



Legislative Assembly of the Northern Territory

Legislative Scrutiny Committee

# **Inquiry into the Building Legislation Amendment (Fidelity Fund) Bill 2025**

November 2025



# **Inquiry into the Building Legislation Amendment (Fidelity Fund) Bill 2025**



Legislative Assembly of the Northern Territory

Parliament House  
State Square  
Darwin NT 0800

Web: [www.parliament.nt.gov.au](http://www.parliament.nt.gov.au)

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## Chair's Preface

This report details the Committee's findings regarding its consideration of the Building Legislation Amendment (Fidelity Fund) Bill 2025. Amending the *Building Act 1993* and the Building (RBI and Fidelity Fund Schemes) Regulations 2012, the Bill seeks to provide for administrative efficiencies to enhance transparency and accountability in the operation of approved fidelity fund schemes.

The Committee received six written submissions to its Inquiry. Whilst most submissions supported the Government's aims to enhance transparency and accountability, concerns were raised regarding the broader functioning of the scheme. Following its examination of the Bill, the Committee is of the view that the Assembly should pass the Bill with no amendments.

However, as set out in the report, the Committee considered the issues raised that were beyond the scope of the current Bill, including concerns about issuing fidelity fund certificates, transparency of decision-making and risk projection, and broader structural and perceived compliance issues with the scheme. The Committee has consequently recommended these issues be considered as part of a Government review of the scheme, noting further amendments to the Building (RBI and Fidelity Fund Schemes) Regulations 2012 are currently being progressed.

On behalf of the Committee, I would like to thank all those who made submissions to the Inquiry. The Committee also thanks the representatives from the Department of Lands, Planning and Environment for briefing the Committee on the Bill. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.



**Mrs Oly Carlson MLA**

**Chair**

## Committee Members

Chair:	Mrs Oly Carlson, MLA Member for Wanguri
Deputy Chair:	Mr Clinton Howe, MLA Member for Drysdale
Members:	Mrs Laurie Zio, MLA Member for Fannie Bay Justine Davis, MLA Member for Johnston  Mr Chanston Paech, MLA Member for Gwoja

## Committee Secretariat

Committee Secretary:	Julia Knight
Committee Secretary:	Katie Helme
Senior Research Officer:	Georgia Eagleton
Administration/Research Officer:	Caelan Ikin
Administration Assistant:	Kim Cowcher
Contact Details:	GPO Box 3721 DARWIN NT 0801 Tel: +61 08 8946 1485  Email: <a href="mailto:LA.Committees@nt.gov.au">LA.Committees@nt.gov.au</a>  Website: <a href="https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee">https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee</a>

## Acknowledgments

The Committee acknowledges all those that provided written submission to its inquiry and the representatives from the Department of Lands, Planning and Environment that appeared before the Committee at its public briefing on the Bill.

## Acronyms and Abbreviations

ACT	Australian Capital Territory
the Act	the <i>Building Act 1993</i> (NT)
the Bill	the Building Legislation Amendment (Fidelity Fund) Bill 2025
the Committee	the Legislative Scrutiny Committee
the Department	the Department of Lands, Planning and Environment
HIA	Housing Industry Association
NT	Northern Territory
the Regulations	the Building (RBI and Fidelity Fund Schemes) Regulations 2012
the Trustees	the Trustees of Fidelity Fund NT

# Terms of Reference

## Sessional Order 14

### *Establishment of Legislative Scrutiny Committee*

- (1) The Assembly appoints a Legislative Scrutiny Committee
- (2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.
- (3) The functions of the scrutiny committee shall be to inquire into and report on:
  - (a) any bill referred to it by the Assembly;
  - (b) in relation to any bill referred by the Assembly:
    - (i) whether the Assembly should pass the bill;
    - (ii) whether the Assembly should amend the bill;
    - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
      - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
      - (B) is consistent with principles of natural justice; and
      - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
      - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
      - (E) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
      - (F) provides appropriate protection against self-incrimination; and
      - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
      - (H) does not confer immunity from proceeding or prosecution without adequate justification; and
      - (I) provides for the compulsory acquisition of property only with fair compensation; and
      - (J) has sufficient regard to Aboriginal and Torres Strait Islander tradition; and
      - (K) is unambiguous and drafted in a sufficiently clear and precise way.

- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether a bill:
  - (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
  - (C) authorises the amendment of an Act only by another Act.

(4) The committee will provide an annual report of its activities to the Assembly.

Adopted 15 October 2024

# Recommendations

## Recommendation 1

The Committee recommends that the Legislative Assembly pass the Building Legislation Amendment (Fidelity Fund) Bill 2025 without amendment.

## Recommendation 2

The Committee recommends that the Government conduct a comprehensive review of the fidelity fund scheme as a whole, informed by consultation with relevant stakeholders.

# 1 Introduction

## Introduction of the Bill

- 1.1 On 22 October 2025, the Building Legislation Amendment (Fidelity Fund) Bill 2025 (the Bill) was introduced into the Legislative Assembly by the Minister for Lands, Planning and Environment, the Hon Joshua Burgoyne, MLA. The Legislative Assembly subsequently referred the Bill to the Legislative Scrutiny Committee (the Committee) for inquiry and report by 20 November 2025.<sup>1</sup>

## Conduct of the Inquiry

- 1.2 On 23 October 2025, the Committee called for submissions by 31 October 2025. The call for submissions was advertised via the Legislative Assembly website, Facebook, and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. The Committee received 6 submissions (see Appendix 1 for a full list).
- 1.3 On 30 October 2025, the Committee held a public briefing with the Department of Lands, Planning and Environment (the Department).

## Outcome of Committee's Consideration

- 1.4 Sessional Order 14 requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
  - (ii) whether the Assembly should amend the bill;
  - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
  - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill without amendment.

### Recommendation 1

**The Committee recommends that the Legislative Assembly pass the Building Legislation Amendment (Fidelity Fund) Bill 2025 without amendment.**

## Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives and purpose of the Bill and Chapter 3 considers the main issues raised in evidence received.

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<sup>1</sup> Parliamentary Record, *Draft Daily Hansard - Wednesday 22 October 2025*, <https://territorystories.nt.gov.au/10070/1016326/0/2>, p. 1-2.

## 2 Overview of the Bill

### Background to the Bill

- 2.1 The *Building Act 1993* (NT) (the Act) and the Building (RBI and Fidelity Fund Schemes) Regulations 2012 (the Regulations) establish the framework for fidelity fund schemes in the Northern Territory (NT).<sup>2</sup>
- 2.2 Fidelity funds cover against financial loss to homeowners due to defective building work where they are unable to seek recovery from the builder responsible due to a prescribed ‘trigger event’. This may include when the builder has died, disappeared, become bankrupt or lost registration.<sup>3</sup> The scheme covers prescribed residential building work.<sup>4</sup>
- 2.3 The Department advised the Committee on the purpose and operation of the scheme, noting that it is mandatory for builders to apply for cover before commencing prescribed works:
- A builder cannot carry out prescribed residential building work unless the builder has an authorised residential building insurance (RBI) policy issued by an approved insurer or a fidelity certificate issued by an approved fidelity fund scheme.... It is a last-resort scheme that operates as a not-for-profit trust which is separate to government. The scheme provides up to 20% of the contract price to a maximum of \$200,000 to transition to a new builder to complete the works.<sup>5</sup>
- 2.4 Under the existing framework, trustees of a fidelity fund may apply to the Minister for approval of the scheme under which they will be a provider of fidelity certificates.<sup>6</sup> Fidelity Fund NT is the only residential building cover scheme currently approved in the NT.<sup>7</sup>
- 2.5 The Regulations set out the criteria for a person eligible or ineligible to be appointed as a trustee of an approved scheme. To be eligible to be appointed as a trustee a person must:
- be an individual who is an Australian citizen;

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<sup>2</sup> The Department of Trade, Business and Asian Relations and the Department of Lands, Planning and Environment share portfolio responsibilities for the Act and Regulations.

<sup>3</sup> *Building Act 1993* (NT), s 54D(2).

<sup>4</sup> Building (RBI and Fidelity Fund Schemes) Regulations 2012, regs 5 and 25 outline that the residential building work covered by a fidelity fund scheme includes: building a new home; units in complexes up to three storeys in height excluding undercroft or underground parking levels; renovations and extensions to the buildings above; and building work worth over \$12,000 that increases the residential floor area of a property.

<sup>5</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 2.

<sup>6</sup> *Building Act 1993* (NT), s 54DA(4).

<sup>7</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 2.

- have the competence, knowledge, skills, experience, qualifications and integrity to carry out the duties as trustee that would be expected of an ordinary prudent person carrying out those duties; and
- maintain professional indemnity insurance in relation to the position as a trustee that is prudent and reasonable in the circumstances and that covers claims amounting to the lesser of the following:
  - \$5 000 000;
  - the total of the value of all the assets of the scheme.<sup>8</sup>

2.6 A person is not eligible for appointment as a trustee of the scheme if the person:

- has an actual or potential conflict of interest that is likely to influence the person's ability to carry out the duties of a trustee with appropriate probity and competence;
- has been an insolvent under administration as defined in section 9 of the *Corporations Act 2001*;
- is under investigation, or has been disciplined or removed from membership of a professional body relevant to the duties as a trustee;
- has been refused the right, or restricted in the right, to carry on any trade, business or profession relevant to the duties as a trustee; or
- has been the subject of an adverse finding in relation to dishonest conduct in any judgment in an administrative or civil proceeding in any jurisdiction of Australia or in a foreign country; or
- has been convicted of an offence against the *Act*, the *Corporations Act 2001*, the *Insurance Act 1973* (Cth), or the *Financial Sector (Collection of Data) Act 2001*(Cth), or against a law of any jurisdiction of Australia, or a foreign country, involving dishonest conduct.<sup>9</sup>

2.7 There are currently five trustees appointed, as required by the Regulations.<sup>10</sup>

## Purpose of the Bill

2.8 The Bill seeks to provide for “administrative efficiencies to enhance transparency and accountability in the operation of approved fidelity fund schemes”.<sup>11</sup> The Department advised:

This Bill forms part of a broader package of regulatory reforms and seeks to strengthen the oversight and governance of fidelity fund schemes. This is being done to restore industry and homeowners' confidence in the

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<sup>8</sup> Building (RBI and Fidelity Fund Schemes) Regulations 2012, reg 31(2).

<sup>9</sup> Building (RBI and Fidelity Fund Schemes) Regulations 2012, reg 31(3).

<sup>10</sup> Building (RBI and Fidelity Fund Schemes) Regulations 2012, reg 30; Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 3.

<sup>11</sup> Explanatory Statement, *Building Legislation Amendment (Fidelity Fund) Bill 2025 (Serial 45)*, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0005/1567067/Explanatory-Statement-Building-Legislation-Amendment-Fidelity-Fund-Bill-2025-Serial-45.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0005/1567067/Explanatory-Statement-Building-Legislation-Amendment-Fidelity-Fund-Bill-2025-Serial-45.pdf), p. 1.

protections provided by the fund and to ensure that the fund is delivering outcomes for Territorians.<sup>12</sup>

2.9 The Bill proposes to amend the Act to:

- provide for the Minister to approve the appointment of a trustee to a fidelity fund scheme;
- set out matters relating to the appointment of a trustee to be prescribed by Regulations, including application, approval, refusal, revocation, cessation and notice requirements;
- expand the information gathering powers of the Minister to a broader range of matters relating to the operation and management of a fidelity fund scheme;
- provide for the appointment of a public sector employee as the Minister's observer of an approved fidelity fund scheme to provide advice on the scheme's compliance with the Act, the Regulations and any conditions of approval;
- make consequential amendments to definitions; and
- provide for transitional matters.

2.10 In addition, the Bill seeks to amend the Regulations to:

- set out requirements for the application for approval, revocation and cessation of appointment of a person as a trustee of a fidelity fund scheme;
- enable the Minister to request information relating to the operation and management of a fidelity fund scheme, including information about applications for certificates and contracts or arrangements for services provided to trustees of the scheme; and
- make consequential amendments to align with new terminology in the Act.

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<sup>12</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 3.

## 3 Examination of the Bill

### Introduction

- 3.1 The Committee received six submissions to the inquiry. Half of submissions supported the Bill in part, suggesting either minor or substantial amendments. Other submissions did not support passage of the Bill as drafted.
- 3.2 The Committee received limited comments on the content of the Bill itself, with the majority of submissions reflecting on issues that were beyond the scope of the current Bill. The following discussion considers issues that were raised in submissions and the public briefing.

### Approval, appointment, revocation and continuation of trustees

- 3.3 Clause 6 seeks to insert a new section 54DBA into the Act. The new section provides that trustees must, as soon as practicable after appointing a trustee of the scheme, apply in writing to the Minister to approve the appointment. The Minister must provide written notice to the trustees to approve or refuse to approve the appointment. The appointment only takes effect after the Minister approves it. The clause further provides for matters relating to the appointment of a trustee to be prescribed via regulations.
- 3.4 Clause 12 seeks to insert new regulations 31A to 31C into the Regulations. For the purpose of new section 54DBA, these provisions prescribe processes relating to the appointment of a trustee, including application, approval, refusal to approve, revocation, cessation and notice requirements. The Minister may revoke an approval if the person has contravened the Act, a regulation or another law in force in the Territory in relation to the scheme or the prescribed prudential standards.<sup>13</sup>
- 3.5 Clause 9 seeks to insert new section 210 into the Act. New section 210 provides that the appointment of a trustee of an approved scheme, that is in effect immediately before the commencement of the amendments, is taken to be approved by the Minister under section 54DBA(2)(a). This has the effect of continuing the appointment of the current trustees. The current trustees must continue to meet the prescribed eligibility criteria under the Regulations.<sup>14</sup>
- 3.6 The Department advised that there is an existing requirement for the Minister to approve any changes to a fidelity fund scheme, and that clauses 6 and 12 seek to provide greater clarity regarding any changes to trustee appointments:

While the legislation already provides for the Minister to consider initial appointment of trustees when the fidelity fund is established and the scheme is approved, the legislation lacks clarity with regard to the appointment of new trustees for a scheme that is already operating. The legislation already requires that any changes to an approved scheme require approval by the

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<sup>13</sup> Building Legislation Amendment (Fidelity Fund) Bill 2025, cl 12.

<sup>14</sup> Building (RBI and Fidelity Fund Schemes) Regulations 2012, reg 31.

Minister. These amendments provide greater clarity regarding changes to trustees.

The proposed amendments improve oversight of appointments by requiring trustees to provide information to satisfy the Minister that a proposed trustee meets the eligibility criteria before an appointment takes effect.

The amendments also clarify that the approval of a person's appointment as a trustee can be revoked if the person has contravened the Act, a regulation or another law in relation the scheme or prudential standards.<sup>15</sup>

- 3.7 Submitter opinions were divided on the appropriateness of allowing for greater ministerial oversight of the appointment of trustees.<sup>16</sup> In some instances, the Committee heard increased ministerial oversight of the scheme is needed. However, there must be a balance to ensure there are sufficient safeguards in place. Master Builders NT supported the inclusion in the Regulations of specified grounds by which the Minister may approve or revoke trustee appointments, so long as clear criteria and procedural safeguards are put in place to mitigate against expanded ministerial discretion resulting in operational instability.<sup>17</sup>
- 3.8 The Housing Industry Association (HIA) recognised the necessity to ensure the continuation of current trustees. HIA recommended that a review of the current trustees' eligibility occur within 30 days of commencement of the Bill.<sup>18</sup>
- 3.9 The Committee was also made aware of broader concerns about a perceived lack of transparency around decision making in relation to the scheme, and particularly a lack of transparency in relation to the trustee eligibility assessments.<sup>19</sup> These concerns were informed by potential impacts on procedural fairness for trustees in relation to revocation decisions. Submitters recommended that eligibility decisions should be transparent and reviewable.<sup>20</sup>
- 3.10 By contrast, the Committee received evidence from the Trustees of the Fidelity Fund NT (the Trustees) that did not support the expansion of ministerial oversight. The Trustees were of the view that 'interference' of the Minister in the trustee approval and appointment process would impact on the independence of Fidelity Fund NT and would result in "unnecessary statutory oversight".<sup>21</sup>

### **Committee's Comments**

- 3.11 The Committee considers it important that trustees have the appropriate competence, knowledge, skills, experience, qualifications and integrity to carry out their functions. In this regard, the Committee notes that trustees must continue to meet the eligibility criteria, and not be considered ineligible, as prescribed by the existing Act and Regulations. The Committee observes that

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<sup>15</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 3.

<sup>16</sup> Submission 1 – Not for publication; Submission 2 – Housing Industry Association; Submission 3 – Trustees of Fidelity Fund NT; and Submission 5 – Master Builders Northern Territory.

<sup>17</sup> Submission 5 – Master Builders Northern Territory, p. 4.

<sup>18</sup> Submission 2 – Housing Industry Association, p. 2.

<sup>19</sup> Submission 1 – Not for publication; and Submission 2 – Housing Industry Association, p. 1.

<sup>20</sup> Submission 1 – Not for publication; and Submission 5 – Master Builders Northern Territory, p. 4.

<sup>21</sup> Submission 3 – Trustees of Fidelity Fund NT, p. 4.

the Bill does not alter these criteria but adds an additional layer of oversight to promote accountability within the scheme.

## **Minister's observer**

- 3.12 Clause 8 inserts new section 54DFA into the Act. This new section provides that the Minister may appoint a public sector employee to be the Minister's observer of an approved scheme. The Minister's observer has the function of providing advice to the Minister on all matters relevant to the scheme's compliance with the Act, Regulations and any conditions of approval of the scheme. The clause further provides 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.
- 3.13 The Department advised that the new section formalises and provides a legislative basis for arrangements that are already in place as agreed to by Fidelity Fund NT and aims to support "oversight of the fund to provide confidence that trustees are operating the fund in accordance with the legislation".<sup>22</sup>
- 3.14 However, despite this advice, the Trustees were of the opinion that it would be problematic for a public servant to access private financial information about builders and homeowners, and details of the intellectual property of the Fidelity Fund and its third-party providers. The Trustees recommended protocols be established for the Minister's observer including for: exclusion of the observer; requirements for a back-up observer; dealing with observer conflicts; and circumstances where the Trustees may request a new observer.<sup>23</sup>
- 3.15 Master Builders NT also supported further regulation or guidance to limit both the Minister's and the Minister's observer's access to information to only what is reasonably necessary for the performance of their statutory functions, and to require strict statutory confidentiality protections over any applicant's commercial, financial, and personal information.<sup>24</sup>

## **Committee's Comments**

- 3.16 The Committee acknowledges the sensitive and confidential nature of the information the Minister's observer may access. However, the Committee considers the scope of the power to be appropriate to achieve the objective of greater oversight of the scheme.
- 3.17 In light of the Department's advice that this is an existing practice, the Committee considers it appropriate that the arrangement is formalised in legislation.

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<sup>22</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 3.

<sup>23</sup> Submission 3 – Trustees of Fidelity Fund NT, p. 6.

<sup>24</sup> Submission 5 – Master Builders Northern Territory, p. 5.

## **Ministerial powers to require information**

- 3.18 Clause 7 seeks to amend section 54DE(1)(b) of the Act to broaden the type of information the Minister may require trustees to provide. Currently, the legislation requires trustees to provide information relating to the financial position of the scheme. The Bill seeks to broaden this to information relating to the operation and management of the scheme.<sup>25</sup>
- 3.19 Clause 15 seeks to insert new regulations 61(3)(e) and 61(3)(f) into the Regulations to provide that the Minister may give trustees a notice requiring information about applications for certificates received by the scheme and contracts or arrangements for services provided.<sup>26</sup>
- 3.20 The Department explained that these changes aim to improve oversight and accountability of the fidelity fund scheme in meeting obligations as set out in the legislation.<sup>27</sup>
- 3.21 There were differing views on the appropriateness of the scope of powers provided for in these clauses. Some stakeholders supported the proposed provisions in principle but recommended to extend or broaden the powers.<sup>28</sup>
- 3.22 The Trustees were opposed to these clauses based on the view that, in order to meet the requirements, the Fidelity Fund would need to keep extensive records. The Trustees argued this would slow fidelity fund certificate approval process, increase costs and create a “divisive” environment. The Trustees recommend amending the Bill to establish clear statutory limits on ministerial powers to access private and confidential information.<sup>29</sup>
- 3.23 The Department of Trade, Business and Asian Relations suggested that the powers are “very broad”, and more detail should be set out in the Bill to ensure market confidence, particularly in relation to ensuring “confidentiality of commercially sensitive information vested in the scheme by members is upheld”.<sup>30</sup>

### **Committee’s Comments**

- 3.24 The Committee considers the scope of the power to be sufficiently defined in the Bill. On balance, the Committee considers the ministerial powers to require information to be appropriate and proportionate in the context of the objectives of the Bill.

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<sup>25</sup> Section 54DE(1)(b) current provides for the Minister to request information relating to the financial position of the scheme.

<sup>26</sup> It is an offence under regulation 61(5) to fail to comply with the Minister’s requirement, punishable by 60 penalty units.

<sup>27</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 5.

<sup>28</sup> Submission 1 – Not for publication; and Submission 2 – Housing Industry Association, p. 2.

<sup>29</sup> Submission 3 – Trustees of Fidelity Fund NT.

<sup>30</sup> Submission 6 – Department of Trade, Business and Asian Relations, p. 2.

## Broader issues with the fidelity fund scheme

3.25 Several submissions raised concerns in relation to the functioning of the fidelity fund scheme. These concerns go beyond the scope of the individual clauses contained in the Bill. Submitters suggested the Bill does not sufficiently address these broader structural issues with the scheme, including:

- delays and refusal to issue fidelity fund certificates;
- lack of transparency in decision making, financial processes and position, and risk framework;
- lack of responsiveness to builder's concerns and complaints.<sup>31</sup>

3.26 The Committee observes that other jurisdictions have reviewed the broader functioning of their residential building insurance schemes. For example, the Australian Capital Territory conducted its *2023 Review of Residential Building Work Insurance Regulatory Settings*.<sup>32</sup>

3.27 The Committee heard that a review of the broader functioning of the scheme could address these systemic issues. However, such a review should be evidence-based and grounded in extensive consultation. HIA stated:

...HIA cautions government against making changes to the statutory framework unless they can be justified by a positive cost-benefit ratio, as a part of a regulatory impact statement and comprehensive stakeholder consultation...As a part of the review process, it will be necessary to assess whether the current objectives are being met and whether there is opportunity for improvement. While there is the potential for this to result in improvements to the scheme's function as a safety net for homeowners, it may also support moves towards a competitive market in the NT.<sup>33</sup>

3.28 The Committee notes there was no public consultation on the Bill. The Department advised:

Industry and community consultation was not undertaken in the development of the proposed amendments as they contain minor administrative efficiencies to support a good governance approach which directly relate to oversight of the fund. Consultation with government was undertaken with the representatives of the Department of Treasury and Finance and the Solicitor for the Northern Territory. There have been ongoing discussions with the fund about ways to improve its efficiency and operation while still honouring its key function to protect consumers.<sup>34</sup>

3.29 However, the Committee heard some stakeholders wished to be consulted in the development of the Bill.<sup>35</sup>

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<sup>31</sup> Submission 1 – Not for publication; Submission 2 – Housing Industry Association; Submission 4 – Not for publication; and Submission 5 – Master Builders Northern Territory.

<sup>32</sup> Environment, Planning and Sustainable Development Directorate (ACT Government), *Review of Residential Building Work Insurance Regulatory Settings Final Report*, December 2023, [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0012/2527995/2\\_Review-of-Residential-Building-Work-Insurance-Regulatory-Settings-Final-Report.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0012/2527995/2_Review-of-Residential-Building-Work-Insurance-Regulatory-Settings-Final-Report.pdf).

<sup>33</sup> Submission 2: Attachment A – Housing Industry Association, p. 6.

<sup>34</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 3.

<sup>35</sup> Submission 3 – Trustees of Fidelity Fund NT, p. 5.

3.30 As noted in Chapter 2, the Department advised the Committee that additional changes to the scheme are currently being progressed. The Bill “forms part of a broader package of regulatory reforms” aiming to strengthen the oversight and governance of fidelity fund schemes. This will include additional changes to the Regulations to “improve consumer protections relating to trigger events and time for making a claim”.<sup>36</sup>

### **Committee’s Comments**

3.31 The Committee acknowledges the concerns raised by some submitters regarding the broader functioning of the scheme. However, the Committee recognises that the Bill forms part of a broader package of reforms and considers that submitters concerns would be more appropriately addressed in a comprehensive review of the scheme as a whole, rather than through the limited scope of the current Bill.

3.32 The Committee is of the view that adequate consultation undertaken alongside the Government’s forthcoming regulatory reforms, would be beneficial in addressing the systemic concerns identified by stakeholders.

### **Recommendation 2**

**The Committee recommends that the Government conduct a comprehensive review of the fidelity fund scheme as a whole, informed by consultation with relevant stakeholders.**

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<sup>36</sup> Committee Transcript, Public Hearing, Thursday 30 October 2025, [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0007/1568995/Corrected-Transcript-Public-Briefing-30-October-2025.pdf), p. 3.

# Appendix 1: Submissions Received

## Submissions Received

1. Submission 1 – Not for publication
2. Submission 2 – Housing Industry Association
3. Submission 3 – Trustees of Fidelity Fund NT
4. Submission 4 – Not for publication
5. Submission 5 – Master Builders Northern Territory
6. Submission 6 – Department of Trade, Business and Asian Relations

**Note:** Copies of submissions are available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/45-2025>

## Appendix 2: Public briefing

### Public briefing – Darwin, 30 October 2025

- Mr Mark Meldrum: Executive Director, Land Services, Department of Lands, Planning and Environment.
- Ms Dawna Turner: Director, Land Services Reform, Department of Lands, Planning and Environment.

**Note:** A copy of the public briefing transcript is available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/45-2025>

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Explanatory Statement, *Building Legislation Amendment (Fidelity Fund) Bill 2025* (Serial 45), [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0005/1567067/Explanatory-Statement-Building-Legislation-Amendment-Fidelity-Fund-Bill-2025-Serial-45.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0005/1567067/Explanatory-Statement-Building-Legislation-Amendment-Fidelity-Fund-Bill-2025-Serial-45.pdf).

Parliamentary Record, *Draft Daily Hansard - Wednesday 22 October 2025*, <https://territorystories.nt.gov.au/10070/1016326/0/2>.

# Dissenting Report: Justine Davis MLA

## Justine Davis MLA Independent Member for Johnston

Alawa - Jingili - Millner - Moil

integrity | action | community



19/11/25

### Building Legislation Amendment (Fidelity Fund) Bill 2025 – Additional Report

I thank the Chair and my fellow Committee members for their work on this inquiry and for the constructive engagement of all stakeholders. I also acknowledge the Department for its briefing and the individuals and organisations that provided submissions despite the limited timeframe.

While I support the passage of the Building Legislation Amendment (Fidelity Fund) Bill 2025, I wish to formally place on the record a number of concerns regarding the development and scope of the Bill. These concerns relate directly to the Bill's stated purpose, as set out in the Explanatory Statement, which is to:

*“enhance transparency and accountability in the operation of approved fidelity fund schemes.”*

Despite this clear objective, it is my view that the Bill does not adequately achieve this purpose. The issues raised by stakeholders and confirmed through the Committee's inquiry indicate that the amendments before the Assembly provide only limited administrative adjustments, rather than the substantive reforms required to genuinely improve transparency, accountability and confidence in the scheme.

A central premise of transparency is openness, yet the Government undertook no public or industry consultation in the development of this Bill. Several stakeholders expressed that they were unaware of the proposed amendments until the inquiry commenced, despite being directly affected by the scheme and its governance arrangements.

We were also unable to hold public hearings due to time constraints which meant that many of the issue raised in submissions could not be fully explored and understood

This is inconsistent with the Bill's stated intention to 'improve transparency and accountability'. True transparency begins with legislative development that is open and consultative and the absence of this is a missed opportunity to both strengthen the Bill as well as strengthen the reform process

Submitters raised longstanding issues regarding the fidelity fund scheme, including:



[www.justinedavis.com.au](http://www.justinedavis.com.au)  
[@justine4johnston](mailto:@justine4johnston)



08 8999 6620  
[electorate.johnston@nt.gov.au](mailto:electorate.johnston@nt.gov.au)



Millner Village Plaza, Cnr of Fitzgerald St  
and Bagot Rd, Millner NT 0810

- lack of visibility in risk assessment and decision-making,
- unclear processes for certificate approvals and refusals,
- limited access to information for builders and consumers,
- inadequate procedural fairness for trustees, and
- concerns about the balance between oversight and independence.

In addition to these concerns, stakeholders highlighted several critical transparency and governance gaps that the draft legislation does not address, including:

- conflicts of interest, which remain insufficiently regulated under both current law and the proposed amendments;
- a lack of transparency in trustee appointments, with no requirement for public disclosure of who is appointed, their qualifications, or any declared interests;
- the absence of mechanisms for independent oversight or approval of trustee remuneration, leaving remuneration arrangements opaque and without external scrutiny; and
- no obligation to provide public access to fundamental operational information, such as annual reports, capital management plans, audit findings, or financial disclosures relating to the Fund.

These issues go directly to the transparency and accountability failures that the Explanatory Statement claims the Bill is intended to address.

Strengthening oversight is important, but without clearer statutory criteria, enhanced transparency of decisions, stronger confidentiality protections, review and appeal mechanisms, and explicit procedural safeguards, the Bill does not materially improve trust or accountability in the scheme.

In this respect, the Bill does not give meaningful effect to the Government's own stated purpose.

I support the Committee's recommendation for a comprehensive, consultation-driven review of the entire scheme. However, this review must be substantive, transparent and genuinely collaborative. It must address long-standing structural issues that this Bill, in its current form, does not confront. If the Government intends to promote transparency and

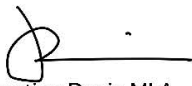


accountability, then a broader reform process must be undertaken with the full participation of builders, homeowners, trustees, consumer advocates and industry bodies.

### **Conclusion**

In supporting the passage of this Bill, I do so on the basis that it represents a first administrative step rather than a complete or adequate response to the systemic issues that stakeholders have identified.

In my view the Bill falls short of achieving its stated purpose to “enhance transparency and accountability”, and I urge the Government to approach any forthcoming reviews with openness, rigour and a commitment to genuine reform.



Justine Davis MLA,

Independent Member for Johnston



[www.justinedavis.com.au](http://www.justinedavis.com.au)  
[@justine4johnston](https://twitter.com/justine4johnston)



08 8999 6620  
[electorate.johnston@nt.gov.au](mailto:electorate.johnston@nt.gov.au)



Millner Village Plaza, Cnr of Fitzgerald St  
and Bagot Rd, Millner NT 0810