

Guideline for Vendor's Statement (Section 7) – repealed and substituted legislation

Land and Business (Sale and Conveyancing) Act 1994

Section 7 of the *Land and Business (Sale and Conveyancing) Act 1994* requires a vendor of land to serve or cause to be served on a purchaser a statement that details the purchaser's rights in section 5, and various interests that affect the land.

The vendor's statement is prescribed by regulation and is commonly referred to as a "Form 1". The information that must be disclosed in the Form 1 includes the particulars of notices issued under other legislation.

For example, under the current Form 1 prescribed under the Regulations (the "Prescribed Form 1"), notices under a variety of legislation must be disclosed and this includes the *Housing Improvement Act 1940*, *Natural Resources Management Act 2004* and *Development Act 1993*.

The Commissioner for Consumer Affairs (Commissioner) is in the process of revisiting the prescribed Form 1 and will potentially be issuing a new prescribed Form 1 in 2021.

The Commissioner is issuing this Guideline to confirm how the Prescribed Form 1 should be completed, having regard to the fact that some legislative references in the Prescribed Form 1 are no longer applicable. The Commissioner is aware that some Form 1 templates do not provide sufficient space to comply with this Guideline. In these cases, the information can be disclosed using an attachment identified in the completed Prescribed Form 1.

Specifically, since the Prescribed Form 1 was last updated in late 2013:

- The *Housing Improvement Act 1940* was repealed by the *Housing Improvement Act 2016* on 3 April 2017;
- The *Natural Resources Management Act 2004* was repealed by the *Landscape South Australia Act 2019* on 1 July 2020; and
- The *Development Act 1993* is currently being repealed by the *Planning Development and Infrastructure Act 2016* on a transitional basis in phases.

Information on when properties in a particular local council area transfer from the scope of the Development Act to the Planning Development and Infrastructure Act can be found at:

https://plan.sa.gov.au/our_planning_system/instruments/planning_instruments/planning_and_design_code

By virtue of provisions of the *Acts Interpretation Act 1915*, any reference in the Prescribed Form 1 to legislation which is no longer applicable, should be taken to be a reference to the relevant substituted legislation. In the interests of satisfying the full disclosure and exchange of information intended for the Prescribed Form 1, the substituted legislation should be noted against the Item that refers to repealed legislation.

For example, in Part 15 of the table of particulars in the Prescribed Form 1, the reference to the *Housing Improvement Act 1940* should be read as a reference to the *Housing Improvement Act 2016*.



Accordingly, if a notice under the *Housing Improvement Act 2016* applies to the subject property, this should be detailed in the Prescribed Form 1 with a notation that the relevant Act is the *Housing Improvement Act 2016*. (See below example).

Column 1	Column 2	Column 3
15. Housing Improvement Act 1940		
15.2 Part 7 (rent control for substandard houses) – Notice or declaration	<p>Is this item applicable?</p> <p>Will this be discharged or satisfied prior to or at settlement?</p> <p>Are there attachments? If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars): HOUSING SAFETY AUTHORITY LETTER DATED 07/08/2020 ISSUED PURSUANT TO SECTION 30 OF THE HOUSING IMPROVEMENT ACT 2016</p> <p>Date of notice or declaration: 1/01/2018</p> <p>Those particulars required to be provided by the housing authority under section 60: REFER HOUSING SAFETY AUTHORITY LETTER ATTACHED</p>	<input checked="" type="checkbox"/> NO YES

The *Planning, Development and Infrastructure Act 2016* provides for the repeal of the *Development Act 1993* on a transitional basis in phases. As such, Part 4 of the table of particulars in Form 1 which refers to the *Development Act 1993* may refer to a notice under the *Development Act 1993* or the *Planning, Development and Infrastructure Act*, depending on the specific notice. Whichever Act is currently applicable should be referred to.

For example, if a notice is issued under a provision of the *Planning, Development and Infrastructure Act* which is already in operation, then an appropriate notation to the relevant section of that Act should be included.

Please note, the above examples of legislation mentioned in the Prescribed Form 1 may not be the only ones that have since been repealed and substituted by new legislation.

The Commissioner reminds all legal practitioners, real estate agents and conveyancers who complete the vendor’s statement documents on behalf of clients that this Guideline is not intended to be legal advice. It is a matter for each legal practitioner, conveyancer or real estate agent to satisfy themselves that they are properly complying with the requirements of the *Land and Business (Sale and Conveyancing) Act 1994* and associated Regulations and providing full disclosure as required by law.

