

## **Review of the ACT *Building Act 2004***

### ***Introduction***

Achieving a more balanced building and construction regulatory regime is a strategic priority for the Government. Effective building regulation is an important part of realising the Government's vision for the ACT – making Canberra healthy and smart, growing the economy, enhancing liveability and opportunity, and investing in urban renewal.

The constructor sector makes an important contribution to the ACT and national economies. However, the success and effectiveness of building regulation goes far beyond the contribution of construction businesses to the economy – it must also consider the costs to the community of buildings and building services that arise when basic standards and protections are not achieved.

### ***Background***

EPD has been conducting a full policy review of the ACT *Building Act 2004* and associated construction legislation, to assess its effectiveness in achieving its objectives. The review was instigated for two reasons:

1. Recommendation of the *Building Quality in the ACT* report

In late 2010, the ACT Government released the *Building Quality in the ACT* report (the report), which was developed in response to an Assembly motion on community concerns about poor quality construction in apartment buildings and perceived failings in the private certification system. Given the range of issues identified in the report and their potential application to other classes of building, the report recommended a full review of the Building Act to apply to all classifications of buildings.

2. The Act is largely based on the *Building Act 1972*.

There is no evidence of a full review of the policy underpinning the legislation having been completed after the introduction of the 1972 legislation, despite the introduction of residential home warranty insurance in the 1980s and major amendments to introduce private certification in the late 1990s.

### ***Interim measures***

As a result of ongoing work on the Building Act review, a series of reforms have been introduced in three Acts to amend construction legislation passed by the Legislative Assembly in 2013-14 (Construction and Energy Efficiency Legislation Amendment Acts 2013, 2014 (No 1) and 2014 (No 2)).

Reforms to improve the quality of construction in the Territory include:

- major revisions to existing offences and increased penalties in the *Building Act 2004* for not complying with the building code, requirements for carrying out building work or breaching regulations for building work involving asbestos and the *Construction Occupations (Licensing) Act 2004* for failing to comply with a rectification order.
- giving the Construction Occupations Registrar (Registrar) new powers to: refuse to grant or renew a licence if it is necessary or desirable to protect the public; to request a skills assessment from a licensee or applicant to find out if they have the skills and knowledge to carry out work competently; and to improve the Registrar's ability to investigate and act on complaints and breaches of construction legislation
- introducing a system of continuing development for licensed construction practitioners by targeted training directed by the Registrar

- creating a public register of information about construction licensees to improve consumer information and protection.

In October 2014, the Registrar also released a consumer guide for people having building work done for them. *Building in the ACT: A consumer guide to the building process* outlines the role of the Registrar and building certifier as well providing information about development approvals, building approvals, choosing a builder, the building process, building contracts, warranties and insurance and dispute resolution.

Changes to administrative processes for licensing, particularly increased verification of skills and experience relevant to medium-high rise buildings, have also prevented under-qualified applicants from gaining licences in higher risk work.

As a result of the changes noted above in 2014 the Registrar refused 95 out of approximately 600 builders licence applications for new licences and/or to upgrade to another classification of builders licence. A large proportion of these were applications for Class B licenses which were rejected due to a lack of demonstrated experience.

### **Scope of the review**

The review includes all aspects of building regulation including:

*Pre-construction:* Design compliance, contracts, obligations of developers, approvals, exemptions, practitioner licensing

*Construction process:* compliance with plans, stage inspections, on-site supervision, amendments

*Post construction:* final inspections, certificates of occupancy

*General:* Scope of Act, administration and enforcement (public and private), insurance, skills, training, accountability of practitioners, owners rights and obligations, consumer protection, complaints and dispute resolution, funding, governance, interactions with related legislation, offences and penalties, funding, governance.

### **Issues**

Good construction practices underpin a range of government objectives that ultimately rely on building standards and compliance with minimum requirements. This encompasses a range of existing strategies for affordable housing, increasing housing densities, reducing the cost of living, reducing energy use, waste and GHG emissions, disability access, active design and other social policies. All of these objectives are undermined if buildings, building services and other installations do not meet minimum standards, require high maintenance and rectification costs, or have a reduced lifespan due to poor work.

Successive reforms prior to the adoption of the new Building Act in 2004 resulted in the ACT having one of the 'lightest touch' building regulatory systems in Australia. The relatively low level of intervention has allowed better understanding of how the market operates with a minimal regulatory presence. There are a number of issues relevant to the effectiveness of the current regulation:

- The distinct role of building and construction policy and regulation, separate from planning, environmental protection, work health and safety and other legislation is not well understood.

In addition, the importance of a well-functioning building regulatory system to the economy and the community is generally not a focus of reforms that affect the industry.

- Whilst regulation that forms part of, or heavily influences the effectiveness of, building regulation has been in constant flux over the last few decades, building regulation has been relatively stagnant since the 1970s. The risk assessment, policy settings and assumptions that current building regulation is based on are outdated and need to be revised taking in account the full set of impacts on construction, including those in external legislation and national policies.
- At present, there is evidence that compliance with basic standards is unacceptably low. There are strong indications that there are systemic industry and regulatory issues that need to be addressed.
- Research indicates that rectification work costs the ACT community, industry and Government a minimum of \$180 million collectively per year.
- There is an increasing number of complaints about building work, and an increasing need for rectification of buildings, particularly in the forms of construction the Government is promoting – medium-high rise multi unit and mixed use developments. Defects in more complex buildings can result in extensive work to rectify. For example, one apartment building has already been subject to over \$10 million in rectification. This cost does not include legal and other costs associated with identifying problems and pursuing the builder.
- The current situation is a combination of many factors, particularly ‘upstream’ decisions in other sectors or the market, such as training reforms, national deregulation and competition reforms, increased competition and changing market conditions, market preferences and industry culture, a shift to performance-based regulation, new design and building technology, removal of technical capabilities and standards from design qualifications, and a change in the built form from single dwellings and single use buildings to more complex forms such as multi-unit and mixed use buildings.
- As a result of the way building regulation is funded and regulatory performance is measured, the building regulatory system is largely reactive to problems, not preventative. This is a highly costly, protracted and ineffective way to achieve objectives. If protections are to be improved, new funding, legislative, administrative and enforcement models will be need to be developed and supported. This will promote a risk-based approach and better targeting of resources.

Regardless of any recent or future changes to the system there will be a significant legacy of defective buildings in the Territory. This applies to public- and privately-owned buildings. Defects not only have the potential to cause health and safety problems but can lead to a shortened asset life and substantially increased maintenance costs over the life cycle of the building.

The review is seeking to make lasting changes to the quality of practice in the construction sector. Without this, it is questionable whether the existing standards will be met, and achieving more ambitious standards for the built environment is feasible. For example, policies that encourage

medium density residential dwellings, green roofs and other measures are less likely to be supported if the ongoing issues with poor quality construction of apartment buildings and water ingress continue.

### ***Public consultation***

When approved by the Minister for Planning, a discussion paper based on the findings of the review will be released in early 2015. This will be complemented by an intensive period of public consultation for at least 10 weeks. The longer consultation period is necessary because this is a major legislative review and the breadth and depth of issues will require some stakeholders common to a number of Government projects to commit a considerable amount of time to the review and to preparing a submission to Government.