

CONVEYANCING (AMENDMENT) BILL 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Land Sales (Amendment) Bill 1985 is cognate with this Bill.

The objects of this Bill are—

- (a) to require vendors under contracts for the sale of land to attach documents, to be prescribed by regulations under the Conveyancing Act 1919, to those contracts;
- (b) to provide for the inclusion in those contracts of such terms, conditions and warranties as may be so prescribed; and
- (c) to enable those regulations to prescribe remedies for breach of the vendor disclosure requirements.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 provides that the proposed Act does not apply to contracts for the sale of land made before the commencement of the proposed Act and contracts made pursuant to certain options.

Schedule 1 (1) makes an amendment consequential on the amendment made by Schedule 1 (3).

Schedule 1 (2) inserts a definition of "Regulations" into the Principal Act.

Schedule 1 (3) inserts section 52A into the Principal Act. The section is expressed to apply to contracts for the sale of any land. The section requires a vendor under a contract to attach prescribed documents to the contract and provides that a vendor shall be deemed to have included in the contract prescribed terms, conditions and warranties. Where, under the section, a vendor attaches to a contract a certificate or other document

obtained from a government department, statutory authority or local government council, the section confers on the purchaser and a mortgagee of the purchaser the rights and immunities the purchaser or mortgagee would have had if the certificate or document had been issued to the purchaser or mortgagee. The section provides that, except in so far as provision may otherwise be made in the regulations, a prescribed term, condition or warranty cannot be excluded, modified or restricted. The section enables regulations to be made for the purposes of the section, particularly for the purpose of specifying the remedies available to a purchaser where a vendor fails to comply with the requirements of the section. The section binds the Crown.

Schedule 1 (4) extends and amends, by way of statute law revision, the regulation making powers under the Principal Act.

CONVEYANCING (AMENDMENT) BILL 1985

No. , 1985

A BILL FOR

An Act to amend the Conveyancing Act 1919 to provide for the inclusion of certain matters in contracts for the sale of land by the vendors under those contracts.

See also Land Sales (Amendment) Bill 1985.

Conveyancing (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Conveyancing (Amendment) Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 6, 1919

15 3. The Conveyancing Act 1919 is amended in the manner set forth in Schedule 1.

Application of Act

4. Nothing in this Act applies to or in respect of—

- 20 (a) a contract for the sale of land that was made before the commencement of this Act; or
- (b) a contract for the sale of land that was made on or after the commencement of this Act pursuant to an option that was granted before the commencement of this Act.

SCHEDULE 1

25

(Sec. 3)

AMENDMENTS TO THE CONVEYANCING ACT 1919

(1) Section 6 (2)—

After "provided", insert "by this Act or the regulations made for the purposes of section 52A".

*Conveyancing (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

(2) Section 7 (1), definition of “Regulations”—

After the definition of “Registered”, insert:

“Regulations” means regulations made under this Act.

(3) Section 52A—

5 Before section 53, insert:

Contracts for sale of land

10 52A. (1) Except in so far as the regulations may otherwise provide, this section applies to contracts for the sale of any land, including land subject to the provisions of the Real Property Act 1900, the Crown Lands Consolidation Act 1913 or any other Act and irrespective of whether or not any such Act makes provision for or with respect to the conveyance or transfer of land.

(2) A vendor under a contract for the sale of land—

15 (a) shall, before the contract is signed by or on behalf of the purchaser, attach to the contract such documents, or copies of such documents, as may be prescribed; and

(b) shall be deemed to have included in the contract such terms, conditions and warranties as may be prescribed.

20 (3) Notwithstanding the provisions of any other Act (whether assented to before, on or after the commencement of the Conveyancing (Amendment) Act 1985) or any other law, where a vendor attaches to a contract for the sale of land a certificate or other document, or a copy of a certificate or other document, issued, on or before the date of the contract, to the vendor or to
25 a person on the vendor’s behalf by a government department, a statutory authority, the council of a local government area or a prescribed person or body, being a document—

(a) which is, or a copy of which is, required to be attached to the contract pursuant to subsection (2) (a);

*Conveyancing (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

(b) which contains information consistent with the provisions of a term, condition or warranty prescribed as referred to in subsection (2) (b); or

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(c) which contains information which has caused the vendor to make a specific disclosure in the contract in relation to any such term, condition or warranty,

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the purchaser or a mortgagee of the purchaser shall have and may exercise, in relation to the certificate or document, the rights, powers and immunities that the purchaser or mortgagee would have had if the certificate or document had been issued to the purchaser or mortgagee.

(4) Except in so far as the regulations may otherwise provide, a provision, whether in a contract for the sale of land or any other agreement—

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(a) which purports to exclude, modify or restrict any provision of this section or a regulation made for the purposes of this section; or

(b) which would, but for this subsection, have the effect of excluding, modifying or restricting any such provision,

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is void.

(5) The regulations may provide that subsection (2) or any provision of that subsection shall not apply to or in respect of—

(a) a prescribed vendor or a vendor of a prescribed class or description;

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(b) a prescribed contract or a contract of a prescribed class or description; or

(c) prescribed land or land of a prescribed class or description.

*Conveyancing (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

5 (6) The regulations may make provision for or with respect to the remedies and relief which shall be available to a purchaser under a contract for the sale of land and the penalties which may be incurred by a vendor under such a contract for any failure or refusal to comply with any of the provisions of this section or the regulations made for the purposes of this section.

10 (7) Without limiting the generality of subsection (6), the remedies and relief may include remedies and relief by way of rescission of the contract by the purchaser and the payment of compensation by the vendor.

(8) The regulations may provide that a term, condition or warranty prescribed as referred to in subsection (2) (b) shall not merge in the transfer or conveyance on completion of the contract.

15 (9) The regulations—

(a) may require the inclusion in contracts for the sale of land of terms, conditions and warranties prescribed as referred to in subsection (2) (b); and

20 (b) may require the attachment to contracts for the sale of land of notices or other documents.

(10) This section binds the Crown.

(4) (a) Section 202 (1)—

Omit “under this Part”.

(b) Section 202 (4)–(7)—

25 Omit section 202 (4), insert instead:

(4) A regulation may create an offence punishable by a penalty not exceeding \$500.

30 (5) Proceedings for an offence against a regulation shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Conveyancing (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

(6) A provision of a regulation may—

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- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

10 (7) Section 41 of the Interpretation Act 1897 applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

CONVEYANCING (AMENDMENT) ACT 1985 No. 142

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 142, 1985

An Act to amend the Conveyancing Act 1919 to provide for the inclusion of certain matters in contracts for the sale of land by the vendors under those contracts. [Assented to, 25th November, 1985.]

See also Land Sales (Amendment) Act 1985.

Conveyancing (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Conveyancing (Amendment) Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 6, 1919

3. The Conveyancing Act 1919 is amended in the manner set forth in Schedule 1.

Application of Act

4. Nothing in this Act applies to or in respect of—

- (a) a contract for the sale of land that was made before the commencement of this Act; or
- (b) a contract for the sale of land that was made on or after the commencement of this Act pursuant to an option that was granted before the commencement of this Act.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CONVEYANCING ACT 1919

(1) Section 6 (2)—

After "provided", insert "by this Act or the regulations made for the purposes of section 52A".

Conveyancing (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

(2) Section 7 (1), definition of “Regulations”—

After the definition of “Registered”, insert:

“Regulations” means regulations made under this Act.

(3) Section 52A—

Before section 53, insert:

Contracts for sale of land

52A. (1) Except in so far as the regulations may otherwise provide, this section applies to contracts for the sale of any land, including land subject to the provisions of the Real Property Act 1900, the Crown Lands Consolidation Act 1913 or any other Act and irrespective of whether or not any such Act makes provision for or with respect to the conveyance or transfer of land.

(2) A vendor under a contract for the sale of land—

- (a) shall, before the contract is signed by or on behalf of the purchaser, attach to the contract such documents, or copies of such documents, as may be prescribed; and
- (b) shall be deemed to have included in the contract such terms, conditions and warranties as may be prescribed.

(3) Notwithstanding the provisions of any other Act (whether assented to before, on or after the commencement of the Conveyancing (Amendment) Act 1985) or any other law, where a vendor attaches to a contract for the sale of land a certificate or other document, or a copy of a certificate or other document, issued, on or before the date of the contract, to the vendor or to a person on the vendor’s behalf by a government department, a statutory authority, the council of a local government area or a prescribed person or body, being a document—

- (a) which is, or a copy of which is, required to be attached to the contract pursuant to subsection (2) (a);

*Conveyancing (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

- (b) which contains information consistent with the provisions of a term, condition or warranty prescribed as referred to in subsection (2) (b); or
- (c) which contains information which has caused the vendor to make a specific disclosure in the contract in relation to any such term, condition or warranty,

the purchaser or a mortgagee of the purchaser shall have and may exercise, in relation to the certificate or document, the rights, powers and immunities that the purchaser or mortgagee would have had if the certificate or document had been issued to the purchaser or mortgagee.

(4) Except in so far as the regulations may otherwise provide, a provision, whether in a contract for the sale of land or any other agreement—

- (a) which purports to exclude, modify or restrict any provision of this section or a regulation made for the purposes of this section; or
- (b) which would, but for this subsection, have the effect of excluding, modifying or restricting any such provision,

is void.

(5) The regulations may provide that subsection (2) or any provision of that subsection shall not apply to or in respect of—

- (a) a prescribed vendor or a vendor of a prescribed class or description;
- (b) a prescribed contract or a contract of a prescribed class or description; or
- (c) prescribed land or land of a prescribed class or description.

*Conveyancing (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

(6) The regulations may make provision for or with respect to the remedies and relief which shall be available to a purchaser under a contract for the sale of land and the penalties which may be incurred by a vendor under such a contract for any failure or refusal to comply with any of the provisions of this section or the regulations made for the purposes of this section.

(7) Without limiting the generality of subsection (6), the remedies and relief may include remedies and relief by way of rescission of the contract by the purchaser and the payment of compensation by the vendor.

(8) The regulations may provide that a term, condition or warranty prescribed as referred to in subsection (2) (b) shall not merge in the transfer or conveyance on completion of the contract.

(9) The regulations—

(a) may require the inclusion in contracts for the sale of land of terms, conditions and warranties prescribed as referred to in subsection (2) (b); and

(b) may require the attachment to contracts for the sale of land of notices or other documents.

(10) This section binds the Crown.

(4) (a) Section 202 (1)—

Omit “under this Part”.

(b) Section 202 (4)–(7)—

Omit section 202 (4), insert instead:

(4) A regulation may create an offence punishable by a penalty not exceeding \$500.

(5) Proceedings for an offence against a regulation shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Conveyancing (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

- (6) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(7) Section 41 of the Interpretation Act 1897 applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985



