrar written directions about the exercise of  
23 a function.

**Part 2** Registrar and deputy registrars

Section 10

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- 1 (3) If the registrar gives a deputy registrar written directions about the  
2 exercise of a function, the deputy registrar may only exercise the  
3 function in accordance with the directions.

1 **Part 3** **Licensing of property developers**

2 **Division 3.1** **Preliminary**

3 **11 Purpose—pt 3**

4 The purpose of this part is to allow a person to apply for and to obtain  
5 a licence to do the following:

- 6 (a) apply for development approval in relation to certain residential  
7 building developments under the *Planning Act 2023*,  
8 section 162A;
- 9 (b) apply for a building approval, building commencement notice  
10 or certificate of occupancy in relation to certain residential  
11 building work under the *Building Act 2004*, section 27 (1) (ca),  
12 section 28AA and section 69 (1) (c);
- 13 (c) sell, or advertise the sale of, residential property off-the-plan  
14 under the *Civil Law (Sale of Residential Property) Act 2003*,  
15 division 2A.2.

16 **12 Meaning of *associated entity* and *key person***

17 (1) In this Act:

18 *associated entity*, of a corporation, means—

- 19 (a) a related corporation; or  
20 (b) an entity prescribed by regulation.

21 *key person*, for a corporation, means—

- 22 (a) a director or secretary of—  
23 (i) the corporation; or  
24 (ii) an associated entity of the corporation; and

- 1 (b) an individual who is in a position to control or significantly  
2 influence the corporation's or an associated entity's conduct and  
3 includes an individual who—
- 4 (i) directly or indirectly owns, holds or controls 25% or more  
5 of the shares in either corporation, or 25% or more of a  
6 class of shares in either corporation; or
- 7 (ii) gives instructions to an officer of either corporation and the  
8 officer generally acts on those instructions; or
- 9 (iii) makes, or participates in making, decisions that affect the  
10 whole or a substantial part of either corporation's business  
11 or financial standing; or
- 12 (iv) engages in conduct or makes representations that would  
13 cause someone else to reasonably believe the person  
14 controls, or substantially influences, either corporation's  
15 business.
- 16 (2) However, a *key person* for a corporation, does not include—
- 17 (a) a professional, only because the advice given by the professional  
18 influences the corporation's conduct; or
- 19 (b) a regulator, only because the regulator, when exercising a  
20 function under an Act or other law, influences the corporation's  
21 business; or
- 22 (c) an administrator, controller, provisional liquidator or liquidator  
23 within the meaning of the [Corporations Act](#), section 9.
- 24 (3) For this section, a *related corporation* has the same meaning as  
25 *related body corporate* under the [Corporations Act](#), section 9, except  
26 that in section 46 (Meaning of *subsidiary*—general) of that Act,  
27 references to 'one-half' are taken to be references to '25%'.



- 1 (4) In this section:  
2 ***professional***—  
3 (a) means a person who provides professional advice to more than  
4 1 client; but  
5 (b) does not include a person who provides professional advice to a  
6 client in the person’s capacity as an employee of the client.  
7 **Example**  
8 a lawyer or accountant, employed in that capacity by a firm of lawyers or  
9 accountants, engaged by a corporation to give the corporation advice on a particular  
10 matter  
11 ***regulator*** means—  
12 (a) a person employed by the Territory, a State, a local government  
13 or the Commonwealth; or  
14 (b) a person engaged by the Territory, a State, a local government  
15 or the Commonwealth to provide a particular service or carry  
16 out a particular activity; or  
17 (c) an agent of a person mentioned in paragraph (b) if, in that  
18 capacity, the agent provides the service or carries out the activity  
19 the person is engaged to provide or carry out.  
20 *Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

21 **13 Meaning of *suitable person***

- 22 (1) For this Act, in deciding whether an applicant for a licence is  
23 a ***suitable person*** to hold the licence, the registrar must consider the  
24 following:  
25 (a) the applicant’s character, including, for example, the applicant’s  
26 honesty, integrity and professionalism;

- 1 (b) the applicant's history of compliance, or ability to comply, with  
2 this Act and relevant laws including whether the applicant has  
3 been—
- 4 (i) the subject of regulatory action (however described) under  
5 this Act or a relevant law; or
- 6 (ii) convicted of an offence against this Act or a relevant law  
7 or another law that affects the applicant's suitability to  
8 undertake residential development activities;
- 9 (c) if the applicant is able to demonstrate an ability to comply with  
10 this Act and relevant laws;
- 11 (d) the applicant's operational and financial capacity to undertake  
12 residential development activities including the applicant's—
- 13 (i) past performance in undertaking residential development  
14 activities or related activities; and
- 15 (ii) credit history and financial viability;
- 16 (e) the applicant's compliance with any competency requirement;
- 17 (f) whether the applicant has previously held a licence that has been  
18 cancelled or suspended, or for which conditions have been  
19 imposed under section 23;
- 20 (g) if the applicant is an individual—
- 21 (i) whether the applicant has been an insolvent under  
22 administration under the [Corporations Act](#), section 9; or
- 23 (ii) whether a corporation has been placed into administration,  
24 receivership or liquidation while the applicant was an  
25 executive officer of the corporation; or
- 26 (iii) whether the applicant has been disqualified from managing  
27 a corporation under the [Corporations Act](#);
- 28 (h) any matter prescribed by regulation.

- 1 (2) If the applicant is a corporation and the registrar considers it relevant,  
2 the registrar may also consider the matters mentioned in  
3 subsection (1) for—
- 4 (a) an associated entity or key person for the corporation; and  
5 (b) a former associated entity or key person for the corporation.
- 6 (3) The registrar may consider any other matter the registrar considers  
7 relevant.

8 **14 Meaning of *rating report*—pt 3**

9 In this part:

10 *rating report*, in relation to an applicant for a licence or a licensee,  
11 means a written report—

- 12 (a) prepared by a rating entity; and  
13 (b) that assesses the operational and financial capacity of the  
14 applicant or licensee to undertake residential development  
15 activities; and  
16 (c) that satisfies any other requirement prescribed by regulation.

17 **Division 3.2 Property developer licences**

18 **15 Applications for licence**

- 19 (1) A person may apply to the registrar to be licensed as a property  
20 developer (a *licence application*).
- 21 (2) A licence application must—
- 22 (a) be in writing; and  
23 (b) if requested by the registrar—include a rating report; and  
24 (c) include information about the matters mentioned in  
25 section 13 (1) (Meaning of *suitable person*); and

- 1 (d) include any information prescribed by regulation.
- 2 (3) The registrar may refuse to consider a licence application that does  
3 not comply with subsection (2).

4 **16 Eligibility for licence**

5 An applicant is eligible to be given a licence if—

- 6 (a) the registrar is satisfied the applicant has the operational and  
7 financial capacity, and is otherwise a suitable person, to  
8 undertake residential development activities; and
- 9 (b) the applicant is not disqualified (however described) from  
10 applying for a licence under this Act; and
- 11 (c) the applicant meets any other eligibility requirements prescribed  
12 by regulation.

13 **17 Applications for licence renewal**

- 14 (1) A person may apply to the registrar for renewal of their licence  
15 (a *renewal application*) before the licence ends.
- 16 (2) A renewal application must—
- 17 (a) be in writing; and
- 18 (b) if requested by the registrar—include a rating report or any other  
19 report prescribed by regulation; and
- 20 (c) include details of any relevant competency requirements to be  
21 undertaken by the applicant during the term of the applicant's  
22 licence; and
- 23 (d) if any information about a matter mentioned in section 13 (1)  
24 (Meaning of *suitable person*) has changed since the applicant  
25 last made a licence application or renewal application—include  
26 details of the changes; and
- 27 (e) include any information prescribed by regulation.

- 1 (3) The registrar may refuse to consider an application that does not  
2 comply with subsection (2).

3 **18 Eligibility for licence renewal**

4 An applicant is eligible to have their licence renewed if—

- 5 (a) the registrar is satisfied the applicant has the operational and  
6 financial capacity, and is otherwise a suitable person, to  
7 undertake residential development activities; and  
8 (b) the applicant has undertaken any relevant competency  
9 requirements; and  
10 (c) the applicant meets any other eligibility requirements prescribed  
11 by regulation.

12 **19 Registrar may request more information**

- 13 (1) The registrar may, in writing, require an applicant under section 15 or  
14 section 17 to give the registrar information that the registrar  
15 reasonably needs to decide the application.  
16 (2) Without limiting subsection (1), the registrar may require an  
17 additional rating report or a rating report that includes stated  
18 information to be provided by the applicant.  
19 (3) If the applicant does not comply with a requirement under  
20 subsection (1), the registrar may refuse to consider the application  
21 further.

22 **20 Change of information must be provided**

23 If the information in a licence application or renewal application  
24 changes before the application is decided, the applicant must give the  
25 registrar written notice of the details of the change.

1    **21           Deciding applications**

- 2           (1) If a person makes a licence application, the registrar must—
- 3               (a) if the person is eligible—give a licence to the person; or
- 4               (b) if the person is not eligible—refuse to give a licence to the
- 5                     person.
- 6           (2) If a person makes a renewal application, the registrar must—
- 7               (a) if the person is eligible—renew the person’s licence; or
- 8               (b) if the person is not eligible—refuse to renew the person’s
- 9                     licence.
- 10          (3) If the registrar renews a licence, the renewed licence begins on the
- 11             day after the licence being renewed ends.
- 12          (4) The registrar may renew a licence that has been suspended, but the
- 13             renewed licence is suspended until the suspension ends.

14    **22           Licence valid until application for renewal decided**

- 15           (1) If a person makes a renewal application, the person’s existing licence
- 16             continues in force until the application is decided.
- 17           (2) Subsection (1) applies even if it causes the existing licence to be in
- 18             force for longer than the maximum licence term stated in
- 19             section 24 (b) (i).

20    **23           Licence conditions**

- 21           (1) A licence is subject to the following conditions:
- 22               (a) the licensee must comply with this Act (including any approved
- 23                     code of practice);
- 24               (b) the licensee must comply with all relevant competency
- 25                     requirements;
- 26               (c) the licensee must comply with all relevant laws;

- 1 (d) the licensee must—
- 2 (i) meet the standard reasonably expected of a licensee; and
- 3 (ii) demonstrate a level of competence reasonably expected of
- 4 a licensee; and
- 5 (iii) demonstrate the operational and financial capacity to
- 6 comply with—
- 7 (A) its obligations under this Act and relevant laws; and
- 8 (B) its legal obligations to subcontractors and other
- 9 people engaged by the licensee; and
- 10 (iv) not engage in improper or unethical conduct;
- 11 (e) on request by the registrar, the licensee must provide
- 12 stated information about any matter mentioned in
- 13 paragraphs (a) to (d);
- 14 (f) any other condition the registrar considers appropriate;
- 15 (g) any other condition prescribed by regulation.
- 16 *Note* It is an offence under s 98 for a licensee not to comply with a condition
- 17 of their licence.
- 18 (2) Without limiting subsection (1) (f) or (g), a condition may be imposed
- 19 or prescribed in relation to the following matters:
- 20 (a) limiting the residential development activities that may be
- 21 undertaken concurrently by the licensee or an associated entity;
- 22 (b) preventing new residential development activities from being
- 23 undertaken by the licensee or an associated entity;
- 24 (c) limiting the size or kinds of residential development activities
- 25 that may be undertaken by the licensee or an associated entity;
- 26 (d) requiring the design documentation for residential building
- 27 work to be independently reviewed or inspected;

- 1 (e) requiring inspections of stated residential building work by a  
2 stated person and the provision of information about the  
3 inspections;
- 4 (f) minimum financial requirements to be satisfied by the licensee  
5 or an associated entity;
- 6 (g) restricting stated people from involvement in stated residential  
7 development activities.

8 **Examples**

- 9 1 Kerr Developments Pty Ltd is a new entrant into the residential development  
10 industry. The registrar imposes a condition on the company's licence limiting  
11 the company from developing multi-unit housing with more than 3 units or  
12 with a value of more than \$5 million.
- 13 2 Foord Developments Pty Ltd holds a licence and is the parent company of  
14 3 subsidiary companies, each responsible for the development of different  
15 residential development projects. One of the subsidiaries is placed under  
16 external administration and defects relating to a number of buildings  
17 constructed by the insolvent company have been identified. The registrar  
18 imposes a condition preventing the subsidiary companies from undertaking  
19 new projects and requiring additional independent review of design  
20 documentation for the subsidiaries' projects.

21 (3) Before imposing a condition under subsection (1) (f), the registrar  
22 must—

- 23 (a) give the applicant or licensee a written notice that—
- 24 (i) states the condition the registrar proposes to impose; and  
25 (ii) states the reason the registrar proposes to impose the  
26 condition; and  
27 (iii) tells the person that they may give a written response to the  
28 registrar about the matters stated in the notice not later than  
29 28 days after the day the person receives the notice; and
- 30 (b) consider any response given to the registrar in accordance with  
31 paragraph (a) (iii).



- 1   **24**       **Licence term**
- 2           A licence—
- 3           (a) begins on the day stated in the licence; and
- 4           (b) ends on the earliest of the following:
- 5                 (i) the day stated in the licence, being not more than 7 years
- 6                 from the day the licence begins;
- 7                 (ii) if the licence is cancelled under division 5.1 (Regulatory
- 8                 action), division 5.3 (Immediate suspension or cancellation
- 9                 of licence) or section 44 (Voluntary cancellation of
- 10                licence)—the day the cancellation takes effect.
- 11   **25**       **Content of licence**
- 12           (1) This section applies if the registrar—
- 13                 (a) gives a licence or renews a licence; or
- 14                 (b) varies a licence under section 26 (Variation of licence) or
- 15                 division 5.1 (Regulatory action).
- 16           (2) The registrar must give the licensee a licence that states—
- 17                 (a) the name of the licensee; and
- 18                 (b) a unique identifying number for the licence; and
- 19                 (c) the term of the licence; and
- 20                 (d) any conditions on the licence; and
- 21                 (e) any other information prescribed by regulation.
- 22           (3) A licence may include any other information the registrar considers
- 23            relevant.

- 1     **Division 3.3**                    **Licence variations and change of**  
2    **circumstances**
- 3     **26**            **Variation of licence**
- 4            (1) The registrar may vary a licence on written application by the licensee  
5            if the registrar—
- 6                (a) has considered any reasons provided by the licensee in their  
7                application to vary the licence; and
- 8                (b) is satisfied it is appropriate to vary the licence.
- 9            (2) The registrar may vary the licence on the registrar’s own initiative if  
10           the registrar—
- 11               (a) has given the licensee a written notice that—
- 12                    (i) states how the registrar proposes to vary the licence; and
- 13                    (ii) states the reason the registrar proposes to vary the licence;  
14                    and
- 15                    (iii) tells the licensee that the licensee may give a written  
16                    response to the registrar about the matters stated in the  
17                    notice not later than 28 days after the day the licensee  
18                    receives the notice; and
- 19               (b) has considered any response given in accordance with  
20               paragraph (a) (iii); and
- 21               (c) is satisfied it is appropriate to vary the licence.
- 22            (3) If the registrar varies a licence under this section, the registrar must  
23            give the licensee a written notice (a ***notice of variation***) that states—
- 24               (a) how the licence has been varied; and
- 25               (b) the day on which the variation takes effect.
- 26            (4) A variation of a licence takes effect on the day stated in the notice of  
27            variation.

- 1 (5) In this section:  
2 *licence* includes a suspended licence.  
3 *vary*, in relation to a licence, includes—  
4 (a) varying the term of the licence; and  
5 (b) adding, amending or removing a condition of the licence.
- 6 **27 Notifying registrar about change of circumstances**
- 7 (1) A licensee must notify the registrar, in writing, about any of the  
8 following within 14 days after the licensee becomes aware of the  
9 matter:  
10 (a) a change to the licensee's name or contact details;  
11 (b) if an entity stops being, or becomes, an associated entity of the  
12 licensee;  
13 (c) if a person stops being, or becomes, a key person for the  
14 licensee;  
15 (d) any other change to the information given by the licensee in a  
16 licence application or renewal application;  
17 (e) the licensee, or an associated entity, applying for a building  
18 approval or development approval in relation to residential  
19 building work;  
20 (f) any other event or circumstance prescribed by regulation.
- 21 Maximum penalty: 20 penalty units.
- 22 (2) An offence against this section is a strict liability offence.
- 23 (3) In this section:  
24 *building approval*—see the *Building Act 2004*, dictionary.  
25 *development approval*—see the *Planning Act 2023*, dictionary.

1     **Division 3.4**                    **Register of licensed property**  
2    **developers**

3     **28**                    **Registrar must keep register**

- 4             (1) The registrar must keep a register of licensed property developers  
5                (the *register*).
- 6             (2) The registrar must keep the following details about a licensee in the  
7                register:
- 8                (a) their registered business name;
- 9                (b) if the licensee operates the business under another name—their  
10                business’s trading name;
- 11              (c) details of current and former associated entities of the licensee;
- 12              (d) names of current and former directors for the licensee and  
13                associated entities of the licensee;
- 14              (e) their ABN or ACN;
- 15              (f) their licence number;
- 16              (g) the term of their licence;
- 17              (h) any conditions on their licence;
- 18              (i) the status of their licence;
- 19              (j) their address for service;
- 20              (k) any rating information prescribed by regulation;
- 21              (l) the details and status of any—
- 22                    (i) regulatory action taken under part 5 (Licensed property  
23                    developers—regulatory action) against them or an  
24                    associated entity; and

- 1 (ii) action taken under part 6 (Rectification orders, stop work  
2 orders and undertakings) against them or an associated  
3 entity; and
- 4 (iii) any regulatory action (however described) taken against  
5 them or an associated entity under a relevant law;
- 6 (m) past and current residential development activities undertaken  
7 by the licensee and their associated entities;
- 8 (n) any other details prescribed by regulation.
- 9 (3) The registrar must, for a former licensee, keep the details mentioned  
10 in subsection (2) in the register for 10 years after the day the former  
11 licensee's licence ends.
- 12 (4) The register may also contain any other details the registrar considers  
13 appropriate.
- 14 (5) The registrar may correct any mistake, error or omission in the  
15 register.

16 **29 Publication of information in register**

- 17 (1) The registrar must make the details mentioned in section 28 in  
18 relation to a licensee, or a former licensee, available to the public.
- 19 (2) However, the registrar must not make details about a licensee or a  
20 former licensee available to the public if the licensee or former  
21 licensee applies, in writing, for the information not to be made  
22 available to the public and the registrar is satisfied the publication of  
23 the information would, or could reasonably be expected to—
- 24 (a) endanger the life or physical safety of a person; or
- 25 (b) jeopardise national security.

1 **Part 4** **Rating entities**

2 **30** **Approval of rating entities**

- 3 (1) On written application by an entity, the director-general may approve  
4 the entity to prepare rating reports.
- 5 (2) The director-general may only approve an entity if—
- 6 (a) the entity holds an Australian financial services licence that  
7 authorises the entity to provide services in accordance with this  
8 section; and
- 9 (b) the director-general is satisfied the entity—
- 10 (i) has appropriate processes to undertake assessments of the  
11 operational and financial capacity of an applicant for a  
12 licence, or a licensee, to undertake residential development  
13 activities; and
- 14 (ii) has proven procedures for training and monitoring people  
15 employed or engaged by the entity to undertake the  
16 assessments; and
- 17 (iii) has the operational and financial capacity to undertake the  
18 assessments; and
- 19 (iv) imposes fees that are reasonable taking into account the  
20 scope of the services being offered; and
- 21 (v) has appropriate processes for internally reviewing  
22 assessments and managing complaints; and
- 23 (c) the entity meets any other requirement prescribed by regulation.

- 1 (3) An approval—  
2 (a) must be for a term not longer than 5 years; and  
3 (b) is subject to—  
4 (i) any condition the director-general considers appropriate;  
5 and  
6 (ii) any condition prescribed by regulation.
- 7 (4) An approval is a notifiable instrument.
- 8 (5) In this section:  
9 *Australian financial services licence*—see the [Corporations Act](#),  
10 section 9.

11 **31 Approval valid until new application decided**

- 12 (1) This section applies if an entity—  
13 (a) holds an approval under section 30; and  
14 (b) before the approval ends, applies in writing for a new approval.
- 15 (2) The entity's existing approval continues in force until the application  
16 is decided.
- 17 (3) Subsection (2) applies even if it causes the existing approval to be in  
18 force for longer than the maximum term stated in section 30 (3) (a).

19 **32 Variation of approval**

- 20 (1) On written application by a rating entity, the director-general may  
21 vary the entity's approval if the director-general—  
22 (a) has considered any reasons provided by the entity in its  
23 application; and  
24 (b) is satisfied it is appropriate to vary the approval.

- 1           (2) The director-general may vary the approval of a rating entity on the  
2           director-general's own initiative if the director-general—
- 3           (a) has given the entity a written notice that—
- 4                 (i) states how the director-general proposes to vary the  
5                 approval; and
- 6                 (ii) states the reason the director-general proposes to vary the  
7                 approval; and
- 8                 (iii) tells the entity that it may give a written response to the  
9                 director-general about the matters stated in the notice not  
10                later than 28 days after the day the entity receives the  
11                notice; and
- 12           (b) has considered any response given in accordance with  
13           paragraph (a) (iii); and
- 14           (c) is satisfied it is appropriate to vary the approval.
- 15           (3) A variation of an approval takes effect on the day stated in the  
16           variation.
- 17           (4) A variation of an approval is a notifiable instrument.
- 18           (5) In this section:
- 19                 **vary**, in relation to an approval includes—
- 20                 (a) varying the term of the approval; and
- 21                 (b) adding, amending or removing a condition of the approval.



1   **33           Revocation of approval**

- 2           (1) On written application by a rating entity, the director-general must  
3           revoke the entity's approval if the director-general is satisfied it is  
4           appropriate to do so.
- 5           (2) The director-general may revoke the approval of a rating entity on the  
6           director-general's own initiative if the director-general—
- 7           (a) is satisfied 1 or more of the following applies:
- 8                   (i) the entity has failed to comply with a condition of its  
9                   approval;
- 10                  (ii) the entity knowingly or recklessly used false or misleading  
11                  information to become a rating entity;
- 12                  (iii) the entity no longer satisfies the requirements mentioned in  
13                  section 30 (2);
- 14                  (iv) the entity has been the subject of regulatory action  
15                  (however described) in relation to its Australian financial  
16                  services licence; and
- 17           (b) has given the entity a written notice that—
- 18                   (i) states that the director-general proposes to revoke the  
19                   approval; and
- 20                   (ii) states the reason the director-general proposes to revoke  
21                   the approval; and
- 22                   (iii) tells the entity that it may give a written response to the  
23                   director-general about the matters stated in the notice not  
24                   later than 28 days after the day the entity receives the  
25                   notice; and
- 26           (c) has considered any response given in accordance with  
27           paragraph (b) (iii); and
- 28           (d) is satisfied it is appropriate to revoke the approval.

- 1 (3) Revocation of an approval takes effect—  
2 (a) for a revocation under subsection (1)—  
3 (i) 90 days after the day the revocation is notified; or  
4 (ii) if a later date is stated in the revocation—on that date; or  
5 (b) for a revocation under subsection (2)—on the day stated in the  
6 revocation.
- 7 (4) A revocation is a notifiable instrument.
- 8 (5) In this section:  
9 *Australian financial services licence*—see section 30 (5).

1 **Part 5** **Licensed property developers—**  
2 **regulatory action**

3 **Division 5.1** **Automatic licence suspension**

4 **34** **Automatic suspension of licence**

- 5 (1) A licensee's licence is automatically suspended—  
6 (a) if an annual licence fee or other fee is determined under  
7 section 125 and is payable on a stated date—for the period the  
8 fee is unpaid after the stated date; or  
9 (b) for an individual—if the licensee becomes bankrupt or  
10 personally insolvent; or  
11 (c) for a corporation—if the licensee—  
12 (i) becomes the subject of a winding-up order; or  
13 (ii) has a controller or administrator appointed for the licensee.  
14 (2) The registrar may revoke a suspension of a licence under  
15 subsection (1) (c) (ii) if satisfied it is in the best interests of consumers  
16 to do so.

17 **Division 5.2** **Regulatory action**

18 **35** **Definitions—div 5.2**

19 In this division:

20 *ground for regulatory action*—see section 36.

21 *licensee* includes a former licensee.

22 *proposed regulatory action*—see section 37 (1).

23 *regulatory action*, against a licensee, means any of the following:

- 24 (a) reprimanding the licensee;

- 1 (b) directing the licensee to undergo an assessment of the  
2 licensee's—
- 3 (i) required qualifications, experience and competencies; or
- 4 (ii) operational and financial capacity to undertake residential  
5 building activities including by providing an additional  
6 rating report;
- 7 (c) directing the licensee to undertake stated training;
- 8 (d) imposing, or amending, a condition of their licence;
- 9 (e) suspending their licence for either a fixed period or until a  
10 particular event happens;
- 11 (f) cancelling their licence.
- 12 *show cause notice*—see section 37 (2).

13 **36 Grounds for regulatory action**

14 Each of the following is a *ground for regulatory action* against a  
15 licensee:

- 16 (a) the licensee has knowingly or recklessly used false or  
17 misleading information to become a licensee;
- 18 (b) the licensee has failed to comply with a condition of their  
19 licence;
- 20 (c) the licensee has knowingly or recklessly given someone  
21 information about residential development activities  
22 undertaken, or to be undertaken, by the licensee that was false  
23 or misleading in a material particular;
- 24 (d) the licensee has stopped being eligible to be licensed;
- 25 (e) the licensee has had their licence immediately suspended or  
26 cancelled under section 41;

- 1 (f) the licensee has been convicted or found guilty of an offence—  
2 (i) that is an indictable offence under a law of the ACT or the  
3 Commonwealth; or  
4 (ii) for an offence committed outside the ACT—that would be  
5 an indictable offence against a law of the ACT if  
6 committed in the ACT;  
7 (g) the licensee has contravened this Act (including an approved  
8 code of practice) or a relevant law;  
9 (h) regulatory action (however described) under a relevant law has  
10 been taken against the licensee in another jurisdiction;  
11 (i) the licensee has failed to comply with a requirement of any  
12 regulatory action taken against the licensee under this part;  
13 (j) any other ground prescribed by regulation.

14 **37 Notice of proposed regulatory action**

- 15 (1) The registrar may propose to take regulatory action (the *proposed*  
16 *regulatory action*) against a licensee if satisfied a ground for  
17 regulatory action exists in relation to the licensee.  
18 (2) If the registrar proposes to take regulatory action against a licensee,  
19 the registrar must give the licensee a written notice (a *show cause*  
20 *notice*) that states—  
21 (a) the grounds on which the registrar considers regulatory action  
22 may be taken against the licensee; and  
23 (b) details of the proposed regulatory action; and  
24 (c) that the licensee may give the registrar a written submission  
25 about the proposed regulatory action not later than 28 days after  
26 the day the licensee is given the notice.

- 1     **38           Taking regulatory action**
- 2           (1) The registrar may take the proposed regulatory action against a  
3           licensee if the registrar—
- 4               (a) has given the licensee a show cause notice in accordance with  
5               section 37; and
- 6               (b) has considered any submission given in accordance with  
7               section 37 (2) (c); and
- 8               (c) is satisfied it is appropriate to take the proposed regulatory  
9               action against the licensee.
- 10          (2) If the registrar decides to take the proposed regulatory action, the  
11          registrar must give the licensee a written notice (a *regulatory action*  
12          *notice*) that states—
- 13               (a) that the proposed regulatory action will be taken; and
- 14               (b) the day on which the regulatory action will take effect.
- 15          (3) Regulatory action takes effect—
- 16               (a) if the regulatory action is suspension or cancellation of the  
17               licensee’s licence—
- 18                   (i) 14 days after the day the regulatory action notice is given  
19                   to the licensee; or
- 20                   (ii) if a later date is stated in the notice—that date; or
- 21               (b) in any other case—on the day stated in the regulatory action  
22               notice.
- 23     **39           Not taking regulatory action**
- 24           (1) This section applies if the registrar—
- 25               (a) has given a licensee a show cause notice in accordance with  
26               section 37; and

- 1 (b) has considered any submission given in accordance with  
2 section 37 (2) (c); and
- 3 (c) is satisfied regulatory action against the licensee—
- 4 (i) may not be taken; or
- 5 (ii) may be taken, but in all the circumstances, it is not  
6 appropriate to take the action.
- 7 (2) The registrar must give the licensee a written notice that tells the  
8 licensee that regulatory action will not be taken against the licensee  
9 in relation to the matters stated in the show cause notice.

10 **40 Effect of suspension**

11 If a person's licence is suspended under this part, the person is taken  
12 not to be a licensee during the period of suspension.

13 **Division 5.3 Immediate suspension or cancellation**  
14 **of licence**

15 **41 Immediate suspension or cancellation**

- 16 (1) This section applies if the registrar is satisfied—
- 17 (a) a ground for regulatory action exists in relation to a licensee,  
18 other than a failure to comply with a requirement of any  
19 regulatory action taken under division 5.1; and
- 20 (b) it is in the public interest to immediately suspend or cancel a  
21 licence.
- 22 (2) The registrar may—
- 23 (a) immediately suspend the licence for a stated period or until a  
24 stated event happens; or
- 25 (b) immediately cancel the licence.

- 1 (3) If the registrar immediately suspends or cancels a licence under  
2 subsection (2), the registrar must give the licensee written notice  
3 (an *immediate action notice*) that includes the following information:
- 4 (a) a statement that the suspension or cancellation takes effect as  
5 soon as the notice is given to the licensee;
- 6 (b) if the licence is suspended—when the suspension ends;
- 7 (c) the reason for the suspension or cancellation;
- 8 (d) that the licensee may make an application to the registrar under  
9 section 43 (Revoking immediate suspension or cancellation).
- 10 (4) However, the registrar may give a licensee an immediate action notice  
11 orally if the registrar believes there is an immediate risk to the safety  
12 of a person.
- 13 (5) If the registrar gives the immediate action notice orally, the registrar  
14 must also give the licensee a written notice that includes the  
15 information mentioned in subsection (3) as soon as practicable, but  
16 not later than 7 days after the day the notice was given orally.
- 17 (6) Suspension or cancellation under this section takes effect when—
- 18 (a) for an immediate action notice given orally and in writing—the  
19 oral notice is given to the licensee; or
- 20 (b) for an immediate action notice given only in writing—the  
21 written notice is given to the licensee.
- 22 (7) A suspension under this section ends on the earliest of the following:
- 23 (a) if the registrar suspends the licence—
- 24 (i) for a stated period—when the period ends; or
- 25 (ii) until a stated event happens—when the event happens;
- 26 (b) if other regulatory action—
- 27 (i) is taken against the licensee—when the other regulatory  
28 action takes effect; or



- 1 (ii) is not taken against the licensee—on the earliest of the  
2 following:
- 3 (A) when the registrar gives the licensee a written notice  
4 under section 39 (2);
- 5 (B) 90 days after the immediate suspension notice is  
6 given to the licensee;
- 7 (C) if the registrar revokes the suspension or cancellation  
8 under section 43—the day stated in the written notice  
9 given to the person under section 43 (4).

10 **42 Effect of immediate suspension**

11 If a person's licence is immediately suspended under section 41, the  
12 person is taken not to be a licensee during the period of suspension.

13 **43 Revoking immediate suspension or cancellation**

- 14 (1) The registrar may revoke an immediate suspension or cancellation—
- 15 (a) on written application by the person whose licence is suspended  
16 or cancelled; or
- 17 (b) on the registrar's own initiative.
- 18 (2) An application by a person under subsection (1) (a) must be made not  
19 later than 14 days after the day the person is given the immediate  
20 action notice under section 41.
- 21 (3) The registrar may revoke the immediate suspension or cancellation  
22 under subsection (1) if—
- 23 (a) for an application made under subsection (1) (a)—
- 24 (i) the application was made in accordance with  
25 subsection (2); and
- 26 (ii) the registrar has considered any reasons given by the  
27 person requesting the revocation; and

- 1 (b) the registrar has considered any matter prescribed by regulation.
- 2 (4) If the registrar revokes the immediate suspension or cancellation, the
- 3 registrar must give the person a written notice that states—
- 4 (a) that the suspension or cancellation has been revoked; and
- 5 (b) the day on which the revocation takes effect.

## 6 **Division 5.4 Other regulatory action**

### 7 **44 Voluntary cancellation of licence**

8 The registrar must cancel a licence if—

- 9 (a) the licensee asks, in writing, for the cancellation; and
- 10 (b) the registrar is satisfied it is appropriate to cancel the licence.

### 11 **45 Application to disqualify person from applying for licence**

- 12 (1) This section applies if the registrar suspends or cancels a licence
- 13 under division 5.2 (Regulatory action).
- 14 (2) On application by the registrar, the ACAT may make the following
- 15 orders:
- 16 (a) if the registrar has suspended the person's licence—
- 17 (i) an order cancelling the licence; and
- 18 (ii) an order disqualifying the person from applying for a
- 19 licence—
- 20 (A) for a stated period of not more than 5 years; or
- 21 (B) until a stated event happens;
- 22 (b) if the registrar has cancelled the person's licence—an order
- 23 disqualifying the person from applying for a licence—
- 24 (i) for a stated period of not more than 5 years; or

- 1 (ii) until a stated event happens;
- 2 (c) an order requiring the person to pay the Territory a stated  
3 amount of not more than \$200 000;
- 4 (d) any other order the ACAT considers appropriate.
- 5 (3) Before making an order under subsection (2), the ACAT must  
6 consider any matter prescribed by regulation.
- 7 (4) If the ACAT makes an order under subsection (2) (c), the amount may  
8 be recovered as a debt payable to the Territory.
- 9 *Note* An amount owing under a law may be recovered as a debt in a court of  
10 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

11 **Division 5.5** **Miscellaneous**

12 **46** **Registrar may consult people before exercising functions**

- 13 (1) In exercising a function under this part, the registrar may consult any  
14 person the registrar considers appropriate.
- 15 (2) For subsection (1), the registrar is authorised to disclose information  
16 that relates to the exercise of the function.

1 **Part 6** **Rectification orders, stop work**  
2 **orders and undertakings**

3 **Division 6.1** **Preliminary**

4 **47** **Application—pt 6**

- 5 (1) This part applies to residential building work that is uncompleted or  
6 has been completed for up to 10 years, including work that was started  
7 or completed before the commencement of this part.
- 8 (2) For this section, residential building work is **completed** if a certificate  
9 of occupancy under the *Building Act 2004* is issued in relation to it.

10 **48** **Definitions—pt 6**

11 In this part:

12 *authorised contractor*—see section 58 (2).

13 *compliance action*—see section 67 (1).

14 *compliance cost notice*—see section 67 (2).

15 *compliance undertaking*—see section 65 (1).

16 *director*, of a property developer that is a corporation—see the  
17 *Corporations Act*, section 9.

18 *property developer*—see section 49.

19 *proposed rectification order notice*—see section 51 (2).

20 *rectification order*—see section 52 (2).

21 *rectify*, a serious defect, includes eliminate, minimise or remediate  
22 the defect.

23 *required rectification work*, in relation to a rectification order—see  
24 section 52 (2) (a).

25 *stop work order*—see section 63 (2).

1   **49        Meaning of *property developer*—pt 6**

2       (1) In this part:

3           *property developer*, in relation to residential building work, means  
4           any of the following:

5           (a) a person who contracts or arranges for, or facilitates or otherwise  
6           causes (whether directly or indirectly) the building work to be  
7           done;

8           (b) the owner of the land on which the building work is undertaken  
9           at the time the building work is done;

10          (c) the principal builder of the building work;

11          (d) for a residential building under a units plan—the *developer*, as  
12          defined in the *Unit Titles Act 2001*, dictionary, in relation to the  
13          units plan;

14          (e) a person prescribed by regulation.

15       (2) A regulation may exclude a person from the definition of *property*  
16       *developer*.

17       (3) In this section:

18           *commencement notice*, in relation to residential building work,  
19           means a notice issued under the *Building Act 2004*, section 37 for the  
20           building work.

21           *principal builder*, in relation to residential building work, means the  
22           person stated to be the builder in the commencement notice for the  
23           building work.

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

- 1     **50**           **Meaning of *serious defect***
- 2           (1) In this Act:
- 3                 *serious defect*, in relation to a building, means—
- 4                 (a) a defect in a building element that is attributable to a failure to
- 5                         comply with a performance requirement of the building code,
- 6                         the relevant Australian Standards or the relevant approved plans
- 7                         for the building work; or
- 8                 (b) a defect in a building product or building element that—
- 9                         (i) is attributable to defective design, defective work or
- 10                         defective materials; and
- 11                         (ii) causes or is likely to cause—
- 12                                 (A) the inability to live in or use any part of the building
- 13                                 for its intended purpose; or
- 14                                 (B) the destruction of any part of the building; or
- 15                                 (C) a threat of collapse of any part of the building; or
- 16                 (c) a thing prescribed by regulation.
- 17           (2) In this section:
- 18                 *above grade wall*, in relation to a building, means a wall above the
- 19                 level of the ground surrounding the building.
- 20                 *approved plans*—see the *Building Act 2004*, dictionary.
- 21                 *below grade wall*, in relation to a building, means a wall below the
- 22                 level of the ground surrounding the building.
- 23                 *building element*, in relation to a building—
- 24                 (a) means any of the following:
- 25                         (i) the fire safety systems for the building within the meaning
- 26                         of the building code;

- 1 (ii) waterproofing of the building;
- 2 (iii) an internal or external load-bearing component of the  
3 building that is essential to the stability of the building, or  
4 a part of it, including in-ground and other foundations and  
5 footings, floors, walls, roofs, columns and beams;
- 6 (iv) a component of the building that is part of the building  
7 enclosure;
- 8 (v) those aspects of the mechanical, plumbing and electrical  
9 services for the building that are required to achieve  
10 compliance with the building code;
- 11 (vi) a thing prescribed by regulation; but
- 12 (b) does not include a thing excluded by regulation.

13 *building enclosure*, in relation to a building, means the part of the  
14 building that physically separates the interior environment of the  
15 building from the exterior environment, including roof systems,  
16 above grade and below grade walls (including windows and doors).

17 *building product* means any product, material or other thing that is,  
18 or could be, used in a building.

## 19 **Division 6.2 Rectification orders**

### 20 **51 Notice of proposed rectification order**

- 21 (1) This section applies if the registrar believes on reasonable grounds  
22 that—
- 23 (a) residential building work was or is being undertaken by, or  
24 under an arrangement with, a property developer in a way that  
25 could result in a serious defect in the building; or
- 26 (b) a residential building constructed by, or under an arrangement  
27 with, a property developer has a serious defect.

- 1           (2) The registrar may give the property developer a written notice  
2           (a *proposed rectification order notice*) that—
- 3           (a) gives details of the proposed rectification order; and  
4           (b) explains why the registrar proposes to make the order; and  
5           (c) states that the property developer may give the registrar a written  
6           submission about the proposed rectification order not later than  
7           28 days after the day the developer is given the notice.

8           **52           Making rectification orders**

- 9           (1) This section applies if the registrar—
- 10           (a) has given a property developer a proposed rectification order  
11           notice in relation to residential building work; and  
12           (b) has considered any submission given in accordance with  
13           section 51 (2) (c); and  
14           (c) is satisfied it is appropriate to make an order under this section.
- 15           (2) The registrar may make an order (a *rectification order*) against a  
16           property developer requiring any of the following:
- 17           (a) stated action (the *required rectification work*) to be taken to  
18           rectify the serious defect, or possible serious defect, within a  
19           stated period not less than 1 month after the day the rectification  
20           order is given;
- 21           (b) stated information to be given to the registrar about the required  
22           rectification work;
- 23           (c) any other thing reasonably necessary to ensure the required  
24           rectification work is done.
- 25           (3) A rectification order—
- 26           (a) may, but need not, state how required rectification work is to be  
27           done; and



- 1 (b) must state that it is an offence under section 57 to fail to comply  
2 with the order.
- 3 (4) The registrar may only make a rectification order before the latest of  
4 the following:
- 5 (a) if the registrar first became aware of the serious defect, or  
6 possible serious defect, within 6 months before the end of the  
7 10-year period—1 year after the registrar became aware of the  
8 serious defect, or possible serious defect;
- 9 (b) if the registrar gives a proposed rectification order notice before  
10 the end of the 10-year period—1 year after the notice is given;
- 11 (c) in any other case—the day the 10-year period ends.
- 12 (5) A copy of the rectification order must be given to—
- 13 (a) either—
- 14 (i) the owner of the land on which the residential building  
15 work is undertaken; or
- 16 (ii) for a residential building under a units plan—the unit  
17 owner and the owners corporation; and
- 18 (b) the registrar under the *Building Act 2004* and the *Construction*  
19 *Occupations (Licensing) Act 2004*.
- 20 (6) In this section:
- 21 ***10-year period*** means 10 years starting on the latest of the following  
22 days:
- 23 (a) the day the residential building work resulting in the serious  
24 defect, or possible serious defect, was undertaken or stopped  
25 being undertaken ;

- 1 (b) the day any certificate was issued by the registrar under any of  
2 the following provisions of the *Building Act 2004* in relation to  
3 the building the subject of the serious defect, or possible serious  
4 defect:
- 5 (i) section 69 (Certificates of occupancy);
- 6 (ii) section 71 (2) (Certificate for building work involving  
7 demolition);
- 8 (iii) section 72 (2) (Certificate for building work involving  
9 erection of structure);
- 10 (iv) section 73 (Certificates of occupancy and use for  
11 owner-builders).

12 *owners corporation*—see the *Unit Titles (Management) Act 2011*,  
13 dictionary.

14 *units plan*—see the *Unit Titles Act 2001*, dictionary.

### 15 **53 Emergency rectification orders**

- 16 (1) This section applies if the registrar is satisfied a serious defect, or  
17 possible serious defect, in relation to residential building work needs  
18 to be rectified urgently to protect the health or safety of people,  
19 property or the environment.
- 20 (2) The registrar may make a rectification order (an *emergency*  
21 *rectification order*) under section 52 without giving the property  
22 developer a proposed rectification order notice.
- 23 (3) An emergency rectification order—
- 24 (a) must state a period not less than 24 hours in which the required  
25 rectification work must be done; and
- 26 (b) may contain a summary of the reasons why the registrar is  
27 making the order.

- 1 (4) If a summary of reasons is provided, the registrar must give the  
2 property developer a detailed written statement of the reasons within  
3 7 days after the day the emergency rectification order is made.

4 **54 Rectification orders—more than 1 property developer**

- 5 (1) This section applies if there is more than 1 property developer in  
6 relation to residential building work.

- 7 (2) A rectification order may be given to 2 or more property developers  
8 in relation to the residential building work to which the order relates,  
9 however, the order is not invalid merely because it was not given to  
10 another developer.

- 11 (3) If the rectification order is given to 2 or more property developers—

- 12 (a) the order applies jointly and severally to the developers given  
13 the order; and

- 14 (b) any of those developers may comply with the order without  
15 affecting the liability of the other developers or anyone else to  
16 pay for or contribute towards the cost of complying with the  
17 order; and

- 18 (c) the order is not affected by any existing or future claim a person  
19 may make against another person, or any existing or future  
20 proceeding in relation to a claim, in relation to the residential  
21 building work to which the order relates.

22 **Example—par (c)**

23 Owners of an apartment building have commenced proceedings against the  
24 builder for damages in relation to serious defects in the building. There are  
25 also proceedings on foot between the property developer and the builder in  
26 relation to the defects. The registrar may issue a rectification order against  
27 the builder and property developer regardless of those proceedings. The  
28 existing proceedings or any new civil proceedings do not stay the operation  
29 of the rectification order and the builder and property developer are jointly  
30 and severally liable to comply with the order.

- 1           (4) Nothing in this part affects the right of a property developer to recover  
2           from any other developer or other person all or any of the costs  
3           incurred by the developer in complying with a rectification order.

4       **55           Registrar may give rectification order to directors if**  
5       **property developer wound up etc**

- 6           (1) This section applies if—  
7           (a) the registrar—  
8               (i) believes on reasonable grounds that making a rectification  
9               order against a property developer is appropriate; or  
10              (ii) makes a rectification order against a property developer;  
11              and  
12           (b) the property developer is a corporation; and  
13           (c) before, or after, the registrar makes the order—  
14               (i) the property developer becomes the subject of a  
15               winding-up order; or  
16               (ii) the developer is placed into administration, receivership or  
17               liquidation; or  
18              (iii) the developer is deregistered.  
19           (2) If the registrar is satisfied it is appropriate to do so, the registrar may,  
20           in relation to each person who was a director of the property  
21           developer at or after the time the residential building work resulting  
22           in the serious defect, or possible serious defect, was undertaken or  
23           stopped being undertaken—  
24           (a) if a rectification order has not been given to the property  
25           developer—give each person a proposed rectification order  
26           notice in accordance with section 51 as if they were the property  
27           developer; and

- 1 (b) make a rectification order in accordance with section 52 against  
2 each person as if they were the property developer.
- 3 (3) In considering whether it is appropriate to take action under  
4 subsection (2), the registrar must consider—
- 5 (a) if a latent defects insurance policy or other similar insurance  
6 policy covers the work required to rectify the serious defect, or  
7 possible serious defect; and
- 8 (b) any other matter prescribed by regulation.

9 **56 Occupier of land may be required to permit rectification**  
10 **work**

- 11 (1) If a rectification order is made against a person, the registrar may, in  
12 writing, order the occupier of the land to permit reasonable access to  
13 the land within a stated period (an *access order*) to allow the  
14 rectification order to be complied with.
- 15 (2) A person commits an offence if the person fails to comply with an  
16 access order.

17 Maximum penalty: 50 penalty units.

18 **57 Offence—failing to comply with rectification order**

- 19 (1) A person commits an offence if the person—
- 20 (a) is given a rectification order; and
- 21 (b) fails to comply with the order; and
- 22 (c) intended to not comply with the order.

23 Maximum penalty: 2 000 penalty units.

- 1 (2) A person commits an offence if the person—  
2 (a) is given a rectification order; and  
3 (b) fails to comply with the order; and  
4 (c) is reckless about complying with the order.  
5 Maximum penalty: 1 000 penalty units.
- 6 (3) A person commits an offence if the person—  
7 (a) is given a rectification order; and  
8 (b) fails to comply with the order.  
9 Maximum penalty: 50 penalty units.
- 10 (4) An offence against subsection (3) is a strict liability offence.

11 **Division 6.3 Rectification work arranged by**  
12 **Territory**

13 **58 Rectification by Territory—failure to comply with**  
14 **rectification order**

- 15 (1) This section applies if a person (the *ordered party*) against whom a  
16 rectification order is made contravenes the rectification order.
- 17 (2) The Territory may, in writing, authorise a person (an *authorised*  
18 *contractor*) to enter the land where the work to which the rectification  
19 order relates is to be done and—  
20 (a) take the action stated in the rectification order; or  
21 (b) start or finish the work stated in the rectification order.
- 22 (3) The authorised contractor must—  
23 (a) give the occupier of the land written notice that they intend to  
24 enter the land at least 24 hours before entering the land; and

1 (b) give a copy of the notice to the ordered party before entering the  
2 land.

3 (4) The ordered party is liable for the reasonable cost incurred in doing  
4 anything under subsection (2) and the cost is taken to be a debt owing  
5 to the Territory.

6 **59 Offence—hindering or obstructing authorised contractor**

7 (1) An person commits an offence if—

8 (a) the Territory authorises a person to do something under  
9 section 58 (the *rectification work*); and

10 (b) the person knows the authorised contractor is authorised to do  
11 the rectification work; and

12 (c) the person hinders or obstructs the authorised contractor in  
13 doing the rectification work.

14 Maximum penalty: 50 penalty units.

15 (2) Strict liability applies to subsection (1) (c).

16 **60 Damage etc by authorised contractor to be minimised**

17 (1) In doing something, or purporting to do something, authorised under  
18 section 58, the authorised contractor must take reasonable steps to  
19 ensure that they, and anyone assisting them, cause as little  
20 inconvenience, detriment and damage as is practicable.

21 (2) If the authorised contractor, or a person assisting them, damages  
22 anything in doing something, or purporting to do something,  
23 authorised under section 58, the authorised contractor must give  
24 written notice of the details of the damage to the person the authorised  
25 contractor believes on reasonable grounds is the owner of the thing.

26 (3) If the damage occurs at premises entered under this part in the absence  
27 of the occupier, the notice may be given by securing it in a  
28 conspicuous place at the premises.

- 1     **61            Compensation**
- 2           (1) A person may claim reasonable compensation from the Territory if
- 3           the person suffers loss or expense because of the exercise, or
- 4           purported exercise, of a function under this part by an authorised
- 5           contractor or person assisting an authorised contractor.
- 6           (2) Compensation may be claimed and ordered in a proceeding for—
- 7                 (a) compensation brought in a court of competent jurisdiction; or
- 8                 (b) an offence against this Act brought against the person making
- 9                 the claim for compensation.
- 10          (3) A court may order the payment of reasonable compensation for the
- 11          loss or expense only if it is satisfied it is just to make the order in the
- 12          circumstances of the particular case.
- 13          (4) A regulation may prescribe matters that may, must or must not be
- 14          taken into account by the court in considering whether it is just to
- 15          make the order.
- 16     **62            Protection of authorised contractor from liability**
- 17           (1) A person authorised under section 58 to do rectification work does
- 18           not incur civil liability for any rectification work done honestly for
- 19           this part.
- 20           (2) Civil liability that would, apart from this section, attach to the
- 21           authorised contractor attaches instead to the Territory.



1     **Division 6.4                    Stop work orders**

2     **63                    Stop work orders**

3             (1) This section applies if the registrar believes on reasonable grounds  
4             that—

5                     (a) residential building work is being, or is likely to be, undertaken  
6                     by, or under an arrangement with, a property developer in a way  
7                     that could result in—

8                                 (i) significant harm or loss to the public or occupiers or  
9                                 potential occupiers of the residential building; or

10                                (ii) significant damage to property; or

11                     (b) residential building work is being undertaken and a relevant  
12                     provision requires a person to hold a licence in relation to the  
13                     work and—

14                                (i) no person holds a licence in relation to the work; or

15                                (ii) if a person holds a licence in relation to the work—

16   (A) regulatory action under part 5 is, or is proposed to be,  
17   taken against the licensee or an associated entity of  
18   the licensee; or

19   (B) the licence prevents the building work being  
20   undertaken.

21             (2) The registrar may give the property developer a written order (a *stop*  
22             *work order*) requiring the property developer to ensure the residential  
23             building work stops.

24             (3) A stop work order—

25                     (a) must—

26                                 (i) explain why the registrar is making the order; and

- 1 (ii) state the time residential building work must stop, which  
2 may be the time the order is given to the property  
3 developer; and
- 4 (iii) state it is an offence under section 64 not to comply with  
5 the order; and
- 6 (b) may include any condition the registrar considers appropriate.
- 7 (4) A stop work order ends on the earliest of the following:
- 8 (a) the registrar giving the property developer written notice  
9 revoking the order;
- 10 (b) any term stated in the order ending;
- 11 (c) the period, starting 12 months from the day the order is given to  
12 the developer, ending.
- 13 (5) A copy of the stop work order must be given to—
- 14 (a) the owner of the land on which the residential building work is  
15 being done; and
- 16 (b) the registrar under the *Building Act 2004* and the *Construction*  
17 *Occupations (Licensing) Act 2004*; and
- 18 (c) the certifier for the residential building work.
- 19 (6) In this section:
- 20 **certifier**—see the *Building Act 2004*, dictionary.
- 21 **relevant provision** means—
- 22 (a) apply for development approval in relation to certain residential  
23 building developments under the *Planning Act 2023*,  
24 section 162A; or
- 25 (b) apply for a building approval, building commencement notice  
26 or certificate of occupancy in relation to certain residential  
27 building work under the *Building Act 2004*, section 27 (1) (ca),  
28 section 28AA and section 69 (1) (c); or

- 1 (c) sell, or advertise the sale of, residential property off-the-plan  
2 under the *Civil Law (Sale of Residential Property) Act 2003*,  
3 division 2A.2.

4 **64 Offence—failing to comply with stop work order**

- 5 (1) A person commits an offence if the person—

- 6 (a) is given a stop work order; and  
7 (b) fails to comply with the order; and  
8 (c) intended to not comply with the order.

9 Maximum penalty: 2 000 penalty units.

- 10 (2) A person commits an offence if the person—

- 11 (a) is given a stop work order; and  
12 (b) fails to comply with the order; and  
13 (c) is reckless about not complying with the order.

14 Maximum penalty: 1 000 penalty units.

- 15 (3) A person commits an offence if the person—

- 16 (a) is given a stop work order; and  
17 (b) fails to comply with the order.

18 Maximum penalty: 50 penalty units.

- 19 (4) An offence against subsection (3) is a strict liability offence.

- 1     **Division 6.5                      Compliance undertakings**
- 2     **65                      Registrar may accept undertakings**
- 3             (1) The registrar may accept a written undertaking (a *compliance*
- 4             *undertaking*) given by a property developer in relation to residential
- 5             building work.
- 6             (2) A compliance undertaking may include an undertaking by the
- 7             property developer to do 1 or both of the following:
- 8                 (a) take stated action in relation to—
- 9                         (i) a serious defect, or possible serious defect in the building;
- 10                         or
- 11                         (ii) a contravention of this Act or a relevant law;
- 12                 (b) provide the registrar with a financial security that may be
- 13                 claimed or realised by the Territory to meet—
- 14                         (i) the costs of rectifying a serious defect, or possible serious
- 15                         defect in the building; or
- 16                         (ii) the costs mentioned in section 67 (2) (Compliance cost
- 17                         notices).
- 18             (3) A compliance undertaking must state—
- 19                 (a) the circumstances in which the financial security may be
- 20                 claimed or realised; and
- 21                 (b) the procedure for claiming or realising the financial security;
- 22                 and
- 23                 (c) that it is an offence under section 66 to fail to comply with an
- 24                 undertaking.
- 25             (4) In this section:
- 26                 *financial security* means a bank guarantee, bond or other form of
- 27                 security acceptable to the registrar.

1   **66           Offence—failing to comply with compliance undertaking**

- 2           (1) A person commits an offence if the person—  
3               (a) gives a compliance undertaking; and  
4               (b) fails to comply with the undertaking; and  
5               (c) intended to not comply with the undertaking.

6           Maximum penalty: 2 000 penalty units.

- 7           (2) A person commits an offence if the person—  
8               (a) gives a compliance undertaking; and  
9               (b) fails to comply with the undertaking; and  
10              (c) is reckless about not complying with the undertaking.

11           Maximum penalty: 1 000 penalty units.

- 12           (3) A person commits an offence if the person—  
13               (a) gives a compliance undertaking; and  
14               (b) fails to comply with the undertaking.

15           Maximum penalty: 50 penalty units.

- 16           (4) An offence against subsection (3) is a strict liability offence.

17   **Division 6.6           Miscellaneous**

18   **67           Compliance cost notices**

- 19           (1) This section applies if the registrar does either of the following  
20               (a *compliance action*):

21               (a) gives a property developer a rectification order or stop work  
22                   order;

23               (b) accepts a compliance undertaking from a property developer.

- 1 (2) The registrar may give the property developer a written notice  
2 (a *compliance cost notice*) requiring the developer to pay all or any  
3 reasonable costs incurred by the Territory (including remuneration  
4 and other administrative costs) relating to—
- 5 (a) monitoring and ensuring that any required rectification work the  
6 subject of a compliance action is done; and
- 7 (b) investigations leading to the taking of a compliance action; and
- 8 (c) preparation of a compliance action including legal costs; and
- 9 (d) any other matter related to the compliance action.
- 10 (3) An amount payable under a compliance cost notice is a debt owing to  
11 the Territory.
- 12 (4) A regulation may provide for the following:
- 13 (a) how compliance cost notices are given;
- 14 (b) the form of a notice;
- 15 (c) limiting the amounts that may be required to be paid under a  
16 notice or the matters in relation to which costs and expenses may  
17 be required to be paid under the notice.

18 **68 Appeal against orders etc**

- 19 (1) This section applies if a property developer is given a rectification  
20 order, stop work order or compliance cost notice.
- 21 (2) The property developer may apply to the Supreme Court to have the  
22 order or notice revoked or varied.
- 23 (3) An application may only be made within 30 days after the order or  
24 notice is given to the property developer.
- 25 (4) On hearing the application, the court may—
- 26 (a) revoke or vary the order or notice; or
- 27 (b) make any other order the court considers appropriate.

1 **69 Exercise of powers unaffected by approvals etc**

2 To remove any doubt, the registrar is not prevented from exercising a  
3 power under this part in relation to a matter only because a certificate  
4 or approval (however described) has been issued in relation to the  
5 matter under the following:

- 6 (a) the *Building Act 2004*;
- 7 (b) the *Construction Occupations (Licensing) Act 2004* or an  
8 operational Act for that Act;
- 9 (c) the *Planning Act 2023*.

1           **Part 7**                                   **Enforcement**

2           **Division 7.1**                       **Preliminary**

3           **70**           **Definitions—pt 7**

4           In this part:

5           *authorised person* means a person appointed as an authorised person  
6           under section 71.

7           *connected*—an activity or thing is *connected* with an offence if—

- 8           (a) the offence has been committed in relation to it; or  
9           (b) it will provide evidence of the commission of the offence; or  
10          (c) it was used, is being used, or is intended to be used, to commit  
11          the offence.

12          *occupier*, of premises, includes—

- 13          (a) any person an authorised person believes on reasonable grounds  
14          to be an occupier of the premises; and  
15          (b) a person apparently in charge of the premises.

16          *offence* includes an offence that there are reasonable grounds for  
17          believing has been, is being, or will be, committed.

18          *premises* includes the following:

- 19          (a) land (whether or not vacant);  
20          (b) any part of a building, tent, stall or other structure (whether of a  
21          permanent or temporary nature);  
22          (c) a vehicle.

23          *warrant* means a warrant issued under division 7.5.



1 **71 Appointment of authorised people**

2 The director-general may appoint a public servant as an authorised  
3 person for this Act.

4 *Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

5 **72 Identity cards**

6 (1) The director-general must give an authorised person an identity card  
7 that—

8 (a) states the authorised person's name; and

9 (b) states that the person is an authorised person; and

10 (c) includes a recent photograph of the person; and

11 (d) states the card's date of issue and expiry; and

12 (e) includes anything else prescribed by regulation.

13 (2) A person must return their identity card to the director-general within  
14 7 days after the day the person stops being an authorised person.

15 Maximum penalty: 1 penalty unit.

16 (3) Subsection (2) does not apply to a person if their identity card is—

17 (a) lost or stolen; or

18 (b) destroyed by someone else.

19 *Note* The defendant has an evidential burden in relation to the matters  
20 mentioned in s (3) (see [Criminal Code](#), s 58).

21 (4) An offence against this section is a strict liability offence.

1       **Division 7.2                    Exercise of powers generally**

2       **73                    Requirements before certain powers can be exercised**

3           (1) This section applies if an authorised person intends to exercise any of  
4           the following powers:

5                   (a) giving a direction under section 75 (1) (Direction to give  
6                   information);

7                   (b) giving a direction under section 76 (1) or (2) (Direction to give  
8                   name and address);

9                   (c) entering premises under section 77 (1) (b) or (c) (Powers of  
10                   authorised person to enter premises);

11                   (d) giving a direction under section 79 (1) (e) (General powers on  
12                   entry to premises).

13           (2) Before exercising the power, the authorised person must—

14                   (a) either—

15                           (i) show their identity card to the affected person; or

16                           (ii) if the authorised person intends to exercise the power other  
17                           than in person—provide other evidence of the authorised  
18                           person’s identity to the affected person; and

19                   (b) tell the affected person the reason for exercising the power; and

20                   (c) tell the affected person about any relevant offence in relation to  
21                   the power.

22                   **Examples—exercise of powers other than in person**

23                   1 an authorised person emails a person giving them a direction to provide  
24                   information

25                   2 an authorised person emails a person asking for consent to enter and search  
26                   the person’s premises using a remote-controlled surveillance device

1 (3) The authorised person must ensure the matters mentioned in  
2 subsection (2) are communicated in a way that the authorised person  
3 believes the affected person is likely to understand.

4 (4) In this section:

5 *affected person*, in relation to the exercise of a power under this part,  
6 means—

- 7 (a) the individual affected by the exercise of the power; or  
8 (b) if the person is not an individual—an employee, officer or agent  
9 of the person affected by the exercise of the power.

10 *relevant offence* means an offence against—

- 11 (a) for a direction under section 75 (1)—section 75 (2); or  
12 (b) for a direction under section 76 (1) or (2)—section 76 (3); or  
13 (c) for a direction under section 79 (1) (e)—section 79 (2).

14 **74 Privilege against self-incrimination does not apply**

15 (1) If an authorised person gives a person a direction to provide  
16 information, a document or other thing under this part, the person is  
17 not excused from complying with the direction on the ground that  
18 doing so may—

- 19 (a) tend to incriminate the person; or  
20 (b) expose the person to a penalty.

21 (2) However, any information, document or thing obtained, directly or  
22 indirectly, because of the person's compliance with the direction is  
23 not admissible in evidence against the person in a civil or criminal  
24 proceeding, other than a proceeding for an offence arising out of the  
25 false or misleading nature of the information, document or thing.

1       **Division 7.3                    Power to obtain information**

2       **75                    Direction to give information**

3           (1) An authorised person may, in writing, direct a relevant person to give  
4           the authorised person information, a document or other thing within  
5           a stated reasonable period if the information, document or thing is  
6           reasonably required by the authorised person for this Act.

7           *Note*     The [Legislation Act](#), s 171 deals with the application of client legal  
8           privilege.

9           (2) A relevant person must take reasonable steps to comply with the  
10          direction.

11          Maximum penalty: 100 penalty units.

12          (3) Subsection (2) does not apply to a relevant person unless the  
13          authorised person—

14           (a) complies with section 73 (Requirements before certain powers  
15           can be exercised); and

16           (b) explains the effect of section 74 (Privilege against  
17           self-incrimination does not apply).

18          *Note*     The defendant has an evidential burden in relation to the matters  
19          mentioned in s (3) (see [Criminal Code](#), s 58).

20          (4) In this section:

21          *relevant person* means—

22           (a) a licensee; or

23           (b) if the licensee is a corporation—an associated entity or key  
24           person, or former associated entity or key person, for the  
25           licensee; or

26           (c) an employer or former employer of a licensee; or

27           (d) any other person prescribed by regulation.

- 1 **76 Direction to give name and address**
- 2 (1) An authorised person may direct a person to state the person's name  
3 and home address if the authorised person believes on reasonable  
4 grounds that the person—
- 5 (a) is involved in the commission of an offence against this Act; or  
6 (b) may be able to assist in the investigation of an offence against  
7 this Act.
- 8 (2) If the authorised person believes on reasonable grounds that  
9 information given in response to a direction under subsection (1) is  
10 false or misleading, the authorised person may direct the person to  
11 produce evidence of the correctness of the information within a stated  
12 reasonable period.
- 13 (3) A person must comply with a direction given to the person under this  
14 section.
- 15 **Maximum penalty: 5 penalty units.**
- 16 *Note* It is an offence to make a false or misleading statement or give false or  
17 misleading information (see [Criminal Code](#), pt 3.4).
- 18 (4) Subsection (3) does not apply to a person unless the authorised person  
19 complies with section 73 (Requirements before certain powers can be  
20 exercised).
- 21 *Note* The defendant has an evidential burden in relation to the matter  
22 mentioned in s (4) (see [Criminal Code](#), s 58).
- 23 (5) An offence against this section is a strict liability offence.

1 **Division 7.4 Power to enter premises**

2 **77 Powers of authorised person to enter premises**

- 3 (1) For this Act, an authorised person may—
- 4 (a) at any reasonable time, enter premises that the public is entitled  
5 to use or that are open to the public (whether or not on payment  
6 of money); or
- 7 (b) at any time, enter premises with the occupier’s consent; or
- 8 (c) at any time, enter premises—
- 9 (i) to monitor compliance with this Act (including an  
10 approved code of practice) or a relevant law; or
- 11 (ii) if the authorised person believes an offence against this Act  
12 is being, or is likely to be, or has just been, committed at  
13 the premises; or
- 14 (d) enter premises in accordance with a warrant.
- 15 (2) However, subsection (1) (a) and (c) do not authorise entry into a part  
16 of the premises that is being used only for residential purposes.
- 17 (3) If an authorised person wants to ask for consent to enter a building or  
18 other structure on the premises, the authorised person may, without  
19 the occupier’s consent, enter any land that forms part of the premises  
20 to ask for the consent.
- 21 (4) To remove any doubt, an authorised person may enter premises under  
22 subsection (1) without payment of an entry fee or other charge.
- 23 (5) An authorised person may—
- 24 (a) enter the premises with 1 or more people who, in the opinion of  
25 the authorised person, have knowledge or skills that could assist  
26 the authorised person to carry out their functions; and
- 27 (b) if entering the premises in accordance with a warrant—also  
28 enter the premises with necessary force.

1    **78           Obtaining consent to entry**

- 2           (1) For section 77 (1) (b), an authorised person must—
- 3               (a) before asking the occupier for consent—tell the occupier—
- 4                     (i) the purpose of the proposed entry; and
- 5                     (ii) the reason for, and identity of, any other person
- 6                     accompanying the authorised person; and
- 7                     (iii) that anything found and seized under this part may be used
- 8                     in evidence in court; and
- 9                     (iv) that consent may be refused; and
- 10           (b) if the occupier consents to the entry—give the occupier a written
- 11               record confirming—
- 12                     (i) the matters mentioned in paragraph (a); and
- 13                     (ii) that the occupier was told about those matters; and
- 14                     (iii) the time and date when the consent was given.
- 15           (2) A court must find that the occupier did not consent if—
- 16               (a) a question arises, in a proceeding before the court, whether the
- 17               occupier consented to the authorised person entering the
- 18               premises under this part; and
- 19               (b) a record mentioned in subsection (1) (b) is not produced in
- 20               evidence; and
- 21               (c) it is not proved that the occupier consented to the entry.

22    **79           General powers on entry to premises**

- 23           (1) An authorised person who enters premises under this division may do
- 24           1 or more of the following in relation to the premises or anything at
- 25           the premises:
- 26               (a) examine anything;

- 1 (b) take a measurement or conduct a test;
- 2 (c) take a sample;
- 3 (d) take images, make audio or video recordings or any other kind  
4 of record;
- 5 (e) if reasonably required for an authorised person to exercise a  
6 power under this division, direct the occupier of the premises, or  
7 anyone at the premises, to do 1 or more of the following:
- 8 (i) give information, a document or other thing (including  
9 information, a document or thing that is not at the  
10 premises);
- 11 (ii) produce a document or other thing (including a document  
12 or other thing that is not at the premises);
- 13 (iii) answer a question;
- 14 (iv) give the authorised person reasonable help to exercise a  
15 power under this part.

16 *Note* The [Legislation Act](#), s 171 deals with the application of client legal  
17 privilege.

18 (2) A person must take all reasonable steps to comply with a direction  
19 given under subsection (1) (e).

20 Maximum penalty: 50 penalty units.

21 (3) Subsection (2) does not apply in relation to a direction given to a  
22 person under subsection (1) (e) (i), (ii) and (iii) unless, before giving  
23 the direction, the authorised person—

24 (a) complies with section 73 (Requirements before certain powers  
25 can be exercised); and

26 (b) explains the effect of section 74 (Privilege against  
27 self-incrimination does not apply) to the person.

28 *Note* The defendant has an evidential burden in relation to the matters  
29 mentioned in s (3) (see [Criminal Code](#), s 58).



1 **Division 7.5**                      **Warrants**

2 **80**                      **Definitions—div 7.5**

3                      In this division:

4                      *remote application*—see section 81 (3).

5                      *warrant form*—see section 84 (2).

6                      *warrant terms*—see section 83 (2).

7 **81**                      **Application for warrant**

8                      (1) An authorised person may apply to a magistrate for a warrant to enter  
9                      the premises and exercise the authorised person’s powers under this  
10                      part.

11                      (2) The application must—

12                      (a) be sworn; and

13                      (b) state the grounds on which the warrant is sought.

14                      (3) However, if the authorised person considers it necessary because of  
15                      urgent or other special circumstances, the authorised person may  
16                      make an application (a *remote application*) by—

17                      (a) preparing a written application stating the grounds on which a  
18                      warrant is sought; and

19                      (b) applying to the magistrate for the warrant other than in person  
20                      before the written application is sworn.

21 **82**                      **Magistrate may refuse to consider application for warrant**  
22                      **until authorised person gives relevant information**

23                      The magistrate may refuse to consider an application for a warrant  
24                      made under section 81 until the authorised person gives the  
25                      magistrate all the information the magistrate requires about the  
26                      application in the way the magistrate requires.

- 1     **83            Decision on application for warrant**
- 2           (1) If an application for a warrant is made under section 81, the
- 3                 magistrate may issue the warrant only if satisfied there are reasonable
- 4                 grounds for suspecting—
- 5                     (a) there is a particular thing or activity connected with an offence
- 6                         against this Act; and
- 7                     (b) the thing or activity—
- 8                         (i) is, or is being engaged in, at the premises; or
- 9                         (ii) may be, or may be engaged in, at the premises within the
- 10                         next 14 days.
- 11           (2) The warrant must include the following information (the *warrant*
- 12                 *terms*):
- 13                     (a) a statement that an authorised person may, with any necessary
- 14                         assistance and force, enter the premises and exercise the
- 15                         authorised person’s powers under this part;
- 16                     (b) details of the offence for which the warrant is issued;
- 17                     (c) the things that may be seized under the warrant;
- 18                     (d) the hours when the premises may be entered;
- 19                     (e) the date, within 14 days after the day of the warrant’s issue,
- 20                         when the warrant ends.
- 21     **84            Warrant issued on remote application**
- 22           (1) A magistrate may issue a warrant on a remote application by—
- 23                     (a) immediately giving a written copy of the warrant to the
- 24                         authorised person if it is practicable to do so; or
- 25                     (b) if it is not practicable to do so—tell the authorised person the
- 26                         following:
- 27                         (i) the warrant terms;

- 1                   (ii) the date and time the warrant is issued.
- 2           (2) If the magistrate issues a warrant under subsection (1) (b), the  
3           authorised person must complete a form of warrant (the **warrant**  
4           **form**) stating—
- 5                   (a) the magistrate’s name; and
- 6                   (b) the date and time the magistrate issued the warrant; and
- 7                   (c) the warrant terms.
- 8           (3) The written copy of the warrant, or the warrant form properly  
9           completed by the authorised person, authorises the entry and the  
10           exercise of the authorised person’s powers under this part.
- 11           (4) The authorised person must, as soon as is reasonably practicable—
- 12                   (a) swear the remote application; and
- 13                   (b) give the magistrate—
- 14                         (i) the sworn application; and
- 15                         (ii) if the authorised person completed a warrant form—the  
16                         warrant form.
- 17           (5) On receiving the documents mentioned in subsection (4) (b), the  
18           magistrate must attach them to the warrant.
- 19           (6) A court must find that a power exercised by an authorised person was  
20           not authorised by a warrant under this section if—
- 21                   (a) a question arises in a proceeding before the court whether the  
22                   exercise of the power was authorised by a warrant; and
- 23                   (b) the warrant is not produced in evidence; and
- 24                   (c) it is not proved that the exercise of the power was authorised by  
25                   a warrant under this section.

- 1     **85           Announcement before entry under warrant**
- 2           (1) Before anyone enters premises under a warrant, an authorised person
- 3           must—
- 4           (a) announce that they are authorised to enter the premises; and
- 5           (b) give anyone at the premises an opportunity to allow entry to the
- 6           premises; and
- 7           (c) if the occupier of the premises is present at the premises—
- 8           identify themselves to the person.
- 9           (2) The authorised person is not required to comply with subsection (1)
- 10          if they believe on reasonable grounds that immediate entry to the
- 11          premises is required to ensure—
- 12          (a) the safety of anyone (including themselves or any person
- 13          assisting them); or
- 14          (b) that the effective execution of the warrant is not frustrated.
- 15     **86           Warrant etc to be given to occupier**
- 16           If the occupier of premises is present at the premises while a warrant
- 17           is being executed, the authorised person must give to the occupier—
- 18           (a) a copy of—
- 19           (i) the warrant; or
- 20           (ii) if section 84 (1) (b) applies—the warrant form; and
- 21           (b) a document setting out the occupier’s rights and obligations.
- 22     **87           Occupier entitled to watch search etc**
- 23           (1) If the occupier of premises is present at the premises while a warrant
- 24           is being executed, the occupier is entitled to watch the authorised
- 25           person, and any person assisting the authorised person, conduct any
- 26           search and exercise any other power authorised by the warrant.

- 1 (2) However, the occupier is not entitled to watch the authorised person  
2 or a person assisting the authorised person, exercise their powers if—  
3 (a) to do so would interfere with the powers being exercised; or  
4 (b) the occupier is under arrest, and allowing them to watch the  
5 powers being exercised would interfere with the objective of the  
6 warrant.
- 7 (3) This section does not prevent an authorised officer exercising powers  
8 under this part in 2 or more areas of the premises at the same time.

## 9 **Division 7.6 Power to seize things**

### 10 **88 Authorised person may seize things at premises**

- 11 (1) An authorised person who enters premises under this part—  
12 (a) may seize anything at the premises if satisfied on reasonable  
13 grounds that—  
14 (i) the thing is connected with an offence against this Act; and  
15 (ii) the seizure is necessary to prevent the thing from being—  
16 (A) concealed, lost or destroyed; or  
17 (B) used to commit, continue or repeat the offence; and  
18 (b) if the premises were entered with the occupier's consent—may  
19 also seize anything at the premises if seizure of the thing is  
20 consistent with the purpose of the entry told to the occupier  
21 when seeking the occupier's consent; and  
22 (c) if the premises were entered under a warrant—may also seize  
23 anything at the premises that the authorised person is authorised  
24 to seize under the warrant.
- 25 (2) Having seized a thing, the authorised person may—  
26 (a) remove the thing from the premises where it was seized to  
27 another place; or

1 (b) leave the thing at the premises where it is seized and restrict  
2 access to it.

3 *Note* If an authorised person seizes a thing, the authorised person must give a  
4 receipt for it to the person from whom it was seized (see s 92).

5 (3) If access to a seized thing is restricted under subsection (2) (b), the  
6 authorised person must secure, in a conspicuous place at the premises,  
7 a notice identifying that the thing is seized.

8 **89 Moving things to another place for examination or**  
9 **processing under warrant**

10 (1) A thing found at premises entered under a warrant may be moved to  
11 another place for examination or processing to decide whether it may  
12 be seized under the warrant if—

13 (a) both of the following apply:

14 (i) there are reasonable grounds for believing that the thing is  
15 or contains something to which the warrant relates;

16 (ii) it is significantly more practicable to do so taking into  
17 account the timeliness and cost of examining or processing  
18 the thing at another place and the availability of expert  
19 assistance; or

20 (b) the occupier of the premises agrees in writing.

21 (2) The thing may be moved to another place for examination or  
22 processing for not longer than 72 hours.

23 (3) An authorised person may apply to a magistrate for an extension of  
24 time if they believe on reasonable grounds that the thing cannot be  
25 examined or processed within 72 hours.

26 (4) The authorised person must give notice of the application to the  
27 occupier of the premises, and the occupier is entitled to be heard on  
28 the application.

- 1 (5) If a thing is moved to another place under this section, the authorised  
2 person must, if practicable—
- 3 (a) tell the person from whom the thing was seized the address of  
4 the place where, and time when, the examination or processing  
5 will be carried out; and
- 6 (b) allow the person from whom the thing was seized or their  
7 representative to be present during the examination or  
8 processing.
- 9 (6) The provisions of this part relating to the issue of warrants apply, with  
10 any necessary changes, to the giving of an extension under  
11 subsection (3).

12 **90 Owner etc may access seized things**

13 A person who would, apart from the seizure, be entitled to inspect a  
14 thing seized under this division may—

- 15 (a) inspect the thing; and
- 16 (b) make a visual recording of the thing; and
- 17 (c) if the thing is a document—take extracts from, or make copies  
18 of, the thing.

19 **91 Person must not interfere with seized things**

- 20 (1) A person commits an offence if—
- 21 (a) a thing has been seized under this division; and
- 22 (b) the person interferes with the thing, or anything containing the  
23 thing; and
- 24 (c) the person does not have the approval of an authorised person to  
25 interfere with the thing.

26 Maximum penalty: 50 penalty units.

- 27 (2) An offence against this section is a strict liability offence.

- 1     **92            Authorised person must give receipt for seized things**
- 2           (1) If an authorised person seizes a thing under this division, they must—
- 3               (a) as soon as practicable after seizing the thing, give the person
- 4               from whom the thing was seized a receipt for the thing; or
- 5               (b) if complying with paragraph (a) is not practicable—secure a
- 6               receipt for the thing in a conspicuous place at the premises where
- 7               the thing was seized.
- 8           (2) A receipt must include the following information:
- 9               (a) a description of the thing seized;
- 10              (b) the reasons why the thing was seized;
- 11              (c) the authorised person’s name, and how they can be contacted;
- 12              (d) if the thing is moved from the premises where it was seized—
- 13              where the thing will be taken.
- 14     **93            Return of seized things**
- 15           (1) Unless subsection (2) applies, a thing seized under this division must
- 16           be returned to its owner, or reasonable compensation must be paid to
- 17           the owner by the Territory for the loss of the thing.
- 18           (2) The thing is not required to be returned and reasonable compensation
- 19           is not required to be paid for it if—
- 20              (a) both of the following apply:
- 21                  (i) a prosecution for an offence connected with the thing
- 22                  (a *relevant offence*) is started against the owner within the
- 23                  1-year period;
- 24                  (ii) the proceeding (including any appeal) is finalised and the
- 25                  owner is convicted or found guilty of the offence; or



- 1 (b) an infringement notice for a relevant offence is served on the  
2 owner within the 1-year period and—
- 3 (i) the owner gives notice disputing liability for the offence  
4 (a *disputed liability notice*) in accordance with the  
5 *Magistrates Court Act 1930*, section 132; and
- 6 (ii) an information is laid in the Magistrates Court against the  
7 owner for the offence within 60 days after the day the  
8 disputed liability notice is given; and
- 9 (iii) the proceeding (including any appeal) is finalised and the  
10 owner is convicted or found guilty of the offence; or
- 11 (c) an infringement notice for a relevant offence is served on the  
12 owner within the 1-year period and—
- 13 (i) the infringement notice penalty for the offence is paid; and  
14 (ii) the notice is not withdrawn; or
- 15 (d) a court makes an order under a territory law that the thing is  
16 forfeited to the Territory or must be otherwise dealt with.
- 17 (3) If subsection (2) applies—
- 18 (a) the thing is forfeited to the Territory; and
- 19 (b) the registrar may direct that the thing be sold, destroyed or  
20 otherwise disposed of.
- 21 (4) In this section:
- 22 *1-year period*, in relation to a seized thing, means 12 months after the  
23 day the thing was seized.

24 **94 Order disallowing seizure**

- 25 (1) If a thing is seized under this division, a person claiming to be entitled  
26 to the thing may apply to the Magistrates Court for an order  
27 disallowing the seizure.

- 1           (2) The application—
- 2               (a) must be made not later than 10 days after the day the thing is
- 3               seized; and
- 4               (b) must not be heard unless the applicant has served a copy of the
- 5               application on the registrar.
- 6           (3) The registrar is entitled to appear as a respondent at the hearing of the
- 7           application.
- 8           (4) The court must make an order disallowing the seizure of the thing if
- 9           satisfied—
- 10               (a) the applicant would, apart from the seizure, be entitled to the
- 11               return of the seized thing; and
- 12               (b) the thing is not connected with an offence against this Act; and
- 13               (c) possession of the thing by the person would not be an offence.
- 14           (5) The court may also make an order disallowing the seizure if satisfied
- 15           there are exceptional circumstances justifying the making of the
- 16           order.
- 17           (6) If the court makes an order disallowing the seizure, the court may
- 18           make 1 or more of the following ancillary orders:
- 19               (a) an order directing the registrar to return the thing to the applicant
- 20               or to someone else who appears to be entitled to it;
- 21               (b) if the thing cannot be returned or has depreciated in value
- 22               because of the disallowed seizure—an order directing the
- 23               Territory to pay reasonable compensation;
- 24               (c) an order about costs in relation to the application.

1 **Division 7.7** **Miscellaneous**

2 **95** **Damage etc to be minimised**

3 (1) In the exercise, or purported exercise, of a function under this part, an  
4 authorised person must take reasonable steps to ensure that they, and  
5 any person assisting them, cause as little inconvenience, detriment  
6 and damage as is practicable.

7 (2) If an authorised person, or a person assisting them, damages anything  
8 in the exercise or purported exercise of a function under this part, the  
9 authorised person must give written notice of the details of the  
10 damage to the person they believe on reasonable grounds is the owner  
11 of the thing.

12 (3) If the damage occurs at premises entered under this part in the absence  
13 of the occupier, the notice may be given by securing it in a  
14 conspicuous place at the premises.

15 **96** **Compensation for exercise of enforcement powers**

16 (1) A person may claim compensation from the Territory if the person  
17 suffers loss or expense because of the exercise, or purported exercise,  
18 of a function under this part by—

- 19 (a) an authorised person; or  
20 (b) a person assisting an authorised person.

21 (2) Compensation may be claimed and ordered in a proceeding for—

- 22 (a) compensation brought in a court of competent jurisdiction; or  
23 (b) an offence against this Act brought against the person making  
24 the claim for compensation.

25 (3) A court may order the payment of reasonable compensation for the  
26 loss or expense only if satisfied it is just to make the order in the  
27 circumstances of the particular case.

- 1           (4) A regulation may prescribe matters that may, must or must not be  
2           taken into account by the court in considering whether it is just to  
3           make the order.

1 **Part 8** **Offences**

2 **97** **Offence—false or misleading representation about**  
3 **licence**

4 (1) A person commits an offence if—

5 (a) the person makes a false or misleading representation that the  
6 person is authorised under a licence to undertake a residential  
7 development activity; and

8 (b) the representation is false or misleading in a material particular;  
9 and

10 (c) the person intends the representation to be false or misleading.

11 Maximum penalty: 500 penalty units.

12 (2) A person commits an offence if—

13 (a) the person makes a false or misleading representation that the  
14 person is authorised under a licence to undertake a residential  
15 development activity; and

16 (b) the representation is false or misleading in a material particular;  
17 and

18 (c) the person is reckless about whether the representation is false  
19 or misleading.

20 Maximum penalty: 200 penalty units.

- 1 (3) A person commits an offence if—
- 2 (a) the person makes a false or misleading representation that the
- 3 person is authorised under a licence to undertake a residential
- 4 development activity; and
- 5 (b) the representation is false or misleading in a material particular.
- 6 Maximum penalty: 50 penalty units.
- 7 (4) An offence against subsection (3) is a strict liability offence.

8 **98 Offence—failure to comply with licence condition**

- 9 (1) A licensee commits an offence if—
- 10 (a) the licensee's licence is subject to a condition; and
- 11 (b) the licensee fails to comply with the condition; and
- 12 (c) the licensee intended to not comply with the condition.
- 13 Maximum penalty: 500 penalty units.
- 14 (2) A licensee commits an offence if—
- 15 (a) the licensee's licence is subject to a condition; and
- 16 (b) the licensee fails to comply with the condition; and
- 17 (c) the licensee is reckless about complying with the condition.
- 18 Maximum penalty: 200 penalty units.
- 19 (3) A licensee commits an offence if—
- 20 (a) the licensee's licence is subject to a condition; and
- 21 (b) the licensee fails to comply with the condition.
- 22 Maximum penalty: 50 penalty units.
- 23 (4) An offence against subsection (3) is a strict liability offence.

- 1 **99**        **Offence—failure to comply with approved code of**  
2                **practice**
- 3                (1) A licensee commits an offence if—
- 4                    (a) an approved code of practice applies to the licensee; and
- 5                    (b) the licensee fails to comply with a requirement of the approved  
6                    code of practice; and
- 7                    (c) the licensee intended to not comply with the approved code of  
8                    practice.
- 9                Maximum penalty: 200 penalty units.
- 10              (2) A licensee commits an offence if—
- 11                    (a) an approved code of practice applies to the licensee; and
- 12                    (b) the licensee fails to comply with a requirement of the approved  
13                    code of practice; and
- 14                    (c) the licensee is reckless about complying with the approved code  
15                    of practice.
- 16              Maximum penalty: 100 penalty units.
- 17              (3) A licensee commits an offence if—
- 18                    (a) an approved code of practice applies to the licensee; and
- 19                    (b) the licensee fails to comply with a requirement of the approved  
20                    code of practice.
- 21              Maximum penalty: 50 penalty units.
- 22              (4) An offence against subsection (3) is a strict liability offence.

1 **Part 9** **Complaints about licensees**

2 **Division 9.1** **Preliminary**

3 **100** **Definitions—pt 9**

4 In this part:

5 *aggrieved person* means a person who may make a complaint about  
6 a licensee.

7 *complainant*—see section 103 (1) (b).

8 *respondent*—see section 103 (1) (d).

9 **Division 9.2** **Making complaints**

10 **101** **When may someone complain about licensees?**

11 A person may complain to the registrar about a licensee if the person  
12 believes on reasonable grounds the licensee—

13 (a) has contravened this Act; or

14 (b) has, when undertaking a residential development activity—

15 (i) failed to meet the standard reasonably expected of a  
16 licensee; or

17 (ii) not demonstrated a level of competence reasonably  
18 expected of a licensee; or

19 (iii) engaged in improper or unethical conduct; or

20 (c) has engaged in any other conduct prescribed by regulation.

21 **102** **Making a complaint on behalf of another person**

22 The following people may make a complaint under section 101 on  
23 behalf of an aggrieved person:

24 (a) a person who is the agent of the aggrieved person;



- 1 (b) a person who has guardianship or control of the affairs of the  
2 aggrieved person under another law or an order of a court or  
3 tribunal.

4 **103 Form and contents of complaint**

- 5 (1) A complaint must—  
6 (a) be in writing; and  
7 (b) include the name and contact details of the aggrieved person  
8 (the *complainant*); and  
9 (c) for a complaint made by an agent or representative of an  
10 aggrieved person—include the name and contact details of the  
11 agent or representative; and  
12 (d) include the name of the licensee the complaint is about  
13 (the *respondent*); and  
14 (e) include details of the complaint about the respondent.  
15 (2) However, the registrar may accept a complaint for consideration even  
16 if it does not comply with subsection (1).  
17 (3) If the registrar accepts a complaint for consideration and the  
18 complaint is not in writing, the registrar must require the complainant  
19 to put the complaint in writing unless there is a good reason for not  
20 doing so.

21 **104 Withdrawal of complaint**

- 22 (1) A complainant may withdraw a complaint at any time by giving  
23 written notice to the registrar.  
24 (2) If the complainant withdraws the complaint, the registrar—  
25 (a) is not required to continue to act on the complaint; and  
26 (b) may continue to act on the complaint if the registrar considers it  
27 appropriate to do so; and

- 1 (c) is not required to give the complainant notice of the outcome of  
2 the complaint under section 110.

### 3 **Division 9.3 Dealing with complaints**

#### 4 **105 Notifying licensee about complaint**

5 As soon as practicable after accepting a complaint for consideration,  
6 the registrar must give the respondent written notice that—

- 7 (a) states that a complaint has been made about the respondent; and  
8 (b) includes details about the complaint.

#### 9 **106 Consideration of complaint**

- 10 (1) The registrar must take reasonable steps to consider each complaint  
11 accepted for consideration.
- 12 (2) The registrar's consideration of a complaint may be conducted in any  
13 way the registrar decides, unless otherwise expressly provided by this  
14 Act.

##### 15 **Example—s (2)**

16 the registrar may decide to split a complaint and consider the parts separately

#### 17 **107 Registrar may request information or statement**

- 18 (1) The registrar may, at any time, ask a complainant or respondent to  
19 give the registrar information or a statement about the complaint.

20 *Note 1* It is an offence to make a false or misleading statement, give false or  
21 misleading information or produce a false or misleading document (see  
22 [Criminal Code](#), pt 3.4).

23 *Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the  
24 privilege against self-incrimination and client legal privilege.

- 25 (2) A request under subsection (1) must—  
26 (a) be in writing; and  
27 (b) state the information or statement that the registrar requires; and

- 1 (c) state a reasonable period for the person to comply with the  
2 request; and
- 3 (d) state that the person may seek an extension of the period  
4 mentioned in paragraph (c) before or after the period ends.
- 5 (3) The registrar may extend the period for the complainant or respondent  
6 to comply with a request under subsection (1) before or after the  
7 period ends.
- 8 (4) If the complainant does not comply with a request under  
9 subsection (1), the registrar may, but is not required to, take further  
10 action on the complaint.

## 11 **Division 9.4 Finalising complaints**

### 12 **108 No further action**

13 The registrar must not take further action on a complaint if satisfied  
14 the complaint—

- 15 (a) lacks substance or credibility; or
- 16 (b) is frivolous, vexatious or was made other than in good faith; or
- 17 (c) has been adequately dealt with, including by being referred to  
18 another entity under section 109.

### 19 **109 Registrar may refer complaint or matter to another entity**

- 20 (1) The registrar may refer a complaint, together with any relevant  
21 documents or information in the registrar's possession or control, to  
22 another entity if satisfied the complaint can be more appropriately  
23 dealt with by the other entity.

#### 24 **Examples—other entities**

25 building inspector, construction occupations registrar, fair work commissioner,  
26 commissioner for fair trading, work health and safety commissioner

- 27 (2) The registrar may also refer a matter arising in relation to a complaint  
28 if satisfied it is appropriate for another entity to deal with the matter.

1            (3) Nothing in this section requires the other entity to deal with the  
2            referred complaint or matter.

3        **110            Notice of outcome of complaint consideration**

4            (1) The registrar must, after finalising a complaint under this part, give  
5            the complainant and the respondent a written notice that includes  
6            information about the outcome of the complaint.

7            (2) If, after finalising a complaint under this part, the registrar is satisfied  
8            a ground for regulatory action exists in relation to a licensee, the  
9            registrar must consider taking regulatory action against them under  
10           division 5.1 (Regulatory action).

11        **Division 9.5                      Miscellaneous**

12        **111            Immunity from liability**

13            If a person makes a complaint in good faith—

14            (a) the making of the complaint is not—

15                      (i) a breach of confidence; or

16                      (ii) a breach of professional etiquette or ethics; or

17                      (iii) a breach of a rule of professional conduct; and

18            (b) the complainant does not incur civil or criminal liability only  
19            because of the making of the complaint.

1 **Part 10** **Information sharing**

2 **Division 10.1** **Sharing public safety information**

3 **112** **Definitions—div 10.1**

4 (1) In this division:

5 *law of another jurisdiction* means a law of the Commonwealth, a  
6 State or the Northern Territory.

7 *non-territory agency* means an agency of the Commonwealth, a State  
8 or the Northern Territory that exercises functions substantively  
9 corresponding to those exercised by a public safety agency.

10 *public safety agency* means any of the following:

- 11 (a) the registrar;
- 12 (b) the director-general responsible for this Act or an operational  
13 Act;
- 14 (c) an inspector appointed under an operational Act;
- 15 (d) the director-general responsible for the *Emergencies Act 2004*;
- 16 (e) the commissioner and chief officers appointed under the  
17 *Emergencies Act 2004*;
- 18 (f) an inspector appointed under the *Emergencies Act 2004*;
- 19 (g) the director-general responsible for the *Work Health and Safety*  
20 *Act 2011*;
- 21 (h) the commissioner appointed under the *Work Health and Safety*  
22 *Act 2011*;
- 23 (i) an inspector appointed under the *Work Health and Safety*  
24 *Act 2011*;
- 25 (j) an agency prescribed by regulation.

1            **public safety information** means information in relation to a situation  
2            that presents, or is likely to present, a risk of death or injury to a  
3            person, significant harm to the environment or significant damage to  
4            property, that is disclosed to, or obtained by, a public safety agency  
5            because the agency is, or has been, a public safety agency.

6            (2) In this section:

7            **operational Act** means any of the following:

- 8            (a) the *Building Act 2004*;
- 9            (b) the *Construction Occupations (Licensing) Act 2004*;
- 10           (c) the *Dangerous Substances Act 2004*;
- 11           (d) the *Electricity Safety Act 1971*;
- 12           (e) the *Gas Safety Act 2000*;
- 13           (f) the *Planning Act 2023*;
- 14           (g) the *Professional Engineers Act 2023*;
- 15           (h) the *Unit Titles Act 2001*;
- 16           (i) the *Utilities Act 2000*;
- 17           (j) the *Water and Sewerage Act 2000*.

18           **113            Sharing public safety information—territory agencies**

19           (1) A public safety agency may—

- 20           (a) give public safety information to another public safety agency  
21           (the **receiving agency**); and
- 22           (b) impose conditions on how the receiving agency uses, stores or  
23           shares the information.

24           (2) A public safety agency (the **requesting agency**) may request public  
25           safety information from another public safety agency.

- 1 (3) If a public safety agency receives a request under subsection (2), the  
2 agency may comply with the request if satisfied the requesting agency  
3 will use the information only to exercise a function given to the  
4 requesting agency under a territory law.

5 **114 Sharing public safety information—non-territory agencies**

- 6 (1) A public safety agency may give public safety information to a  
7 non-territory agency if the public safety agency is satisfied—  
8 (a) the information relates to a function of the non-territory agency;  
9 and  
10 (b) the information relates to compliance with a law of the  
11 Commonwealth, a State or the Northern Territory that provides  
12 for public safety; and  
13 (c) the non-territory agency that receives the information  
14 (the *receiving agency*) will use the information only to exercise  
15 a function the receiving agency has under a law mentioned in  
16 paragraph (b); and  
17 (d) giving the information will not unreasonably compromise the  
18 exercise of a function under a territory law.  
19 (2) A public safety agency may impose conditions on how the  
20 non-territory agency uses, stores or shares the public safety  
21 information.

22 **Division 10.2 Unauthorised disclosure of protected**  
23 **information**

24 **115 Offences—use or divulge protected information**

- 25 (1) A person commits an offence if—  
26 (a) the person uses information; and  
27 (b) the information is protected information about someone else;  
28 and

- 1 (c) the person is reckless about whether the information is protected  
2 information about someone else.
- 3 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
4 both.
- 5 (2) A person commits an offence if—
- 6 (a) the person does something that divulges information; and  
7 (b) the information is protected information about someone else;  
8 and  
9 (c) the person is reckless about whether—
- 10 (i) the information is protected information about someone  
11 else; and  
12 (ii) doing the thing would result in the information being  
13 divulged to someone else.
- 14 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
15 both.
- 16 (3) Subsections (1) and (2) do not apply—
- 17 (a) if the information is used or divulged—
- 18 (i) under this Act, another territory law, or another law  
19 applying in the ACT; or  
20 (ii) in relation to the exercise of a function by a public official  
21 under this Act or another territory law; or  
22 (iii) in a court proceeding; or  
23 (b) to the using or divulging of protected information about a person  
24 with the person's consent.
- 25 (4) A public official need not divulge protected information to a court, or  
26 produce a document containing protected information to a court,  
27 unless it is necessary to do so for this Act or another law applying in  
28 the ACT.



- 1           (5) In this section:
- 2                 *court* includes a tribunal, authority or person having power to require  
3                 the production of documents or the answering of questions.
- 4                 *divulge* includes communicate or publish.
- 5                 *produce* includes allow access to.
- 6                 *protected information* means information about a person that is  
7                 disclosed to, or obtained by a public official because of the exercise,  
8                 or the purported exercise, of a function under this Act by the public  
9                 official or someone else.
- 10                *use*, in relation to information, includes make a record of the  
11                information.

1 **Part 11** **Notification and review of**  
2 **decisions**

3 **116** **Definitions—pt 11**

4 In this part:

5 *ACAT reviewable decision* means a decision mentioned in  
6 schedule 1, part 1.2, column 3 under a provision of this Act  
7 mentioned in column 2 in relation to the decision.

8 *affected person* means a person mentioned in schedule 1, column 4  
9 in relation to a decision.

10 *decision-maker* means the decision-maker for a reconsideration  
11 application.

12 *internally reviewable decision* means a decision mentioned in  
13 schedule 1, part 1.1, column 3 under a provision of this Act  
14 mentioned in column 2 in relation to the decision.

15 *internal review notice*—see the *ACT Civil and Administrative*  
16 *Tribunal Act 2008*, section 67B (1).

17 *reconsideration application*—see section 117 (1).

18 **117** **Applications for reconsideration**

- 19 (1) An affected person may make an application for reconsideration of  
20 an internally reviewable decision (a *reconsideration application*).
- 21 (2) A reconsideration application must—
- 22 (a) be in writing; and
- 23 (b) set out the grounds on which reconsideration is sought; and
- 24 (c) be made not later than—
- 25 (i) 28 days after the day the internal review notice is given to  
26 the affected person; or

- 1 (ii) any longer period allowed by the registrar.
- 2 (3) The making of a reconsideration application does not stay the  
3 internally reviewable decision or otherwise prevent action being  
4 taken as a result of the decision.

5 **118 Reconsideration of internally reviewable decisions**

- 6 (1) Within 30 days after receiving a reconsideration application, the  
7 decision-maker must—
- 8 (a) reconsider the internally reviewable decision; and  
9 (b) confirm, vary or set aside the decision.
- 10 (2) The decision-maker must be a different person to the person who  
11 made the internally reviewable decision.
- 12 (3) If the decision-maker does not confirm, vary or set aside the internally  
13 reviewable decision within 30 days after receiving the  
14 reconsideration application, the decision-maker is taken to have  
15 confirmed the decision.

16 **119 Reviewable decision notice**

17 If the decision-maker makes an ACAT reviewable decision, the  
18 decision-maker must give a reviewable decision notice to the registrar  
19 and each affected person.

20 *Note* The decision-maker must also take reasonable steps to give a reviewable  
21 decision notice to any other person whose interests are affected by the  
22 decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

23 **120 Applications for review of ACAT reviewable decisions**

24 An affected person may apply to the ACAT for a review of an ACAT  
25 reviewable decision.

- 1           **Part 12**                           **Miscellaneous**
- 2           **121**           **Codes of practice**
- 3           (1) The Minister may approve a code of practice (an *approved code of*  
4           *practice*) for the following (a *relevant property developer*):
- 5                 (a) licensees; and
- 6                 (b) any other person prescribed by regulation undertaking  
7                 residential development activities.
- 8           (2) An approved code of practice is a disallowable instrument.
- 9           (3) A relevant property developer must comply with an approved code of  
10           practice.
- 11           *Note*       It is an offence under s 99 for a licensee not to comply with an approved  
12           code of practice.
- 13           **122**           **Competency requirements for property developers**
- 14           (1) The Minister may determine qualifications, experience, continuing  
15           professional development or other competencies (a *competency*  
16           *requirement*) that a person must have to be a licensee.
- 17           (2) A determination is a disallowable instrument.
- 18           (3) A licensee must comply with a competency requirement.
- 19           **123**           **Protection of public officials from liability**
- 20           (1) A public official is not civilly liable for conduct engaged in honestly  
21           and without recklessness—
- 22                 (a) in the exercise of a function under this Act or another territory  
23                 law; or
- 24                 (b) in the reasonable belief that the conduct was in the exercise of a  
25                 function under this Act or another territory law.

- 1 (2) Any liability that would, apart from this section, attach to the public  
2 official attaches instead to the Territory.

3 **124 Incorporating, applying or adopting documents in**  
4 **regulations and instruments**

- 5 (1) A regulation or instrument may incorporate, apply or adopt (with or  
6 without change or modification)—

7 (a) a law or an Australian Standard as in force from time to time; or

8 (b) another instrument as in force from time to time.

- 9 (2) The [Legislation Act](#), section 47 (6) does not apply to a document  
10 incorporated, applied or adopted under subsection (1).

11 *Note* An instrument under s (1) (b) does not need to be notified under the  
12 [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#),  
13 s 47 (7)).

- 14 (3) The director-general must ensure that an instrument that is  
15 incorporated, applied or adopted under subsection (1) is—

16 (a) on the ACT legislation register; or

17 (b) available for inspection by anyone without charge during  
18 ordinary business hours at an ACT government office; or

19 (c) accessible on an ACT government website, or by a link on an  
20 ACT government website.

- 21 (4) An instrument that is incorporated, applied or adopted under  
22 subsection (1) is not enforceable by or against the Territory or anyone  
23 else unless it is made accessible in accordance with subsection (3).

- 24 (5) In this section:

25 *ACT legislation register*—see the [Legislation Act](#), section 18 (1).

1    **125       Determination of fees**

- 2           (1) The Minister may determine fees for this Act.  
3           (2) A determination is a disallowable instrument.

4    **126       Regulation-making power**

5           The Executive may make regulations for this Act.

6    **127       Review of Act**

- 7           (1) The Minister must, as soon as practicable after the end of this Act's  
8           5th year of operation—  
9           (a) review the operation and effectiveness of this Act; and  
10          (b) present a report of the review to the Legislative Assembly.  
11          (2) This section expires 7 years after the day it commences.

1 **Part 13** **Transitional**

2 **128** **Transitional regulations**

- 3 (1) A regulation may prescribe transitional matters necessary or  
4 convenient to be prescribed because of the enactment of this Act.
- 5 (2) A regulation may modify this part (including in relation to another  
6 territory law) to make provision in relation to anything that, in the  
7 Executive's opinion, is not, or is not adequately or appropriately,  
8 dealt with in this part.
- 9 (3) A regulation under subsection (2) has effect despite anything  
10 elsewhere in this Act or another territory law.

11 *Note* A transitional provision under s (1) continues to have effect after its  
12 repeal, however, a modification under s (2) has no ongoing effect after its  
13 repeal (see [Legislation Act](#), s 88).

14 **129** **Expiry—pt 13**

15 This part expires 7 years after the day it commences.

1 **Part 14 Consequential amendments**

2 **130 Legislation amended—sch 2**

3 This Act amends the legislation mentioned in schedule 2.



1 **Schedule 1**      **Reviewable decisions**

2 (see pt 11)

3 **Part 1.1**      **Internally reviewable decisions**

column 1 item	column 2 section	column 3 decision	column 4 affected person
1	15 (3)	refuse to consider licence application	applicant for licence
2	17 (3)	refuse to consider renewal application	applicant for licence renewal
3	19 (3)	refuse to consider application further	applicant for licence or licence renewal
4	21 (1) (b)	refuse to give licence	applicant for licence
5	21 (2) (b)	refuse to renew licence	applicant for licence renewal
6	23 (1) (f)	impose condition on licence	licensee
7	26	vary, or refuse to vary, licence	licensee
8	44	refuse to cancel licence	licensee

4 **Part 1.2**      **ACAT reviewable decisions**

column 1 item	column 2 section	column 3 decision	column 4 affected person
1	30 (1)	refuse to approve approval application	applicant for approval
2	30 (3) (b) (i)	impose condition on approval	rating entity
3	32	vary, or refuse to vary, approval	rating entity

**Schedule 1**  
**Part 1.2**

Reviewable decisions  
ACAT reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 affected person</b>
4	33 (1)	refuse to revoke approval	rating entity
5	33 (2)	revoke approval	rating entity
6	38	take regulatory action	licensee
7	41	immediately suspend or cancel licence	licensee
8	43	refuse to revoke immediate suspension or cancellation	licensee
9	118	confirm, vary or set aside internally reviewable decision	person applying for reconsideration

1

1 **Schedule 2**            **Consequential amendments**

2 (see s 130)

3 **Part 2.1**                **Building Act 2004**

4 **[2.1]        New section 27 (1) (ca)**

5 *insert*

6 (ca) if the application relates to residential building work—each  
7 person arranging for the building work to be carried out or a  
8 related entity of the person—

9 (i) holds a property developer licence; and

10 (ii) is not restricted under their licence from arranging for the  
11 work to be carried out; and

12 **[2.2]        New section 27 (1A)**

13 *insert*

14 (1A) A regulation may exclude a person or an application under section 26  
15 from the application of subsection (1) (ca).

16 **[2.3]        Section 27 (2), new definitions**

17 *insert*

18 *property developer licence* means a licence under the *Property*  
19 *Developers Act 2023*.

20 *related entity*, of a person, means—

21 (a) for a corporation—a corporation that holds all of the issued  
22 share capital of the corporation; or

23 (b) an entity prescribed by regulation.

1            *residential building*—see the *Property Developers Act 2023*,  
2            dictionary.

3            *residential building work* means building work in relation to a  
4            residential building.

5            **[2.4] New section 28AA**

6            *before section 28A, insert*

7            **28AA Approval of certain residential building work when**  
8            **property developer licence required**

9            (1) This section applies to a building approval for residential building  
10            work if a person is required to hold a property developer licence  
11            because of section 27 (1) (ca) in relation to the application for  
12            approval.

13            (2) The approval is subject to a condition that—

14                    (a) the residential building work the subject of the approval may  
15                    only be carried out or arranged to be carried out by a person who  
16                    holds a property developer licence or whose related entity holds  
17                    a property developer licence; and

18                    (b) the relevant property developer licensee is not restricted under  
19                    their licence from carrying out the residential building work.

20            (3) In this section:

21                    *property developer licence*—see section 27 (2).

22                    *related entity*—see section 27 (2).

23                    *residential building work*—see section 27 (2).

1 **[2.5] New sections 48A and 48B**

2 *in division 3.6, insert*

3 **48A Approval of building manual**

4 (1) This section applies if a certifier is satisfied building work has been  
5 completed in accordance with section 48 (1).

6 (2) The building licensee in charge of the building may give the certifier  
7 a draft building manual for the building work and apply to the certifier  
8 for approval of the manual.

9 (3) The certifier may only approve the draft building manual for the  
10 building work if satisfied the draft manual complies with the  
11 requirements prescribed by regulation.

12 *Note* The registrar cannot issue a certificate of occupancy for certain building  
13 work if a building manual approved by the certifier for the work has not  
14 been given to the registrar (see s 69 (1) (d)).

15 (4) In this section:

16 *building manual*, in relation to a building, means a manual for the  
17 ongoing management of the building.

18 **48B Offence—false or misleading information in building**  
19 **manual**

20 (1) A person commits an offence if—

21 (a) the person gives a certifier a draft building manual for approval  
22 under section 48A; and

23 (b) the draft manual contains information that is false or misleading  
24 in a material particular.

25 Maximum penalty: 50 penalty units.

26 (2) An offence against this section is a strict liability offence.

1 **[2.6] New section 69 (1) (c)**

2 *before note 1, insert*

3 (c) if the approval is subject to a condition under section 28AA  
4 (Approval of certain residential building work when property  
5 developer licence required)—the condition has been complied  
6 with.

7 **[2.7] New section 69 (1) (d)**

8 *before note 1, insert*

9 (d) if required by regulation—the application includes a building  
10 manual for the building work approved by the certifier in  
11 accordance with section 48A.

12 **[2.8] Section 69 (2C) (c)**

13 *omit*

14 (Residential buildings—statutory warranties, standard conditions,  
15 insurance and fidelity certificates)

16 *substitute*

17 (Residential building work—warranties, conditions, insurance etc)

18 **[2.9] New section 69 (5)**

19 *insert*

20 (5) In this section:

21 *residential building work*—see section 27 (2).

1 **[2.10] Section 73**

2 *omit*

3 (Residential buildings—statutory warranties, standard conditions,  
4 insurance and fidelity certificates)

5 *substitute*

6 (Residential building work—warranties, conditions, insurance etc)

7 **[2.11] Part 6 heading**

8 *substitute*

9 **Part 6 Residential building work—**  
10 **warranties, conditions, insurance**  
11 **etc**

12 **[2.12] Section 84, new definition of *property developer***

13 *insert*

14 ***property developer***, in relation to residential building work—

15 (a) means—

16 (i) a person who contracts or arranges for, or facilitates or  
17 otherwise causes (whether directly or indirectly) the  
18 building work to be carried out; or

19 (ii) the owner of the land on which the building work is carried  
20 out at the time the building work is done; or

21 (iii) a person prescribed by regulation; but

22 (b) does not include a person excluded by regulation.

- 1 **[2.13] New section 88 (2A)**
- 2 *insert*
- 3 (2A) If a property developer arranges for the residential building work the  
4 subject of the contract mentioned in subsection (1) (the *building*  
5 *contract*) to be carried out—
- 6 (a) the building contract also contains a warranty by the property  
7 developer in relation to the matters mentioned in  
8 subsection (2) (a) to (d); and
- 9 (b) the warranty under paragraph (a) is in addition to and does not  
10 limit the warranty by the builder under subsection (2); and
- 11 (c) the warranty by the builder under subsection (2) does not limit  
12 the warranty by the property developer under paragraph (a).
- 13 **[2.14] New section 88 (4A) and (4B)**
- 14 *insert*
- 15 (4A) Subsection (2A) does not apply to a building contract entered into  
16 before the commencement of this subsection.
- 17 (4B) Subsection (4A) and this subsection expire 5 years after the day they  
18 commence.
- 19 *Note* Subsection (4A) continues to have effect after its expiry (see [Legislation](#)  
20 [Act](#), s 88).
- 21 **[2.15] Section 89 heading**
- 22 *substitute*
- 23 **89 Builder’s and property developer’s liability**



1 **[2.16] Section 89**

2 *after*

3 a builder

4 *insert*

5 or a property developer

6 **[2.17] New division 6.2B**

7 *insert*

8 **Division 6.2B Defective building work**

9 **89F Affected party may require builder or property developer**  
10 **to rectify defect after completion**

- 11 (1) This section applies to residential building work carried out by a  
12 builder, or arranged to be carried out by a property developer, which  
13 is—
- 14 (a) defective; and
- 15 (b) able to be rectified.
- 16 (2) An affected party may give written notice to the builder and any  
17 property developer, within 2 years after the completion day for the  
18 residential building work requiring the defective work to be rectified.
- 19 (3) If a notice is given in accordance with subsection (2), in any  
20 proceeding in which the affected party claims that the residential  
21 building work is defective it is presumed that it is defective and able  
22 to be rectified unless the contrary is proven.
- 23 (4) In addition to the remedy under subsection (2), the affected party may  
24 claim from the builder and any property developer, damages for any  
25 loss or damage to the affected party resulting from the defect that is  
26 reasonably foreseeable as a result of the defect.

- 1 (5) Nothing in this section affects a warranty under section 88.
- 2 (6) This section does not apply to residential building work carried out—
- 3 (a) before the commencement of this section; or
- 4 (b) under a contract entered into before the commencement of this
- 5 section.
- 6 (7) Subsection (6) and this subsection expire 5 years after the day this
- 7 section commences.
- 8 *Note* Subsection (6) continues to have effect after its expiry (see [Legislation](#)
- 9 [Act](#), s 88).
- 10 (8) In this section:
- 11 *affected party*, in relation to residential building work—
- 12 (a) means—
- 13 (i) the owner of the building or the land on which the building
- 14 work was carried out, whether or not that person was a
- 15 party to the contract for the building work or the contract
- 16 for sale of the building; or
- 17 (ii) a person prescribed by regulation; but
- 18 (b) does not include a person excluded by regulation.
- 19 *residential building work*—see section 27 (2).

1 **[2.18] New division 6.3A**

2 *insert*

3 **Division 6.3A Latent defects insurance**

4 **95A Requirements for latent defects insurance**

5 (1) A regulation may provide for the following matters:

6 (a) when latent defects insurance is required for residential building  
7 work;

8 (b) requirements for latent defects insurance policies;

9 (c) requirements for insurers issuing latent defects insurance;

10 (d) any other matter relevant to paragraph (a), (b) or (c).

11 (2) In this section:

12 *residential building work*—see section 27 (2).

13 **[2.19] Dictionary, definition of *actuary* etc**

14 *omit*

15 (Residential buildings—statutory warranties, standard conditions,  
16 insurance and fidelity certificates)

17 *substitute*

18 (Residential building work—warranties, conditions, insurance etc)

19 *in the dictionary definitions of*

- 20 • *actuary*  
21 • *approval criteria*  
22 • *approved scheme*  
23 • *builder*  
24 • *building*

- 1           • *building work*
- 2           • *completion day*
- 3           • *complying residential building work insurance*
- 4           • *cost*
- 5           • *fidelity certificate*
- 6           • *fidelity fund scheme*
- 7           • *insurable residential building*
- 8           • *insurable residential building work*

9   **[2.20] Dictionary, new definitions**

10           *insert*

11           *property developer*, for part 6 (Residential building work—  
12           warranties, conditions, insurance etc)—see section 84.

13   **[2.21] Dictionary, definition of *prudential standards* etc**

14           *omit*

15           (Residential buildings—statutory warranties, standard conditions,  
16           insurance and fidelity certificates)

17           *substitute*

18           (Residential building work—warranties, conditions, insurance etc)

19           *in the dictionary definitions of*

- 20           • *prudential standards*
- 21           • *residential building*
- 22           • *residential building work*
- 23           • *special actuary*
- 24           • *storey*

1 **Part 2.2** **Building (General)**  
2 **Regulation 2008**

3 **[2.22] New section 30A (c) (via)**

4 *insert*

5 (via) if a person is required to hold a property developer licence  
6 because of the [Act](#), section 27 (1) (ca) in relation to the  
7 building work—

8 (A) the name and licence number of the licensee; and

9 (B) a contact telephone number for the property  
10 developer licensee; and

11 (C) for a corporation—the property developer licensee  
12 ACN or ABN;

13 **[2.23] New section 30A (2)**

14 *insert*

15 (2) In this section:

16 *residential building work*—see the [Act](#), section 27 (2).

17 **Part 2.3** **Civil Law (Property) Act 2006**

18 **[2.24] Section 260 (1), new note**

19 *insert*

20 *Note* The [Civil Law \(Sale of Residential Property\) Act 2003](#), div 2A.3 requires  
21 additional matters to be disclosed before an off-the-plan contract in  
22 relation to the construction of a residence may be entered into.

1 **Part 2.4** **Civil Law (Sale of Residential**  
2 **Property) Act 2003**

3 **[2.25] New section 9 (1) (ja)**

4 *insert*

5 (ja) for an off-the-plan contract—a statement about the  
6 matters mentioned in section 19AC (1) (but not including  
7 paragraph (d));

8 *Note* If the off-the-plan contract relates to a unit, a disclosure statement  
9 mentioned in par (g) (ii) must also be included in the proposed  
10 contract.

11 **[2.26] Section 9 (4), new definition of *off-the-plan contract***

12 *insert*

13 *off-the plan contract*—see section 19AA (1).

14 **[2.27] New divisions 2A.1 to 2A.3**

15 *before section 19A, insert*

16 **Division 2A.1 Preliminary**

17 **19AA Definitions—pt 2A**

18 (1) In this part:

19 *certificate of occupancy*—see the *Building Act 2004*, dictionary.

20 *Commonwealth or State entity* means an agency of the  
21 Commonwealth, a State or the Northern Territory that substantially  
22 corresponds to a territory entity.

23 *off-the-plan contract* means a contract for the sale of—

24 (a) a unit for residential use before the units plan for the unit is  
25 registered; or

1 (b) a residence (other than a unit) on land identified in the contract  
2 before the certificate of occupancy for the residence is issued; or

3 (c) vacant land for residential use identified in the contract before  
4 the Crown lease for the land is registered.

5 ***property developer licence*** means a licence issued under the *Property*  
6 *Developers Act 2023*, part 3.

7 ***related entity***, of a seller, means—

8 (a) if the seller is a corporation—a corporation that holds all of the  
9 issued share capital of the seller; or

10 (b) an entity prescribed by regulation.

11 ***territory entity*** means—

12 (a) a territory authority; or

13 (b) a territory instrumentality; or

14 (c) a territory-owned corporation.

15 (2) In this section:

16 ***registered*** means registered with the registrar-general under the—

17 (a) *Land Titles Act 1925*; or

18 (b) *Land Titles (Unit Titles) Act 1970*.

19 **Division 2A.2 Off-the-plan contracts—licence**  
20 **requirements**

21 **19AB Off-the-plan contracts—seller must be licensed**

22 (1) A seller commits an offence if—

23 (a) 2 parties enter into an off-the-plan contract; and

24 (b) either of the following applies:

- 1 (i) neither the seller, nor any related entity of the seller, holds  
2 a property developer licence;
- 3 (ii) the seller or a related entity holds a property developer  
4 licence that restricts the seller or related entity from  
5 entering into the off-the-plan contract.

6 Maximum penalty: 100 penalty units.

7 (2) This section does not apply to—

- 8 (a) the Territory, the Commonwealth or a State; or  
9 (b) a territory entity or a Commonwealth or State entity; or  
10 (c) a person excluded by regulation.

11 *Note* The defendant has an evidential burden in relation to the matters  
12 mentioned in s (2) (see [Criminal Code](#), s 58).

13 **19AC Off-the-plan contracts—advertising**

14 (1) A person commits an offence if—

- 15 (a) the person publishes an advertisement for the sale of premises  
16 under an off-the-plan contract; and  
17 (b) the advertisement does not contain the property developer  
18 licence number of the proposed seller or a related entity of the  
19 proposed seller.

20 Maximum penalty: 5 penalty units.

21 (2) Subsection (1) does not apply to—

- 22 (a) the Territory, the Commonwealth or a State; or  
23 (b) a territory entity or a Commonwealth or State entity; or  
24 (c) a person excluded by regulation.



- 1 (3) A person commits an offence if—
- 2 (a) the person publishes an advertisement for the sale of premises
- 3 under an off-the-plan contract; and
- 4 (b) the advertisement includes a statement about the property
- 5 developer licence number of the proposed seller or a related
- 6 entity of the proposed seller; and
- 7 (c) the statement is false or misleading in a material particular.
- 8 Maximum penalty: 5 penalty units.
- 9 (4) An offence against this section is a strict liability offence.

10 **Division 2A.3 Off-the-plan contracts—disclosure**

11 **requirements**

12 **19AD Disclosure statements**

- 13 (1) Before a buyer and seller enter into an off-the-plan contract, the seller
- 14 must give the buyer a statement (a *disclosure statement*) including
- 15 the following matters:
- 16 (a) if section 19AB requires the seller, or a related entity of the
- 17 seller, to hold a property developer licence—
- 18 (i) the licence number;
- 19 (ii) a statement that the register under the *Property Developers*
- 20 *Act 2023*, section 28 contains information about property
- 21 developers licensed under that Act;
- 22 (b) the fixtures, fittings and finishes that are included in each
- 23 residence;
- 24 (c) any other matter prescribed by regulation.
- 25 (2) This division does not limit the operation of the *Civil Law (Property)*
- 26 *Act 2006*, part 2.9 (Unit titles).



1 **[2.30] Section 19A (1), definition of *off-the-plan contract***

2 *omit*

3 **[2.31] Section 19A (2), definitions of *certificate of occupancy***  
4 **and *registered***

5 *omit*

6 **[2.32] Dictionary, note 2**

7 *insert*

- 8 • territory authority  
9 • territory instrumentality  
10 • territory-owned corporation

11 **[2.33] Dictionary, new definitions**

12 *insert*

13 *certificate of occupancy*, for part 2A (Off-the-plan contracts)—see  
14 the *Building Act 2004*, dictionary.

15 *Commonwealth or State entity*, for part 2.A (Off-the-plan  
16 contracts)—see section 19AA.

17 **[2.34] Dictionary, definition of *delay event***

18 *substitute*

19 *delay event*, in relation to an off-the-plan contract, for  
20 division 2A.4 (Off-the-plan contracts—rescission provisions)—see  
21 section 19A (1).

22 **[2.35] Dictionary, definition of *off-the-plan contract***

23 *substitute*

24 *off-the-plan contract*, for part 2.A (Off-the-plan contracts)—see  
25 section 19AA (1).

- 1 **[2.36] Dictionary, new definition of *property developer licence***  
2 *insert*  
3 *property developer licence*, for part 2.A (Off-the-plan contracts)—  
4 see section 19AA (1).
- 5 **[2.37] Dictionary, definition of *rescission provision***  
6 *substitute*  
7 *rescission provision*, for division 2A.4 (Off-the-plan contracts—  
8 rescission provisions)—see section 19A (1).
- 9 **[2.38] Dictionary, new definition of *related entity***  
10 *insert*  
11 *related entity*, of a seller, for part 2.A (Off-the-plan contracts)—see  
12 section 19AA (1).
- 13 **[2.39] Dictionary, definitions of *sunset date* and *sunset event***  
14 *substitute*  
15 *sunset date*, for division 2A.4 (Off-the-plan contracts—rescission  
16 provisions)—see section 19A (1).  
17 *sunset event*, for division 2A.4 (Off-the-plan contracts—rescission  
18 provisions)—see section 19A (1).
- 19 **[2.40] Dictionary, new definition of *territory entity***  
20 *insert*  
21 *territory entity*, for part 2.A (Off-the-plan contracts)—see  
22 section 19AA (1).

1 **Part 2.5** **Planning Act 2023**

2 **[2.41] New division 7.3.3**

3 *insert*

4 **Division 7.3.3** **Development applications for certain**  
5 **residential building developments**

6 **162A** **Development applications for certain residential building**  
7 **developments—property developer licence required**

8 (1) This section applies to a development application in relation to a  
9 proposed residential building development.

10 (2) The territory planning authority must not accept a development  
11 application in relation to the proposed residential building  
12 development unless—

13 (a) the proponent for the development, or a related entity of the  
14 proponent, holds a property developer licence; and

15 (b) the relevant licensee is not restricted under their licence from  
16 undertaking the development.

17 (3) A regulation may exclude a person or development application from  
18 the application of subsection (2).

19 (4) In this section:

20 ***related entity***, of a person, means—

21 (a) if the person is a corporation—a corporation that holds all of the  
22 issued share capital of the person; or

23 (b) an entity prescribed by regulation.

24 ***residential building***—see the *Property Developers Act 2023*,  
25 dictionary.

- 1                    *residential building development* means—
- 2                    (a) building or altering a residential building on land; and
- 3                    (b) for the purpose of building a residential building on land—
- 4                         (i) undertaking earthworks or other construction work on or
- 5                         under the land; or
- 6                         (ii) subdividing or consolidating the land; or
- 7                         (iii) varying a lease relating to the land (other than a variation
- 8                         that reduces the rent payable to a nominal rent); or
- 9                         (iv) demolishing a building on the land; and
- 10                    (c) another development prescribed by regulation.

11    **162B    Transitional—amendments of existing development**

12                    **applications for certain residential building**

13                    **developments—property developer licence required**

- 14                    (1) This section applies if a development approval is given in relation to
- 15                    a residential building development before section 162A commences.
- 16                    (2) The territory planning authority must not accept an application for a
- 17                    significant amendment of the development approval in relation to the
- 18                    residential building development unless—
- 19                         (a) the applicant for the amendment, or a related entity of the
- 20                         applicant, holds a property developer licence; and
- 21                         (b) the relevant licensee is not restricted under their licence from
- 22                         undertaking the development.
- 23                    (3) This section does not apply if the applicant is—
- 24                         (a) the Territory, the Commonwealth or a State; or
- 25                         (b) a territory entity or a Commonwealth or State entity.
- 26                    (4) A regulation may exclude a person or application for a significant
- 27                    amendment from the application of subsection (2).

- 1 (5) In this section:
- 2 *Commonwealth or State entity* means an agency of the  
3 Commonwealth, a State or the Northern Territory that substantially  
4 corresponds to a territory entity.
- 5 *related entity*—see section 162A (4).
- 6 *residential building*—see the *Property Developers Act 2023*,  
7 dictionary.
- 8 *significant amendment*, of a development approval in relation to a  
9 residential building development, means an amendment of the  
10 approval—
- 11 (a) to increase the gross floor area of the building by more than  
12 10%; or
- 13 (b) to vary the lease; or
- 14 (c) prescribed by regulation.
- 15 (6) This section expires on the day the *Property Developers Act 2023*,  
16 part 14 (Transitional) expires.
- 17 *Note* A transitional provision is repealed on its expiry but continues to have  
18 effect after its repeal (see [Legislation Act](#), s 88).

19 **[2.42] New section 187 (1) (f)**

- 20 *insert*
- 21 (f) if a person is required to hold a property developer licence  
22 because of division 7.3.3—must include a condition that—
- 23 (i) any residential building work undertaken in or on a place  
24 the subject of the approval may only be undertaken or  
25 arranged by a person who holds a property developer  
26 licence or who is a related entity of someone who holds a  
27 property developer licence; and

- 1 (ii) the relevant property developer licensee is not restricted  
2 under their licence from undertaking the residential  
3 building work.

4 **[2.43] New section 187 (6)**

5 *insert*

6 (6) In this section:

7 *related entity*, of someone who holds a property developer licence,  
8 means—

9 (a) if the person is a corporation—a wholly-owned subsidiary of the  
10 licence holder; or

11 (b) an entity prescribed by regulation.

12 *residential building work*—see the *Property Developers Act 2023*,  
13 dictionary.

14 **[2.44] Dictionary, new definition of *property developer licence***

15 *insert*

16 *property developer licence* means a licence under the *Property*  
17 *Developers Act 2023*.



## Dictionary

(see s 3)

*Note* The [Legislation Act](#) contains definitions relevant to this Act.  
For example:

- ACAT
- building code
- corporation
- [Corporations Act](#)
- found guilty
- individual
- Minister (see s 162)
- territory authority
- territory instrumentality
- territory-owned corporation
- the Territory.

*ACAT reviewable decision*, for part 11 (Notification and review of decisions)—see section 116.

*affected person*, for part 11 (Notification and review of decisions)—see section 116.

*aggrieved person*, for part 9 (Complaints about licensees)—see section 100.

*approved code of practice*—see section 121 (1).

*associated entity*, of a corporation—see section 12 (1).

*authorised contractor*, for part 6 (Rectification orders, stop work orders and undertakings)—see section 58 (2).

*authorised person*, for part 7 (Enforcement)—see section 70.

*building work*—see the [Building Act 2004](#), section 6.

*class*, for a building, means the class of building under the building code.

- 1            **competency requirement**—see section 122 (1).
- 2            **complainant**, for part 9 (Complaints about licensees)—see  
3            section 103 (1) (b).
- 4            **compliance action**, for part 6 (Rectification orders, stop work orders  
5            and undertakings)—see section 67 (1).
- 6            **compliance cost notice**, for part 6 (Rectification orders, stop work  
7            orders and undertakings)—see section 67 (2).
- 8            **compliance undertaking**, for part 6 (Rectification orders, stop work  
9            orders and undertakings)—see section 65 (1).
- 10           **connected**, for part 7 (Enforcement)—see section 70.
- 11           **decision-maker**, for part 11 (Notification and review of decisions)—  
12           see section 116.
- 13           **director**, of a property developer that is a corporation, for part 6  
14           (Rectification orders, stop work orders and undertakings)—see the  
15           [Corporations Act](#), section 9.
- 16           **ground for regulatory action**, for division 5.2 (Regulatory action)—  
17           see section 36.
- 18           **internally reviewable decision**, for part 11 (Notification and review  
19           of decisions)—see section 116.
- 20           **internal review notice**, for part 11 (Notification and review of  
21           decisions)—see the [ACT Civil and Administrative Tribunal Act 2008](#),  
22           section 67B (1).
- 23           **key person**, for a corporation—see section 12 (1).
- 24           **law of another jurisdiction**, for division 11.1 (Sharing public safety  
25           information)—see section 112 (1).
- 26           **licence** means a licence under part 3.
- 27           **licence application**—see section 15 (1).

- 1           **licensee**—
- 2           (a) means a person who holds a licence; and
- 3           (b) for division 5.2 (Regulatory action)—see section 35.
- 4           **non-territory agency**, for division 11.1 (Sharing public safety
- 5           information)—see section 112 (1).
- 6           **occupier**, of premises, for part 7 (Enforcement)—see section 70.
- 7           **offence**, for part 7 (Enforcement)—see section 70.
- 8           **premises**, for part 7 (Enforcement)—see section 70.
- 9           **property developer**, for part 6 (Rectification orders, stop work orders
- 10           and undertakings)—see section 49.
- 11           **proposed rectification order notice**, for part 6 (Rectification orders,
- 12           stop work orders and undertakings)—see section 51 (2).
- 13           **proposed regulatory action**, for division 5.2 (Regulatory action)—
- 14           see section 37 (1).
- 15           **public safety agency**, for division 11.1 (Sharing public safety
- 16           information)—see section 112 (1).
- 17           **public safety information**, for division 11.1 (Sharing public safety
- 18           information)—see section 112 (1).
- 19           **rating entity** means an entity approved under section 30.
- 20           **rating report**, in relation to an applicant for a license or a licensee, for
- 21           part 3 (Licensing of property developers)—see section 14.
- 22           **reconsideration application**, for part 11 (Notification and review of
- 23           decisions)—see section 117 (1).
- 24           **rectification order**, for part 6 (Rectification orders, stop work orders
- 25           and undertakings)—see section 52 (2).
- 26           **rectify**, a serious defect, for part 6 (Rectification orders, stop work
- 27           orders and undertakings)—see section 48.
- 28           **registrar**—see section 7 (1).

1           **regulatory action**, for division 5.2 (Regulatory action)—see  
2           section 35.

3           **relevant law** means the following:

- 4           (a) the *Building Act 2004*;
- 5           (b) the *Building and Construction Industry (Security of Payment)*  
6           *Act 2009*;
- 7           (c) the *Civil Law (Sale of Residential Property) Act 2003*;
- 8           (d) the *Construction Occupations (Licensing) Act 2004*;
- 9           (e) the *Corporations Act*;
- 10          (f) the *Fair Work Act 2009* (Cwlth);
- 11          (g) the *Planning Act 2023*;
- 12          (h) the *Unit Titles (Management) Act 2011*;
- 13          (i) the *Work Health and Safety Act 2011*;
- 14          (j) any other law prescribed by regulation.

15          **remote application**, for division 7.5 (Warrants)—see section 81 (3).

16          **renewal application**—see section 17 (1).

17          **required rectification work**, in relation to a rectification order, for  
18          part 6 (Rectification orders, stop work orders and undertakings)—see  
19          section 52 (2) (a).

20          **residential building**—

- 21          (a) means a class 1 or class 2 building; and
- 22          (b) includes a building that contains a class 2 building.

- 1           ***residential development activities*** includes—
- 2           (a) undertaking residential building work, or arranging for
- 3           residential building work to be undertaken; and
- 4           (b) marketing and selling residential buildings including off-the-
- 5           plan.
- 6           ***residential building work*** means building work in relation to a
- 7           residential building.
- 8           ***respondent***, for part 9 (Complaints about licensees)—see
- 9           section 103 (1) (d).
- 10          ***serious defect***, in relation to a building—see section 50.
- 11          ***show cause notice***, for division 5.1 (Regulatory action)—see
- 12          section 37 (2).
- 13          ***stop work order***, for part 6 (Rectification orders, stop work orders and
- 14          undertakings)—see section 63 (2).
- 15          ***suitable person***—see section 13.
- 16          ***territory entity*** means—
- 17          (a) a territory authority; or
- 18          (b) a territory instrumentality; or
- 19          (c) a territory-owned corporation.
- 20          ***warrant***, for part 7 (Enforcement)—see section 70.
- 21          ***warrant form***, for division 7.5 (Warrants)—see section 84 (2).
- 22          ***warrant terms***, for division 7.5 (Warrants)—see section 83 (2).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 30 November 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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