

# Explanatory Statement

## BUILDING LEGISLATION AMENDMENT (FIDELITY FUND) BILL 2025

### SERIAL NO. 45 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LANDS, PLANNING AND ENVIRONMENT

#### GENERAL OUTLINE

This Bill makes amendments to the *Building Act 1993* and *Building (RBI and Fidelity Fund Schemes) Regulations 2012* to provide administrative efficiencies to enhance transparency and accountability in the operation of approved fidelity fund schemes.

#### NOTES ON CLAUSES

##### Part 1 Preliminary matters

###### Clause 1. Short title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Building Legislation Amendment (Fidelity Fund) Act 2025*.

###### Clause 2. Commencement

This clause sets out how the amendment Act will be commenced. In this case the amendments will commence on the day after assent.

##### Part 2 Amendment of *Building Act 1993*

###### Clause 3. Act amended

This clause provides that this Part amends the *Building Act 1993*.

###### Clause 4. Section 4 amended (Definitions)

This clause inserts the definition of **auditor** to clarify how the term is used in the Act, specifically clarifying the application of the term in Parts 3 and 5A of the Act.

This clause also inserts a new **Minister's observer** definition to specify that for an approved scheme, it means the Minister's observer under section 54DFA(1).

This clause also corrects reference in **actuary** definition to remove section 54E(1) and insert section 54E(1)(b).

###### Clause 5. Section 54DB amended (Deciding application)

This clause inserts a new subsection (5) after section 54DB(4) to specify if the Minister approves a fidelity fund scheme, each trustee named in the application is taken to be approved by the Minister under section 54DBA(2)(a). This clause inserts a note to explain that the Minister's approval under section 54DBA(2)(a) is required for appointment of subsequent trustees of an approved scheme.

**Clause 6. Section 54DBA inserted**

This clause inserts a new section 54DBA after section 54DB to provide for approval of trustees by the Minister. New section 54DBA specifies trustees must apply to the Minister for approval of appointment to the scheme. The Minister must provide written notice to the trustees, to approve or otherwise refuse to approve the appointment, and the appointment will only take effect after the Minister approves the appointment.

This new section also specifies that regulations may prescribe matters relating to appointment of a trustee including application for approval, approval or refusal to approve, revocation of approval, cessation of trustee and giving notices relevant to the appointment.

**Clause 7. Section 54DE amended (Powers of Minister)**

This clause amends section 54DE(1)(b) to remove the words ‘scheme’s ability to meet its liabilities and potential liabilities’ after the words ‘relevant to the’ and to insert the words ‘operation and management of the scheme’ after the words ‘relevant to the’. This amendment broadens the type of information the Minister may require the trustees to provide from information relating to the financial position of an approved scheme to information relating to operation and management of the scheme.

**Clause 8. Section 54DFA inserted**

This clause inserts new section 54DFA after section 54DF, in Part 5A, Division 4 to provide for appointment of a Minister’s observer. New section 54DFA specifies the Minister may appoint a public sector employee to be the Minister’s observer for an approved scheme, to provide advice to the Minister on all matters relevant to the scheme’s compliance with this Act, the Regulations and any conditions of approval of the scheme. This new section also specifies that trustees must allow the Minister’s observer to be present at each trustee meeting and have access to all documents and information to enable the observer to provide advice to the Minister.

**Clause 9. Part 24 inserted**

This clause inserts Part 24 after section 209 to outline transitional matters to specify that the appointment of a trustee of an approved scheme that is in effect before commencement of the *Building Legislation Amendment (Fidelity Fund) Act 2025* is taken to have been approved by the Minister under section 54DBA(2)(a).

**Part 3 Amendment of *Building (RBI and Fidelity Fund Schemes) Regulations 2012*****Clause 10. Regulations amended**

This clause provides that this Part amends the *Building (RBI and Fidelity Fund Schemes) Regulations 2012*.

**Clause 11. Chapter 3, Part 3.2, Division 2 heading amended (Trustees and management of scheme)**

This clause amends Division 2 heading to remove wording ‘and management’. This change is made due to the change at clause 13 to insert a new Division 2A Management of scheme.

**Clause 12. Regulations 31A to 31C inserted**

This clause inserts new regulations 31A to 31C after regulation 31. New regulation 31A provides for an application for approval of appointment of a trustee of an approved scheme. This new regulation specifies an application must include information to satisfy the Minister that the person meets the

eligibility criteria and the terms of appointment, it allows for the Minister to request additional information and to give a notice of refusal to approve appointment with reasons specified.

New regulation 31B provides for Minister revocation of approval of appointment as a trustee of an approved scheme. This new regulation provides for Minister to revoke approval by notice with reasons specified, taking immediate effect, if satisfied the person has contravened the Act, a regulation or other law in force or prudential standards.

New regulation 31C provides for when a person ceases to be a trustee of an approved scheme, including if a person's appointment is revoked or the person resigns.

**Clause 13. Chapter 3, Part 3.2, Division 2A heading inserted**

This clause inserts new Division 2A Management of scheme heading after regulation 32.

**Clause 14. Chapter 3, Part 3.3, Division 3 heading replaced**

This clause replaces the Division 3 heading to more accurately reflect the content of the Division.

**Clause 15. Regulation 61 amended (Minister may require information about financial position)**

This clause amends regulation 61 heading to replace the wording 'financial position' with the wording 'operation and management'.

This clause amends regulation 61(1) to replace the wording 'scheme's ability to meet its liabilities and potential liabilities at a particular date or time or at particular intervals' with the wording 'operation and management of the scheme'.

This clause amends regulation 61(3)(a) to insert the wording 'at a particular date or time or at particular intervals' after the word 'potential liabilities'.

This clause inserts new paragraphs (e) and (f) after regulation 61(3)(d) to specify that the Minister may also require information about applications for certificates received by the scheme and contracts or arrangements for services provided.

Together these changes allow the Minister to request information broader than the financial position of the fund.

**Clause 16. Regulation 64 amended (Application for approval of change)**

This clause inserts a note at the end of regulation 64 that states for approval to appoint a new trustee see section 54DBA of the Act.

**Clause 17. Regulation 69 amended (Eligibility for appointment and continuing eligibility)**

This clause omits subregulation (1) as it is now provided for elsewhere in the Regulations and makes consequential amendments to the heading and subsection numbering of regulation 69.

**Part 4 Repeal of Act**

**Clause 18. Repeal of Act**

This clause provides that the Act is repealed on the day after it commences.