Australian Capital Territory

Property Developers Act 2024

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Last amendment made by A2026-2
(republication for commenced provisions)

Not all provisions are in force: see last endnote

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About this republication

The republished law

This is a republication of the *Property Developers Act 2024* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 July 2026. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 10 July 2026.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

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Australian Capital Territory

Property Developers Act 2024

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

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Part 1 Preliminary

1 Name of Act

This Act is the *Property Developers Act 2024*.

2 Commencement

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

- part 1 (Preliminary)
- section 8 (Meaning of *associated entity* and *key person*)
- part 5 (Rectification orders, stop work orders and undertakings) (other than section 60 (1) (b) and (6), definition of ***relevant provision***)
- part 6 (Enforcement)
- part 9 (Information sharing)
- part 10 (Notification and review of decisions)
- part 11 (Miscellaneous)
- part 12 (Transitional)
- schedule 1 (Reviewable decisions)
- dictionary.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The following provisions commence on a day fixed by the Minister by written notice:

(a) the licence requirement provisions;

(b) the remaining provisions.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

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(3) However—

(a) if the licence requirement provisions have not commenced within 3 years beginning on this Act's notification day, they automatically commence on the first day after that period; and

(b) if the remaining provisions have not commenced within 2 years beginning on this Act's notification day, they automatically commence on the first day after that period.

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

(5) In this section:

licence requirement provisions means—

(a) section 7 (Purpose—pt 2); and

(b) section 60 (1) (b) and (6), definition of ***relevant provision***; and

(c) the following provisions in schedule 2:

(i) amendments 2.2 to 2.5;

(ii) amendment 2.7;

(iii) parts 2.2 to 2.6.

3 Dictionary

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

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

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

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

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4 Notes

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

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

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Objects of Act

(1) The objects of this Act are to—

(a) protect the public by ensuring—

(i) residential development activities are undertaken by property developers that are competent and have the capacity to undertake those activities; and

(ii) property developers are responsible and accountable for the residential development activities they undertake; and

(b) promote public confidence in the standard of residential development activities undertaken by property developers.

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(2) The objects are to be achieved by—

(a) establishing a licensing scheme that ensures certain residential development activities are only undertaken by licensed property developers; and

(b) imposing standards of practice and competency for the residential development activities undertaken by licensed property developers; and

(c) requiring property developers to rectify serious defects, or possible serious defects, in regulated residential buildings they arrange to be constructed; and

(d) providing for the monitoring and enforcement of compliance with this Act.

Note Other legislation applies to residential development activities to help achieve this Act's objects and to ensure property developers are accountable for the residential development activities they undertake. See the following:

- *Building Act 2004*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Planning Act 2023*
- *Unit Titles (Management) Act 2011*.

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Part 2 Licensing of property developers

Division 2.1 Preliminary

7 Purpose—pt 2

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

(a) apply for development approval in relation to certain residential building developments under the *Planning Act 2023*, section 162A;

(b) apply for a building approval, building commencement notice or certificate of occupancy in relation to certain residential building work under the *Building Act 2004*, section 27 (1) (ca), section 28AA and section 69 (1) (c);

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

8 Meaning of *associated entity* and *key person*

(1) In this Act:

associated entity, of a corporation, means—

(a) a related corporation; or

(b) an entity prescribed by regulation.

key person, for a corporation, means—

(a) a director or secretary of—

(i) the corporation; or

(ii) an associated entity of the corporation; and

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(b) an individual who is in a position to control or significantly influence the corporation's or an associated entity's conduct and includes an individual who—

(i) directly or indirectly owns, holds or controls 25% or more of the shares in either corporation, or 25% or more of a class of shares in either corporation; or

(ii) gives instructions to an officer of either corporation and the officer generally acts on those instructions; or

(iii) makes, or participates in making, decisions that affect the whole or a substantial part of either corporation's business or financial standing; or

(iv) engages in conduct or makes representations that would cause someone else to reasonably believe the person controls, or substantially influences, either corporation's business.

(2) However, a ***key person*** for a corporation, does not include—

(a) a professional, only because the advice given by the professional influences the corporation's conduct; or

(b) a regulator, only because the regulator, when exercising a function under an Act or other law, influences the corporation's business; or

(c) an administrator, controller, provisional liquidator or liquidator within the meaning of the Corporations Act, section 9.

(3) For this section, a ***related corporation*** has the same meaning as ***related body corporate*** under the Corporations Act, section 9, except that in section 46 (Meaning of *subsidiary*—general) of that Act, references to 'one-half' are taken to be references to '25%'.

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(4) In this section:

professional—

(a) means a person who provides professional advice to more than 1 client; but

(b) does not include a person who provides professional advice to a client in the person's capacity as an employee of the client.

Example

a lawyer or accountant, employed in that capacity by a firm of lawyers or accountants engaged by a corporation to give the corporation advice on a particular matter

regulator means—

(a) a person employed by the Territory, a State, a local government or the Commonwealth; or

(b) a person engaged by the Territory, a State, a local government or the Commonwealth to provide a particular service or carry out a particular activity; or

(c) an agent of a person mentioned in paragraph (b) if, in that capacity, the agent provides the service or carries out the activity the person is engaged to provide or carry out.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

9 Meaning of *suitable person*

(1) For this Act, in deciding whether an applicant for a licence is a ***suitable person*** to hold the licence, the registrar must consider the following:

(a) the applicant's character;

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(b) the applicant's history of compliance, or ability to comply, with this Act and relevant laws including whether the applicant has been—

(i) the subject of regulatory action (however described) under this Act or a relevant law; or

(ii) convicted of an offence against this Act or a relevant law or another law that affects the applicant's suitability to undertake residential development activities;

(c) if the applicant is able to demonstrate an ability to comply with this Act and relevant laws;

(d) the applicant's operational and financial capacity to undertake residential development activities including the applicant's—

(i) past performance in undertaking residential development activities or related activities; and

(ii) credit history and financial viability;

(e) the applicant's compliance with any competency requirement;

(f) whether the applicant has previously held a licence that has been cancelled or suspended, or for which conditions have been imposed under section 19;

(g) if the applicant is an individual, whether the applicant has been—

(i) an insolvent under administration under the Corporations Act, section 9; or

(ii) an executive officer of a corporation within 2 years before the corporation was placed into administration, receivership or liquidation; or

(iii) disqualified from managing a corporation under the Corporations Act;

(h) any matter prescribed by regulation.

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(2) If the applicant is a corporation and the registrar considers it relevant, the registrar may also consider the matters mentioned in subsection (1) for—

(a) an associated entity or key person for the corporation; and

(b) a former associated entity or key person for the corporation.

(3) The registrar may consider any other matter the registrar considers relevant.

10 Meaning of *rating report*—pt 2

In this part:

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

(a) prepared by a rating entity; and

(b) that assesses the operational and financial capacity of the applicant or licensee to undertake residential development activities; and

(c) that satisfies any other requirement prescribed by regulation.

Division 2.2 Property developer licences

11 Applications for licence

(1) A person may apply to the registrar to be licensed as a property developer (a ***licence application***).

(2) A licence application must—

(a) be in writing; and

(b) if requested by the registrar—include a rating report or any other report prescribed by regulation; and

(c) include information about the matters mentioned in section 9 (1) (Meaning of *suitable person*); and

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(d) include any information prescribed by regulation.

(3) The registrar may refuse to consider a licence application that does not comply with subsection (2).

12 Eligibility for licence

An applicant is eligible to be given a licence if—

(a) the registrar is satisfied the applicant has the operational and financial capacity, and is otherwise a suitable person, to undertake residential development activities; and

(b) the applicant is not disqualified (however described) from applying for a licence under this Act; and

(c) the applicant meets any other eligibility requirements prescribed by regulation.

13 Applications for licence renewal

(1) A person may apply to the registrar for renewal of their licence (a ***renewal application***) before the licence ends.

(2) A renewal application must—

(a) be in writing; and

(b) if requested by the registrar—include a rating report or any other report prescribed by regulation; and

(c) include details of any relevant competency requirements to be undertaken by the applicant during the term of the applicant's licence; and

(d) if any information about a matter mentioned in section 9 (1) (Meaning of *suitable person*) has changed since the applicant last made a licence application or renewal application—include details of the changes; and

(e) include any information prescribed by regulation.

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

14 Eligibility for licence renewal

An applicant is eligible to have their licence renewed if—

(a) the registrar is satisfied the applicant has the operational and financial capacity, and is otherwise a suitable person, to undertake residential development activities; and

(b) the applicant has undertaken any relevant competency requirements; and

(c) the applicant meets any other eligibility requirements prescribed by regulation.

15 Registrar may request more information

(1) The registrar may, in writing, require an applicant under section 11 or section 13 to give the registrar information that the registrar reasonably needs to decide the application.

(2) Without limiting subsection (1), the registrar may require an additional rating report or a rating report that includes stated information to be provided by the applicant.

(3) If the applicant does not comply with a requirement under subsection (1), the registrar may refuse to consider the application further.

16 Change of information must be provided

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

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17 Deciding applications

(1) If a person makes a licence application, the registrar must—

(a) if the person is eligible—give a licence to the person; or

(b) if the person is not eligible—refuse to give a licence to the person.

(2) If a person makes a renewal application, the registrar must—

(a) if the person is eligible—renew the person's licence; or

(b) if the person is not eligible—refuse to renew the person's licence.

(3) If the registrar renews a licence, the renewed licence begins on the day after the licence being renewed ends.

(4) The registrar may renew a licence that has been suspended, but the renewed licence is suspended until the suspension ends.

18 Licence valid until application for renewal decided

(1) If a person makes a renewal application, the person's existing licence continues in force until the application is decided.

(2) Subsection (1) applies even if it causes the existing licence to be in force for longer than the maximum licence term stated in section 20 (b) (i).

19 Licence conditions

(1) A licence is subject to the following conditions:

(a) the licensee must comply with this Act (including any approved code of practice);

(b) the licensee must comply with all relevant competency requirements;

(c) the licensee must comply with all relevant laws;

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(d) the licensee must—

(i) meet the standard reasonably expected of a licensee; and

(ii) demonstrate a level of competence reasonably expected of a licensee; and

(iii) demonstrate the operational and financial capacity to comply with—

(A) its obligations under this Act and relevant laws; and

(B) its legal obligations to subcontractors and other people engaged by the licensee; and

(iv) not engage in improper or unethical conduct;

(e) on request by the registrar, the licensee must provide stated information about any matter mentioned in paragraphs (a) to (d);

(f) any other condition the registrar considers appropriate;

(g) any other condition prescribed by regulation.

Note It is an offence under s 94 for a licensee not to comply with a condition of their licence.

(2) Without limiting subsection (1) (f) or (g), a condition may be imposed or prescribed in relation to the following matters:

(a) limiting the residential development activities that may be undertaken concurrently by the licensee or an associated entity;

(b) preventing new residential development activities from being undertaken by the licensee or an associated entity;

(c) limiting the size or kinds of residential development activities that may be undertaken by the licensee or an associated entity;

(d) requiring the design documentation for residential building work to be independently reviewed or inspected;

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(e) requiring inspections of stated residential building work by a stated person and the provision of information about the inspections;

(f) minimum financial requirements to be satisfied by the licensee or an associated entity;

(g) restricting stated people from involvement in stated residential development activities.

Examples

1 Kerr Developments Pty Ltd is a new entrant into the residential development industry. The registrar imposes a condition on the company's licence limiting the company from developing multi-unit housing with more than 10 units or with a value of more than $5 million.

2 Foord Developments Pty Ltd holds a licence and is the parent company of 3 subsidiary companies, each responsible for the development of different residential development projects. One of the subsidiaries is placed under external administration and defects relating to a number of buildings constructed by the insolvent company have been identified. The registrar imposes a condition preventing the subsidiary companies from undertaking new projects and requiring additional independent review of design documentation for the subsidiaries' projects.

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

(a) give the applicant or licensee a written notice that—

(i) states the condition the registrar proposes to impose; and

(ii) states the reason the registrar proposes to impose the condition; and

(iii) tells the person that they may give a written response to the registrar about the matters stated in the notice not later than 28 days after the day the person receives the notice; and

(b) consider any response given to the registrar in accordance with paragraph (a) (iii).

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20 Licence term

A licence—

(a) begins on the day stated in the licence; and

(b) ends on the earliest of the following:

(i) the day stated in the licence, being not more than 7 years from the day the licence begins;

(ii) if the licence is cancelled under division 4.2 (Regulatory action), division 4.3 (Immediate suspension or cancellation of licence) or section 41 (Voluntary cancellation of licence)—the day the cancellation takes effect.

21 Content of licence

(1) This section applies if the registrar—

(a) gives a licence or renews a licence; or

(b) varies a licence under section 22 (Variation of licence) or division 4.2 (Regulatory action).

(2) The registrar must give the licensee a licence that states—

(a) the name of the licensee; and

(b) a unique identifying number for the licence; and

(c) the term of the licence; and

(d) any conditions on the licence; and

(e) any other information prescribed by regulation.

(3) A licence may include any other information the registrar considers relevant.

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Division 2.3 Licence variations and change of circumstances

22 Variation of licence

(1) The registrar may vary a licence on written application by the licensee if the registrar—

(a) has considered any reasons provided by the licensee in their application to vary the licence; and

(b) is satisfied it is appropriate to vary the licence.

(2) The registrar may vary the licence on the registrar's own initiative if the registrar—

(a) has given the licensee a written notice that—

(i) states how the registrar proposes to vary the licence; and

(ii) states the reason the registrar proposes to vary the licence; and

(iii) tells the licensee that the licensee may give a written response to the registrar about the matters stated in the notice not later than 28 days after the day the licensee receives the notice; and

(b) has considered any response given in accordance with paragraph (a) (iii); and

(c) is satisfied it is appropriate to vary the licence.

(3) If the registrar varies a licence under this section, the registrar must give the licensee a written notice (a ***notice of variation***) that states—

(a) how the licence has been varied; and

(b) the day on which the variation takes effect.

(4) A variation of a licence takes effect on the day stated in the notice of variation.

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(5) In this section:

licence includes a suspended licence.

vary, in relation to a licence, includes—

(a) varying the term of the licence; and

(b) adding, amending or removing a condition of the licence.

23 Notifying registrar about change of circumstances

(1) A licensee must notify the registrar, in writing, about any of the following within 14 days after the licensee becomes aware of the matter:

(a) a change to the licensee's name or contact details;

(b) if an entity stops being, or becomes, an associated entity of the licensee;

(c) if a person stops being, or becomes, a key person for the licensee;

(d) any other change to the information given by the licensee in a licence application or renewal application;

(e) the licensee, or an associated entity, doing the earliest of the following:

(i) entering into an off-the-plan contract for the sale of a regulated residential building;

(ii) applying for a development approval in relation to residential building work;

(iii) applying for a building approval in relation to residential building work;

(f) any other event or circumstance prescribed by regulation.

Maximum penalty: 20 penalty units.

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

(3) In this section:

building approval—see the *Building Act 2004*, dictionary.

development approval—see the *Planning Act 2023*, dictionary.

off-the-plan contract—see the *Civil Law (Sale of Residential Property) Act 2003*, section 19A (1).

24 Registrar may request rating report

(1) The registrar may request a licensee to provide a rating report if the licensee—

(a) applies to vary a licence under section 22; or

(b) notifies the registrar about a matter under section 23.

(2) The registrar may refuse to consider an application under section 22 that does not comply with subsection (1).

Division 2.4 Register of licensed property developers

25 Registrar must keep register

(1) The registrar must keep a register of licensed property developers (the ***register***).

(2) The registrar must keep the following details about a licensee in the register:

(a) their registered business name;

(b) if the licensee operates the business under another name—their business's trading name;

(c) details of current and former associated entities of the licensee;

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(d) names of current and former directors for the licensee and associated entities of the licensee;

(e) their ABN or ACN;

(f) their licence number;

(g) the term of their licence;

(h) any conditions on their licence;

(i) the status of their licence;

(j) their address for service;

(k) any rating information prescribed by regulation;

(l) the details and status of any—

(i) regulatory action taken under part 4 (Licensed property developers—regulatory action) against them or an associated entity; and

(ii) action taken under part 5 (Rectification orders, stop work orders and undertakings) against them or an associated entity; and

(iii) any regulatory action (however described) taken against them or an associated entity under a relevant law;

(m) past and current residential development activities undertaken by the licensee and their associated entities;

(n) any other details prescribed by regulation.

(3) The registrar must, for a former licensee, keep the details mentioned in subsection (2) in the register for 10 years after the day the former licensee's licence ends.

(4) The register may also contain any other details the registrar considers appropriate.

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(5) The registrar may correct any mistake, error or omission in the register.

26 Publication of information in register

(1) The registrar must make the details mentioned in section 25 in relation to a licensee, or a former licensee, available to the public.

(2) However, the registrar must not make details about a licensee or a former licensee available to the public if the licensee or former licensee applies, in writing, for the information not to be made available to the public and the registrar is satisfied the publication of the information would, or could reasonably be expected to—

(a) endanger the life or physical safety of a person; or

(b) jeopardise national security.

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Part 3 Rating entities

27 Approval of rating entities

(1) On written application by an entity, the director-general may approve the entity to prepare rating reports.

(2) The director-general may only approve an entity if—

(a) the entity holds an Australian financial services licence that authorises the entity to provide services in accordance with this section; and

(b) the director-general is satisfied the entity—

(i) has appropriate processes to undertake assessments of the operational and financial capacity of an applicant for a licence, or a licensee, to undertake residential development activities; and

(ii) has proven procedures for training and monitoring people employed or engaged by the entity to undertake the assessments; and

(iii) has the operational and financial capacity to undertake the assessments; and

(iv) imposes fees that are reasonable taking into account the scope of the services being offered; and

(v) has appropriate processes for internally reviewing assessments and managing complaints; and

(c) the entity meets any other requirement prescribed by regulation.

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(3) An approval—

(a) must be for a term not longer than 5 years; and

(b) is subject to—

(i) any condition the director-general considers appropriate; and

(ii) any condition prescribed by regulation.

(4) An approval is a notifiable instrument.

(5) In this section:

Australian financial services licence—see the Corporations Act, section 9.

28 Approval valid until new application decided

(1) This section applies if an entity—

(a) holds an approval under section 27; and

(b) before the approval ends, applies in writing for a new approval.

(2) The entity's existing approval continues in force until the application is decided.

(3) Subsection (2) applies even if it causes the existing approval to be in force for longer than the maximum term stated in section 27 (3) (a).

29 Variation of approval

(1) On written application by a rating entity, the director-general may vary the entity's approval if the director-general—

(a) has considered any reasons provided by the entity in its application; and

(b) is satisfied it is appropriate to vary the approval.

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(2) The director-general may vary the approval of a rating entity on the director-general's own initiative if the director-general—

(a) has given the entity a written notice that—

(i) states how the director-general proposes to vary the approval; and

(ii) states the reason the director-general proposes to vary the approval; and

(iii) tells the entity that it may give a written response to the director-general about the matters stated in the notice not later than 28 days after the day the entity receives the notice; and

(b) has considered any response given in accordance with paragraph (a) (iii); and

(c) is satisfied it is appropriate to vary the approval.

(3) A variation of an approval takes effect on the day stated in the variation.

(4) A variation of an approval is a notifiable instrument.

(5) In this section:

vary, in relation to an approval includes—

(a) varying the term of the approval; and

(b) adding, amending or removing a condition of the approval.

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30 Revocation of approval

(1) On written application by a rating entity, the director-general must revoke the entity's approval if the director-general is satisfied it is appropriate to do so.

(2) The director-general may revoke the approval of a rating entity on the director-general's own initiative if the director-general—

(a) is satisfied 1 or more of the following applies:

(i) the entity has failed to comply with a condition of its approval;

(ii) the entity knowingly or recklessly used false or misleading information to become a rating entity;

(iii) the entity no longer satisfies the requirements mentioned in section 27 (2);

(iv) the entity has been the subject of regulatory action (however described) in relation to its Australian financial services licence; and

(b) has given the entity a written notice that—

(i) states that the director-general proposes to revoke the approval; and

(ii) states the reason the director-general proposes to revoke the approval; and

(iii) tells the entity that it may give a written response to the director-general about the matters stated in the notice not later than 28 days after the day the entity receives the notice; and

(c) has considered any response given in accordance with paragraph (b) (iii); and

(d) is satisfied it is appropriate to revoke the approval.

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(3) Revocation of an approval takes effect—

(a) for a revocation under subsection (1)—

(i) 90 days after the day the revocation is notified; or

(ii) if a later date is stated in the revocation—on that date; or

(b) for a revocation under subsection (2)—on the day stated in the revocation.

(4) A revocation is a notifiable instrument.

(5) In this section:

Australian financial services licence—see section 27 (5).

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Part 4 Licensed property developers—regulatory action

Division 4.1 Automatic licence suspension

31 Automatic suspension of licence

(1) A licensee's licence is automatically suspended—

(a) if an annual licence fee or other fee is determined under section 121 and is payable on a stated date—for the period the fee is unpaid after the stated date; or

(b) for an individual—if the licensee becomes bankrupt or personally insolvent; or

(c) for a corporation—if the licensee—

(i) becomes the subject of a winding-up order; or

(ii) has a controller or administrator appointed for the licensee.

(2) The registrar may revoke a suspension of a licence under subsection (1) (c) (ii) if satisfied it is in the best interests of consumers to do so.

Division 4.2 Regulatory action

32 Definitions—div 4.2

In this division:

ground for regulatory action—see section 33.

licensee includes a former licensee.

proposed regulatory action—see section 34 (1).

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

(a) reprimanding the licensee;

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(b) directing the licensee to undergo an assessment of the licensee's—

(i) required qualifications, experience and competencies; or

(ii) operational and financial capacity to undertake residential development activities including by providing an additional rating report;

(c) directing the licensee to undertake stated training;

(d) imposing, or amending, a condition of their licence;

(e) suspending their licence for either a fixed period or until a particular event happens;

(f) cancelling their licence.

show cause notice—see section 34 (2).

33 Grounds for regulatory action

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

(a) the licensee has knowingly or recklessly used false or misleading information to become a licensee;

(b) the licensee has failed to comply with a condition of their licence;

(c) the licensee has knowingly or recklessly given someone information about residential development activities undertaken, or to be undertaken, by the licensee that was false or misleading in a material particular;

(d) the licensee has stopped being eligible to be licensed;

(e) the licensee has had their licence immediately suspended or cancelled under section 38;

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(f) the licensee has been convicted or found guilty of an offence—

(i) that is an indictable offence under a law of the ACT or the Commonwealth; or

(ii) for an offence committed outside the ACT—that would be an indictable offence against a law of the ACT if committed in the ACT;

(g) the licensee has contravened this Act (including an approved code of practice) or a relevant law;

(h) regulatory action (however described) under a relevant law has been taken against the licensee in another jurisdiction;

(i) the licensee has failed to comply with a requirement of any regulatory action taken against the licensee under this part;

(j) any other ground prescribed by regulation.

34 Notice of proposed regulatory action

(1) The registrar may propose to take regulatory action (the ***proposed regulatory action***) against a licensee if satisfied a ground for regulatory action exists in relation to the licensee.

(2) If the registrar proposes to take regulatory action against a licensee, the registrar must give the licensee a written notice (a ***show cause notice***) that states—

(a) the grounds on which the registrar considers regulatory action may be taken against the licensee; and

(b) details of the proposed regulatory action; and

(c) that the licensee may give the registrar a written submission about the proposed regulatory action not later than 28 days after the day the licensee is given the notice.

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35 Taking regulatory action

(1) The registrar may take the proposed regulatory action against a licensee if the registrar—

(a) has given the licensee a show cause notice in accordance with section 34; and

(b) has considered any submission given in accordance with section 34 (2) (c); and

(c) is satisfied it is appropriate to take the proposed regulatory action against the licensee.

(2) If the registrar decides to take the proposed regulatory action, the registrar must give the licensee a written notice (a ***regulatory action notice***) that states—

(a) that the proposed regulatory action will be taken; and

(b) the day on which the regulatory action will take effect.

(3) Regulatory action takes effect—

(a) if the regulatory action is suspension or cancellation of the licensee's licence—

(i) 14 days after the day the regulatory action notice is given to the licensee; or

(ii) if a later date is stated in the notice—that date; or

(b) in any other case—on the day stated in the regulatory action notice.

36 Not taking regulatory action

(1) This section applies if the registrar—

(a) has given a licensee a show cause notice in accordance with section 34; and

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(b) has considered any submission given in accordance with section 34 (2) (c); and

(c) is satisfied regulatory action against the licensee—

(i) may not be taken; or

(ii) may be taken, but in all the circumstances, it is not appropriate to take the action.

(2) The registrar must give the licensee a written notice that tells the licensee that regulatory action will not be taken against the licensee in relation to the matters stated in the show cause notice.

37 Effect of suspension

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

Division 4.3 Immediate suspension or cancellation of licence

38 Immediate suspension or cancellation

(1) This section applies if the registrar is satisfied—

(a) a ground for regulatory action exists in relation to a licensee, other than a failure to comply with a requirement of any regulatory action taken under division 4.2; and

(b) it is in the public interest to immediately suspend or cancel a licence.

(2) The registrar may—

(a) immediately suspend the licence for a stated period or until a stated event happens; or

(b) immediately cancel the licence.

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(3) If the registrar immediately suspends or cancels a licence under subsection (2), the registrar must give the licensee written notice (an ***immediate action notice***) that includes the following information:

(a) a statement that the suspension or cancellation takes effect as soon as the notice is given to the licensee;

(b) if the licence is suspended—when the suspension ends;

(c) the reason for the suspension or cancellation;

(d) that the licensee may make an application to the registrar under section 40 (Revoking immediate suspension or cancellation).

(4) However, the registrar may give a licensee an immediate action notice orally if the registrar believes there is an immediate risk to the safety of a person.

(5) If the registrar gives the immediate action notice orally, the registrar must also give the licensee a written notice that includes the information mentioned in subsection (3) as soon as practicable, but not later than 7 days after the day the notice was given orally.

(6) Suspension or cancellation under this section takes effect when—

(a) for an immediate action notice given orally and in writing—the oral notice is given to the licensee; or

(b) for an immediate action notice given only in writing—the written notice is given to the licensee.

(7) A suspension under this section ends on the earliest of the following:

(a) if the registrar suspends the licence—

(i) for a stated period—when the period ends; or

(ii) until a stated event happens—when the event happens;

(b) if other regulatory action—

(i) is taken against the licensee—when the other regulatory action takes effect; or

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(ii) is not taken against the licensee—on the earliest of the following:

(A) when the registrar gives the licensee a written notice under section 36 (2);

(B) 90 days after the immediate suspension notice is given to the licensee;

(C) if the registrar revokes the suspension or cancellation under section 40—the day stated in the written notice given to the person under section 40 (4).

39 Effect of immediate suspension

If a person's licence is immediately suspended under section 38, the person is taken not to be a licensee during the period of suspension.

40 Revoking immediate suspension or cancellation

(1) The registrar may revoke an immediate suspension or cancellation—

(a) on written application by the person whose licence is suspended or cancelled; or

(b) on the registrar's own initiative.

(2) An application by a person under subsection (1) (a) must be made not later than 14 days after the day the person is given the immediate action notice under section 38.

(3) The registrar may revoke the immediate suspension or cancellation under subsection (1) if—

(a) for an application made under subsection (1) (a)—

(i) the application was made in accordance with subsection (2); and

(ii) the registrar has considered any reasons given by the person requesting the revocation; and

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(b) the registrar has considered any matter prescribed by regulation.

(4) If the registrar revokes the immediate suspension or cancellation, the registrar must give the person a written notice that states—

(a) that the suspension or cancellation has been revoked; and

(b) the day on which the revocation takes effect.

Division 4.4 Other regulatory action

41 Voluntary cancellation of licence

The registrar must cancel a licence if—

(a) the licensee asks, in writing, for the cancellation; and

(b) the registrar is satisfied it is appropriate to cancel the licence.

42 Application to disqualify person from applying for licence

(1) This section applies if the registrar suspends or cancels a licence under division 4.2 (Regulatory action).

(2) On application by the registrar, the ACAT may make the following orders:

(a) if the registrar has suspended the person's licence—

(i) an order cancelling the licence; and

(ii) an order disqualifying the person from applying for a licence—

(A) for a stated period of not more than 5 years; or

(B) until a stated event happens;

(b) if the registrar has cancelled the person's licence—an order disqualifying the person from applying for a licence—

(i) for a stated period of not more than 5 years; or

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(ii) until a stated event happens;

(c) an order requiring the person to pay the Territory a stated amount of not more than $200 000;

(d) any other order the ACAT considers appropriate.

(3) Before making an order under subsection (2), the ACAT must consider any matter prescribed by regulation.

(4) If the ACAT makes an order under subsection (2) (c), the amount may be recovered as a debt payable to the Territory.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

Division 4.5 Miscellaneous

43 Registrar may consult people before exercising functions

(1) In exercising a function under this part, the registrar may consult any person the registrar considers appropriate.

(2) For subsection (1), the registrar is authorised to disclose information that relates to the exercise of the function.

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Part 5 Rectification orders, stop work orders and undertakings

Division 5.1 Preliminary

44 Application—pt 5

(1) This part applies to residential building work for which a development approval is given on or after the day this section commences.

(2) In this section:

development approval—see the *Planning Act 2023*, dictionary.

45 Definitions—pt 5

In this part:

authorised contractor—see section 55 (2).

compliance action—see section 64 (1).

compliance cost notice—see section 64 (2).

compliance undertaking—see section 62 (1).

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

property developer—see section 46.

proposed rectification order notice—see section 48 (2).

rectification order—see section 49 (2).

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

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required rectification work, in relation to a rectification order—see section 49 (2) (a).

stop work order—see section 60 (2).

46 Meaning of *property developer*—pt 5

(1) In this part:

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

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

(b) the owner of the land on which the building work is undertaken when the building work is undertaken;

(c) the principal builder of the building work;

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

(e) a person prescribed by regulation.

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

(3) In this section:

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

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

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

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47 Meaning of *serious defect*

(1) In this Act:

serious defect, in relation to a building, means—

(a) a defect in a building element that is attributable to a failure to comply with a performance requirement of the building code, the relevant Australian Standards or the relevant approved plans for the building work; or

(b) a defect in a building product or building element that—

(i) is attributable to defective design, defective work or defective materials; and

(ii) causes or is likely to cause—

(A) the inability to live in or use any part of the building for its intended purpose; or

(B) the destruction of any part of the building; or

(C) a threat of collapse of any part of the building; or

(c) a thing prescribed by regulation.

(2) In this section:

above grade wall, in relation to a building, means a wall above the level of the ground surrounding the building.

approved plans—see the *Building Act 2004*, dictionary.

below grade wall, in relation to a building, means a wall below the level of the ground surrounding the building.

building element, in relation to a building—

(a) means any of the following:

(i) the fire safety systems for the building within the meaning of the building code;

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(ii) waterproofing of the building;

(iii) an internal or external load-bearing component of the building that is essential to the stability of the building, or a part of it, including in-ground and other foundations and footings, floors, walls, roofs, columns and beams;

(iv) a component of the building that is part of the building enclosure;

(v) those aspects of the mechanical, plumbing and electrical services for the building that are required to achieve compliance with the building code*;*

(vi) a thing prescribed by regulation; but

(b) does not include a thing excluded by regulation.

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

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

Division 5.2 Rectification orders

48 Notice of proposed rectification order

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

(a) residential building work was or is being undertaken by, or under an arrangement with, a property developer in a way that could result in a serious defect in the building; or

(b) a regulated residential building constructed by, or under an arrangement with, a property developer has a serious defect.

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(2) The registrar may give the property developer a written notice (a ***proposed rectification order notice***) that—

(a) gives details of the proposed rectification order; and

(b) explains why the registrar proposes to make the order; and

(c) states that the property developer may give the registrar a written submission about the proposed rectification order not later than 28 days after the day the developer is given the notice.

49 Making rectification orders

(1) This section applies if the registrar—

(a) has given a property developer a proposed rectification order notice in relation to residential building work; and

(b) has considered any submission given in accordance with section 48 (2) (c); and

(c) is satisfied it is appropriate to make an order under this section.

(2) The registrar may make an order (a ***rectification order***) against a property developer requiring any of the following:

(a) stated action (the ***required rectification work***) to be taken to rectify the serious defect, or possible serious defect, within a stated period not less than 1 month after the day the rectification order is given;

(b) stated information to be given to the registrar about the required rectification work;

(c) any other thing reasonably necessary to ensure the required rectification work is done.

(3) A rectification order—

(a) may, but need not, state how required rectification work is to be done; and

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(b) must state that it is an offence under section 54 to fail to comply with the order.

(4) The registrar may only make a rectification order before the latest of the following:

(a) if the registrar first became aware of the serious defect, or possible serious defect, within 6 months before the end of the 10-year period—1 year after the registrar became aware of the serious defect, or possible serious defect;

(b) if the registrar gives a proposed rectification order notice before the end of the 10-year period—1 year after the notice is given;

(c) in any other case—the day the 10-year period ends.

(5) A copy of the rectification order must be given to—

(a) the owner of the land on which the residential building work is undertaken; or

(b) for a regulated residential building under a units plan—the unit owner and the owners corporation.

(6) In this section:

10-year period means the period within which a building action may be brought in relation to the residential building work under the *Building Act 2004*, section 142 (1).

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

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

50 Emergency rectification orders

(1) This section applies if the registrar is satisfied a serious defect, or possible serious defect, in relation to residential building work needs to be rectified urgently to protect the health or safety of people, property or the environment.

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(2) The registrar may make a rectification order (an ***emergency rectification order***) under section 49 without giving the property developer a proposed rectification order notice.

(3) An emergency rectification order must—

(a) state a period not less than 24 hours in which the required rectification work must be done; and

(b) contain a detailed written statement of the reasons for making the order, or a summary of reasons.

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

51 Rectification orders—more than 1 property developer

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

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

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

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

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

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

Example—par (c)

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

(4) Subsection (3) does not apply to a property developer given a rectification order only because of section 49 (5) (a).

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

52 Registrar may give rectification order to directors if property developer wound up etc

(1) This section applies if—

(a) the registrar—

(i) believes on reasonable grounds that making a rectification order against a property developer is appropriate; or

(ii) makes a rectification order against a property developer; and

(b) the property developer is a corporation; and

(c) before, or after, the registrar makes the order—

(i) the property developer becomes the subject of a winding-up order; or

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(ii) the developer is placed into administration, receivership or liquidation; or

(iii) the developer is deregistered.

(2) If the registrar is satisfied it is appropriate to do so, the registrar may, in relation to each person who was a director of the property developer at or after the time the residential building work resulting in the serious defect, or possible serious defect, was undertaken or stopped being undertaken—

(a) if a rectification order has not been given to the property developer—give each person a proposed rectification order notice in accordance with section 48 as if they were the property developer; and

(b) make a rectification order in accordance with section 49 against each person as if they were the property developer.

(3) In considering whether it is appropriate to take action under subsection (2), the registrar must consider—

(a) if a latent defects insurance policy or other similar insurance policy covers the work required to rectify the serious defect, or possible serious defect; and

(b) any other matter prescribed by regulation.

(4) This section does not apply to—

(a) a person who was a director of a territory entity or a Commonwealth or State entity; or

(b) a person excluded by regulation.

(5) In this section:

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

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53 Occupier of land may be required to permit rectification work

(1) If a rectification order is made against a person, the registrar may, in writing, order the occupier of the land to permit reasonable access to the land within a stated period (an ***access order***) to allow the rectification order to be complied with.

(2) A person commits an offence if the person fails to comply with an access order.

Maximum penalty: 50 penalty units.

54 Offence—failing to comply with rectification order

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

(a) is given a rectification order; and

(b) fails to comply with the order; and

(c) intended to not comply with the order.

Maximum penalty: 2 000 penalty units.

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

(a) is given a rectification order; and

(b) fails to comply with the order; and

(c) is reckless about complying with the order.

Maximum penalty: 1 000 penalty units.

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

(a) is given a rectification order; and

(b) fails to comply with the order.

Maximum penalty: 50 penalty units.

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

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Division 5.3 Rectification work arranged by Territory

55 Rectification by Territory—failure to comply with rectification order

(1) This section applies if a person (the ***ordered party***) against whom a rectification order is made contravenes the rectification order.

(2) The Territory may, in writing, authorise a person (an ***authorised contractor***) to enter the land where the work to which the rectification order relates is to be done and—

(a) take the action stated in the rectification order; or

(b) start or finish the work stated in the rectification order.

(3) The authorised contractor must—

(a) give the occupier of the land written notice that they intend to enter the land at least 24 hours before entering the land; and

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

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

56 Offence—hindering or obstructing authorised contractor

(1) An person commits an offence if—

(a) the Territory authorises a person to do something under section 55 (the ***rectification work***); and

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

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

Maximum penalty: 50 penalty units.

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

57 Damage etc by authorised contractor to be minimised

(1) In doing something, or purporting to do something, authorised under section 55, the authorised contractor must take reasonable steps to ensure that they, and anyone assisting them, cause as little inconvenience, detriment and damage as is practicable.

(2) If the authorised contractor, or a person assisting them, damages anything in doing something, or purporting to do something, authorised under section 55, the authorised contractor must give written notice of the details of the damage to the person the authorised contractor believes on reasonable grounds is the owner of the thing.

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

58 Compensation

(1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised contractor or person assisting an authorised contractor.

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

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

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

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

59 Protection of authorised contractor from liability

(1) A person authorised under section 55 to do rectification work does not incur civil liability for any rectification work done honestly for this part.

(2) Civil liability that would, apart from this section, attach to the authorised contractor attaches instead to the Territory.

Division 5.4 Stop work orders

60 Stop work orders

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

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

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

(ii) significant damage to property; or

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

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

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

(A) regulatory action under part 4 is, or is proposed to be, taken against the licensee or an associated entity of the licensee; or

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

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

(3) A stop work order—

(a) must—

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

(ii) state the time residential building work must stop, which may be the time the order is given to the property developer; and

(iii) state it is an offence under section 61 not to comply with the order; and

(b) may include any condition the registrar considers appropriate.

(4) A stop work order ends on the earliest of the following:

(a) the registrar giving the property developer written notice revoking the order;

(b) any term stated in the order ending;

(c) the period, starting 12 months from the day the order is given to the developer, ending.

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(5) A copy of the stop work order must be given to—

(a) the owner of the land on which the residential building work is being undertaken; and

(b) the certifier for the residential building work.

(6) In this section:

certifier—see the *Building Act 2004*, dictionary.

relevant provision means—

(a) the *Planning Act 2023*, section 162A; or

(b) the *Building Act 2004*, section 27 (1) (ca), section 28AA and section 69 (1) (c); or

(c) the *Civil Law (Sale of Residential Property) Act 2003*, division 2A.2.

61 Offence—failing to comply with stop work order

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

(a) is given a stop work order under section 60 (2); and

(b) fails to comply with the order; and

(c) intended to not comply with the order.

Maximum penalty: 2 000 penalty units.

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

(a) is given a stop work order under section 60 (2); and

(b) fails to comply with the order; and

(c) is reckless about not complying with the order.

Maximum penalty: 1 000 penalty units.

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

(a) is given a stop work order under section 60 (2); and

(b) fails to comply with the order.

Maximum penalty: 50 penalty units.

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

Division 5.5 Compliance undertakings

62 Registrar may accept undertakings

(1) The registrar may accept a written undertaking (a ***compliance undertaking***) given by the following in relation to residential building work:

(a) a property developer;

(b) a director of a property developer that is a corporation if the developer—

(i) becomes the subject of a winding-up order; or

(ii) is placed into administration, receivership or liquidation; or

(iii) is deregistered.

(2) A compliance undertaking may include an undertaking by the property developer or director to do 1 or both of the following:

(a) take stated action in relation to—

(i) a serious defect, or possible serious defect in the building; or

(ii) a contravention of this Act or a relevant law;

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(b) provide the registrar with a financial security that may be claimed or realised by the Territory to meet—

(i) the costs of rectifying a serious defect, or possible serious defect in the building; or

(ii) the costs mentioned in section 64 (2) (Compliance cost notices).

(3) A compliance undertaking must state—

(a) the circumstances in which the financial security may be claimed or realised; and

(b) the procedure for claiming or realising the financial security; and

(c) that it is an offence under section 63 to fail to comply with an undertaking.

(4) In this section:

financial security means a bank guarantee, bond or other form of security acceptable to the registrar.

63 Offence—failing to comply with compliance undertaking

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

(a) gives a compliance undertaking; and

(b) fails to comply with the undertaking; and

(c) intended to not comply with the undertaking.

Maximum penalty: 2 000 penalty units.

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

(a) gives a compliance undertaking; and

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(b) fails to comply with the undertaking; and

(c) is reckless about not complying with the undertaking.

Maximum penalty: 1 000 penalty units.

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

(a) gives a compliance undertaking; and

(b) fails to comply with the undertaking.

Maximum penalty: 50 penalty units.

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

Division 5.6 Miscellaneous

64 Compliance cost notices

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

(a) gives a person a rectification order or stop work order;

(b) accepts a compliance undertaking from a person.

(2) The registrar may give the person a written notice (a ***compliance cost notice***) requiring the person to pay all or any reasonable costs incurred by the Territory (including remuneration and other administrative costs) relating to—

(a) monitoring and ensuring that any required rectification work the subject of a compliance action is done; and

(b) investigations leading to the taking of a compliance action; and

(c) preparation of a compliance action including legal costs; and

(d) any other matter related to the compliance action.

(3) An amount payable under a compliance cost notice is a debt owing to the Territory.

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(4) A regulation may provide for the following:

(a) how compliance cost notices are given;

(b) the form of a notice;

(c) limiting the amounts that may be required to be paid under a notice or the matters in relation to which costs and expenses may be required to be paid under the notice.

65 Exercise of powers unaffected by approvals etc

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

(a) the *Building Act 2004*;

(b) the *Construction Occupations (Licensing) Act 2004* or an operational Act for that Act;

(c) the *Planning Act 2023*.

(2) In this section:

operational Act, for the *Construction Occupations (Licensing) Act 2004*—see that Act, section 16.

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Part 6 Enforcement

Division 6.1 Preliminary

66 Definitions—pt 6

In this part:

authorised person means a person appointed as an authorised person under section 67.

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

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

(a) any person an authorised person believes on reasonable grounds to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

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

premises includes the following:

(a) land (whether or not vacant);

(b) any part of a building, tent, stall or other structure (whether of a permanent or temporary nature);

(c) a vehicle.

warrant means a warrant issued under division 6.5.

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67 Appointment of authorised people

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

Note For laws about appointments, see the Legislation Act, pt 19.3.

68 Identity cards

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

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

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

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

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

(e) includes anything else prescribed by regulation.

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

Maximum penalty: 1 penalty unit.

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

(a) lost or stolen; or

(b) destroyed by someone else.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

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

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Division 6.2 Exercise of powers generally

69 Requirements before certain powers can be exercised

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

(a) giving a direction under section 71 (1) (Direction to give information);

(b) giving a direction under section 72 (1) or (2) (Direction to give name and address);

(c) entering premises under section 73 (1) (b) or (c) (Powers of authorised person to enter premises);

(d) giving a direction under section 75 (1) (e) (General powers on entry to premises).

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

(a) either—

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

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

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

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

Examples—exercise of powers other than in person

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

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

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

(4) In this section:

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

(a) the individual affected by the exercise of the power; or

(b) if the person is not an individual—an employee, officer or agent of the person affected by the exercise of the power.

relevant offence means an offence against—

(a) for a direction under section 71 (1)—section 71 (2); or

(b) for a direction under section 72 (1) or (2)—section 72 (3); or

(c) for a direction under section 75 (1) (e)—section 75 (2).

70 Privilege against self-incrimination does not apply

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

(a) tend to incriminate the person; or

(b) expose the person to a penalty.

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

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Division 6.3 Power to obtain information

71 Direction to give information

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

Note The Legislation Act, s 171 deals with the application of client legal privilege.

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

Maximum penalty: 100 penalty units.

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

(a) complies with section 69 (Requirements before certain powers can be exercised); and

(b) explains the effect of section 70 (Privilege against self-incrimination does not apply).

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

(4) In this section:

property developer—see section 46.

relevant person means—

(a) a licensee; or

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

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

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(d) a property developer; or

(e) a person who may have information, a document or other thing that is relevant to determining whether this Act has been contravened; or

(f) any other person prescribed by regulation.

72 Direction to give name and address

(1) An authorised person may direct a person to state the person's name and home address if the authorised person believes on reasonable grounds that the person—

(a) is involved in the commission of an offence against this Act; or

(b) may be able to assist in the investigation of an offence against this Act.

(2) If the authorised person believes on reasonable grounds that information given in response to a direction under subsection (1) is false or misleading, the authorised person may direct the person to produce evidence of the correctness of the information within a stated reasonable period.

(3) A person must comply with a direction given to the person under this section.

Maximum penalty: 5 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

(4) Subsection (3) does not apply to a person unless the authorised person complies with section 69 (Requirements before certain powers can be exercised).

Note The defendant has an evidential burden in relation to the matter mentioned in s (4) (see Criminal Code, s 58).

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

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Division 6.4 Power to enter premises

73 Powers of authorised person to enter premises

(1) For this Act, an authorised person may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or

(b) at any time, enter premises with the occupier's consent; or

(c) at any time, enter premises—

(i) to monitor compliance with this Act (including an approved code of practice) or a relevant law; or

(ii) if the authorised person believes an offence against this Act is being, or is likely to be, or has just been, committed at the premises; or

(d) enter premises in accordance with a warrant.

(2) However, subsection (1) (a) and (c) do not authorise entry into a part of the premises that is being used only for residential purposes.

(3) If an authorised person wants to ask for consent to enter a building or other structure on the premises, the authorised person may, without the occupier's consent, enter any land that forms part of the premises to ask for the consent.

(4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

(5) An authorised person may—

(a) enter the premises with 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out their functions; and

(b) if entering the premises in accordance with a warrant—also enter the premises with necessary force.

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74 Obtaining consent to entry

(1) For section 73 (1) (b), an authorised person must—

(a) before asking the occupier for consent—tell the occupier—

(i) the purpose of the proposed entry; and

(ii) the reason for, and identity of, any other person accompanying the authorised person; and

(iii) that anything found and seized under this part may be used in evidence in court; and

(iv) that consent may be refused; and

(b) if the occupier consents to the entry—give the occupier a written record confirming—

(i) the matters mentioned in paragraph (a); and

(ii) that the occupier was told about those matters; and

(iii) the time and date when the consent was given.

(2) A court must find that the occupier did not consent if—

(a) a question arises, in a proceeding before the court, whether the occupier consented to the authorised person entering the premises under this part; and

(b) a record mentioned in subsection (1) (b) is not produced in evidence; and

(c) it is not proved that the occupier consented to the entry.

75 General powers on entry to premises

(1) An authorised person who enters premises under this division may do 1 or more of the following in relation to the premises or anything at the premises:

(a) examine anything;

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(b) take a measurement or conduct a test;

(c) take a sample;

(d) take images, make audio or video recordings or any other kind of record;

(e) if reasonably required for an authorised person to exercise a power under this division, direct the occupier of the premises, or anyone at the premises, to do 1 or more of the following:

(i) give information, a document or other thing (including information, a document or thing that is not at the premises);

(ii) produce a document or other thing (including a document or other thing that is not at the premises);

(iii) answer a question;

(iv) give the authorised person reasonable help to exercise a power under this part.

Note The Legislation Act, s 171 deals with the application of client legal privilege.

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

Maximum penalty: 50 penalty units.

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

(a) complies with section 69 (Requirements before certain powers can be exercised); and

(b) explains the effect of section 70 (Privilege against self-incrimination does not apply) to the person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

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Division 6.5 Warrants

76 Definitions—div 6.5

In this division:

remote application—see section 77 (3).

warrant form—see section 80 (2).

warrant terms—see section 79 (2).

77 Application for warrant

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

(2) The application must—

(a) be sworn; and

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

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

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

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

78 Magistrate may refuse to consider application for warrant until authorised person gives relevant information

The magistrate may refuse to consider an application for a warrant made under section 77 until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

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79 Decision on application for warrant

(1) If an application for a warrant is made under section 77, the magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

(2) The warrant must include the following information (the ***warrant terms***):

(a) a statement that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part;

(b) details of the offence for which the warrant is issued;

(c) the things that may be seized under the warrant;

(d) the hours when the premises may be entered;

(e) the date, within 14 days after the day of the warrant's issue, when the warrant ends.

80 Warrant issued on remote application

(1) A magistrate may issue a warrant on a remote application by—

(a) immediately giving a written copy of the warrant to the authorised person if it is practicable to do so; or

(b) if it is not practicable to do so—tell the authorised person the following:

(i) the warrant terms;

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(ii) the date and time the warrant is issued.

(2) If the magistrate issues a warrant under subsection (1) (b), the authorised person must complete a form of warrant (the ***warrant form***) stating—

(a) the magistrate's name; and

(b) the date and time the magistrate issued the warrant; and

(c) the warrant terms.

(3) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.

(4) The authorised person must, as soon as is reasonably practicable—

(a) swear the remote application; and

(b) give the magistrate—

(i) the sworn application; and

(ii) if the authorised person completed a warrant form—the warrant form.

(5) On receiving the documents mentioned in subsection (4) (b), the magistrate must attach them to the warrant.

(6) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—

(a) a question arises in a proceeding before the court whether the exercise of the power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of the power was authorised by a warrant under this section.

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81 Announcement before entry under warrant

(1) Before anyone enters premises under a warrant, an authorised person must—

(a) announce that they are authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises is present at the premises—identify themself to the person.

(2) The authorised person is not required to comply with subsection (1) if they believe on reasonable grounds that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including themselves or any person assisting them); or

(b) that the effective execution of the warrant is not frustrated.

82 Warrant etc to be given to occupier

If the occupier of premises is present at the premises while a warrant is being executed, the authorised person must give to the occupier—

(a) a copy of—

(i) the warrant; or

(ii) if section 80 (1) (b) applies—the warrant form; and

(b) a document setting out the occupier's rights and obligations.

83 Occupier entitled to watch search etc

(1) If the occupier of premises is present at the premises while a warrant is being executed, the occupier is entitled to watch the authorised person, and any person assisting the authorised person, conduct any search and exercise any other power authorised by the warrant.

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(2) However, the occupier is not entitled to watch the authorised person or a person assisting the authorised person, exercise their powers if—

(a) to do so would interfere with the powers being exercised; or

(b) the occupier is under arrest, and allowing them to watch the powers being exercised would interfere with the objective of the warrant.

(3) This section does not prevent an authorised officer exercising powers under this part in 2 or more areas of the premises at the same time.

Division 6.6 Power to seize things

84 Authorised person may seize things at premises

(1) An authorised person who enters premises under this part—

(a) may seize anything at the premises if satisfied on reasonable grounds that—

(i) the thing is connected with an offence against this Act; and

(ii) the seizure is necessary to prevent the thing from being—

(A) concealed, lost or destroyed; or

(B) used to commit, continue or repeat the offence; and

(b) if the premises were entered with the occupier's consent—may also seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent; and

(c) if the premises were entered under a warrant—may also seize anything at the premises that the authorised person is authorised to seize under the warrant.

(2) Having seized a thing, the authorised person may—

(a) remove the thing from the premises where it was seized to another place; or

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

Note If an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized (see s 88).

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

85 Moving things to another place for examination or processing under warrant

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

(a) both of the following apply:

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

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

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

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

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

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

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(5) If a thing is moved to another place under this section, the authorised person must, if practicable—

(a) tell the person from whom the thing was seized the address of the place where, and time when, the examination or processing will be carried out; and

(b) allow the person from whom the thing was seized or their representative to be present during the examination or processing.

(6) The provisions of this part relating to the issue of warrants apply, with any necessary changes, to the giving of an extension under subsection (3).

86 Owner etc may access seized things

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

(a) inspect the thing; and

(b) make a visual recording of the thing; and

(c) if the thing is a document—take extracts from, or make copies of, the thing.

87 Person must not interfere with seized things

(1) A person commits an offence if—

(a) a thing has been seized under this division; and

(b) the person interferes with the thing, or anything containing the thing; and

(c) the person does not have the approval of an authorised person to interfere with the thing.

Maximum penalty: 50 penalty units.

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

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88 Authorised person must give receipt for seized things

(1) If an authorised person seizes a thing under this division, they must—

(a) as soon as practicable after seizing the thing, give the person from whom the thing was seized a receipt for the thing; or

(b) if complying with paragraph (a) is not practicable—secure a receipt for the thing in a conspicuous place at the premises where the thing was seized.

(2) A receipt must include the following information:

(a) a description of the thing seized;

(b) the reasons why the thing was seized;

(c) the authorised person's name, and how they can be contacted;

(d) if the thing is moved from the premises where it was seized—where the thing will be taken.

89 Return of seized things

(1) Unless subsection (2) applies, a thing seized under this division must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing.

(2) The thing is not required to be returned and reasonable compensation is not required to be paid for it if—

(a) both of the following apply:

(i) a prosecution for an offence connected with the thing (a ***relevant offence***) is started against the owner within the 1-year period;

(ii) the proceeding (including any appeal) is finalised and the owner is convicted or found guilty of the offence; or

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(b) an infringement notice for a relevant offence is served on the owner within the 1-year period and—

(i) the owner gives notice disputing liability for the offence (a ***disputed liability notice***) in accordance with the *Magistrates Court Act 1930*, section 132; and

(ii) an information is laid in the Magistrates Court against the owner for the offence within 60 days after the day the disputed liability notice is given; and

(iii) the proceeding (including any appeal) is finalised and the owner is convicted or found guilty of the offence; or

(c) an infringement notice for a relevant offence is served on the owner within the 1-year period and—

(i) the infringement notice penalty for the offence is paid; and

(ii) the notice is not withdrawn; or

(d) a court makes an order under a territory law that the thing is forfeited to the Territory or must be otherwise dealt with.

(3) If subsection (2) (a), (b) or (c) applies—

(a) the thing is forfeited to the Territory; and

(b) the registrar may direct that the thing be sold, destroyed or otherwise disposed of.

(4) In this section:

1-year period, in relation to a seized thing, means 12 months after the day the thing was seized.

90 Order disallowing seizure

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

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(2) The application—

(a) must be made not later than 10 days after the day the thing is seized; and

(b) must not be heard unless the applicant has served a copy of the application on the registrar.

(3) The registrar is entitled to appear as a respondent at the hearing of the application.

(4) The court must make an order disallowing the seizure of the thing if satisfied—

(a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and

(b) the thing is not connected with an offence against this Act; and

(c) possession of the thing by the person would not be an offence.

(5) The court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

(6) If the court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:

(a) an order directing the registrar to return the thing to the applicant or to someone else who appears to be entitled to it;

(b) if the thing cannot be returned or has depreciated in value because of the disallowed seizure—an order directing the Territory to pay reasonable compensation;

(c) an order about costs in relation to the application.

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Division 6.7 Miscellaneous

91 Damage etc to be minimised

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

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

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

92 Compensation for exercise of enforcement powers

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

(a) an authorised person; or

(b) a person assisting an authorised person.

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

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

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

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

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Part 7 Offences

93 Offence—false or misleading representation about licence

(1) A person commits an offence if—

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

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

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

Maximum penalty: 500 penalty units.

(2) A person commits an offence if—

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

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

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

Maximum penalty: 200 penalty units.

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(3) A person commits an offence if—

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

(b) the representation is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

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

94 Offence—failure to comply with licence condition

(1) A licensee commits an offence if—

(a) the licensee's licence is subject to a condition; and

(b) the licensee fails to comply with the condition; and

(c) the licensee intended to not comply with the condition.

Maximum penalty: 500 penalty units.

(2) A licensee commits an offence if—

(a) the licensee's licence is subject to a condition; and

(b) the licensee fails to comply with the condition; and

(c) the licensee is reckless about complying with the condition.

Maximum penalty: 200 penalty units.

(3) A licensee commits an offence if—

(a) the licensee's licence is subject to a condition; and

(b) the licensee fails to comply with the condition.

Maximum penalty: 50 penalty units.

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

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95 Offence—failure to comply with approved code of practice

(1) A licensee commits an offence if—

(a) an approved code of practice applies to the licensee; and

(b) the licensee fails to comply with a requirement of the approved code of practice; and

(c) the licensee intended to not comply with the approved code of practice.

Maximum penalty: 200 penalty units.

(2) A licensee commits an offence if—

(a) an approved code of practice applies to the licensee; and

(b) the licensee fails to comply with a requirement of the approved code of practice; and

(c) the licensee is reckless about complying with the approved code of practice.

Maximum penalty: 100 penalty units.

(3) A licensee commits an offence if—

(a) an approved code of practice applies to the licensee; and

(b) the licensee fails to comply with a requirement of the approved code of practice.

Maximum penalty: 50 penalty units.

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

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Part 8 Complaints about licensees

Division 8.1 Preliminary

96 Definitions—pt 8

In this part:

aggrieved person means a person who may make a complaint about a licensee.

complainant—see section 99 (1) (b).

respondent—see section 99 (1) (d).

Division 8.2 Making complaints

97 When may someone complain about licensees?

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

(a) has contravened this Act; or

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

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

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

(iii) engaged in improper or unethical conduct; or

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

98 Making a complaint on behalf of another person

The following people may make a complaint under section 97 on behalf of an aggrieved person:

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

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

99 Form and contents of complaint

(1) A complaint must—

(a) be in writing; and

(b) include the name and contact details of the aggrieved person (the ***complainant***); and

(c) for a complaint made by an agent or representative of an aggrieved person—include the name and contact details of the agent or representative; and

(d) include the name of the licensee the complaint is about (the ***respondent***); and

(e) include details of the complaint about the respondent.

(2) However, the registrar may accept a complaint for consideration even if it does not comply with subsection (1).

(3) If the registrar accepts a complaint for consideration and the complaint is not in writing, the registrar must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

100 Withdrawal of complaint

(1) A complainant may withdraw a complaint at any time by giving written notice to the registrar.

(2) If the complainant withdraws the complaint, the registrar—

(a) is not required to continue to act on the complaint; and

(b) may continue to act on the complaint if the registrar considers it appropriate to do so; and

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(c) is not required to give the complainant notice of the outcome of the complaint under section 106.

Division 8.3 Dealing with complaints

101 Notifying licensee about complaint

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

(a) states that a complaint has been made about the respondent; and

(b) includes details about the complaint.

102 Consideration of complaint

(1) The registrar must take reasonable steps to consider each complaint accepted for consideration.

(2) The registrar's consideration of a complaint may be conducted in any way the registrar decides, unless otherwise expressly provided by this Act.

Example—s (2)

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

103 Registrar may request information or statement

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

Note 1 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

Note 2 The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

(2) A request under subsection (1) must—

(a) be in writing; and

(b) state the information or statement that the registrar requires; and

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(c) state a reasonable period for the person to comply with the request; and

(d) state that the person may seek an extension of the period mentioned in paragraph (c) before or after the period ends.

(3) The registrar may extend the period for the complainant or respondent to comply with a request under subsection (1) before or after the period ends.

(4) If the complainant does not comply with a request under subsection (1), the registrar may, but is not required to, take further action on the complaint.

Division 8.4 Finalising complaints

104 No further action

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

(a) lacks substance or credibility; or

(b) is frivolous, vexatious or was made other than in good faith; or

(c) has been adequately dealt with, including by being referred to another entity under section 105.

105 Registrar may refer complaint or matter to another entity

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

Examples—other entities

building inspector, fair work commissioner, commissioner for fair trading, work health and safety commissioner

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

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

106 Notice of outcome of complaint consideration

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

(2) If, after finalising a complaint under this part, the registrar is satisfied a ground for regulatory action exists in relation to a licensee, the registrar must consider taking regulatory action against them under division 4.2 (Regulatory action).

(3) In this section:

ground for regulatory action—see section 33.

Division 8.5 Miscellaneous

107 Immunity from liability

If a person makes a complaint in good faith—

(a) the making of the complaint is not—

(i) a breach of confidence; or

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

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

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

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Part 9 Information sharing

Division 9.1 Sharing public safety information

108 Definitions—div 9.1

(1) In this division:

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

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

public safety agency means any of the following:

(a) the registrar;

(b) the director-general responsible for this Act or an operational Act;

(c) an inspector appointed under an operational Act;

(d) the director-general responsible for the *Emergencies Act 2004*;

(e) the commissioner and chief officers appointed under the *Emergencies Act 2004*;

(f) an inspector appointed under the *Emergencies Act 2004*;

(g) the director-general responsible for the *Work Health and Safety Act 2011*;

(h) the commissioner appointed under the *Work Health and Safety Act 2011*;

(i) an inspector appointed under the *Work Health and Safety Act 2011*;

(j) an agency prescribed by regulation.

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

(2) In this section:

operational Act means any of the following:

(a) the *Building Act 2004*;

(b) the *Construction Occupations (Licensing) Act 2004*;

(c) the *Dangerous Substances Act 2004*;

(d) the *Electricity Safety Act 1971*;

(e) the *Gas Safety Act 2000*;

(f) the *Planning Act 2023*;

(g) the *Professional Engineers Act 2023*;

(h) the *Unit Titles Act 2001*;

(i) the *Utilities Act 2000*;

(j) the *Water and Sewerage Act 2000*.

109 Sharing public safety information—territory agencies

(1) A public safety agency may—

(a) give public safety information to another public safety agency (the ***receiving agency***); and

(b) impose conditions on how the receiving agency uses, stores or shares the information.

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

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

110 Sharing public safety information—non-territory agencies

(1) A public safety agency may give public safety information to a non-territory agency if the public safety agency is satisfied—

(a) the information relates to a function of the non-territory agency; and

(b) the information relates to compliance with a law of the Commonwealth, a State or the Northern Territory that provides for public safety; and

(c) the non-territory agency that receives the information (the ***receiving agency***) will use the information only to exercise a function the receiving agency has under a law mentioned in paragraph (b); and

(d) giving the information will not unreasonably compromise the exercise of a function under a territory law.

(2) A public safety agency may impose conditions on how the non-territory agency uses, stores or shares the public safety information.

Division 9.2 Unauthorised disclosure of protected information

111 Offences—use or divulge protected information

(1) A person commits an offence if—

(a) the person uses information; and

(b) the information is protected information about someone else; and

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(c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

(a) the person does something that divulges information; and

(b) the information is protected information about someone else; and

(c) the person is reckless about whether—

(i) the information is protected information about someone else; and

(ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) Subsections (1) and (2) do not apply—

(a) if the information is used or divulged—

(i) under this Act, another territory law, or another law applying in the ACT; or

(ii) in relation to the exercise of a function by a public official under this Act or another territory law; or

(iii) in a court proceeding; or

(b) to the using or divulging of protected information about a person with the person's consent.

(4) A public official need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the ACT.

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(5) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes communicate or publish.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by a public official because of the exercise, or the purported exercise, of a function under this Act by the public official or someone else.

use, in relation to information, includes make a record of the information.

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Part 10 Notification and review of decisions

112 Definitions—pt 10

In this part:

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

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

decision-maker means the decision-maker for a reconsideration application.

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

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

reconsideration application—see section 113 (1).

113 Applications for reconsideration

(1) An affected person may make an application for reconsideration of an internally reviewable decision (a ***reconsideration application***).

(2) A reconsideration application must—

(a) be in writing; and

(b) set out the grounds on which reconsideration is sought; and

(c) be made not later than—

(i) 28 days after the day the internal review notice is given to the affected person; or

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(ii) any longer period allowed by the registrar.

(3) The making of a reconsideration application does not stay the internally reviewable decision or otherwise prevent action being taken as a result of the decision.

114 Reconsideration of internally reviewable decisions

(1) Within 30 days after receiving a reconsideration application, the decision-maker must—

(a) reconsider the internally reviewable decision; and

(b) confirm, vary or set aside the decision.

(2) The decision-maker must be a different person to the person who made the internally reviewable decision.

(3) If the decision-maker does not confirm, vary or set aside the internally reviewable decision within 30 days after receiving the reconsideration application, the decision-maker is taken to have confirmed the decision.

115 Reviewable decision notice

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

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

116 Applications for review of ACAT reviewable decisions

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

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Part 11 Miscellaneous

117 Codes of practice

(1) The Minister may approve a code of practice (an ***approved code of practice***) for the following (a ***relevant property developer***):

(a) licensees; and

(b) any other person prescribed by regulation undertaking residential development activities.

(2) An approved code of practice is a disallowable instrument.

(3) A relevant property developer must comply with an approved code of practice.

Note It is an offence under s 95 for a licensee not to comply with an approved code of practice.

118 Competency requirements for property developers

(1) The Minister may determine qualifications, experience, continuing professional development or other competencies (a ***competency requirement***) that a person must have to be a licensee.

(2) A determination is a disallowable instrument.

(3) A licensee must comply with a competency requirement.

119 Protection of public officials from liability

(1) A public official is not civilly liable for conduct engaged in honestly and without recklessness—

(a) in the exercise of a function under this Act or another territory law; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another territory law.

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

120 Applying, adopting or incorporating documents in regulations and instruments

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

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

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

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

Note An instrument under s (1) (b) does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

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

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

(b) accessible on an ACT government website, or by a link on an ACT government website.

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

121 Determination of fees

(1) The Minister may determine fees for this Act.

(2) A determination is a disallowable instrument.

122 Regulation-making power

The Executive may make regulations for this Act.

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123 Review of Act

(1) The Minister must, as soon as practicable after the end of this Act's 5th year of operation—

(a) review the operation and effectiveness of this Act; and

(b) present a report of the review to the Legislative Assembly.

(2) This section expires 7 years after the day it commences.

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Part 12 Transitional

124 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

(2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

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

125 Expiry—pt 12

This part expires 7 years after the day it commences.

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Part 13 Consequential amendments

126 Legislation amended—sch 2

This Act amends the legislation mentioned in schedule 2.

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Schedule 1 Reviewable decisions

(see pt 10)

Part 1.1 Internally reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 affected person
1	11 (3)	refuse to consider licence application	applicant for licence
2	13 (3)	refuse to consider renewal application	applicant for licence renewal
3	15 (3)	refuse to consider application further	applicant for licence or licence renewal
4	17 (1) (b)	refuse to give licence	applicant for licence
5	17 (2) (b)	refuse to renew licence	applicant for licence renewal
6	19 (1) (f)	impose condition on licence	licensee
7	22	vary, or refuse to vary, licence	licensee
8	41	refuse to cancel licence	licensee

Part 1.2 ACAT reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 affected person
1	27 (1)	refuse to approve approval application	applicant for approval
2	27 (3) (b) (i)	impose condition on approval	rating entity
3	29	vary, or refuse to vary, approval	rating entity

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column 1 item	column 2 section	column 3 decision	column 4 affected person
4	30 (1)	refuse to revoke approval	rating entity
5	30 (2)	revoke approval	rating entity
6	35	take regulatory action	licensee
7	38	immediately suspend or cancel licence	licensee
8	40	refuse to revoke immediate suspension or cancellation	licensee
9	49 (2)	give rectification order to property developer	person given order
10	52 (2)	give rectification order to director	person given order
11	60 (2)	give stop work order	person given order
12	64 (2)	give compliance cost notice	person given notice
13	114	confirm, vary or set aside internally reviewable decision	person applying for reconsideration

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Schedule 2 Consequential amendments

(see s 126)

Part 2.1 Building Act 2004

[2.1] Section 6 (1), definition of *building work*, note

omit

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

substitute

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

U [2.2] New section 27 (1) (ca)

insert

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

(i) holds a property developer licence; and

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

U [2.3] New section 27 (1A)

insert

(1A) Subsection (1) (ca) does not apply to the following:

(a) the Territory, the Commonwealth or a State;

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

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(b) a territory entity or a Commonwealth or State entity;

(c) a person, or an application under section 26, excluded by regulation.

U [2.4] Section 27 (2), new definitions

insert

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

property developer licence means a licence under the *Property Developers Act 2024*.

related entity, of a person, means—

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

(b) an entity prescribed by regulation.

residential building work—see the *Property Developers Act 2024*, dictionary.

territory entity means—

(a) a territory authority; or

(b) a territory instrumentality; or

(c) a territory-owned corporation.

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U [2.5] New section 28AA

before section 28A, insert

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

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

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

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

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

(3) In this section:

property developer licence—see section 27 (2).

related entity—see section 27 (2).

residential building work—see section 27 (2).

[2.6] New sections 48A and 48B

in division 3.6, insert

48A Approval of building manual

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

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

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

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

(4) In this section:

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

48B Offence—false or misleading information in building manual

(1) A person commits an offence if—

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

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

Maximum penalty: 50 penalty units.

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

U [2.7] New section 69 (1) (c)

before note 1, insert

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

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[2.8] New section 69 (1) (d)

before note 1, insert

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

[2.9] Section 69 (2C) (c)

omit

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

substitute

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

[2.10] Section 73

omit

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

substitute

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

[2.11] Part 6 heading

substitute

Part 6 Residential building work—warranties, conditions, insurance etc

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[2.12] Section 84, new definitions

insert

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

property developer, in relation to residential building work—

(a) means—

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

(ii) the owner of the land on which the building work is carried out when the building work is carried out; or

(iii) a person prescribed by regulation; but

(b) does not include—

(i) the Territory, the Commonwealth or a State; or

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(ii) a territory entity or a Commonwealth or State entity; or

(iii) a person excluded by regulation.

territory entity means—

(a) a territory authority; or

(b) a territory instrumentality; or

(c) a territory-owned corporation.

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[2.13] New section 88 (2A)

insert

(2A) If a property developer arranges for the residential building work the subject of the contract mentioned in subsection (1) (the ***building contract***) to be carried out, for any part of the work that is residential building work as defined in the *Property Developers Act 2024*—

(a) the building contract also contains a warranty by the property developer in relation to the matters mentioned in subsection (2) (a) to (d); and

(b) the warranty under paragraph (a) is in addition to and does not limit the warranty by the builder under subsection (2); and

(c) the warranty by the builder under subsection (2) does not limit the warranty by the property developer under paragraph (a).

[2.14] New section 88 (4A) and (4B)

insert

(4A) Subsection (2A) does not apply to a building contract entered into before the commencement of this subsection.

(4B) Subsection (4A) and this subsection expire 5 years after the day they commence.

Note Subsection (4A) continues to have effect after its expiry (see Legislation Act, s 88).

[2.15] Section 89 heading

substitute

89 Builder's and property developer's liability

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[2.16] Section 89

after

a builder

insert

or a property developer

[2.17] New division 6.2B

insert

Division 6.2B Defective building work

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

(1) This section applies to residential building work carried out by a builder, or arranged to be carried out by a property developer, that is—

(a) claimed to be defective; and

(b) able to be rectified.

(2) An affected party may give written notice to the builder and any property developer, within 2 years after the completion day for the residential building work requiring the defective work to be rectified.

(3) If a notice is given in accordance with subsection (2), in any proceeding in which the affected party claims that the residential building work is defective it is presumed that it is defective and able to be rectified unless the contrary is proven.

(4) Nothing in this section affects the right of an affected party to claim from the builder, and any property developer, damages for any loss or damage to the affected party resulting from the defect that is reasonably foreseeable as a result of the defect (including a limitation period applying to the claim).

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(5) Nothing in this section affects a warranty under section 88.

(6) This section does not apply to residential building work carried out—

(a) before the commencement of this section; or

(b) under a contract entered into before the commencement of this section.

(7) Subsection (6) and this subsection expire 5 years after the day this section commences.

Note Subsection (6) continues to have effect after its expiry (see Legislation Act, s 88).

(8) In this section:

affected party, in relation to residential building work—

(a) means—

(i) the owner of the building or the land on which the building work was carried out, whether or not that person was a party to the contract for the building work or the contract for sale of the building; or

(ii) a person prescribed by regulation; but

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

residential building work—see the *Property Developers Act 2024*, dictionary.

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[2.18] New division 6.3A

insert

Division 6.3A Latent defects insurance

95A Requirements for latent defects insurance

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

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

(b) requirements for latent defects insurance policies;

(c) requirements for insurers issuing latent defects insurance;

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

(2) In this section:

residential building work—see the *Property Developers Act 2024*, dictionary.

[2.19] Dictionary, note 2

insert

- territory authority
- territory instrumentality
- territory-owned corporation

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[2.20] Dictionary, definition of *actuary* etc

omit

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

substitute

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

in the dictionary definitions of

- ***actuary***
- ***approval criteria***
- ***approved scheme***
- ***builder***
- ***building***
- ***building work***
- ***completion day***
- ***complying residential building work insurance***
- ***cost***
- ***fidelity certificate***
- ***fidelity fund scheme***
- ***insurable residential building***
- ***insurable residential building work***

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[2.21] Dictionary, new definitions

insert

Commonwealth or State entity, for part 6 (Residential building work—warranties, conditions, insurance etc)—see section 84.

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

territory entity, for part 6 (Residential building work—warranties, conditions, insurance etc)—see section 84.

[2.22] Dictionary, definition of *prudential standards* etc

omit

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

substitute

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

in the dictionary definitions of

- ***prudential standards***
- ***residential building***
- ***residential building work***
- ***special actuary***
- ***storey***

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U Part 2.2 Building (General) Regulation 2008

U [2.23] New section 30A (c) (via)

insert

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

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

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

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

U [2.24] Part 4 heading

substitute

Part 4 Residential building work—warranties, conditions, insurance etc

U [2.25] Section 37

omit

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

substitute

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

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U [2.26] New section 37A

insert

37A People who are not property developers—Act, s 84, def *property developer*, par (b) (iii)

(1) The following people are excluded:

(a) a professional who contracts or arranges for, or facilitates or otherwise causes the residential building work to be carried out only because they provide professional advice in relation to the building work;

(b) a subcontractor engaged to carry out the residential building work by the principal builder of the building work;

(c) the owner-builder of the residential building work.

(2) In this section:

professional—

(a) means a person who provides professional advice to more than 1 client; but

(b) does not include a person who provides professional advice to a client in their capacity as an employee of the client.

Example

a consultant, employed in that capacity by a firm of consultants engaged by a property developer to give the developer advice in relation to residential building work

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U [2.27] Schedule 1, part 1.3, table, column 3

omit

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

substitute

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

U Part 2.3 Civil Law (Property) Act 2006

U [2.28] Section 260 (1), new note

insert

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

U Part 2.4 Civil Law (Sale of Residential Property) Act 2003

U [2.29] New section 9 (1) (ja)

insert

(ja) for an off-the-plan contract—a statement about the matters mentioned in section 19AD (1) (but not including paragraph (b));

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

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U [2.30] Section 9 (4), new definition of *off-the-plan contract*

insert

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

U [2.31] New divisions 2A.1 to 2A.3

before section 19A, insert

Division 2A.1 Preliminary

19AA Definitions—pt 2A

(1) In this part:

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

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

off-the-plan contract—

(a) means a contract for the sale of—

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

(ii) a residence (other than a unit) on land identified in the contract before the certificate of occupancy for the residence is issued; and

(b) for division 2A.4—includes a contract for the sale of vacant land for residential use identified in the contract before the Crown lease for the land is registered.

property developer licence means a licence issued under the *Property Developers Act 2024*, part 2.

regulated residential building—see the *Property Developers Act 2024*, dictionary.

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related entity, of a seller, means—

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

(b) an entity prescribed by regulation.

territory entity means—

(a) a territory authority; or

(b) a territory instrumentality; or

(c) a territory-owned corporation.

(2) In this section:

registered means registered with the registrar-general under the—

(a) *Land Titles Act 1925*; or

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

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

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

(1) A seller commits an offence if—

(a) 2 parties enter into an off-the-plan contract for the sale of a regulated residential building; and

(b) either of the following applies:

(i) neither the seller, nor any related entity of the seller, holds a property developer licence;

(ii) the seller or a related entity holds a property developer licence that restricts the seller or related entity from entering into the off-the-plan contract.

Maximum penalty: 100 penalty units.

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(2) This section does not apply to—

(a) the Territory, the Commonwealth or a State; or

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(b) a territory entity or a Commonwealth or State entity; or

(c) a person excluded by regulation.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

19AC Off-the-plan contracts—advertising

(1) A person commits an offence if—

(a) the person publishes an advertisement for the sale of a regulated residential building under an off-the-plan contract; and

(b) the advertisement does not contain the property developer licence number of the proposed seller or a related entity of the proposed seller.

Maximum penalty: 5 penalty units.

(2) Subsection (1) does not apply to—

(a) the Territory, the Commonwealth or a State; or

(b) a territory entity or a Commonwealth or State entity; or

(c) a person excluded by regulation.

(3) A person commits an offence if—

(a) the person publishes an advertisement for the sale of a regulated residential building under an off-the-plan contract; and

(b) the advertisement includes a statement about the property developer licence number of the proposed seller or a related entity of the proposed seller; and

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(c) the statement is false or misleading in a material particular.

Maximum penalty: 5 penalty units.

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

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

19AD Disclosure statements

(1) Before a buyer and seller enter into an off-the-plan contract, the seller must give the buyer a statement (a ***disclosure statement***) including the following matters:

(a) if section 19AB requires the seller, or a related entity of the seller, to hold a property developer licence—

(i) the licence number;

(ii) a statement that the register under the *Property Developers Act 2024*, section 25 contains information about property developers licensed under that Act;

(b) the fixtures, fittings and finishes that are included in each residence;

(c) any other matter prescribed by regulation.

(2) This division does not limit the operation of the *Civil Law (Property) Act 2006*, part 2.9 (Unit titles).

Note The *Civil Law (Property) Act 2006*, pt 2.9 requires additional matters to be disclosed before an off-the-plan contract for the sale of a unit may be entered into.

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19AE Disclosure statement provided late or not at all

(1) This section applies if—

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

(b) the seller did not give the buyer a disclosure statement as required under section 19AD before the parties entered into the contract.

(2) The buyer may, by written notice to the seller, rescind the contract—

(a) if the seller has not given the buyer the disclosure statement—at any time before the contract is completed; or

(b) if the seller gives the buyer the disclosure statement after the contract is signed—within 21 days after the day the disclosure statement is given to the buyer.

U [2.32] Section 19A heading

substitute

Division 2A.4 Off-the-plan contracts—rescission provisions

19A Definitions—div 2A.4

U [2.33] Section 19A (1)

omit

part

substitute

division

U [2.34] Section 19A (1), definition of *off-the-plan contract*

omit

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U [2.35] Section 19A (2), definitions of *certificate of occupancy* and *registered*

omit

U [2.36] Section 50

substitute

50 Existing off-the-plan contracts

(1) Division 2A.4 applies to an off-the-plan contract in force immediately before the day the *Civil Law (Sale of Residential Property) Amendment Act 2021* commenced.

(2) In this section:

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

U [2.37] Dictionary, note 2

insert

- territory authority
- territory instrumentality
- territory-owned corporation

U [2.38] Dictionary, new definitions

insert

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

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

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U [2.39] Dictionary, definition of *delay event*

substitute

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

U [2.40] Dictionary, definition of *off-the-plan contract*

substitute

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

U [2.41] Dictionary, new definitions

insert

property developer licence, for part 2.A (Off-the-plan contracts)—see section 19AA (1).

regulated residential building, for part 2.A (Off-the-plan contracts)—see the *Property Developers Act 2024*, dictionary.

related entity, of a seller, for part 2.A (Off-the-plan contracts)—see section 19AA (1).

U [2.42] Dictionary, definition of *rescission provision*

substitute

rescission provision, for division 2A.4 (Off-the-plan contracts—rescission provisions)—see section 19A (1).

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U [2.43] Dictionary, definitions of *sunset date* and *sunset event*

substitute

sunset date, for division 2A.4 (Off-the-plan contracts—rescission provisions)—see section 19A (1).

sunset event, for division 2A.4 (Off-the-plan contracts—rescission provisions)—see section 19A (1).

U [2.44] Dictionary, new definition of *territory entity*

insert

territory entity, for part 2.A (Off-the-plan contracts)—see section 19AA (1).

U Part 2.5 Planning Act 2023

U [2.45] New division 7.3.3

insert

Division 7.3.3 Development applications for certain residential building developments

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

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

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

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

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

(3) This section does not apply if the applicant is—

(a) the Territory, the Commonwealth or a State; or

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

(b) a territory entity or a Commonwealth or State entity.

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

(5) In this section:

Commonwealth or State entity means an agency of the Commonwealth or a State that substantially corresponds to a territory entity.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

regulated residential building—see the *Property Developers Act 2024*, dictionary.

related entity, of a person, means—

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

(b) an entity prescribed by regulation.

residential building development means—

(a) building or altering a regulated residential building on land; and

(b) another development prescribed by regulation.

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162B Transitional—amendments of existing development applications for certain residential building developments—property developer licence required

(1) This section applies if a development approval is given in relation to a residential building development before section 162A commences.

(2) The territory planning authority must not accept an application for a significant amendment of the development approval in relation to the residential building development unless—

(a) the applicant for the amendment, or a related entity of the applicant, holds a property developer licence; and

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

(3) This section does not apply if the applicant is—

(a) the Territory, the Commonwealth or a State; or

(b) a territory entity or a Commonwealth or State entity.

(4) A regulation may exclude a person or application for a significant amendment from the application of subsection (2).

(5) In this section:

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

related entity—see section 162A (5).

residential building development—see section 162A (5).

significant amendment, of a development approval in relation to a residential building development, means an amendment of the approval—

(a) to increase the gross floor area of the building by more than 10%; or

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(b) to vary the lease; or

(c) prescribed by regulation.

(6) This section expires on the day the *Property Developers Act 2024*, part 12 (Transitional) expires.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

U [2.46] New section 187 (1) (f)

insert

(f) if a person is required to hold a property developer licence because of division 7.3.3—must include a condition that—

(i) any residential building work undertaken in or on a place the subject of the approval may only be undertaken or arranged by a person who holds a property developer licence or who is a related entity of someone who holds a property developer licence; and

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

U [2.47] New section 187 (6)

insert

(6) In this section:

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

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

(b) an entity prescribed by regulation.

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residential building work—see the *Property Developers Act 2024*, dictionary.

U [2.48] Dictionary, new definition of *property developer licence*

insert

property developer licence means a licence under the *Property Developers Act 2024*.

U Part 2.6 Property Developers Act 2024

U [2.49] Section 23 (3), definition of *off-the-plan contract*

omit

section 19A (1)

substitute

section 19AA (1)

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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 10 (Notification and review of decisions)—see section 112.

affected person, for part 10 (Notification and review of decisions)—see section 112.

aggrieved person, for part 8 (Complaints about licensees)—see section 96.

approved code of practice—see section 117 (1).

associated entity, of a corporation—see section 8 (1).

authorised contractor, for part 5 (Rectification orders, stop work orders and undertakings)—see section 55 (2).

authorised person, for part 6 (Enforcement)—see section 66.

building work—see the *Building Act 2004*, section 6.

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

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competency requirement—see section 118 (1).

complainant, for part 8 (Complaints about licensees)—see section 99 (1) (b).

compliance action, for part 5 (Rectification orders, stop work orders and undertakings)—see section 64 (1).

compliance cost notice, for part 5 (Rectification orders, stop work orders and undertakings)—see section 64 (2).

compliance undertaking, for part 5 (Rectification orders, stop work orders and undertakings)—see section 62 (1).

connected, for part 6 (Enforcement)—see section 66.

decision-maker, for part 10 (Notification and review of decisions)—see section 112.

director, of a property developer that is a corporation, for part 5 (Rectification orders, stop work orders and undertakings)—see the Corporations Act, section 9.

ground for regulatory action, for division 4.2 (Regulatory action)—see section 33.

internally reviewable decision, for part 10 (Notification and review of decisions)—see section 112.

internal review notice, for part 10 (Notification and review of decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

key person, for a corporation—see section 8 (1).

law of another jurisdiction, for division 9.1 (Sharing public safety information)—see section 108 (1).

licence means a licence under part 2.

licence application—see section 11 (1).

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licensee—

(a) means a person who holds a licence; and

(b) for division 4.2 (Regulatory action)—see section 32.

non-territory agency, for division 9.1 (Sharing public safety information)—see section 108 (1).

occupier, of premises, for part 6 (Enforcement)—see section 66.

offence, for part 6 (Enforcement)—see section 66.

premises, for part 6 (Enforcement)—see section 66.

property developer, for part 5 (Rectification orders, stop work orders and undertakings)—see section 46.

proposed rectification order notice, for part 5 (Rectification orders, stop work orders and undertakings)—see section 48 (2).

proposed regulatory action, for division 4.2 (Regulatory action)—see section 34 (1).

public safety agency, for division 9.1 (Sharing public safety information)—see section 108 (1).

public safety information, for division 9.1 (Sharing public safety information)—see section 108 (1).

rating entity means an entity approved under section 27.

rating report, in relation to an applicant for a licence or a licensee, for part 2 (Licensing of property developers)—see section 10.

reconsideration application, for part 10 (Notification and review of decisions)—see section 113 (1).

rectification order, for part 5 (Rectification orders, stop work orders and undertakings)—see section 49 (2).

rectify, a serious defect, for part 5 (Rectification orders, stop work orders and undertakings)—see section 45.

registrar means the construction occupations registrar.

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regulated residential building—

(a) means a class 1 or class 2 building, or a building that contains a class 2 building, constructed as part of a project to construct 3 or more dwellings; but

(b) does not include a building excluded by regulation.

Examples

1 Eddy and Ann engage Darcy Constructions to demolish their house and replace it with 2 duplex-style houses. Five years later they engage Darcy Constructions to construct a smaller house in the backyard. None of the houses are regulated residential buildings.

2 Poppy Projects buys a large infill site. They construct 20 detached class 1 houses on the site as part of a development project. The houses are sold off-the-plan and constructed over 2 years. Each house is a regulated residential building.

3 Vivienne Developments buys 6 small adjoining blocks in a greenfield suburb. They engage an architect, builder and other professionals to construct matching class 1 row houses on the blocks. The houses are regulated residential buildings.

regulatory action, for division 4.2 (Regulatory action)—see section 32.

relevant law means the following:

(a) the *Building Act 2004*;

(b) the *Building and Construction Industry (Security of Payment) Act 2009*;

(c) the *Civil Law (Sale of Residential Property) Act 2003*;

(d) the *Community Housing Providers National Law (ACT)*;

(e) the *Construction Occupations (Licensing) Act 2004*;

(f) the Corporations Act;

(g) the *Fair Work Act 2009* (Cwlth);

(h) the *Planning Act 2023*;

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(i) the *Unit Titles (Management) Act 2011*;

(j) the *Work Health and Safety Act 2011*;

(k) any other law prescribed by regulation.

Note The *Community Housing Providers National Law (ACT) Act 2013*, s 7 applies the Community Housing Providers National Law set out in the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) appendix as if it were an ACT law called the *Community Housing Providers National Law (ACT)*.

remote application, for division 6.5 (Warrants)—see section 77 (3).

renewal application—see section 13 (1).

required rectification work, in relation to a rectification order, for part 5 (Rectification orders, stop work orders and undertakings)—see section 49 (2) (a).

residential building work—

(a) means building work in relation to a regulated residential building; but

(b) does not include building work excluded by regulation.

Examples

1 Anthony and Lisa engage Fowler Build to demolish their house and replace it with a building containing 4 apartments and a shared basement. The project involves residential building work.

2 Cooney-Cross Constructions is engaged to alter an existing class 2 building by adding 2 more dwellings. The project does not involve residential building work.

residential development activities includes—

(a) undertaking residential building work, or arranging for residential building work to be undertaken; and

(b) marketing and selling regulated residential buildings including off the plan.

respondent, for part 8 (Complaints about licensees)—see section 99 (1) (d).

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serious defect, in relation to a building—see section 47.

show cause notice, for division 4.2 (Regulatory action)—see section 34 (2).

stop work order, for part 5 (Rectification orders, stop work orders and undertakings)—see section 60 (2).

suitable person—see section 9.

territory entity means—

(a) a territory authority; or

(b) a territory instrumentality; or

(c) a territory-owned corporation.

warrant, for part 6 (Enforcement)—see section 66.

warrant form, for division 6.5 (Warrants)—see section 80 (2).

warrant terms, for division 6.5 (Warrants)—see section 79 (2).

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
<u>underlining</u> = whole or part not commenced or to be expired

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3 Legislation history

Property Developers Act 2024 A2024-36

notified LR 10 July 2024
s 1, s 2 commenced 10 July 2024 (LA s 75 (1))
ss 3-6, s 8, pt 5 (other than s 60 (1) (b) and (6), def ***relevant provision***), pt 6, pts 9-12, sch 1, dict commenced 11 July 2024 (s 2 (1))
pt 3 commenced 14 March 2025 (s 2 (2), CN2025-1 and LA s 77 (3))
sch 2 amdts 2.1, 2.6, 2.8-2.22 commenced 10 July 2026 (s 2 (2) (b), s 2 (3) (b))
sch 2 remainder awaiting commencement
remainder commenced 5 November 2025 (s 2 (2), CN2025-6 and LA s 77 (3))

as amended by

Building and Construction Legislation Amendment Act 2025 A2025-5 pt 7

notified LR 31 March 2025
s 1, s 2 commenced 31 March 2025 (LA s 75 (1))
pt 7 commenced 1 April 2025 (s 2)

Statute Law Amendment Act 2025 A2025-29 sch 3 pt 3.70

notified LR 6 November 2025
s 1, s 2 commenced 6 November 2025 (LA s 75 (1))
sch 3 pt 3.70 commenced 26 November 2025 (s 2 (3))

Building and Construction Legislation Amendment Act 2026 A2026-2 pt 8

notified LR 16 February 2026
s 1, s 2 commenced 16 February 2026 (LA s 75 (1))
s 56, s 57 commenced 17 February 2026 (s 2 (4))
pt 8 remainder commenced 23 February 2026 (s 2 (1))

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4 Amendment history

Registrar must keep register

s 25	am A2026-2 s 56, s 57

Meaning of *property developer*—pt 5

s 46	am A2025-29 amdt 3.234

Exercise of powers unaffected by approvals etc

s 65	am A2025-29 amdt 3.235

Applying, adopting or incorporating documents in regulations and instruments

s 120 hdg	sub A2025-29 amdt 3.236
s 120	am A2025-5 s 36; A2025-29 amdts 3.237-3.241; pars renum R5 LA

Review of Act

s 123	exp 11 July 2031 (s 123 (2))

Transitional

pt 12 hdg	exp 11 July 2031 (s 125)

Transitional regulations

s 124	exp 11 July 2031 (s 125)

Expiry—pt 12

s 125	exp 11 July 2031 (s 125)

Dictionary

dict	def ***relevant law*** am A2026-2 s 58, s 59; pars renum R7 LA

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 11 July 2024	11 July 2024– 13 Mar 2025	not amended	new Act
R2 14 Mar 2025	14 Mar 2025– 31 Mar 2025	not amended	commenced provisions
R3 1 Apr 2025	1 Apr 2025– 4 Nov 2025	A2025-5	amendments by A2025-5
R4 5 Nov 2025	5 Nov 2025– 25 Nov 2025	A2025-5	commenced provisions
R5 26 Nov 2025	26 Nov 2026– 16 Feb 2026	A2025-29	amendments by A2025-29
R6 17 Feb 2026	17 Feb 2026– 22 Feb 2026	A2026-2	amendments by A2026-2
R7 23 Feb 2026	23 Feb 2026– 9 July 2026	A2026-2	amendments by A2026-2

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6 Uncommenced provisions

Schedule 2, amdts 2.2-2.5 and 2.7 and pts 2.2-2.6 were uncommenced at the republication date but have been included in this republication with the symbol **U** immediately before the provision headings.

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