

Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Peter Lawlor MP

Title of the Bill

Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010

Objectives of the Amendments

Stakeholder feedback on the Bill received subsequent to its introduction indicated a need for minor amendments to the Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010. It was suggested that the wording in the proposed section 367 be made consistent with elsewhere in the Bill. It was also suggested that a technical problem exists in ensuring that the provisions relating to the giving of the warning statement, the proposed relevant contract and the clear statement directing the buyer's attention to these documents are not breached when multiple buyers are involved in the transaction. Clarification is needed for this provision to avoid the creation of a possible loophole.

Achievement of the Objectives

An amendment will be made to the proposed section 367 so that it is made clear that the buyer is to receive a copy of a property valuation that a buyer has been required to pay for, before the buyer signs the proposed relevant contract. This will be consistent with wording used elsewhere in the Bill, for example in the proposed section 370(3).

Clarification of the operation of the proposed section 368A when there are multiple buyers will be made by inserting a provision stating that the requirements of the proposed section 368A will be met when the seller or the seller's agent gives the proposed relevant contract in the manner prescribed by the proposed section 368A to one of the proposed buyers.

Alternative Ways of Achieving Policy Objectives

There is no alternative way of getting consistent wording for the proposed section 367 other than to amend the Bill. Also, there is no alternative way of addressing the clarification required in the proposed section 368A other than to amend the Bill. It would not be sufficient to educate the industry as to the intention of the operation of the proposed section 368A. A definitive application of the provision is required in the legislation to avoid a legal challenge on its operation.

Estimated Cost for Government Implementation

There is no cost associated with these amendments.

Consistency with Fundamental Legislative Principles

Amendments during consideration in detail will not require retrospective application to contracts that have been entered into but not yet settled or otherwise terminated. There is no breach of fundamental legislative principles of the *Legislative Standards Act 1992*.

Consultation

Consultation has occurred with the Department of the Premier and Cabinet, including the Parliamentary Liaison Officer.

Notes on Provisions

1 – 3 Clause 4 (Amendment of ch 11 (Residential property sales))

Clauses 1 – 3 replace the words ‘*entered into*’ with ‘*signed by the buyer*’. This is to make the phraseology consistent in this provision with that used elsewhere in the Bill, for example in the proposed section 370(3).

The intention of this clause is to ensure that where a buyer is required to pay for a valuation of the property, the buyer is to receive a copy of the property valuation the buyer is required to pay for before the relevant contract is signed by the buyer.

4 Clause 4 (Amendment of ch 11 (Residential property sales))

Clause 4 has a similar intention to clauses 1 – 3, and replaces the words ‘*entered into*’ with ‘*signed*’.

5 Clause 4 (Amendment of ch 11 (Residential property sales))

Clause 5 inserts a new provision at subsection (8) under the proposed section 368A to clarify the operation of this proposed section in circumstances where there are multiple buyers. Where there are multiple buyers, that is, more than one buyer, involved in a residential property transaction, it is considered sufficient compliance with the provision for the seller or the seller’s agent to give the warning statement and an information sheet if it is for a unit sale, attached to the proposed relevant contract, and to give a clear statement as required by the provision, to one of the buyers in the transaction. It is sufficient for the seller or the seller’s agent to fully comply with the proposed section 368A with one of the buyers named on the proposed relevant contract. The seller or the seller’s agent does not have to give the contract as required by the proposed section 368A to every buyer named on the proposed relevant contract.