

2004

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
2004**

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

Circulated by authority of the
Attorney General
Mr Jon Stanhope MLA

This explanatory statement supplements the explanatory statement to the Justice and Community Safety Legislation Amendment Bill 2004 as introduced into the Legislative Assembly on 14 May 2004.

Overview of Bill

Amendment 1

Amendment 1 amends the commencement date for various provisions of the Bill.

Amendment 2

Amendment 2 inserts new clauses 3A to 3C into the Bill. These clauses alter the licensing requirements for a travel agent under the *Agents Act 2003* to exempt a director of a travel agency already holding a corporate licence from the additional eligibility requirement of contributing to the Travel Compensation Fund twice. This will avoid the doubling up of insurance payments by directors who already hold a corporate licence and who have already paid their Travel Compensation Fund contribution.

Amendment 3

Amendment 3 inserts a new Part 2A into the Bill, which provides for amendments to the Agents Regulations 2003 to provide that an agent is deemed to have the qualifications for a real estate agent's licence if, immediately before the commencement of the *Agents Act 2003*, the person was eligible for the grant of a licence under the *Agents Act 1968*.

Amendment 4

Amendment 4 inserts new clauses 6A to 6ZH into the Bill. These clauses make a number of minor technical amendments to Part 2 of the *Civil Law (Sale of Residential Property) Act 2003*. The amendments are designed to better reflect the commercial practice of real estate conveyancing in the ACT. The amendments will also facilitate a smooth market transition to the new system for the sale of residential property.

Amendment 5

Amendment 5 inserts new clauses 7A to 7M into the Bill. These clauses make a number of minor technical amendments to Parts 4 and 5 of the *Civil Law (Sale of Residential Property) Act 2003*. The amendments are designed to facilitate a smooth market transition to the new system for conducting public auctions of residential property.

Amendment 6

Amendment 6 inserts new clauses 8A and 8B into the Bill. These clauses amend Part 3.3 of the *Civil Law (Wrongs) Act 2002* by removing the sunset clauses in sections 28 and 39 of the Act.

Amendment 7

Amendment 7 inserts a new Part 10A into the Bill. This part amends the *Leases (Commercial and Retail) Act 2001* to extend the transitional period provided under section 171 of the Act.

Outline of Provisions

Amendment 1

Clause 2 – Commencement

This clause explains that Parts 2, 2A and 10A will commence on the day after notification; Part 3 will commence on 1 July 2004; and, the remaining provisions will commence on the 14th day after notification.

Amendment 2

Clause 3A – Eligibility for licences, Section 24(1)(d)

This clause inserts an amended section 24(1)(d), which provides that for a travel agent's licence, an individual must be eligible under section 26 of the Act.

Clause 3B – New section 24(3A)

This clause provides that a corporation is eligible for a travel agent's licence if no director of the corporation is disqualified from being licensed, at least one director meets the eligibility requirements under paragraphs 24(1)(a) to (c) of the Act, and the corporation meets the additional eligibility requirements under section 26 of the Act.

Clause 3C – Section 24

This clause explains that the subsections will be renumbered the next time the Act is republished.

Amendment 3

Clause 5A – Legislation amended – part 2A

This clause provides that Part 2A amends the Agents Regulations 2003.

Clause 5B – Qualifications for licences, ACT s25 New regulation 6(1A)

This clause provides that a real estate agent is deemed to have the qualifications for a real estate agent's licence if, immediately before the commencement of the *Agents Act 2003*, the person was eligible for the grant of a licence under the *Agents Act 1968*.

Clause 5C – Regulation 6

This clause provides that subregulations be renumbered the next time the regulations are republished.

Amendment 4

Clause 6A – Definitions for part 2, section 7, new definition of *building and compliance inspection report*

This clause inserts a new definition for a ‘building and compliance inspection report’. This definition replaces the previous definition of a building inspection report. The amendment will ensure that all building inspection reports provide information about the structural soundness of a property and its compliance with building approval requirements.

Clause 6B – Section 7, definition of *building inspection report*

This clause omits the definition of a building inspection report.

Clause 6C – Section 7, definition of *encumbrance*

This clause provides a definition of encumbrance that excludes any encumbrance that is to be released or discharged on or before completion of the sale. This amendment ensures that the seller does not have to provide copies of an encumbrance, such as a copy of the mortgage documents, which will not encumber the property after completion. This amendment will not disadvantage the purchaser, as the encumbrance in question will almost invariably be noted on the certificate of title.

Clause 6D – Section 7, definition of *pest treatment certificate*

This clause omits the phrase “pest treatment certificate” from section 7. This amendment recognises that pest treatment certificates are superfluous, as a structure will not be issued with a certificate of occupancy unless pest treatment has been provided.

Clause 6E – Section 7, definition of *seller*, paragraph (a)

The clause amends the definition of a seller to include a person with an equitable interest in a property. This amendment recognises that not all sellers will have full legal title to a property but do have a legitimate interest of which to dispose, for example a mortgagee in possession or a person who on-sells an off-the-plan property before the completion date.

Clause 6F – Meaning of *residential property*, new section 8(2)(ba)

This clause inserts a new paragraph (ba) to exempt land or a unit subject to the Retirement Villages Code of Practice from the definition of residential property for the purposes of the Act. The Code already sets out information disclosure provisions for a contract for the sale of property in a retirement village.

Clause 6G - Section 8(2)(c)

This clause provides that the words “developers holding lease” appear in italics.

Clause 6H – Section 8(2)

This clause provides that paragraphs be renumbered the next time the Act is republished.

Clause 6I - Meaning of *required documents*, new section 9(1)(ba)

This clause inserts a new paragraph (ba), which stipulates that a copy of the deposited plan is a required document. This document provides a consumer with a plan of the property, including its boundaries and whether any easements affect the property.

Clause 6J – Section 9(1)(f)(i)

This clause makes it clear that a registered units plan must only be provided if it exists and provides that where there is no registered units plan for a property, a plan showing the proposed location and dimensions of the unit and common property should be provided.

The amendment also requires that a unit title certificate under section 75 of the *Unit Titles Act 2001* is one of the required documents under this section for a unit that has a registered units plan.

Clause 6K – Section 9(1)(g)(iii)

This clause inserts the words “and compliance” after the word “building”. This amendment will ensure that a comprehensive structural and compliance report is prepared for each residential property offered for sale in the ACT.

Clause 6L – Section 9(1)(g)(iii)

This clause inserts the words “or offered” after the word “advertised”. This amendment clarifies that it is the time the property is placed upon, or offered to, the market, whether advertised publicly for sale or not, that is the operative time in the section.

Clause 6M – Section 9(1)(g)(iv) and (v)

This clause omits two subparagraphs that deal with the provision of a pest treatment certificate. The subparagraphs are superfluous, as a structure will not be issued with a certificate of occupancy unless pest treatment has been provided.

Clause 6N – Section 9(1)(g)(vi) and (vii)

This clause inserts the words “or offered” after the word “advertised”. This amendment clarifies that it is the time the property is placed upon, or offered to, the market, whether advertised publicly for sale or not, that is the operative time in the section.

Clause 6O – Section 9(1)(g)(vii)

This clause deletes the full stop at the end of the word agent and inserts a semicolon.

Clause 6P – New section 9(1)(h)

This clause inserts a new paragraph (h) that provides that any other document prescribed under the regulations may be a required document.

Clause 6Q – Section 9(1)

This clause provides that paragraphs and subparagraphs be renumbered the next time the Act is republished.

Clause 6R – Section 9(2)(a)

This clause inserts the words “and compliance” after the word “building”. This amendment will ensure that a comprehensive structural and compliance report is prepared for each residential property offered for sale in the ACT.

Clause 6S – Section 9(2)(a)(iii)

This clause provides that the words “off-the plan purchase” appear in italics.

Clause 6T – Section 9(2)(b)

This clause replaces the full stop after the word “unit” with a semicolon and the word “and”.

Clause 6U – New paragraphs 9(2)(c) and (d)

This clause provides that a document listed in subsection 9(1) is not required in the circumstances where the seller cannot obtain the document after taking all reasonable steps to obtain it.

The amendment also provides that for the sale of vacant land under a developer’s holding lease, the required documents are a copy of the holding lease and a copy of the draft or actual development conditions for the lease.

Clause 6V – Section 9(3)

This clause omits from the section the following text, “, and (v)”.

Clause 6W – Proposed contract etc to be available for inspection, Section 10(1)

This clause provides that the word “reasonable” be inserted before the word “times”.

Clause 6X – Certain conditions to be included in contract, Section 11(1)(a)(ii)

This clause provides that the words “on completion of the contract” be inserted after the word “possession”.

Clause 6Y – Section 11(1)(d)

This amendment inserts a new paragraph 11(1) (d) that provides that if a buyer becomes aware of an unapproved structure on the property that was not disclosed in the contract, the buyer may ask the seller to have the structure approved before completion of the contract. If the structure is not approved before completion, the buyer may rescind the contract or elect to complete the contract and claim damages from the seller.

Clause 6Z – Section 11(1)(f)(iii)

This clause replaces the words “there are no” with the words “the seller has no knowledge of any”. This amendment ensures that a seller is not in breach of the conditions in this paragraph because of circumstances outside his or her knowledge.

Clause 6ZA – Section 11(1)(g)(i)

This clause inserts the phrase “,or be able to be,” after the word “be”. This amendment ensures that a seller with an equitable interest in a property who on-sells an off-the plan property before completion is not in breach of the condition in this paragraph.

Clause 6ZB – Section 11(1)(g)(iii)

This clause replaces the words “there are no” with the words “the seller has no knowledge of any”. This amendment ensures that a seller is not in breach of the conditions in this paragraph because of circumstances outside his or her knowledge.

Clause 6ZC – Section 11(1)(h)

This clause provides that if a buyer becomes aware of an error in the description of the property, the buyer may ask the seller to have the error corrected before completion of the contract. If the error is not corrected before completion, the buyer may rescind the contract if the error is material, or complete the contract and claim damages. If the error is not material, the buyer must complete the contract but may claim damages.

Clause 6ZD – Section 11(1)(i)

This clause changes the reference to paragraph (g) to a reference to paragraph (h).

Clause 6ZE – Section 11(2)

This clause inserts a reference to paragraph 11(1)(g)(i) into subsection 11(2).

Clause 6ZF – Section 11(2)(a)

This clause inserts the phrase “,or exercising a power of sale” after the word “property”. This amendment will allow a mortgagee to exercise their power to sell the property without first taking action to eject the mortgagor, and will avoid undue cost and inconvenience for a mortgagor.

Clause 6ZG – Buyer may waive cooling-off period, Section 13

This clause replaces the word “signing” with the words “entering into”. This amendment will allow a buyer to waive their cooling-off right without needing to visit their solicitor twice.

Clause 6ZH – Buyer to reimburse seller for cost of certain reports, Section 18(a) and (b)

This clause provides that a buyer is only required to reimburse a seller for one pest inspection report or building and compliance inspection report.

Amendment 5**Clause 7A – Bidders record, Section 25(4)**

This clause inserts the words “the bidders record, including” after the words “in relation to”.

Clause 7B – Bidders’ name and address to be established by proof of identity, Section 26(5)

This clause corrects an error in a cross reference in the Act by substituting “(4)” for “(3)”.

Clause 7C – New section 31A

This clause provides that a public auction of residential property must be conducted in accordance with the standard auction conditions prescribed under the regulations.

Clause 7D – Auction conditions to be available before auction begins, new Section 32(3)

This clause provides for a definition of the term “conditions”. The term is defined to mean the standard auction conditions prescribed under section 31A and any other conditions decided by the seller, which are not inconsistent with the standard auction conditions.

Clause 7E – Making false and misleading statements, section 37(7), definition of *relevant document*, paragraph (b), (c) and (d)

This clause makes an amendment to the definition of a relevant document under section 37 of the Act. The amendment removes the reference to a pest treatment certificate and replaces the words “building inspection report” with the words “building and compliance inspection report”.

Clause 7F – Regulation-making power, new Section 40(3) and (4)

This clause provides that a regulation may incorporate a law or instrument, or a provision of a law or instrument as in force from time to time. Subsection (4) defines incorporate to include apply and adopt. This amendment allows the regulations to prescribe industry standards to which pest inspection and building and compliance inspection reports must be prepared.

Clause 7G – New part 7

This clause inserts a new Part 7 into the *Civil Law (Sale of Residential Property) Act 2003* to provide for a series of transitional provisions in the Act. New section 43 provides that Part 2 of the Act does not apply to contracts entered into before 1 July 2004. New section 44 provides that a seller will not be in contravention of section 10 of the Act if a required document is not available at any time before 31 October, if the seller has taken all reasonable steps to obtain the document. This section will expire on 31 October 2004.

New section 45 provides that the regulations may prescribe transitional matters that are necessary and convenient to be prescribed because of the enactment of the Act. New section 46 provides that the regulations may modify the operation of Part 7 to make provision for any matter that is not already adequately dealt with in Part 7. New section 47 provides that part 7 will expire one year after it commences.

Clause 7H – Schedule 1, amendment 1.1 Proposed new Section 89A(1)(b) and (2)(c)

This clause inserts the word “reasonable” after the word “times”. This is a consequential amendment to ensure consistency with the amendment in clause 6W.

Clause 7I – Dictionary, new definition of *building and compliance inspection report*

This clause makes a consequential amendment to the dictionary to ensure consistency with the amendment in clause 6A.

Clause 7J - Dictionary, definition of *building inspection report*

This clause omits the definition of ‘building inspection report’ from the dictionary consistent with the amendment in clause 6B.

Clause 7K– Dictionary, new definition of *developer’s holding lease*

This clause inserts a definition of a developer’s holding lease into the dictionary.

Clause 7L – Dictionary, definition of *pest treatment certificate*

This clause makes a consequential amendment to the dictionary to ensure consistency with the amendment in clauses 6D and 6M.

Clause 7M – Dictionary, new definition of *unit title certificate*

This clause inserts a definition of unit title certificate into the dictionary.

Amendment 6**Clause 8A – Limitation of liability for acts of terrorism, Section 38(1)**

This clause removes the sunset clause from section 38 by omitting the words “committed before 1 October 2004”.

Clause 8B – Expiry of pt 3.3, Section 39

This clause removes the sunset clause that provides for the expiry of Part 3.3.

Amendment 7**Clause 31A – Legislation amended - pt10A**

This clause provides that Part 10A amends the *Leases (Commercial and Retail) Act 2001*.

Clause 31B – Expiry of pt 16, Section 171

This clause provides that Part 16 of the Act expires on 30 June 2006, but that sections 169 and 170 expire on 30 June 2004.