

ACT government reviews building rules amid spiralling complaints and problems with quality

The Canberra Times, November 23, 2015 [Kirsten Lawson](#)

The ACT government has signalled wide-ranging changes to building regulations to stem the tide of complaints and disputes about defects in new residential buildings, especially apartments.

Planning Minister Mick Gentleman will release a discussion paper on Monday that canvasses more government inspections of buildings, better protection of owners' and sub-contractors' money when a builder goes bust, and more stringent approval of building designs.

Mr Gentleman said the aim was to minimise serious building defects that had plagued the industry and "led to financial loss, safety concerns and heartache for Canberrans".

The discussion paper, on which the government wants feedback till February 12, points out that rectification work costs at least \$150 million a year.

Complaints about builders and defects in residential buildings have doubled since 2009 to an average of more than 350 a year – more than 10 per cent of approvals. Over the past five years, complaints have covered 1500 apartments.

Water entering buildings is a common complaint, but rectification orders have also been issued for structural issues, inadequate fire protection, non-functioning emergency systems, inadequate emergency exits and insufficient ventilation.

Insolvencies and bankruptcies in building and construction are having a worsening impact, with creditors owed "tens of millions of dollars" each year, the discussion paper says.

It also points to problems with the system of building certification, saying checks on compliance with building rules had become "largely reactive to problems and emerging issues rather than preventative".

The paper suggests more supervision during building, with inspections at "critical stages", including the completion of work for fire protection, acoustic measures, pre-insulation and post-insulation, weatherproofing and waterproofing in wet areas.

"Inspecting work throughout the construction process could further minimise a builder's exposure to poor workmanship and give owners greater assurance in the quality of work," the review comments.

While the government began on-site inspections in 2014, the paper suggests the system be beefed up, with low-risk projects subject to random inspections, more visits for medium-risk work, and a "designated inspector" for high-risk work.

The designated inspector would follow projects from start to finish, visit regularly, and educate the builder, developer and others. As builders completed successful projects they could revert to a more standard inspection regime.

The ACT introduced a system of private certifiers to sign off on buildings in 1999. The discussion paper points to differing standards among certifiers and a "mismatch" in expectations about how much documentation is required.

It says rules could be changed to make it more clear to owners that they can appoint their own certifier, rather than relying on a certifier appointed by the builder.

It suggests a new system for reviewing designs before plans are submitted, either by a government panel or allowing independent or peer review. Design reviews could be made compulsory, or could be encouraged by cheaper fees for projects that had been through a design review.

The current law requires the builder to give a two-year warranty for defects in residential buildings three storeys or less, but doesn't cover medium and high-rise apartments. The review says a recent High Court decision (*Brookfield Multiplex v Owners Corporation Strata Plan 61288*, 2014) could significantly affect the rights of subsequent owners to pursue damages and suggested extending the warranty to apartments and basement car parks.

It also pointed to problems with "unscrupulous builders setting up as developers and carrying on regardless of any actions against them".

"In many cases, concerns about developers of residential buildings relate to phoenixing, where directors wind up a company to avoid its liabilities but set up another company to continue operating," it says, suggesting the government await the outcome of a federal inquiry into the issue, then move to close gaps here.

It also refers to growing numbers of disputes over non-completion of work and says some builders in financial trouble borrow from one project to pay for incomplete projects, leading to insolvency. It suggests a new regime to protect funds paid by owners and sub-contractors, perhaps forcing head contractors to set up trust funds or individual project accounts.

The number of licensed builders has increased from 2600 in 2004 to 3800, with another 900 owner-builder licences. The number of certifiers has increased from 20 in 1999 to more than 80.