Attachment D – summary of changes to vendor disclosure legislation

The 2008 Bill has been revised so as to take account of the submissions and other matters.

Main changes and points to note

1. The 2008 Bill has been renamed as "Sale of Land (Rights and Duties of Parties) Bill 2009". This has occurred as the previous name (Sale of Land (Vendor Disclosure) Bill 2008) did not recognise that the Bill provides for cooling period for sales of residential property.

2. The 2009 Bill and the 2009 Regulations have been amended so that for "off the plan" sales there is no need to provide a building report until such time as the building has been built – see draft Regulation 4(1). It was not ever intended that there be a building report for non existent buildings.

3. The 2009 Regulations do not include a requirement for a seller of land to provide a pest report in the building report. On balance the view is that pest reports are relatively ephemeral and that buyers are better placed in obtaining their own report at the time when they are seriously considering making a purchase.

4. The 2009 Regulations do not require the production of a sacred site certificate. The previous Regulations read as though such a certificate was required. This was probably a mistake. The Regulations should have provided that a certificate was only required if the vendor was aware that there was such a site. However, it now appears that any inclusion of this matter in the Regulations would adversely affect the capacity of the Sacred Sites Protection Authority to do its job. Given the relatively small number of such sites and the relatively limited impact on the use of residential land, the inclusion of the requirement is difficult to justify at this time.

5. Clause 15(1)(f) of the 2008 Bill has been removed. Under it the vendor would have warranted that on the day for completion of the contract the vendor will be able to complete the contract. This was criticised because it imposes an unreasonable duty on vendors when, for many transactions, it is a financial institution that controls whether settlement can take place.

6. Clause 4(2) is designed to deal with confusion about the interaction of the disclosure provisions of the *Unit Title Schemes Act 2009* (as enacted during April 2009 and the disclosure provisions of the 2009 Bill in respect of "off-the-plan" sales). In essence disclosures of the kind required under that Act are not disclosures for the purposes of the 2009 Bill. The 2009 Bill does cover matters relating to buildings being sold off the plan.

7. However, the cooling off periods of the 2009 Bill will apply to units as will the requirements of clause 4 (disclosure documents) and Regulations 4, 5 and 6.

8. Sales of freehold land for the purpose of subdivisions of land will be subject to the disclosure obligations under the 2009 Bill. This type of sale would not be subject to the disclosure obligations in the *Unit Titles Schemes Act 2009* as they are not a "scheme" as defined in that Bill. Where a developer buys the freehold for the purpose of subdividing the land for on-selling, the developer will also be subject to the disclosure requirements in the Bill on the sale of the divided land and will only be required to provide a building report on "an existing building on the land" (clause 4(1) of the Regulations).

9. Likewise where an owner of freehold is selling land to be developed, for example, into apartments by a purchaser who is a developer, that owner is also subject to the seller's disclosure obligations in respect of that land. The Bill provides that the requirements for a building report can be satisfied by the owner or the vendor providing (in his or her own name) a report stating that the building does not comply with the *Building Act* or that it is not known if the building complies with the *Building Act*.

10. The time limit for expiry is now six months to accommodate situations where a sale takes longer than three months to finalise. This is a practical solution that will avoid the imposition of further costs on the vendor.

11. The other outstanding issue concerned whether real estate agents and legal practitioners would be prevented under their professional indemnity insurance from interpreting Building Board material for the purpose of giving a building report. While this may emerge as an issue in time, in the meantime, it will not prevent other classes of qualified persons such as conveyancers, or those who qualify as a building certifier pursuant to the *Building Act* such as, for example, builders, architects and structural engineers from providing building reports. It is not proposed to amend this provision.

12. In summary the outcome of these changes is legislation that will be relatively minimalist. However it will:

- provide for up front provision of contracts and critical land titles information when land is put on the market;
- provide that cooling off provisions apply to all sales (not just those handled by licensed real estate agents);
- lay the foundations for new disclosure needs that may come into existence (eg regarding the energy rating of buildings); and
- lay the foundations for more professional disclosure requirements for the time when there are greater numbers of building professionals in the NT (or, more particularly, in the regional areas).