



New South Wales

Conveyancing (Sale of Land) Amendment (Vendor Warranty) Regulation 1998

under the
Conveyancing Act 1919

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Conveyancing Act 1919*.

RICHARD AMERY, M.P.,
Minister for Land and Water Conservation

Explanatory note

Section 52A of the *Conveyancing Act 1919* provides (among other things) that a vendor under a contract for the sale of land is taken to have included in the contract "such terms, conditions and warranties as may be prescribed", Section 66ZA of that Act contains a similar provision concerning options to purchase residential land. The warranties are given as at the date of the contract or option.

If a warranty is breached, clause 19 of the *Conveyancing (Sale of Land) Regulation 1995* enables the purchaser to rescind the contract or option in certain circumstances. Schedule 3 to that Regulation currently prescribes the relevant warranties.

The object of this Regulation is to add a further warranty to those already prescribed. The new warranty is concerned with structures on the land. A purchaser may test the warranty by applying for a building certificate from the local council of the area in which the land concerned is located.

1998 No 691

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Explanatory note

The additional warranty is prescribed in view of the decision of the New South Wales Court of Appeal in the case of *Carpenter & Anor v McGrath & Anor* (40 NSWLR 39–76). That case decided, among other things, that an unauthorised structure on land does not constitute a latent defect in title. The case overruled an earlier line of decisions in New South Wales in this respect.

This Regulation also amends clause 19 of the *Conveyancing (Sale of Land) Regulation 1995* so as to prevent a purchaser from rescinding a contract or option on the grounds of breach of the new warranty if a building certificate has issued, since the date of the contract or option, in relation to the building (or part of the building) to which the warranty relates. It also inserts a definition of *budding certificate* in clause 3 of that Regulation.

This Regulation is made under the *Conveyancing Act 1919*, and, in particular, under sections 52A, 66ZA and 202 (the general regulation-making power).

Conveyancing (Sale of Land) Amendment (Vendor Warranty) Regulation 1998

1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Amendment (Vendor Warranty) Regulation 1998*.

2 Commencement

This Regulation commences on 1 January 1999

3 Amendment of Conveyancing (Sale of Land) Regulation 1995

The *Conveyancing (Sale of Land) Regulation 1995* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

building certificate means a certificate issued in accordance with sections 149A–149D of the *Environmental Planning and Assessment Act 1979*.

Note. Building certificates issued under the *Local Government Act 1919* (“section 317A certificates” and “section 317AE certificates”) that were in force immediately before 1 July 1993, and building certificates issued before 1 July 1998 under the *Local Government Act 1993* (“section 172 certificates”), are taken to be building certificates issued in accordance with sections 149A–149D of the *Environmental Planning and Assessment Act 1979*. (See clause 20 of Schedule 7 to the *Local Government Act 1993* and clause 59 (2) (a) of the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.)

[2] Clause 19 Circumstances under which purchaser may rescind contract or option

Insert after clause 19 (3):

- (4) Further, a purchaser may not rescind:
 - (a) a contract for the sale of land for a breach of so much of the warranty prescribed under section 52A (2) (b) of the Act as is set out in item I (d) of Part 1 of Schedule 3, or
 - (b) an option to purchase residential land for a breach of so much of the warranty prescribed under section 66ZA (1) of the Act as is set out in item 1 (d) of Part 2 of Schedule 3,

if a building certificate in respect of the building (or part of the building) to which the warranty relates has issued since the date of the contract or option concerned.

[3] Schedule 2 Prescribed terms

Omit “, or” from paragraph (b) of Schedule 2. Insert instead “, ”.

[4] Schedule 2

Omit paragraph (c).

[5] Schedule 2

Omit “or non-compliance” from the ranged-out words at the end of the Schedule.

[6] Schedule 3 Prescribed warranties

Omit item 1 from Part 1. Insert instead:

1. The vendor warrants that, as at the date of the contract and except as disclosed in the contract:
 - (a) the land is not subject to any adverse affectation, and
 - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
 - (c) the section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 (item 3 excepted) to the *Environmental Planning and Assessment Regulation 1994*, and
 - (d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose.

[7] Schedule 3, Part 1, item 2

Omit "published." from paragraph (c) (iv). Insert instead:

published. and

(d) ***upgrading or demolition order*** means any of the following:

- (i) order No 2 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, being an order made in the circumstances referred to in paragraph (a) relating to that order.
- (ii) order No 12, 13 or 14 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*.
- (iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (d) relating to that order.
- (iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (c) relating to that order.

[8] Schedule 3, Part 2

Omit item 1. Insert instead:

1. The vendor warrants that, as at the date of the option and except as disclosed in the option:
 - (a) the land is not subject to any adverse affectation, and
 - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
 - (c) the section 149 certificate attached to the option specifies the true status of the land the subject of the option in relation to the matters set out in Schedule 4 (item 3 excepted) to the *Environmental Planning and Assessment Regulation 1994*, and

(d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose.

[9] Schedule 3, Part 2, item 2

Omit "published." from paragraph (c) (iv). Insert instead:

published, and

(d) ***upgrading or demolition order*** means any of the following:

- (i) order No 2 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, being an order made in the circumstances referred to in paragraph (a) relating to that order.
- (ii) order No 12, 13 or 14 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*.
- (iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (d) relating to that order.
- (iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (c) relating to that order.