



New South Wales

Conveyancing Amendment (Sunset Clauses) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to prevent developers from unreasonably rescinding off the plan contracts for residential lots under sunset clauses.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Conveyancing Act 1919 No 6

Schedule 1 [2] inserts proposed Division 10 (containing proposed section 66ZL) into Part 4 of the *Conveyancing Act 1919* (the **Principal Act**) which sets out the circumstances in which a vendor may rescind, under a sunset clause, an off the plan contract for a residential lot. An **off the plan contract** is a contract for the sale of a residential lot (the **subject lot**) that has not been created at the time that the contract is entered into. A lot is created when the plan creating the lot becomes a registered plan. A **sunset clause** is a provision of an off the plan contract that provides for the contract to be rescinded if the subject lot is not created by the **sunset date** (being the date set out in the off the plan contract as the latest date by which the subject lot must be created).

A vendor who wishes to rescind an off the plan contract under a sunset clause must give each purchaser under the contract at least 28 days notice in writing of the proposed rescission. The vendor is then permitted to rescind under the clause only if each purchaser under the contract

consents to the rescission, the Supreme Court permits the rescission or the rescission is otherwise permitted by regulations made under the Principal Act. A sunset clause cannot automatically rescind an off the plan contract. The Supreme Court can make an order permitting a vendor to rescind an off the plan contract only if the vendor satisfies the Court that making the order is just and equitable in all the circumstances. In determining whether it is just and equitable the Court must take a number of matters into account, including whether the vendor has acted unreasonably or in bad faith, whether the subject lot has increased in value and the effect of the rescission on each purchaser. The vendor is liable to pay the costs of a purchaser in relation to the proceedings for an order unless the vendor satisfies the Court that the purchaser unreasonably withheld consent to the rescission. The proposed section does not limit any right that a purchaser may have to rescind an off the plan contract under a sunset clause. **Schedule 1 [1]** makes a consequential amendment.

Schedule 1 [3] provides that proposed section 66ZL applies to off the plan contracts regardless of whether they were entered into before, on or after the commencement of that section and it also provides for proposed section 66ZL to have retrospective effect from 2 November 2015 (being the day on which the Minister for Innovation and Better Regulation announced that this Bill would be put before Parliament). The proposed provision provides that the rescission of an off the plan contract under a sunset clause by a vendor on or after 2 November 2015 is taken not to have been done in accordance with the contract unless the required notice was given, and the rescission occurred, in accordance with proposed section 66ZL.