



New South Wales

Conveyancing Legislation Amendment Bill 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Conveyancing Act 1919* and the *Real Property Act 1900*:

- (a) to introduce vendor disclosure requirements in relation to off the plan contracts to provide purchasers with additional information and give purchasers access to remedies and relief where disclosure is ineffective, and
- (b) to support the transition to paperless conveyancing by removing impediments to electronic land transactions, and
- (c) to make other miscellaneous and consequential amendments.

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 a day or days to be appointed by proclamation, except as provided by subclause (2).

Schedule 1 Amendment of Conveyancing Act 1919 No 6

Off the plan contracts

Schedule 1 [15] substitutes Division 10 of Part 4 of the *Conveyancing Act 1919* (the *Conveyancing Act*). Proposed section 66ZL inserts definitions for the purposes of that Division, which deals with off the plan contracts.

Proposed section 66ZM requires the vendor under an off the plan contract to attach a disclosure statement to the contract before the contract is made. The disclosure statement includes a copy of a draft plan and other prescribed documents. **Schedule 1 [4]** extends the regulation-making power with respect to remedies and relief to remedies and relief available to a purchaser if the vendor fails or refuses to comply with proposed section 66ZM. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [9] makes it an offence (with a maximum penalty of \$1,100) to publicly offer residential property for sale under an off the plan contract unless a copy of the proposed disclosure statement is available for inspection, along with all other documents required under section 66R of the Conveyancing Act. **Schedule 1 [8]** defines *disclosure statement* and *off the plan contract* for the purposes of that offence.

Schedule 1 [10] provides that the cooling off period ends at 5 pm on the tenth business day after the day on which an off the plan contract was made. **Schedule 1 [11]** enables the regulations to restrict the time by which a cooling off period under an off the plan contract may be shortened.

Proposed section 66ZN requires the vendor to serve a notice of changes on the purchaser at least 21 days before completion of the contract if the vendor becomes aware that the disclosure statement contains inaccuracies in a material particular. A *material particular* is defined in proposed section 66ZL to include any change to the draft plan or draft by-laws that will, or is likely to, adversely affect the use or enjoyment of the subject lot, any easement or covenant that will, or is likely to, adversely affect the use or enjoyment of the subject lot, any change to the schedule of finishes that will, or is likely to, adversely affect the use or enjoyment of the subject lot or any other prescribed matter, but does not include any matter excluded by the regulations.

Proposed section 66ZO provides the purchaser with a right to rescind if any change notified in the notice of changes is such that the purchaser would not have entered into the contract had the purchaser been aware of the change and would be materially prejudiced by the change. Similarly, proposed section 66ZP provides the purchaser with a right to rescind if, after receiving a copy of the registered plan and any other document that was registered with the plan, the disclosure statement that was attached to the contract includes inaccuracies in relation to a material particular such that the purchaser would not have entered into the contract had the purchaser been aware of the inaccuracy and would be materially prejudiced by the inaccuracy. If a notice of rescission is not served by the purchaser, the disclosure statement is taken to be amended to include the information notified in the notice of changes or the information in the registered plan.

Proposed section 66ZQ specifies that the notice of rescission must be served on the vendor no later than 14 days after receiving the notice of changes or the registered plan.

Proposed section 66ZR provides that on service of an effective notice of rescission, the contract is taken to be rescinded and the amount of the deposit paid under the contract is payable to the purchaser. *Deposit* is defined in proposed section 66ZL.

Currently, section 66ZL provides that a vendor under an off the plan contract may rescind the contract under a sunset clause (being a clause allowing the contract to be rescinded if the subject lot is not created by the date set out in the contract) only by application to the Supreme Court. Proposed section 66ZS substitutes that provision and extends its application to other sunset clauses, including clauses allowing the contract to be rescinded if the occupation certificate for the subject lot is not issued by a certain date or if any other event prescribed by the regulations does not happen by a certain date.

Proposed section 66ZT requires that any money paid by way of deposit or instalment under an off the plan contract must be held as trust money or controlled money in accordance with the relevant legislation. Any such money may be invested if it is lawful to do so, if the terms of the contract do not prevent the investment and if any interest accrued is paid into the trust or controlled money account.

Proposed section 66ZU makes certain savings and transitional arrangements and applies proposed Division 10 to residential property under the *Crown Land Management Act 2016*.

Electronic land transactions

Schedule 1 [1] inserts proposed section 6C, which provides that a reference in the Conveyancing Act to a contract or deed includes a reference to an electronic data file containing a contract or deed in an electronic form. It also enables the regulations to modify and make further provision for the application of the Act to electronic form contracts and deeds and makes provision for the application of the *Electronic Transactions Act 2000* to requirements under the Conveyancing Act.

Schedule 1 [2] makes it clear that a requirement for an instrument to be in writing under section 23C of the Conveyancing Act may be satisfied in electronic form. A requirement under that section for writing to be signed may be satisfied by electronic signature.

Schedule 1 [3] makes it clear that a deed may be created in electronic form and electronically signed and attested.

Schedule 1 [6] provides that a contract to sell or dispose of land is not invalidated or rendered unenforceable only because it has been created in electronic form and electronically signed or attested.

Schedule 1 [16] allows the service of notices by email, facsimile transmission or in any other prescribed manner. **Schedule 1 [12] and [13]** make consequential amendments.

Other amendments

Schedule 1 [7] changes an incorrect reference to a provision of the *Real Property Act 1900* (the *RP Act*).

Schedule 1 [14] removes redundant provisions.

Schedule 1 [18] makes it clear that if an information agreement applies to information recorded in the Central Register on behalf of a participating party, that information must not be provided to a person or used by the Registrar-General, except as permitted by that agreement. **Schedule 1 [17]** simplifies the definition of a *participating party* as a person on whose behalf information is recorded in the Central Register.

Schedule 2 Amendment of Real Property Act 1900 No 25

Schedule 2 [2] provides that the Registrar-General may cancel a certificate of title or certificates of title issued to a class of persons. Currently, the Registrar-General may only cancel a certificate of title on the request of the holder of the certificate. **Schedule 2 [3]** applies existing provisions in section 33AAA (3) (c) and (d) to the cancellation of a certificate of title in accordance with the proposed amendment in Schedule 2 [2]. Those provisions provide that a cancelled certificate of title has no force or effect for the purposes of a statutory requirement to lodge or produce a certificate of title to register a matter and that any such requirement is taken to be satisfied if the person who is recorded in the Register as having control of the right to deal in the land provides consent to the registration of the matter. Schedule 2 [3] also applies existing provisions in section 33AAA (4) and (5) relating to the manner in which that consent must be provided.

Schedule 2 [5] amends the definition of *registration* in section 33AB of the RP Act to include recordings, entries and notations made in the register of plans maintained under the Conveyancing Act, with the effect of enabling the Registrar-General to make a recording in the register of plans if the person who is recorded in the Register as having control of the right to deal in the land consents to the recording. Currently, that provision only applies to recordings, entries or notations in the Register, which is maintained under the RP Act. **Schedule 2 [4]** inserts a definition of *register of plans*.

Schedule 2 [6] provides that any document that supports the electronic lodgment of a dealing, memorandum, caveat or priority notice is not invalidated only because it has been executed electronically.

Currently, under section 56 (1) of the RP Act, the proprietor of the relevant land, estate or interest in land is required to execute a mortgage. **Schedule 2 [7]** provides that the Registrar-General may register a mortgage if satisfied that the mortgagee has signed the mortgage and the mortgagee has

certified that he or she holds a mortgage granted by the mortgagor and that the mortgage is held on the same terms as the mortgage lodged for registration. The proposed amendment will enable the Registrar-General to register a mortgage that has been executed electronically on behalf of the proprietor.

Schedule 2 [8]–[10], [14] and [15] provide that certain statements, caveats, notices, applications and other information may be verified in the manner approved by the Registrar-General, as an alternative to providing a statutory declaration.

Section 74W of the RP Act prevents the recording of any writ lodged during the period that a priority notice has effect, unless the person who lodged the notice gives consent. **Schedule 2 [11]–[13]** amend that section to allow the Registrar-General to register a transfer giving effect to a sale under a writ recorded before the lodgment of the notice. **Schedule 2 [16] and [17]** make consequential amendments.

Schedule 2 [18] makes it clear that a client authorisation produced in electronic form may also be electronically signed.

Schedule 2 [1] updates a reference to a repealed Act.