



**ACT**  
Government

# Developer Regulation

## Summary: Focus Areas

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## Focus areas

The research and analysis undertaken has identified four main areas of focus in considering developer regulation in the ACT. The identification of these focus areas has been informed by previous inquiries, stakeholder engagement, government reports, media reports, academic literature, and a jurisdictional review.

These focus areas capture the key roles and activities of developers and where interventions may be pursued to achieve improved accountability measures for developers and greater protection and information for consumers.

The four focus areas are:

1. [Accountability and Transparency](#)
2. [Ethical Behaviour and Work Practices](#)
3. [Project Capacity and Capability - Financial and Operational](#)
4. [Building Quality and Safety](#)

The following provides a high-level summary of these four focus areas. Detailed analysis of these focus areas is contained in the Discussion Paper.

## Accountability and transparency

Accountability measures are the mechanism through which one is held responsible for or to account for actions they have influence and control over when performing a specific activity and are about more than simply having done something but involve consideration of how it was done.

Accountability is based on the principle of responsibility and engaging in honest and ethical conduct towards others. Accountability involves a willingness to be transparent: to allow others to observe and evaluate your performance.

Transparency is a “public value embraced by society ...(it is)... synonymous with open decision-making ...(and sits)... alongside accountability”.

Key issues considered under this focus area:

- **Industry Opacity:** There is no mechanism for consumers to easily access independent information about those behind a development.
- **Existing Regulatory System:** The current regulatory system does not recognise that developers have become far more intricately involved in decision making processes during both the planning and construction phase of a development leading to an inconsistency between their role and their levels of accountability.

## Ethical behaviours and work practices

Ethical behaviour and work practices are characterised by honesty, fairness, and equity in interpersonal and professional relationships. These practices respect the dignity, diversity, the rights of people and entities and the professional delivery of services and products. This is underpinned by the concept that each person is accountable for their actions and that everyone has a shared responsibility to uphold ethical behaviour.

Property developers often set the culture of a project influencing many aspects of the design, quality, and construction. The level of control differs across projects and between developers, some only invest financially in a project while others exert complete control over a project from financing to construction and sale and management of a development.

Key issues considered under this focus area:

- **‘Fit and proper’ requirements:** There are no minimum standards or suitability test to become a property developer allowing some entities to subvert their responsibilities.
- **Business practices:** The developer is frequently the head of the chain of contracts and as such can have significant influence on a project and its culture.
- **Conflicts of interest:** The development sector in the ACT is small, inherently leading to perceived, potential, and actual conflicts of interest.
- **Project documentation/building plans:** Many aspects of the design and construct stage of the project may change after initial development and subsequent building approval is obtained, meaning the as-designed building documentation may be significantly different from the as-built building.

## Project Capacity and Capability – financial and operational

The findings from the Senate Economics Reference Committee’s 2015 inquiry into Insolvency in the Australian construction industry and the Banking and Finance Royal Commission highlights that there are significant financial issues within the construction sector accounting for between 20-25% of all insolvencies throughout Australia (1).

Key issues considered under this focus area:

- **Financial capacity:** Poor financial structure, health, and governance of a project and the firm behind it can significantly affect vulnerable businesses, investors, and consumers. Major financial problems can subsequently negatively impact confidence in the entire industry.
- **Capability:** Consumers should know that the person undertaking a property development has not only the capacity, both financial and operational, to commence and complete the work, but also the capability to perform their role in the development.
- **Business structure:** Some developers are using business structures to limit risk and avoid responsibility or to shift responsibility onto other entities they engage or engaged with.
- **Phoenixing:** Illegal phoenix activity (phoenixing) is the systemic stripping and transfer of assets from a company to another entity by a company’s directors or other controlling minds with the intention of defeating the interests of the first company’s creditors in that company’s assets. Those affected by phoenixing include employees, other businesses and contractors who are owed money

and statutory bodies. Phoenixing provides companies with an unfair advantage over their competitors, damaging the competitive process.

## Building Quality and Safety

Improving building quality and safety aims to reduce the extent, severity, and impact that defects have on buildings and their occupants, while also making workplaces safer (2). All parties engaged in the development of a building should be held accountable for delivering a quality product that meets contractual obligations and does not mislead consumers or contractors through negligence or deliberate misrepresentation.

Key issues considered under this focus area:

- **Expectations of building quality and built form:** Sometimes building quality and the built form are not met and there are circumstances where there are limited mechanisms available for redress for consumers.
- **The need for additional rectification works:** The current system does not hold developers responsible for rectification of building work relating to a project for which they were involved.