

Property Developers Regulation 2025

Subordinate law SL2025–20

made under the

Property Developers Act 2024, s 122 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Property Developers Regulation 2025* (the **regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

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

Overview

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

The regulation is made under section 122 of the Act.

This regulation:

- a. Requires certain information to be included in a licence application and a licence renewal application for a property developer licence.
- b. Requires that certain information that must be included on the publicly available register of property developers is included in licence applications.
- c. Excludes certain types of people and entities from the broader definition of property developer that is applied in Part 5 of the Act. Excluded people include people providing professional advice, such as consultants, subcontractors, certifiers, and financiers.

- d. Excludes directors of community housing providers and directors of wholly owned subsidiaries of community housing providers from the director liability provisions in Part 5 of the Act.
- e. Excludes certain aged care providers from being subject to the Act by excluding buildings they construct from the Act's definition of *regulated residential building*.
- f. Prescribes the Code of Practice under section 117 of the Act applies to all people who arrange for regulated residential building work.

Applications for property developer licenses will be accepted from 1 October 2025. From 1 October 2026 it will be mandatory for certain residential property developers to hold a licence. This regulation supports the commencement of licence applications being accepted, and provides clarity regarding what types of people that various provisions in the Act will apply to, and those who will be exempted from the Act or particular provisions in it.

Climate Impact

There are no climate change impacts arising from the regulation.

Regulatory Impact Statement

Section 34 of the *Legislation Act 2001* (the **Legislation Act**) provides that if a proposed subordinate law or disallowable instrument (the **proposed law**) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a Regulatory Impact Statement (**RIS**) to be prepared for the proposed law.

Regulatory impact was considered by government as part of the policy approval for the Act, including advice on exemptions. The Act establishes the ACT's property developer licensing and regulation scheme, the requirement for certain property developers to be licensed, and the obligations on these property developers, such as payment of licence fees.

This regulation does not impose an additional regulatory burden on people that the Act applies to. As such, a RIS is not required to support this regulation.

Consistency with Human Rights

The Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the **Scrutiny Committee**) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters, to be assessed for its compatibility with the *Human Rights Act 2004* (the **HRA**).

A detailed human rights assessment is in the explanatory statement to the Property Developers Bill 2023, including consideration of the impact of introducing a property developer licensing scheme in the Territory.

This regulation could be seen to engage and limit the right to privacy and reputation under section 12 of the HRA by setting out personal information required to be provided as part of a licence application, and published on the public register.

The information gathering and publication requirements established in this regulation are considered demonstrably justified to achieve the objectives of the Act. Section 28 (1) of the HRA expressly provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Scrutiny Committee Principles

The regulation has been developed in accordance with the Scrutiny Committee's terms of reference, principles and technical and stylistic standards expected by the Assembly.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Property Developers Regulation 2025*.

Clause 2 Commencement

This clause provides for the commencement of the regulation.

Parts 1, 3, 4 and 5 commence on the day after its notification day.

Part 2 commences on the commencement of section 11 of the Act.

Part 6 commences on the commencement of schedule 2, part 2.4 of the Act.

Clause 3 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation.

Clause 4 Notes

This clause states that any note in the regulation is explanatory and not part of the regulation.

Part 2 Licensing of property developers

Clause 5 Information to be included in licence application—Act, s 11 (2) (d)

This clause prescribes additional information that all applicants must supply with their licence application. This includes:

- Some of the information that section 25 of the Act requires to be published on the public register of licensed property developers.
- If the applicant is a corporation:
 - Director identification numbers for current and former directors of the corporation.
 - Details about associated entities and former associated entities.
 - Director identification numbers of current and previous directors of current and former associated entities of the applicant.
- Evidence of community housing provider registration (if applicable).

Clause 6 Information to be included in licence renewal application—Act, s 13 (2) (e)

This clause prescribes additional information that all applicants must supply with applications for a licence renewal. This includes:

- Some of the information that section 25 of the Act requires to be published on the public register of licensed property developers.
- If the applicant is a corporation:
 - Director identification numbers for current and former directors of the corporation.
 - Details about associated entities and former associated entities.
 - Director identification numbers of current and previous directors of current and former associated entities of the applicant.
- Evidence of community housing provider registration (if applicable).

Part 3 Action against property developers and directors

Clause 7 Application—pt 3

At the time of the Act's commencement on 11 July 2024, some provisions, such as the parts of the Act enliven the requirement for certain property developers to obtain a property developer licence, had not commenced. However, Part 5 of the Act, which relates to rectification orders, stop work orders, and undertakings against a range of people in relation to serious defects, commenced when the Act commenced. This means that the provisions in Part 5 of the Act may apply to residential development projects that had commenced prior to the licensing requirements being imposed.

This clause provides that Part 3 of this regulation applies after 10 July 2024, which was when the Act commenced. Part 3 of this regulation commences prospectively (see clause 2 above) but has retrospective application. This is because the provisions commence after the notification day of the regulation but have effect to things done before the notification day. Explanation of how the provisions are non-prejudicial is included below.

**Clause 8 People excluded from def of *property developer*—Act,
s 46 (2)**

This clause excludes a range of people from the definition of a *property developer* for the purposes of Part 5 of the Act. These people are excluded as they provide services in relation to residential building work, but they will not be subject to rectification orders, stop work orders, or undertakings from the construction occupations registrar in relation to serious defects in regulated residential buildings. This ensures that regulatory action taken under Part 5 of the Act is appropriately directed at people that have primary responsibility for decisions in relation to the work.

It is appropriate that these exclusions apply retrospectively from the date the Act commenced. This clause is removing liabilities that were never intended to apply and is therefore non-prejudicial.

Clause 9 Excluded directors—Act, s 52 (4) (b)

This clause excludes directors of community housing providers and their wholly owned subsidiaries from the director liability provisions in s 54 (4) (b) of the Act. These directors are excluded because they are subject to an existing regulatory regime, the National Regulatory System for Community Housing.

It is appropriate that this exclusion applies retrospectively from the date the Act commenced. This clause is removing liabilities that were never intended to apply and is therefore non-prejudicial.

**Part 4 Regulated residential buildings
and residential building work**

Clause 10 Application—pt 4

This clause provides that part 4 of the regulation only applies to a building or building work after 10 July 2024. Part 4 of this regulation commences prospectively (see clause 2 above) but has retrospective application. This is because the provisions commence after the notification day of the regulation, however, they have effect to things done before the notification day.

It is appropriate that this exclusion applies retrospectively from the date the Act commenced. This clause is removing liabilities that were never intended to apply and is therefore non-prejudicial.

**Clause 11 Excluded buildings—Act, dict, def *regulated residential
building*, par (b)**

This clause exempts buildings used by certain aged care providers for retirement villages from the definition of *regulated residential building* in the Act. This has the effect of also excluding work on these buildings from the Act's definition of *residential building work*.

It is appropriate that this exclusion applies retrospectively from the date the Act commenced. This clause is removing liabilities that were never intended to apply and is therefore non-prejudicial.

Clause 12 Excluded building work—Act, dict, def *residential building work*, par (b)

This clause exempts building work undertaken by certain aged care providers for retirement villages from the definition of *regulated residential building* in the Act. This means that these aged care providers are exempted from the Act entirely, because the Act only applies to property developers that undertake or arrange for work on *regulated residential buildings*, or who market or sell off-the-plan *regulated residential buildings*.

It is appropriate that this exclusion applies retrospectively from the date the Act commenced. This clause is removing liabilities that were never intended to apply and is therefore non-prejudicial.

Part 5 Miscellaneous

Clause 13 People arranging for residential building work must comply with code of practice—Act, s 117 (1) (b)

This clause broadens the operation of the code of practice to cover all people undertaking work on regulated residential buildings, not just licenced property developers. This includes Territory-owned entities that are otherwise exempt from requiring a property developer licence. This means that all people building regulated residential properties must operate to the industry best practice standards of behaviour.

Part 6 Delayed amendment

Clause 14 Legislation amended—pt 6

This clause provides that Part 6 of the regulation amends this regulation itself.

Clause 15 Section 8 (2), definition of *off-the-plan contract*

This clause is a consequential amendment to align the definition of *off-the-plan contract*. It has a delayed commencement to align with the commencement of Schedule 2 part 2.4 of the Act.