

SECOND PRINT

CONVEYANCING (SALE OF LAND) AMENDMENT BILL 1989

NEW SOUTH WALES

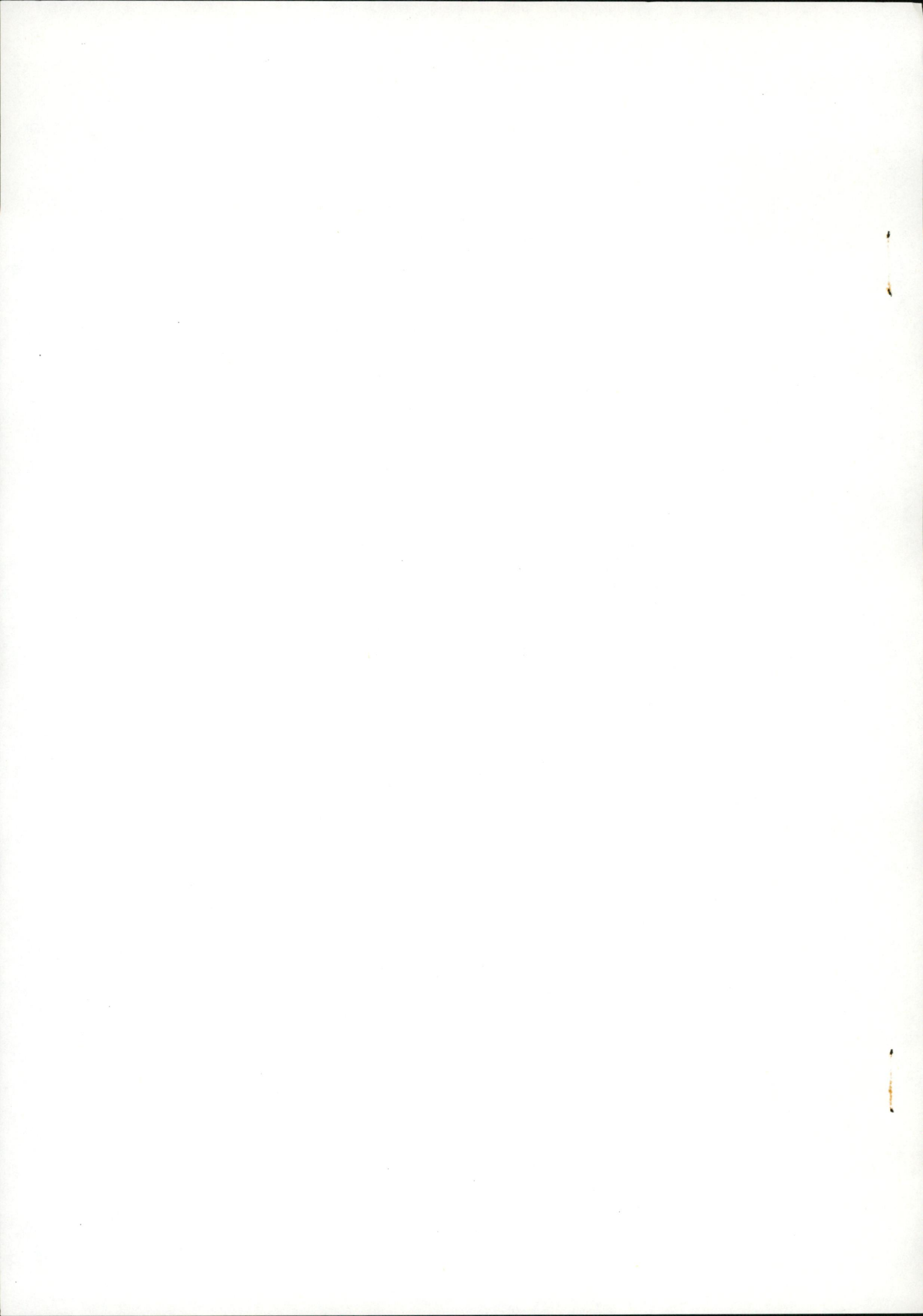


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SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT 1919

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF STAMP DUTIES ACT
1920



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1989*

NEW SOUTH WALES



Act No. , 1989

An Act to amend the Conveyancing Act 1919 in relation to the sale of residential property; to amend the Stamp Duties Act 1920 consequentially; and for other purposes.

See also Auctioneers and Agents (Sale of Land) Amendment Act 1989.

Conveyancing (Sale of Land) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Conveyancing (Sale of Land) Amendment Act 1989.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Conveyancing Act 1919 No. 6

3. The Conveyancing Act 1919 is amended as set out in Schedule 1.

Consequential amendment of Stamp Duties Act 1920 No. 47

4. The Stamp Duties Act 1920 is amended as set out in Schedule 2.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT 1919

(Sec. 3)

(1) Section 6 (**Application of Act to Real Property Act 1900 and other Acts**):

In section 6 (2), after "52A", insert "or 66ZA".

(2) Section 52 (**Application of Part 4 to land under Real Property Act 1900**):

From section 52 (2), omit "Division 7", insert instead "Divisions 7, 8 and 9".

(3) Part 4, Divisions 8 and 9:

Omit Division 8 (sections 66P-66Y) of Part 4, insert instead:

**SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued***

Division 8 - Sale of residential property

Definitions

66P. (1) In this Division:

"agent", in relation to the sale of residential property, includes any agent or representative named in the contract for the sale of the property;

"barrister" means a barrister of a court of any State or Territory;

"business day" means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State;

"purchaser" includes a prospective purchaser;

"residential property" has the meaning given by section 66Q;

"solicitor" means a solicitor of a court of any State or Territory;

"vendor" includes a prospective vendor.

(2) References in this Division to a particular time are to be construed according to Sydney time.

Meaning of residential property

66Q. (1) For the purposes of this Division, residential property is:

- (a) land on which are situated (or in the course of construction) not more than two places of residence, and no other improvements; or
- (b) vacant land on which the construction of a single place of residence alone is not prohibited by law; or
- (c) a lot or lots (including a proposed lot or lots) under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986, comprising not more than one place of residence alone, whether constructed or in the course of construction, and including any

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
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place used or designed for use for a purpose ancillary to the place of residence.

(2) Residential property does not however include:

- (a) land or a lot that is used wholly for non-residential purposes; or
- (b) land that is more than 2.5 hectares in area (or such other area as may be prescribed).

(3) For the purposes of this section, "**place of residence**" means a building or part thereof used, or currently designed for use, as a single dwelling only, and includes outbuildings or other appurtenances incidental to any such use.

Preparation of proposed contract for sale of land

66R. (1) A vendor who, by a written or broadcast advertisement:

- (a) indicates that residential property is for sale or is to be auctioned at any future time; or
- (b) offers to sell residential property; or
- (c) invites an offer to purchase residential property; or
- (d) offers to grant an option to purchase residential property; or
- (e) invites an offer to take an option to purchase residential property,

is guilty of an offence unless the required documents are all available for inspection at the same place by any purchaser.

Maximum penalty: 10 penalty units.

(2) For the purposes of this section, the required documents are:

- (a) a copy of the proposed contract for the sale of the property (excluding particulars of the purchaser and purchase price); and

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
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- (b) the documents required by section 52A to be attached to the contract before signature by the purchaser; and
- (c) in the case of an offer or invitation relating to an option - a copy of the proposed option document (excluding particulars of the purchaser and consideration for the option).

(3) This section applies to sales by way of private treaty, auction or tender (including tender by post).

Cooling off period

66S. (1) Subject to section 66T, there is to be a cooling off period for every contract for the sale of residential property, during which the purchaser may exercise rights under section 66U.

(2) The cooling off period commences when the contract is made.

(3) The cooling off period ends at 5 p.m. on the fifth business day after the day on which the contract was made.

(4) The cooling off period may be extended by a provision in the contract, or by the vendor in writing before the end of the cooling off period.

(5) The cooling off period may be shortened by a provision in the contract, or by a separate written or oral agreement of the parties, but the provision or agreement does not take effect unless and until the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W.

(6) The extension or shortening of the cooling off period may be effected under subsection (4) or (5) before, at or after the time the contract is made.

No cooling off period in certain cases

66T. There is no cooling off period in relation to a contract for the sale of residential property if:

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

- (a) at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W; or
- (b) the property is sold by public auction; or
- (c) the contract is made on the same day as the property was offered for sale by public auction but passed in; or
- (d) the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG.

Cooling off rights

66U. (1) The purchaser under a contract for the sale of residential property may serve a written notice to the effect that the purchaser rescinds the contract.

(2) The notice may only be served during the cooling off period, but is ineffective if served after completion.

(3) The notice of rescission must be signed by:

- (a) the purchaser or the purchaser's solicitor; or
- (b) if there is more than one purchaser, each of the purchasers or their respective solicitors.

(4) The notice of rescission must be served on:

- (a) the vendor or the vendor's solicitor; or
- (b) if there is more than one vendor, any one of the vendors or the solicitor of any of them; or
- (c) the agent of the vendor or vendors.

(5) Service of a notice under this section may be effected in accordance with section 170 or at the address of the vendor shown in the contract or (without affecting the foregoing) by facsimile transmission or in accordance with the service provisions in the contract.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

Consequences of rescission

66V. (1) On service of an effective notice of rescission in accordance with section 66U in relation to a contract for the sale of residential property, the contract is to be taken to be rescinded ab initio, but subject to the rights and obligations conferred by this section.

(2) The purchaser forfeits 0.25 per cent of the purchase price of the property to the vendor.

(3) The amount forfeited may be recovered from any deposit paid under the contract.

(4) If the deposit is insufficient, the balance of any amount forfeited may be recovered from the purchaser as a debt in any court of competent jurisdiction.

(5) The balance of the deposit remaining after deduction of any amount forfeited is payable to the purchaser.

(6) Subject to subsection (7), neither the vendor nor the purchaser is liable to pay any other sum for damages, costs or expenses.

(7) Either party is entitled to make a claim for:

(a) such compensation, adjustment or accounting as is just and equitable between the vendor and purchaser where the purchaser has received the benefit of possession of the property, or

(b) the payment of damages, costs or expenses arising out of a breach of any term, condition or warranty contained or implied in the contract (other than a term, condition or warranty referred to in section 52A),

but not so as to affect rights and obligations arising under this Division.

(8) The vendor may agree to waive any rights regarding forfeiture under this section.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

(9) Stamp duty ceases to be payable on a contract rescinded under this Division, and any duty already paid on it is refundable under the Stamp Duties Act 1920.

(10) In this section, "deposit" includes any amount paid by the purchaser in relation to the contract or on account of the purchase price of residential property.

Certificates

66W. (1) A certificate referred to in section 66S or 66T complies with this section if it:

- (a) is in writing; and
- (b) is signed by a solicitor or barrister, other than:
 - (i) a solicitor acting for the vendor; or
 - (ii) any other solicitor employed in the legal practice of a solicitor acting for the vendor; or
 - (iii) any other solicitor who is a member or employee of a firm of which a solicitor acting for the vendor is a member or employee; and
- (c) indicates the purpose for which the certificate is given; and
- (d) contains a statement to the effect that the solicitor or barrister explained to the purchaser the effect of the contract, the nature of the certificate and the effect of giving the certificate to the vendor.

(2) If the purchaser is a corporation, the reference in subsection (1) (d) to the purchaser is to be read as a reference to an officer of the corporation or a person involved in the management of its affairs.

(3) A document in the form of a certificate that complies with subsection (1) (c) and (d) and that purports to have been signed by a solicitor or barrister is to be regarded, and may be relied on by the vendor, as a valid certificate for all purposes.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

(4) A certificate may, in addition to any other means, be given by facsimile transmission.

Contract to contain statement regarding cooling off period

66X. (1) A statement in the form prescribed by the regulations, relating to the cooling off period, is required to be included in every contract for the sale of residential property.

(2) If a contract does not contain the statement required under this section, the purchaser may serve a notice of rescission under section 66U, except that the notice may be served at any time before completion (whether or not the cooling off period has expired).

(3) On service of the notice, section 66V applies, except that the purchaser is not liable to the forfeiture provided for under that section.

(4) Service of the notice is ineffective if it is served after completion.

(5) This section does not apply where a certificate under section 66W has been given for the purposes of section 66S or 66T.

Operation of Division 8

66Y. (1) This Division extends to residential property under the provisions of the Western Lands Act 1901, the Crown Lands Act 1989 or any other Act, whether or not it deals with the conveyance or transfer of land.

(2) This Division does not apply to a contract made before the commencement of this Division (as inserted by the Conveyancing (Sale of Land) Amendment Act 1989).

(3) This Division, or a prescribed provision of this Division, does not apply to prescribed vendors, purchasers, contracts or land or in prescribed circumstances.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

(4) A provision of a contract for the sale of land or any other agreement or arrangement is void if it would, but for this subsection, have the effect of excluding, modifying or restricting the operation of this Division.

(5) This Division does not affect any right or remedy available otherwise than under this Division.

(6) This Division binds the Crown.

(7) Proceedings for an offence under section 66R may only be brought before a Local Court constituted by a Magistrate sitting alone, and may not be instituted except with the consent in writing of the Minister (which is to be presumed to have been given unless the contrary is proved).

**Division 9 - Options for purchase of residential
property**

Definitions

66Z. (1) In this Division:

"**agent**", in relation to an option to purchase residential property, includes any agent or representative named in the option or in the proposed contract for the sale of the property attached to the option;

"**barrister**" means a barrister of a court of any State or Territory;

"**business day**" means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State;

"**purchaser**" includes a prospective purchaser, and also includes a grantee or prospective grantee of an option;

"**residential property**" has the meaning given by section 66Q;

"**solicitor**" means a solicitor of a court of any State or Territory;

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

"**vendor**" includes a prospective vendor, and also includes a grantor or prospective grantor of an option.

(2) References in this Division to a particular time are to be construed according to Sydney time.

Option to contain certain terms, conditions and warranties

66ZA. (1) A vendor under an option to purchase residential property shall be deemed to have included in the option such terms, conditions and warranties as may be prescribed.

(2) The regulations may make provision for or with respect to the remedies and relief which shall be available to a purchaser under an option to purchase residential property and the penalties which may be incurred by a vendor under such an option for any failure or refusal to comply with any of the provisions of the regulations made for the purposes of this section.

(3) The regulations may adopt, with or without modification, regulations made for the purposes of section 52A.

Cooling off period

66ZB. (1) Subject to section 66ZC, there is to be a cooling off period for every option to purchase residential property, during which the purchaser may exercise rights under section 66ZD.

(2) The cooling off period commences when the option is granted.

(3) The cooling off period ends at 5 p.m. on the fifth business day after the day on which the option was granted.

(4) The cooling off period may be extended by a provision in the option, or by the vendor in writing before the end of the cooling off period.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

(5) The cooling off period may be shortened by a provision in the option, or by a separate written or oral agreement of the parties, but the provision or agreement does not take effect unless and until the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66ZF.

(6) The extension or shortening of the cooling off period may be effected under subsection (4) or (5) before, at or after the time the option is granted.

No cooling off period in certain cases

66ZC. There is no cooling off period in relation to an option to purchase residential property if:

- (a) at or before the time the option is granted, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66ZF; or
- (b) the option is granted on the same day as the property was offered for sale by public auction but passed in.

Cooling off rights

66ZD. (1) The purchaser under an option to purchase residential property may serve a written notice to the effect that the purchaser rescinds the option.

(2) The notice may only be served during the cooling off period.

- (3) The notice of rescission must be signed by:
 - (a) the purchaser or the purchaser's solicitor; or
 - (b) if there is more than one purchaser, each of the purchasers or their respective solicitors.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

- (4) The notice of rescission must be served on:
- (a) the vendor or the vendor's solicitor; or
 - (b) if there is more than one vendor, any one of the vendors or the solicitor of any of them; or
 - (c) the agent of the vendor or vendors.

(5) Service of a notice under this section may be effected in accordance with section 170 or at the address of the vendor shown in the option or in the proposed contract attached to the option or (without affecting the foregoing) by facsimile transmission or in accordance with the service provisions in the option or proposed contract attached to the option.

Consequences of rescission

66ZE. (1) On service of an effective notice of rescission in accordance with section 66ZD in relation to an option to purchase residential property, the option is to be taken to be rescinded ab initio, but subject to the rights and obligations conferred by this section.

(2) The purchaser forfeits 0.25 per cent of the purchase price of the property to the vendor.

(3) The amount forfeited may be recovered from any consideration paid in relation to the option or from any deposit paid in relation to the purchase of the property.

(4) If the consideration or deposit is insufficient, the balance of any amount forfeited may be recovered from the purchaser as a debt in any court of competent jurisdiction.

(5) The balance of the consideration or deposit remaining after deduction of any amount forfeited is payable to the purchaser.

(6) Subject to subsection (7), neither the vendor nor the purchaser is liable to pay any other sum for damages, costs or expenses.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

- (7) Either party is entitled to make a claim for:
- (a) such compensation, adjustment or accounting as is just and equitable between the vendor and purchaser where the purchaser has received the benefit of possession of the property; or
 - (b) the payment of damages, costs or expenses arising out of a breach of any term, condition or warranty contained or implied in the option,
- but not so as to affect rights and obligations arising under this Division.

(8) The vendor may agree to waive any rights regarding forfeiture under this section.

(9) Stamp duty ceases to be payable on an option rescinded under this Division, and the provisions of the Stamp Duties Act 1920 relating to the refund of any stamp duty paid on a rescinded agreement for the sale of property apply in relation to any stamp duty already paid on the rescinded option.

(10) In this section, "deposit" includes any amount paid by the purchaser in relation to the proposed contract attached to the option or on account of the purchase price of residential property.

Certificates

66ZF. (1) A certificate referred to in section 66ZB or 66ZC complies with this section if it:

- (a) is in writing; and
- (b) is signed by a solicitor or barrister, other than:
 - (i) a solicitor acting for the vendor; or
 - (ii) any other solicitor employed in the legal practice of a solicitor acting for the vendor; or
 - (iii) any other solicitor who is a member or employee of a firm of which a solicitor acting

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
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for the vendor is a member or employee;
and

- (c) indicates the purpose for which the certificate is given; and
- (d) contains a statement to the effect that the solicitor or barrister explained to the purchaser the effect of the option and the proposed contract attached to the option, the nature of the certificate and the effect of giving the certificate to the vendor.

(2) If the purchaser is a corporation, the reference in subsection (1) (d) to the purchaser is to be read as a reference to an officer of the corporation or a person involved in the management of its affairs.

(3) A document in the form of a certificate that complies with subsection (1) (c) and (d) and that purports to have been signed by a solicitor or barrister is to be regarded, and may be relied on by the vendor, as a valid certificate for all purposes.

(4) A certificate may, in addition to any other means, be given by facsimile transmission.

Option void in certain circumstances

66ZG. (1) An option granted for the purchase of residential property is void if:

- (a) it is not signed in duplicate by both parties; or
- (b) it is exercisable within 42 days after it is granted or, if a different period is prescribed, within that period.

(2) If an option is void under this section, section 66ZE applies as if an effective notice of rescission of the option had been served under this Division, except that:

- (a) the purchaser is not liable to the forfeiture provided for under that section; and
- (b) that section has effect as if it provided that the whole of the consideration paid in relation to the

**SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued***

option and the whole of any deposit paid in relation to the purchase of the property are payable to the purchaser.

Option to contain statement regarding cooling off period

66ZH. (1) A statement in the form prescribed by the regulations, relating to the cooling off period, is required to be included in every option to purchase residential property.

(2) If an option does not contain the statement required under this section, either party may serve a written notice to the effect that the party rescinds the option or (if the option has been exercised) the contract resulting from the exercise of the option.

(3) On service of an effective notice of rescission under this section, section 66ZE or (if relevant) section 66V applies, except that:

- (a) the purchaser is not liable to the forfeiture provided for under those sections; and
- (b) those sections have effect as if they both provided that the whole of the consideration paid in relation to the option and the whole of any deposit paid in relation to the purchase of the property are payable to the purchaser.

(4) The notice may be served at any time during the period commencing when the option was granted and ending when the option is exercised or ceases to be exercisable or (if relevant) during the period commencing when the option is exercised and ending at 5 p.m. on the fifth business day after the day when the option is exercised.

(5) The notice is ineffective if served after completion of the resulting contract.

SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
1919 - *continued*

(6) This section does not apply where a certificate under section 66ZF has been given for the purposes of section 66ZB or 66ZC.

Annexure of proposed contract for sale of land

66ZI. (1) If an option to purchase residential property is granted and the required documents are not attached to the option document at the time it is granted, either party may serve a written notice to the effect that the party rescinds the option or (if the option has been exercised) the contract resulting from the exercise of the option.

(2) For the purposes of this section, the required documents are:

- (a) a copy of the proposed contract for the sale of the property (excluding particulars of the purchaser, but including particulars of the purchase price); and
- (b) the documents required by section 52A to be attached to the contract before signature by the purchaser.

(3) On service of an effective notice of rescission under this section, section 66ZE or (if relevant) section 66V applies, except that:

- (a) the purchaser is not liable to the forfeiture provided for under those sections; and
- (b) those sections have effect as if they both provided that the whole of the consideration paid in relation to the option and the whole of any deposit paid in relation to the purchase of the property are payable to the purchaser.

(4) The notice may be served at any time during the period commencing when the option was granted and ending when the option is exercised or ceases to be exercisable or (if relevant) during the period commencing when the option is exercised and ending at 5 p.m. on the fifth business day after the day when the option is exercised.

**SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
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(5) The notice is ineffective if served after completion of the resulting contract.

Provisions relating to notices under sections 66ZH and 66ZI

66ZJ. (1) This section applies to a notice of rescission under section 66ZH or 66ZI.

(2) The notice of rescission, if given by the purchaser, must be signed by:

- (a) the purchaser or the purchaser's solicitor; or
- (b) if there is more than one purchaser, each of the purchasers or their respective solicitors.

(3) The notice of rescission, if given by the vendor, must be signed by:

- (a) the vendor or the vendor's solicitor; or
- (b) if there is more than one vendor, each of the vendors or their respective solicitors.

(4) The notice of rescission, if given by the purchaser, must be served on:

- (a) the vendor or the vendor's solicitor; or
- (b) if there is more than one vendor, any one of the vendors or the solicitor of any of them; or
- (c) the agent of the vendor or vendors.

(5) The notice of rescission, if given by the vendor, must be served on:

- (a) the purchaser or the purchaser's solicitor; or
- (b) if there is more than one purchaser, any one of the purchasers or the solicitor of any of them.

(6) Service of the notice of rescission may be effected in accordance with section 170 or at the address of the party to be served shown in the option or in the proposed contract attached to the option or (without affecting the foregoing) by facsimile transmission or in accordance with

**SCHEDULE 1 - AMENDMENT OF CONVEYANCING ACT
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the service provisions in the option or proposed contract attached to the option.

Operation of Division 9

66ZK. (1) This Division extends to residential property under the provisions of the Western Lands Act 1901, the Crown Lands Act 1989 or any other Act, whether or not it deals with the conveyance or transfer of land.

(2) This Division does not apply to an option granted before the commencement of this Division (as inserted by the Conveyancing (Sale of Land) Amendment Act 1989).

(3) This Division, or a prescribed provision of this Division, does not apply to prescribed vendors, purchasers, options or land or in prescribed circumstances.

(4) Except as provided by regulations made for the purposes of section 66ZA, a provision of an option or any other agreement or arrangement is void if it would, but for this subsection, have the effect of excluding, modifying or restricting the operation of this Division.

(5) This Division does not affect any right or remedy available otherwise than under this Division.

(6) This Division binds the Crown.

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF STAMP
DUTIES ACT 1920**

(Sec. 4)

Second Schedule:

Omit paragraph (33) from the General Exemptions from Stamp Duty under Part 3.
