



**SUBMISSION TO THE SCRUTINY COMMITTEE OF THE LEGISLATIVE ASSEMBLY**

## **Building Legislation Amendment (Fidelity Fund) Bill 2025**

**Submitted by: The Trustees of Fidelity Fund NT**

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## Introduction

We, the Trustees of Fidelity Fund NT, welcome the opportunity to make this submission to the Legislative Scrutiny Committee regarding the Building Legislation Amendment (Fidelity Fund) Bill 2025 (**the Bill**). While we share the Government's stated objective of maintaining a strong, fair and transparent consumer protection system for new home buyers in the Northern Territory, we do not support the passage of this Bill as currently drafted.

Our opposition rests on the belief that the proposed amendments represent an unnecessary and counterproductive expansion of ministerial control that will undermine the independence, efficiency, and integrity of the Fidelity Fund system. Instead of addressing practical or administrative challenges, the Bill risks creating new layers of bureaucracy, uncertainty, and cost, without delivering meaningful benefit to consumers or industry.

In summary, our concerns rest around six key matters:

- The unfettered powers given to the Minister in the legislation without any qualifications or limitations;
- The ability for the Minister to request private financial and other information of builders and homeowners, details of the intellectual property of the Fidelity Fund and its third-party providers, and the extension of some of those powers to the Minister's appointed observer who is a public servant;
- A fundamental misreading of the obligations of the Fund and the duties of Trustees by the Minister to homeowners, its risk-based activities, and the nature of insurance;
- A seeming shift of the Fidelity Fund from a private independent provider to a statutory provider with an effective 'veto' by the Minister; and
- The lack of consultation by the Minister with Trustees or any existing homeowners who have benefited from compensation by the Fidelity Fund system;
- That any information captured by the Minister will fall under Freedom of Information laws to create a divisive and combative overlay.

## Background Information

### *Fidelity Fund NT*

The Fidelity Fund is a private organisation set up under a Trust Deed. It is a not-for-profit organisation established to provide the equivalent of 'builders warranty insurance' to new home buyers in the NT with the primary duty to new home buyers, and the conditions and controls in its Trust Deed reflect that duty. It is a 'pooled-risk' system where the Trust accumulates reserves over time to cover claims from homeowners. The Fund succeeds in a marketplace below minimum efficient scale by operating a 'highly leveraged' business model and is the sole provider of consumer protection in the NT, which requires a delicate balance between its obligations to homeowners and the commercial interests of residential builders. It is a taxpaying entity and submits an annual tax return to the ATO.

The Fidelity Fund was licensed by the then Minister in 2013 to provide Fidelity Certificates (**Certificates**) under the Building Act 2013 and is governed by five (5) Trustees who receive a modest stipend. The Government did provide an establishment loan to Trustees at commencement in 2013, which has subsequently been fully repaid with interest and significant Departmental administration fees. Since establishment in 2013, the Fidelity Fund has issued

9,000 plus Certificates and dealt with more than 70 claims. Today, there are 104 active builders on our register and there are 400 plus Certificates available to builders that have not been utilised.

### *Builders' Warranty Insurance*

As mentioned above, the Fidelity Fund NT issues Certificates in the name of homeowners who are contracting a builder to construct their new home, which is akin to an insurance policy. The homeowner is given three distinct 'warranties' through their Certificate, including:

1. A non-completion cover;
2. A non-structural warranty cover of 12 months; and
3. A structural warranty cover of 6 years.

The Certificate has a face value of \$200,000, is attached to the property and transfers to the new owners if the property is sold during the cover period. The cover is 'triggered' when a builder defaults on the homeowner's project due to insolvency, death, disappearance or the removal of their building registration. This makes it clear that the obligation on the Fidelity Fund and, by extension the Trustees, as provider of the Certificate is to 'protect homeowners' and that protection is against a failure by a builder to complete a project or rectify defective work.

Similar, but different regimes exist in all States and Territories of Australia except for Tasmania, though we understand there are moves afoot there to re-introduce a similar system. In the ACT and NT, private Fidelity Funds provide consumer protection, while in the States, Governments either directly operate Schemes or underwrite losses.

### *Building Act 2013*

The Building Act 2013 sets out the compliance obligations on the Fidelity Fund, including licensing to deliver the product, appointment of trustees, minimum cover for homeowners, reporting and limitations. The Trustees must therefore be cognisant of their duties under their Trust Deed, the Building Act 2013 and associated Regulations, financial standards, and the normal regime for a business operating in Australia.

It is important to highlight a number of critical elements under the Building Act 2013:

- 1) The Fidelity Fund cannot charge any builder (no matter how precarious) a different price for cover, and can only manage its risk by adjusting the amount of annual cover it extends to a builder;
- 2) The Fidelity Fund must keep the beneficiary (homeowner/s) whole even when it is clear a builder, who must under the Building Act 2013 purchase a fidelity certificate on an owners' behalf, has provided fraudulent or misleading information;
- 3) The risk in the Fidelity Fund's portfolio and the Fidelity Fund's solvency is assessed each year by an Actuary approved by the Minister;
- 4) The financial performance of the Fidelity Fund is reviewed by an Auditor each year who is approved by the Minister;
- 5) The Trustees must provide the Minister with a consolidated report each year, which includes declarations around solvency and compliance;
- 6) Those assessments are conducted against national and international standards, such as GPS340, AASB 1023 and AASB 17; and
- 7) The Trustees are also required to report to the Commissioner for Consumer Affairs on details associated with claims for compensation made by homeowner/s.

Currently there are two NTPS observers attending Board meetings.

### *Business Activities*

The Fidelity Fund conducts two business activities that attract the ire of builders and drive their advocacy to the Minister. The first of those is an annual assessment of the capacity of a builder to construct homes, given their balance sheet, profit and loss statement, historical business performance and business conduct. The second is an assessment of every project before a Certificate can be issued.

The first activity is an internal compliance activity and the second is referenced in the Building Act 2013. The annual assessment of a builder is provided free-of-charge and is designed to assist that builder to plan for the year. They can also seek upgrades throughout the year should their circumstances change. Each builder is assessed against a 'risk of business failure' test within a range from low to severe likelihood of insolvency. That rating then determines the level of annual cover that may be available to the builder, all things remaining equal, given the Fidelity Fund can only control risk by the level of cover – it is prevented from charging differently for different risk.

The Fidelity Fund has contracted two national specialist construction risk assessing firms to assist it in determining the level of annual cover that is extended to builders. That assessment is proving to be an increasingly complicated endeavour given several industry factors:

1. Aggressive tax planning which leaves very little capital in residential building businesses;
2. Considerable disparity between management accounts signed by directors and later statutory accounts prepared by accountants; and
3. Non-compliance with minimum net tangible asset requirements under the Building Act 2013.

Staff supporting the Fidelity Fund conduct the review of project applications, which includes fraud assessment, compliance with progress payment schedules, a non-legal assessment of the contract and drawings, and a review of not yet completed projects. Again, this is a complicated endeavour as not all information is provided at application, inconsistencies appear between documentation and delays in completed projects.

### **The Bill Represents an Unnecessary Expansion of Ministerial Control**

The Bill inserts provisions that would give the Minister sweeping and discretionary powers over the operation and governance of the Fidelity Fund through the approval process of trustees. To date, the Trustees have been responsible for trustee appointments with ministerial consent proceeding the Trustees' determination of appointment. It has worked for 13 years without issue. The proposed sections 54DBA and 54DFA of the *Building Act 1993* would require Ministerial approval for all trustee appointments and permit the Minister to interfere with the Fidelity Fund's impartial process. This also encroaches on the Fidelity Fund's independence and allowing for unnecessary statutory oversight.

### **The Problem Is Administrative, Not Structural**

The Fidelity Fund NT already operates under a comprehensive system of statutory and fiduciary controls. The Bill appears to be a legislative response to administrative concerns or misunderstandings rather than a failure of the existing system. The Trustees are aware that some of the Minister's motivation to the Bill has arisen from recent information requests to Fidelity Fund.

Our recent correspondence demonstrates a standard commercial-in-confidence process where controls and measures were put around requests for commercial information. They do not warrant a legislative redraft to satisfy the Minister's investigative exercises he decided to undertake on the behalf of a select few disgruntled builders. All issues relating to reporting, communication, or oversight can already be resolved through targeted administrative measures rather than wholesale legislative reform.

### **The Bill Creates Bureaucracy Without Benefit**

The introduction of new layers of approval and oversight by the Bill adds bureaucracy without improving consumer outcomes. Each additional approval step creates delay, increases compliance costs, and diverts limited resources away from the Fund's primary objective – protecting homeowners from loss. As drafted, the Bill risks slowing down the issuance of fidelity certificates and could reduce builder confidence, ultimately making housing more expensive for Territorians. We say this because of the new ministerial oversight into the Fidelity Fund's processes for issuing fidelity certificates. The amendments to section 54DE of the *Building Act 1993* will require the Fidelity Fund to fastidiously file note and record keep each individual issued Fidelity Certificate with reference to financials, decision making and all other matter of variables because the Minister may later call upon the Fidelity Fund to submit the record for same.

### **The Fund's Existing Legal and Financial Oversight Is Already Robust**

The Fidelity Fund NT operates as a private, not-for-profit trust with controls under the *Building Act 1993*. It is already subject to rigorous independent auditing, actuarial review, and annual reporting obligations to the Minister. The Fund's financial performance is reviewed by an Auditor approved by the Minister and an Actuary who assesses solvency and risk annually in accordance with national and international standards such as GPS340, AASB 1023 and AASB 17. These measures provide extensive oversight without compromising operational independence.

### **Absence of Consultation Undermines the Bill's Credibility**

The Trustees are deeply concerned that this Bill has been advanced without any meaningful consultation with Trustees, albeit we acknowledge the Minister has agreed to meet with us in November – well after the current submission deadline. The Minister has not met with the Trustees since assuming the portfolio, despite the Fund being the only provider of this form of consumer protection in the Territory. Instead, the Bill appears to have been developed in response to submissions from individual builders, including those with a history of non-compliance. This one-sided consultation process is inconsistent with principles of transparency and fair governance.

The Trustees were very disappointed to read the Minister's clear and unequivocal misinterpretation of the Fidelity Fund's role in his parliamentary speech of 22 October 2025. For the avoidance of any doubt, the Fidelity Fund does not have a critical role in supporting robust housing growth – that's the role of government and developers. In our opinion, the Minister is attempting to connect its agenda to rebuild the economy via housing growth with reforms under the Bill. The approach is flawed and counterproductive.

### **Recommendations and Conclusion**

We, the Trustees of Fidelity Fund NT, recommend that the Legislative Scrutiny Committee decline to support this Bill in its current form. Instead, the Government should engage in genuine

consultation with Trustees to identify targeted, administrative reforms that improve transparency without undermining independence or confidentiality. Specifically, we recommend:

- That the Bill be withdrawn until it better reflects the operational and fiduciary environment of the Fund;
- That the Government establish clear statutory limits on Ministerial powers to access private or confidential information;
- That the Government establish protocols for the appointed observer for Trustee meetings including (not limited) excluding the observer, when a back-up observer may be required, dealing with observer conflicts and when the Trustees may request a new observer;
- That consultation occur with all relevant stakeholders, including homeowners whom have benefited from the Fidelity Fund system, before further legislative changes;
- That the Minister meet with the Trustees and demonstrate a clear understanding of the Trustees role and the Fidelity Fund's function before any legislative changes;
- That any future reforms preserve the independence of the Trustees and avoid converting the Fund into a statutory body; and
- That any perceived duplication or reporting inefficiencies be addressed through administrative amendment rather than structural overhaul.

The Trustees reaffirm their commitment to transparency, good governance, and consumer protection. However, these objectives are best achieved through collaboration and administrative refinement, not by introducing unnecessary legislative overreach that risks undermining a system that has successfully protected Northern Territory homeowners for more than a decade, balancing consumer protection with industry viability. The proposed legislation threatens this balance and risks undermining the trust placed in the Fund by homeowners and builders alike.

We urge the Committee to consider our concerns and recommendations seriously and to support a more collaborative and transparent approach to reform.

Thank you for your consideration of this submission.