

Response to question on notice

Questions on Notice Paper No 9

5 September 2025

Question No. 594

PETER CAIN MLA: To ask the Minister for Planning and Sustainable Development -

1. Can Access Canberra suspend or refuse to investigate alleged builder or certifier misconduct while private litigation is underway.
2. Does the Government consider it appropriate that charging clauses in ACT building contracts allow builders to lodge caveats over residential properties with minimal evidentiary basis, forcing homeowners into costly litigation.
3. Will the Government consider reforms similar to those in New South Wales, where charging clauses in residential contracts are void.
4. Why are settlement deeds in the ACT permitted to include clauses requiring homeowners to waive statutory rights under building legislation and will the Government prohibit such clauses.
5. What enforcement action has Access Canberra taken against certifiers who approve defective or non-compliant work, particularly where expert reports identify significant defects.
6. Does the Government consider the current system of private certification to be adequate, or should government inspectors replace private certifiers.
7. What avenues of accountability are available to consumers when both Access Canberra and the ACT Ombudsman decline to act on complaints about building regulatory failures.
8. What reforms will the Government commit to in order to improve consumer protections in the residential building sector.

CHRIS STEEL MLA - The answer to the Member's question is as follows:

1. Access Canberra investigates all complaints in accordance with the requirements of legislation and in consideration of the Access Canberra Accountability Commitment Policy and Compliance Framework. Private litigation may be considered in some circumstances in relation to the timing and staging of investigations.
2. While the lodgement of a caveat can significantly impact a registered proprietor, the *Land Titles Act 1925* already offers protection. It provides a mechanism for the timely removal of a caveat lodged without reasonable cause, and subsequently, for the payment of compensation to the registered

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proprietor. In view of these provisions, together with seeking legal advice before entering into a building contract, the ACT Government believes they strike the correct balance in supporting and protecting consumers against improperly maintained caveats.

3. The ACT Government is not considering any reforms to residential sales contracts at the present time but continues to monitor developments in other jurisdictions.
4. As noted above, consumers should seek independent legal advice before entering into settlement deeds, especially where this may relate to large sums of money and affect their ongoing rights. It is important to note that private contracts cannot extinguish statutory provisions. The City and Environment Directorate is currently scoping a project to review residential building work contracts in the ACT, with a focus on improving how the ACT Government supports homeowners through the building contract life-cycle when issues arise, by ensuring that contracts are fair and reasonable.
5. Access Canberra has issued demerit points and applied occupational discipline under the *Construction Occupations (Licensing) Act 2004* as a result of non-compliant work under *Building Act 2004* or *Planning Act 2023*. This includes actions against certifiers who have been responsible for certification processes.

As of 19 September 2025, a total of 47 demerit points have been issued across 12 certifier licences in the preceding three years.

Disciplinary action against certifiers including action taken as a result of incurring 15 or more demerit points, is published on the disciplinary action register

(<https://services.accesscanberra.act.gov.au/s/public-registers/construction-licences?registerid=disciplinary-register>). There are currently five registered actions taken across three certifiers including reprimands, automatic suspension, and required training.

6. The ACT Government has committed to establish an expert team of publicly funded building certifiers within the ACT Public Service. The team will operate on a fee for service competitive model, to help break the perceived over-reliance between developers and private certifiers. Work is underway to progress this commitment in this term of government.
7. Access Canberra will investigate all building complaints. If complainants are not satisfied with outcomes provided by either Access Canberra or the ACT Ombudsman, they can obtain independent legal advice and possibly choose to commence their own private litigation against their builders and certifiers.
8. The ACT Government has committed to a range of reforms to improve consumer protections in the residential building sector. These include monitoring the Professional Engineers Registration Scheme, extending trade licensing, Automatic Mutual Recognition, regulation of medical gas systems, developer licensing and regulation, implementation of reforms to residential building work insurance settings and a review of security of payments.

Approved for circulation to the Member and incorporation into Hansard.

Chris Steel MLA
Minister for Planning and Sustainable Development

Date: 13/10/25

This response required 4hrs 10mins to complete, at an approximate cost of \$433.56.