

Building and Other Legislation Amendment Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Stirling Hinchliffe MP

Short Title

The short title of the Bill is the Building and Other Legislation Amendment Act 2009.

Objectives of the Amendments

The objectives of the amendments to be moved during consideration in detail are to:

- provide certainty about when the obligations on sellers and seller's agents in relation to a sustainability declaration apply during the marketing of a home for sale; and
- ensure there is no right to terminate a contract when a contract is formed on a sale by auction only because the sustainability declaration is incomplete or contains information that is false or misleading.

How objectives are achieved

Passage of the Bill including the amendments to be moved during consideration in detail will achieve the Government's policy objectives.

Alternative method of achieving the policy objectives

There are no alternatives to the passage of the Bill including the amendments to be moved during consideration in detail that would achieve the Government's policy objectives.

Estimated cost for implementation

There are no additional anticipated financial costs for Government arising from the amendments including the amendments to be moved during consideration in detail. Implementation costs will be absorbed within existing departmental budgets.

Consistency with Fundamental Legislative Principles

The amendments to be moved during consideration in detail are consistent with Fundamental Legislative Principles.

Consultation

The amendments to be moved during consideration in detail are based upon ongoing consultation with industry including The Real Estate Institute of Queensland and relevant government departments including Fair Trading within the Department of Employment Economic Development and Innovation and Department of the Premier and Cabinet, since the Bill was introduced into the House.

Notes on Provisions

1 Clause 29 (Insertion of new chs 8A and 8B)

Amendment 1 amends clause 29 by omitting the words “the building is sold” and inserting “a contract for the sale of the building settles”. This clarifies that the intention of section 246E is to ensure the ongoing requirements of the division apply to the seller throughout the potential marketing period.

It may be possible for a contract to be terminated before settlement and for marketing of the building to resume. It may also be possible that some form of marketing would continue before a contract settles but after the contract conditions had been met.

2 Clause 73 (Insertion of new ch 11, pt 5)

Amendment 2 amends clause 73 by omitting the words “the dwelling is sold” and inserting “a contract for the sale of the dwelling settles”. This clarifies that the intention of section 373B is to ensure the ongoing requirements of the division apply to the seller’s agent throughout the potential marketing period.

It may be possible for a contract to be terminated before settlement and for marketing of the building to resume. It may also be possible that some form of marketing would continue before a contract settles but after the contract conditions had been met.

3 Clause 73 (Insertion of new ch 11, pt 5)

Amendment 3 amends clause 73 by inserting the words “or a contract formed on a sale by auction” to ensure that section 373H refers to the buyer under a private contract or a buyer under a contract formed on a sale by auction. The buyer under a private contract or a buyer under a contract formed on a sale by auction will have no right to terminate a contract only because the sustainability declaration is incomplete or contains information that is false or misleading. The earlier reference to “relevant contract” unintentionally excluded a contract formed on a sale by auction from this protection.