Australian Capital Territory

Property Developers (Fees) Determination 2025

Disallowable instrument DI2025-243

made under the

Property Developers Act 2024, s 121 (Determination of fees)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Property Developers (Fees) Determination 2025* as presented to the Legislative Assembly. It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Assembly.

This statement must be read in conjunction with the instrument. It is not, and is not meant to be, a comprehensive description of the instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The *Property Developers Act 2024* (the ***Act***) establishes a framework for licensing certain residential property developers, and a regulatory scheme to bring these property developers into the regulatory chain of accountability for building work they are involved in.

Section 121 (1) of the Act permits the Minister to determine fees for the purposes of the Act. The fee determination is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to section 64 of the *Legislation Act 2001* (the ***Legislation Act***).

The purpose of this instrument is to determine the fees for the property developer licensing requirements set out in the Act. The property developer licensing scheme opens for applications on 1 October 2025 and becomes mandatory from 1 October 2026. From this date, regulated property developers must hold a licence to undertake work or participate in off-the-plan sales of regulated residential buildings as prescribed under the Act.

Fees have been determined for a licence application, licence renewal, licence term and variation to a licence. An activity-based fee is payable, upon issue of a Building Approval (BA) for a regulated residential building, charged based on the number of regulated residential dwellings that a licensee constructs.

This is a new Act and fees under it have not previously been determined. In the future, fees will be indexed according to the wage price index as per government policy.

The fees contained in this instrument were considered by government in establishing the scheme and are based on fees charged for similar licences. This includes costs to government of administering the scheme, which involves processing applications and compliance, and enforcement activities associated with the Act.

The methodology for calculating the fee structure is based on the licensing and regulatory scheme operating on a cost recovery basis, as agreed by government. Trend data from development approval numbers over the last five years was used to estimate the approximate number of regulated residential buildings.

It should be noted that the number of residential development approvals, commencements, and completions varies each year, based on several factors, including market conditions. It is also difficult to predict how residential developers will structure their businesses in response to the scheme, which may have an impact on the actual number of licenses per year. Several scenarios were tested to help refine the fee structure.

The licence application fee broadly aligns with fees charged for an individual building licence. The licence term fee reflects the increased risk profile of residential building work in relation to regulated residential buildings. The variation fee aligns with the methodology of the Professional Engineers fees, being 50 per cent of the application fee.

The activity-based component of the fee structure was developed based on the consideration of simplicity for applicants and to administer and scale based on development activity. It will be levied following the issue of a BA for a project, serving as a proxy for development complexity and risk profile, charged at a point in a project where the cost of regulatory administration increases, and with the likelihood of a project proceeding and having finance arranged.

Registered community housing providers (CHP) will be exempt from the activity-based fee (per dwelling fee). All other property developer licensing fees will apply. If a CHP forms a joint venture or other corporate structure that is not a wholly owned subsidiary to construct a regulated residential development, all property developer licensing fees will apply.

Regulatory Impact Statement (RIS)

Section 34 of the Legislation Act provides that if a proposed subordinate law or disallowable instrument (the ***proposed law***) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the

Minister administering the authorising law must arrange for a RIS to be prepared for the proposed law.

A regulatory impact and cost benefit analysis was considered by government as part of the policy approval for the Act, including the impact of licensing fees. The Act establishes the ACT's developer licensing and regulation scheme, the requirement to be licensed, and the obligations on relevant property developers including payment of licensing fees.

This instrument implements the fee structure agreed by government, on a cost recovery basis, and in alignment with similar industry fees.

Human Rights

The Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the ***Committee***) terms of reference require consideration of human rights impacts, among other matters.

Section 27B (1) of the *Human Rights Act 2004* (the ***HRA***) expressly provides that the practice of a trade, occupation or profession may be regulated by law. Determining fees is common practice in occupational registration schemes.

A detailed human rights assessment is contained in the explanatory statement to the Property Developers Bill 2023, including consideration of the impact of the introduction of a property developers licensing scheme in the ACT on the right to work under section 27B of the HRA.

Any engagement with or limitation on the right to work in section 27B of the HRA is considered reasonable and justifiable.