

FIRST PRINT

**CONVEYANCING (PASSING OF RISK) AMENDMENT
BILL 1986**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to give effect, with certain modifications, to recommendations of the Law Reform Commission of New South Wales in its report on Passing of Risk between Vendor and Purchaser of Land (L.R.C. 40).

The principal reform effected by the Bill is to remove the necessity for a purchaser under a contract for the sale of land to insure any building or other structure on the land immediately on entering into the contract. The risk in respect of damage to land (and the necessity for the purchaser to insure) is to be postponed until the completion of the sale or, if the parties agree, any earlier time after the purchaser enters into possession of the land. The Bill also makes consequential provision for the rescission of a contract or the reduction in the purchase price where the land is damaged after the contract is made and before the risk passes to the purchaser. The reforms effected by the Bill cannot be excluded by the parties to the contract in the case of the sale of a dwelling-house.

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 ensures that the proposed Act does not affect contracts for the sale of land made before the commencement of the proposed Act.

Schedule 1 (1) provides that the proposed new Division to be inserted into the Principal Act applies to land under the Real Property Act 1900.

Schedule 1 (2) inserts a new Division 7 into Part IV of the Principal Act containing the following provisions:

- (a) Proposed section 66J is an interpretation provision. "Land" has been defined to make it clear that the proposed Act applies to damage to buildings and other fixtures. Proposed section 66J (2) defines substantial damage to land as damage which renders the land materially different from that which the purchaser contracted to buy.
 - (b) Proposed section 66K postpones the passing of the risk in respect of damage to land (and the necessity for the purchaser to insure) until the completion of the sale or, if the parties agree, any earlier time after the purchaser enters into possession.
 - (c) Proposed section 66L empowers the purchaser of land to rescind the contract for sale if the land is substantially damaged after the contract is made and before the risk in respect of the damage passes to the purchaser. The option to rescind in those circumstances must be exercised within 28 days of the purchaser's first becoming aware of the damage or within such longer period agreed to by the parties to the contract. If the purchaser decides not to rescind the contract, the purchaser is entitled to a reduction in the purchase price under proposed section 66M. The proposed section makes provision with respect to the service of notice to rescind and the consequences of rescission.
 - (d) Proposed section 66M provides for an appropriate reduction in the purchase price of land damaged after the contract for its sale is made and before the risk in respect of the damage passes to the purchaser. The proposed section would apply where the land is not substantially damaged or the land is substantially damaged but the purchaser decides not to rescind the contract.
 - (e) Proposed section 66N empowers the Supreme Court to refuse to require the vendor to complete a sale where the land is substantially damaged and the purchaser decides not to rescind the contract. The power is exercisable by the Court if it would be unjust or inequitable to require the vendor to complete the sale.
 - (f) Proposed section 66O prohibits the parties to a contract for the sale of a dwelling-house from excluding the operation of the proposed Act.
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CONVEYANCING (PASSING OF RISK) AMENDMENT BILL 1986

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 6, 1919
4. Existing contracts not affected

SCHEDULE 1—AMENDMENTS TO THE CONVEYANCING ACT 1919

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

MEMORANDUM FOR THE SECRETARY OF DEFENSE
DATE: 1978
SUBJECT: [Illegible]

[The remainder of the memorandum text is illegible due to extreme fading.]

**CONVEYANCING (PASSING OF RISK) AMENDMENT
BILL 1986**

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Conveyancing Act 1919 with respect to the passing of risk between vendor and purchaser under a contract for the sale of land.

Conveyancing (Passing of Risk) Amendment 1986

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 (Passing of Risk) Amendment Act 1986".

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.

Existing contracts not affected

4. The amendments made by this Act to the Conveyancing Act 1919 do not apply to or in respect of a contract for the sale of land which was made
20 before the day appointed and notified under section 2 (2).

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CONVEYANCING ACT 1919

25 (1) Section 52 (**Application of Part IV to land under Real Property Act 1900**)—

Section 52 (2)—

At the end of section 52, insert:

(2) Division 7 shall apply to land under the provisions of the Real Property Act 1900.

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

(2) Part IV, Division 7—

After Division 6, insert:

DIVISION 7—*Passing of risk between vendor and purchaser*

Interpretation

5 66J. (1) In this Division—

“damage” includes destruction;

“land” includes buildings and other fixtures;

“sale” includes exchange.

10 (2) For the purposes of this Division, land damaged after the making of a contract for the sale of the land is substantially damaged if the damage renders the land materially different from that which the purchaser contracted to buy.

Postponement of passing of risk to purchaser

15 66K. (1) The risk in respect of damage to land shall not pass to the purchaser under a contract for the sale of the land until—

(a) the completion of the sale; or

(b) the time stipulated by the parties to the contract, being a time after the purchaser enters into, or is entitled to enter into, possession of the land,

20 whichever first occurs.

(2) The reference in subsection (1) to possession of land includes a reference to—

25 (a) the occupation of the land (whether pursuant to a licence or otherwise) pending completion of the sale of the land; and

(b) the receipt of income from the land.

SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued***Power to rescind contract where land substantially damaged**

5 66L. (1) Where land is substantially damaged after the making of a contract for the sale of the land and before the risk in respect of the damage passes to the purchaser, the purchaser may rescind the contract by notice in writing served on the vendor before the completion of the sale and—

(a) within 28 days after the purchaser first became aware of the damage; or

10 (b) within such longer period as may be agreed to by the vendor and purchaser.

(2) A notice under subsection (1) which is served—

(a) by a solicitor or an agent acting for the purchaser; or

(b) on a solicitor or an agent acting for the vendor,

15 shall be deemed to have been served by the purchaser or on the vendor, as the case may be.

(3) A notice under subsection (1) may be served—

(a) in any manner prescribed by section 170; or

(b) in any manner prescribed by the contract to which it relates for the service of notices under that contract.

20 (4) Where the purchaser rescinds a contract for the sale of land pursuant to the right conferred by subsection (1)—

(a) all money paid by the purchaser under the contract shall be repaid to the purchaser; and

25 (b) the vendor and purchaser shall be relieved from all liability under the contract, except a liability arising out of a breach of any term or condition contained or implied in the contract occurring before the date of rescission.

30 (5) Subsection (4) does not affect any provision in a contract relating to an adjustment between the vendor and purchaser where the purchaser has received the benefit of possession of the land.

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

(6) A purchaser is not entitled to exercise the right conferred by subsection (1) if the damage was caused by a wilful or negligent act or omission on the part of the purchaser.

Abatement of purchase price where land damaged

5 66M. (1) Where land is damaged after the making of a contract for the sale of the land and before the risk in respect of the damage passes to the purchaser, the purchase price shall be reduced on completion of the sale by such amount as is just and equitable in the circumstances.

10 (2) Subsection (1) applies whether or not the land concerned is substantially damaged.

(3) Subsection (1) does not apply where the damage was caused by a wilful or negligent act or omission on the part of the purchaser.

15 (4) If the purchase price is not reduced on completion of the sale of land as required by subsection (1), the amount by which the purchase price should have been reduced may be recovered by the purchaser from the vendor as a debt.

Refusal to enforce specific performance against vendor

20 66N. The Court may, if it thinks that it would be unjust or inequitable to require the vendor to complete the sale of land that is substantially damaged after the making of the contract for the sale of the land and before the risk in respect of the damage passes to the purchaser—

- 25 (a) refuse to enforce against the vendor specific performance of the contract;
- (b) order the repayment of any money paid by the purchaser under the contract; and
- 30 (c) make such other orders as the Court considers appropriate in the circumstances.

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

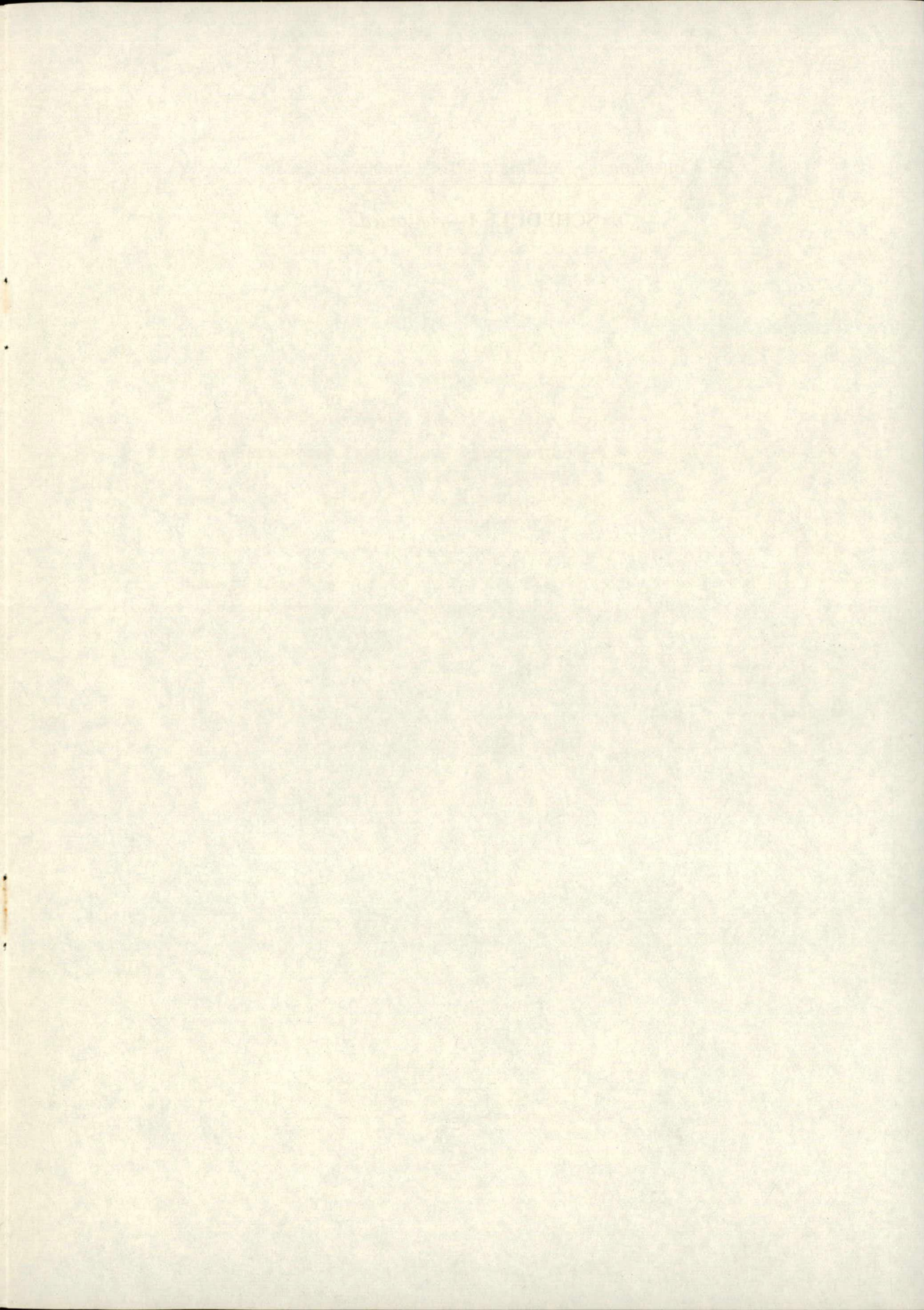
660. (1) In this section—

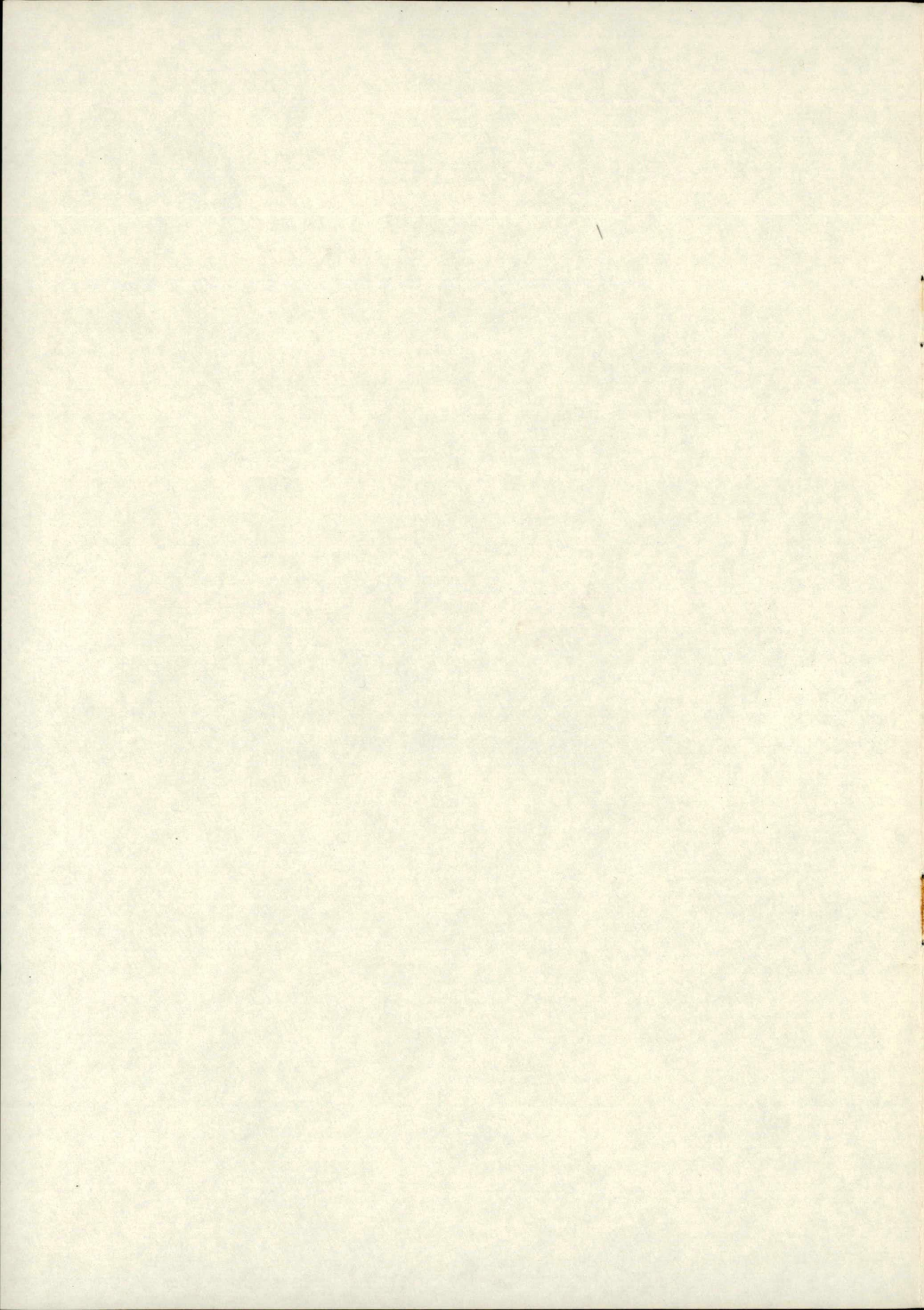
“dwelling-house” means premises (including a lot under the Strata Titles Act 1973) used, or designed for use, principally as a place of residence, and includes—

- (a) outbuildings and other appurtenances to a dwelling-house; and
- (b) a dwelling-house which is in the course of construction.

(2) This Division has effect—

- (a) in the case of the sale of a dwelling-house— notwithstanding any stipulation to the contrary; or
- (b) in any other case—subject to any stipulation to the contrary.





**CONVEYANCING (PASSING OF RISK) AMENDMENT
ACT 1986 No. 6**

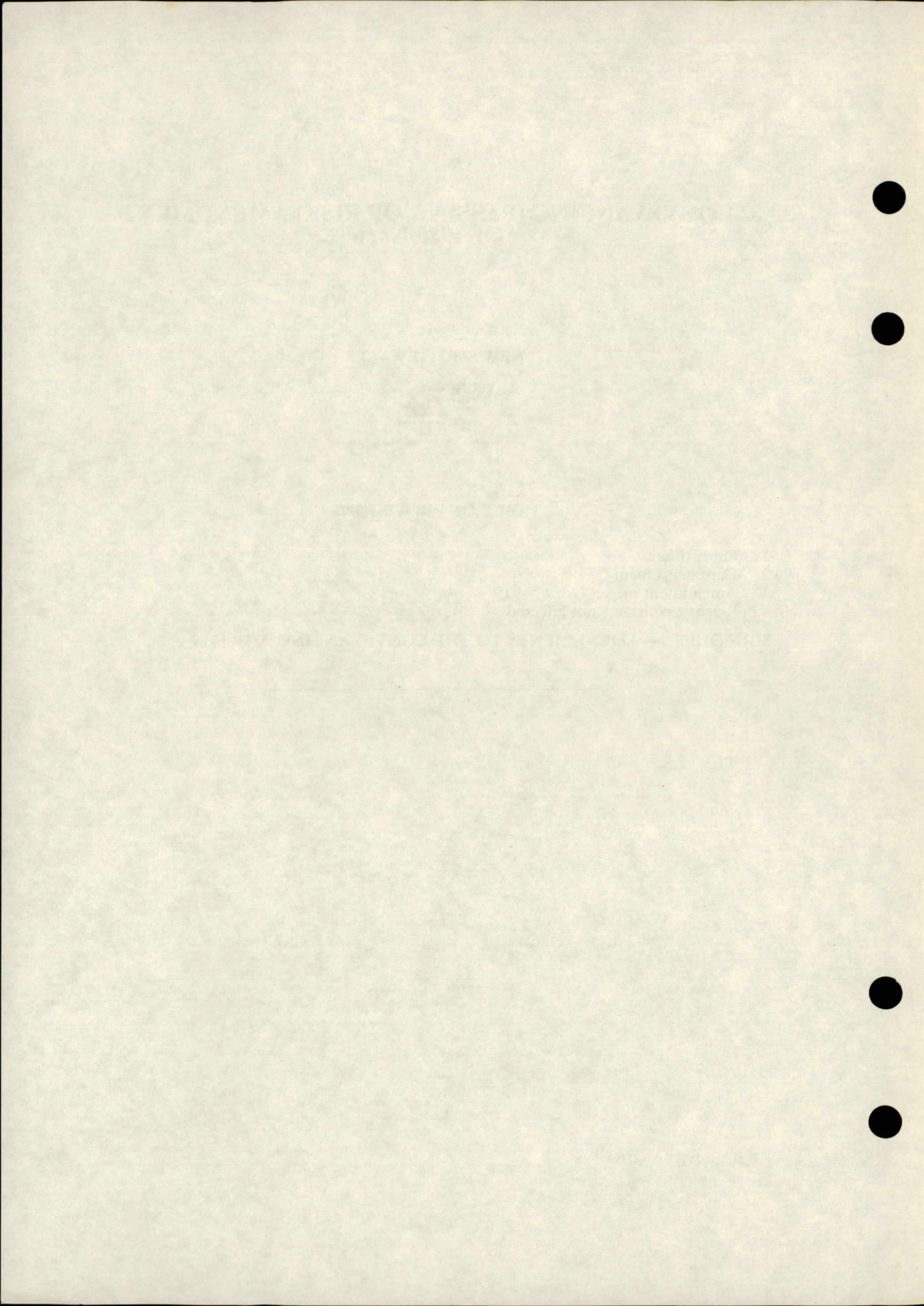
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 6, 1919
4. Existing contracts not affected

SCHEDULE 1—AMENDMENTS TO THE CONVEYANCING ACT 1919



CONVEYANCING (PASSING OF RISK) AMENDMENT ACT 1986
No. 6

NEW SOUTH WALES



Act No. 6, 1986

An Act to amend the Conveyancing Act 1919 with respect to the passing of risk between vendor and purchaser under a contract for the sale of land. [Assented to 24 April 1986.]

Conveyancing (Passing of Risk) Amendment 1986

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 (Passing of Risk) Amendment Act 1986".

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.

Existing contracts not affected

4. The amendments made by this Act to the Conveyancing Act 1919 do not apply to or in respect of a contract for the sale of land which was made before the day appointed and notified under section 2 (2).

SCHEDULE 1

AMENDMENTS TO THE CONVEYANCING ACT 1919 (Sec. 3)

(1) Section 52 (Application of Part IV to land under Real Property Act 1900)—

Section 52 (2)—

At the end of section 52, insert:

(2) Division 7 shall apply to land under the provisions of the Real Property Act 1900.

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

(2) Part IV, Division 7—

After Division 6, insert:

DIVISION 7—*Passing of risk between vendor and purchaser*

Interpretation

66J. (1) In this Division—

“damage” includes destruction;

“land” includes buildings and other fixtures;

“sale” includes exchange.

(2) For the purposes of this Division, land damaged after the making of a contract for the sale of the land is substantially damaged if the damage renders the land materially different from that which the purchaser contracted to buy.

Postponement of passing of risk to purchaser

66K. (1) The risk in respect of damage to land shall not pass to the purchaser under a contract for the sale of the land until—

(a) the completion of the sale; or

(b) the time stipulated by the parties to the contract, being a time after the purchaser enters into, or is entitled to enter into, possession of the land,

whichever first occurs.

(2) The reference in subsection (1) to possession of land includes a reference to—

(a) the occupation of the land (whether pursuant to a licence or otherwise) pending completion of the sale of the land; and

(b) the receipt of income from the land.

SCHEDULE 1—*continued*AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued***Power to rescind contract where land substantially damaged**

66L. (1) Where land is substantially damaged after the making of a contract for the sale of the land and before the risk in respect of the damage passes to the purchaser, the purchaser may rescind the contract by notice in writing served on the vendor before the completion of the sale and—

- (a) within 28 days after the purchaser first became aware of the damage; or
- (b) within such longer period as may be agreed to by the vendor and purchaser.

(2) A notice under subsection (1) which is served—

- (a) by a solicitor or an agent acting for the purchaser; or
- (b) on a solicitor or an agent acting for the vendor,

shall be deemed to have been served by the purchaser or on the vendor, as the case may be.

(3) A notice under subsection (1) may be served—

- (a) in any manner prescribed by section 170; or
- (b) in any manner prescribed by the contract to which it relates for the service of notices under that contract.

(4) Where the purchaser rescinds a contract for the sale of land pursuant to the right conferred by subsection (1)—

- (a) all money paid by the purchaser under the contract shall be repaid to the purchaser; and
- (b) the vendor and purchaser shall be relieved from all liability under the contract, except a liability arising out of a breach of any term or condition contained or implied in the contract occurring before the date of rescission.

(5) Subsection (4) does not affect any provision in a contract relating to an adjustment between the vendor and purchaser where the purchaser has received the benefit of possession of the land.

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

(6) A purchaser is not entitled to exercise the right conferred by subsection (1) if the damage was caused by a wilful or negligent act or omission on the part of the purchaser.

Abatement of purchase price where land damaged

66M. (1) Where land is damaged after the making of a contract for the sale of the land and before the risk in respect of the damage passes to the purchaser, the purchase price shall be reduced on completion of the sale by such amount as is just and equitable in the circumstances.

(2) Subsection (1) applies whether or not the land concerned is substantially damaged.

(3) Subsection (1) does not apply where the damage was caused by a wilful or negligent act or omission on the part of the purchaser.

(4) If the purchase price is not reduced on completion of the sale of land as required by subsection (1), the amount by which the purchase price should have been reduced may be recovered by the purchaser from the vendor as a debt.

Refusal to enforce specific performance against vendor

66N. The Court may, if it thinks that it would be unjust or inequitable to require the vendor to complete the sale of land that is substantially damaged after the making of the contract for the sale of the land and before the risk in respect of the damage passes to the purchaser—

- (a) refuse to enforce against the vendor specific performance of the contract;
- (b) order the repayment of any money paid by the purchaser under the contract; and
- (c) make such other orders as the Court considers appropriate in the circumstances.

Conveyancing (Passing of Risk) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CONVEYANCING ACT 1919—*continued*

Contracting out

660. (1) In this section—

“dwelling-house” means premises (including a lot under the Strata Titles Act 1973) used, or designed for use, principally as a place of residence, and includes—

- (a) outbuildings and other appurtenances to a dwelling-house; and
- (b) a dwelling-house which is in the course of construction.

(2) This Division has effect—

- (a) in the case of the sale of a dwelling-house— notwithstanding any stipulation to the contrary; or
- (b) in any other case—subject to any stipulation to the contrary.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986