



Conveyancing (Sale of Land) Amendment (Occupation Certificate) Regulation 2003

under the

Conveyancing Act 1919

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

ANTHONY BERNARD KELLY, M.L.C.,

Minister Assisting the Minister for Natural Resources (Lands)

Explanatory note

The *Building Legislation Amendment (Quality of Construction) Act 2002* includes an amendment to the *Conveyancing (Sale of Land) Regulation 2000* so as to imply into contracts for the sale of land certain terms regarding the provision of an occupation certificate.

The object of this Regulation is to amend the *Conveyancing (Sale of Land) Regulation 2000* so that the terms so implied provide that the vendor is required to serve an occupation certificate and that the purchaser is not required to complete without such service, that an occupation certificate can be served in respect of part of a building in the case of a strata unit and that a copy of the certificate can be served instead of the original.

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

2003 No 382

Clause 1 Conveyancing (Sale of Land) Amendment (Occupation Certificate)
Regulation 2003

Conveyancing (Sale of Land) Amendment (Occupation Certificate) Regulation 2003

under the

Conveyancing Act 1919

1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Amendment (Occupation Certificate) Regulation 2003*.

2 Commencement

This Regulation commences immediately after the commencement of Schedule 3 to the *Building Legislation Amendment (Quality of Construction) Act 2002*.

3 Amendment of Conveyancing (Sale of Land) Regulation 2000

The *Conveyancing (Sale of Land) Regulation 2000* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 6

Omit the clause. Insert instead:

6 Implied term—all contracts

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 1 of Schedule 2 is prescribed for a contract for the sale of land.

6A Implied term—strata units bought “off the plan”

- (1) For the purposes of section 52A (2) (b) of the Act, the term set out in clause 2 of Schedule 2 is prescribed for a contract for the sale of land if:
 - (a) the contract is a contract for the sale of a lot in a strata plan or a proposed strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and
 - (b) the contract is entered into before the date of registration of the strata plan, or within 12 months after that date, and
 - (c) an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* is required under section 109M of that Act before occupation or use of the building, or part of the building, of which the lot and access to the lot form part, may commence, and
 - (d) the contract does not expressly provide that the vendor and the purchaser agree that:
 - (i) an occupation certificate in relation to the building, or part of the building, of which the lot and access to the lot form part, will not be issued before completion, and
 - (ii) occupation or use of the lot will not commence before the occupation certificate is issued.

Note. Under section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

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Schedule 1 Amendments

- (2) For the purposes of this clause, the part of a building comprising access to a lot is any part of the building reasonably necessary for access to the lot.

6B Implied term—“land and house” packages

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 3 of Schedule 2 is prescribed for a contract for the sale of land if:

- (a) the contract is a contract for the sale of a lot in a deposited plan, or in a proposed deposited plan, and
- (b) the contract provides for:
 - (i) the erection by the vendor of a dwelling-house on the lot, or
 - (ii) for the sale of a dwelling-house already erected on the lot, and
- (c) an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* is required under section 109M of that Act before occupation or use of the dwelling-house may commence.

Note. Under section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

[2] Schedule 2

Omit Schedule 2. Insert instead:

Schedule 2 Prescribed terms

(Clauses 6, 6A and 6B)

1 Objections and requisitions

Nothing in this contract or any other agreement prevents the purchaser, expressly or by implication, from making any objection, requisition or claim that the purchaser would otherwise be entitled to make in respect of:

- (a) any encroachment onto any adjoining land by any building or structure on the land, other than a dividing fence as defined in the *Dividing Fences Act 1991*, or

- (b) any encroachment onto the land by any building or structure on any adjoining land, other than a dividing fence as defined in the *Dividing Fences Act 1991*,

unless the encroachment is disclosed and clearly described in this contract and the contract contains an express term precluding the purchaser from making such an objection, requisition or claim.

2 Strata units bought “off the plan”

- (1) The vendor must serve at least 14 days before completion the original or a copy of an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* (being an interim occupation certificate or a final occupation certificate) in relation to the building, or part of the building, of which the lot and access to the lot form part.
- (2) For the purposes of this clause, the part of a building comprising access to a lot is any part of the building reasonably necessary for access to the lot.
- (3) The purchaser does not have to complete earlier than 14 days after service of the original or copy certificate.

3 “Land and house” packages

- (1) The vendor must serve at least 14 days before completion the original or a copy of an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* (being an interim occupation certificate or a final occupation certificate) in relation to the dwelling-house.
- (2) The purchaser does not have to complete earlier than 14 days after service of the original or copy certificate.