



Minister for Climate Change and Sustainability
Minister for Corrections and Justice Health
Minister for Justice, Consumer Affairs and Road Safety
Minister for Mental Health
Member for Kurrajong

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones *Giulia*

I write in response to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in its *Scrutiny Report 45* published on 30 June 2020 about the Justice Legislation Amendment Bill 2020 (the Bill).

In particular, I refer to the Committee's request for a response concerning the incorporation of the Australian Standard AS 4299-1995 (Adaptable Housing) (the Standard) in the *Civil Law (Sale of Residential Property) Act 2003* and the *Civil Law (Sale of Residential Property) Regulation 2004*.

I address each of the issues raised by the Committee below.

As noted by the Committee, the Bill amends a number of provisions in the *Civil Law (Sale of Residential Property) Act 2003*. It affects amendments moved by Ms Le Couteur to the Unit Titles Legislation Amendment Bill 2019 which were commented on by the Committee in *Scrutiny Report 39*.

Ms Le Couteur's amendments prescribed that drawings and plans demonstrating compliance with the Standard are the required documents under section 9(1)(g)(iv) of the *Civil Law (Sale of Residential Property) Act 2003* in relation to the sale of adaptable housing dwellings. Ms Le Couteur's amendments also introduced a new strict liability offence in circumstances where a person advertises the sale of an adaptable housing dwelling and the advertisement does not contain a statement that the premises is an adaptable housing dwelling.

Defining an adaptable housing dwelling through reference to an Australian Standard

I note that the Committee is concerned that the amendments do not require the Standard to be notified on the ACT Legislation Register or otherwise made available to the public as required by subsection 47(6) of the *Legislation Act 2001*. I also note that the Committee requests a justification as to why a reference to the Standard is warranted.

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I can confirm that the Standard is the subject of copyright and is therefore unable to be published by way of notifiable instrument. However, a member of the public will be able to access the Standard by attending any government shopfront during business hours.

A reference to the Standard is warranted as the Standard provides industry guidance for designing adaptable housing dwellings so that further modifications can be made over time to accommodate the specific needs of an occupant and visitors (i.e. to accommodate disabilities that arise with illness and ageing). For this reason, the Standard was nominated.

Which version of the Standard was intended to apply

I note the Committee's concern that there may be uncertainty as to whether the relevant version of the Standard is the version of the Standard at the time of enactment of the Bill or as it is amended from time to time.

I confirm that the relevant version of the Standard is the version at the time of enactment of the Bill. On this occasion, the Bill does not incorporate the Standard as in force from time to time noting compliance with the Standard is an element of the strict liability offence in section 23B of the *Unit Titles Amendment Act 2020*. Incorporating the standard in this way will create a greater degree of certainty for owners of adaptable housing dwellings about which version of the Standard to comply with in order to avoid committing the offence. Nevertheless, as the Bill removes the reference to the Standard in the *Civil Law (Sale of Residential Property) Act 2003* and relocates it to the *Civil Law (Sale of Residential Property) Regulation 2004* (in the definitions of *adaptable housing dwelling* and *required documents*), this will allow for timely amendments in the future should the Standard change.

Justification for including compliance with the Standard as an element of a strict liability offence

As the Committee is aware, Ms Le Couteur's amendments to the Unit Titles Legislation Amendment Bill 2019 introduced a new strict liability offence in circumstances where a person advertises the sale of an adaptable housing dwelling and the advertisement does not contain a statement that the premises is an adaptable housing dwelling. The Government supported Ms Le Couteur's amendment in the Assembly. I note the Committee's comment that a justification for the strict liability element should be provided, particularly where an element of the offence (the premises is an adaptable housing dwelling) may in some cases be difficult to determine. Strict liability offences engage the right to be presumed innocent until proved guilty according to law (section 22(1) of the *Human Rights Act 2004* (Human Rights Act)) as they allow for the imposition of criminal liability without the need for the prosecution to prove fault. However, the defence of mistake of fact is available to the defendant.

While the Government did not develop this amendment, I am nevertheless satisfied that the strict liability offence is compatible with human rights applying the permissible limitation criteria in section 28 of the Human Rights Act. In this case, the strict liability offence pursues the legitimate purpose of proactively ensuring compliance with the requirement to include a statement in an advertisement for the sale of an adaptable housing dwelling that the premises are an adaptable housing dwelling. Including the fault element in this particular context could render the provision less effective as it may disincentivise an owner from proactively complying with the provision.

Owners of existing premises, which may come within the definition of an adaptable housing dwelling, will be made aware of their future responsibilities in relation to the advertising requirements for the sale of an adaptable housing dwelling.

This information will be clearly published in guidance materials available on ACT Government websites as well as communicated through relevant industry associations such as the ACT Law Society and Real Estate Institute of the ACT. As such, owners of adaptable housing dwellings will be proactively informed about their legal obligations.

How owners of existing premises, which may come within the definition of an adaptable housing dwelling, will be made aware of their future responsibilities

As noted above, information will be clearly published on ACT Government websites in relation to the amendments to the *Civil Law (Sale of Residential Property) Act 2003* and the *Civil Law (Sale of Residential Property) Regulation 2004* before the Bill's consequential amendments commence in November 2020. Additional materials will be prepared to communicate the changes to the wider public. This will assist owners of adaptable housing dwellings to be made aware of their future legal responsibilities.

I trust that this response addresses the Committee's comments in relation to the Bill.

Yours sincerely



Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety

22/7/20

CC: Attorney-General, Gordon Ramsay MLA

Minister for Planning and Land Management, Mick Gentleman MLA