

1991

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LAW REFORM (MISCELLANEOUS PROVISIONS)
(AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by the Authority of
Mr Bernard Collaery MLA
Attorney-General)

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Outline

In accordance with Report No 2 of the ACT Community Law Reform Committee (the Committee) the Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991 provides that the rule in Cavalier v Pope be removed.

The rule in Cavalier v Pope derives from an English case decided in 1906. It is a technical rule which arguably confers an immunity on landlords in respect of normal occupiers liability even where the landlord is otherwise responsible in law for the state of the premises.

The Committee recommended that the relationship between occupiers of all classes, including unauthorised entrants, in relation to occupiers liability should be dealt with on the basis of applying the general principles of negligence. However, the Committee considered that it was necessary to enact legislation to remove any doubt in regard to landlord immunity in relation to Occupiers Liability within the ACT which might persist because of the rule in Cavalier v Pope.

This Bill gives effect to the recommendations of the Committee.

Financial Implications

This Bill has no implications for revenue or expenditure.

Clause Notes

Clause 1 - provides that the Act may be cited as the Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991.

Clause 2 - states that the Principal Act is the Law Reform (Miscellaneous Provisions) Act 1955.

Clause 3 - amends the Principal Act by adding a new Part IX to the Act and a provision which abolishes the rule in Cavalier v Pope. It is intended that the liability of a landlord be determined in accordance with the general principles of negligence as decided by the High Court in Australian Safeway Stores v Zaluzna.