

Authorised Version No. 143

Sale of Land Act 1962

No. 6975 of 1962

Authorised Version incorporating amendments as at
1 July 2011

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Authorised Version No. 143

Sale of Land Act 1962

No. 6975 of 1962

Authorised Version incorporating amendments as at
1 July 2011

An Act to make Provision with respect to the Sale of Land, to amend the **Local Government Act 1958**, the **Transfer of Land Act 1958**, the **Town and Country Planning Act 1961**, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement

- (1) This Act may be cited as the **Sale of Land Act 1962**.
- (2) This Act shall come into force on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette and any such proclamation may fix different days for the coming into operation of different sections of the Act.

* * * * *

**S. 1(3)
amended by
Nos 9423
s. 2(1), 9858
s. 4(1),
repealed by
No. 48/1991
s. 56(1).**

2 Definitions

- (1) In this Act unless inconsistent with the context or subject-matter—

arbitrator means a person appointed by the Governor in Council to be an arbitrator for the purposes of this Act;

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth;

child of a person includes a child of the person's spouse or domestic partner;

conveyancer means a licensee under the **Conveyancers Act 2006**;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

land includes land of any tenure, and buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; and also an undivided share in land and any estate or interest in land;

S. 2(1) def. of *authorised deposit-taking institution* inserted by No. 11/2001 s. 3(Sch. item 67.1(a)).

S. 2(1) def. of *child* inserted by No. 27/2001 s. 3(Sch. 1 item 12.1).

S. 2(1) def. of *conveyancer* inserted by No. 75/2006 s. 192(Sch. 2 item 5.1).

S. 2(1) def. of *domestic partner* inserted by No. 27/2001 s. 3(Sch. 1 item 12.1), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 54.1).

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 2(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 94.1).

mortgage includes any charge or lien on any land for securing money or money's worth but does not include any such charge or lien which attaches to any land by the operation of any enactment to secure an amount due for rates taxes or charges payable to any statutory body or any such charge or lien in favour of a service company to secure the performance by the proprietor of a stratum estate of his obligations to the service company under a service agreement or any floating charge on the whole or any part of the undertaking or property of a corporation and the verb ***to mortgage*** shall have a corresponding interpretation; ***mortgage money*** means money or money's worth secured by a mortgage; ***mortgagor*** includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property; ***mortgagee*** includes any person at any time deriving title under the original mortgagee;

S. 2(1) def. of *mortgage* amended by Nos 7052 s. 2(a), 7272 s. 2(1)(a).

Part means Part of this Act;

prescribed means prescribed by or under this Act;

purchaser includes any person from time to time deriving an interest under a contract of sale from the original purchaser under the contract;

regulations means regulations under this Act;

Registrar means the Registrar of Titles;

s. 2

S. 2(1) def. of
sale
amended by
No. 7272
s. 2(1)(b).

rules means rules under this Act;

sale includes an agreement for sale an offer to sell
and the giving of an option to purchase; and
sell and *sells* shall have corresponding
interpretations;

Schedule means Schedule to this Act;

S. 2(1) def. of
society
inserted by
No. 35/1996
s. 453(Sch. 1
item 73.1),
repealed by
No. 11/2001
s. 3(Sch.
item 67.1(b)).

* * * * *

S. 2(1) def. of
spouse
inserted by
No. 27/2001
s. 3(Sch. 1
item 12.1).

spouse of a person means a person to whom the
person is married;

S. 2(1) def. of
terms contract
substituted by
No. 6/2008
s. 29(1).

terms contract has the meaning set out in
section 29A;

vendor includes any person to whom the rights of
a vendor under a contract have been
assigned.

S. 2(1A)
inserted by
No. 27/2001
s. 3(Sch. 1
item 12.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 54.2).

(1A) For the purposes of the definition of *domestic partner* in subsection (1)—

- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the

matters referred to in section 35(2) of the
Relationships Act 2008 as may be relevant
in a particular case.

- (2) This Act does not bind the Crown but applies to any statutory body or authority (whether or not it represents the Crown) in respect of any subdivision of land.

S. 2(2)
amended by
No. 7898
s. 3(a),
substituted by
No. 53/1988
s. 45(Sch. 2
item 39) (as
amended by
No. 47/1989
s. 19(y)).

* * * * *

S. 2(3)
repealed by
No. 6/2008
s. 29(2).

* * * * *

S. 2(4)
inserted by
No. 7052
s. 2(b),
repealed by
No. 6/2008
s. 29(2).

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Part I—Sale of Land

s. 3

PART I—SALE OF LAND

**Division 1—General provisions relating to the sale and
subdivision of land**

S. 3 amended by Nos 7052 s. 2(c), 7272 s. 2(2), 17/1999 s. 45, repealed by No. 6/2008 s. 30.	*	*	*	*	*
S. 4 amended by Nos 7052 s. 2(d), 9554 s. 2(2)(Sch. 2 item 288), 85/1998 s. 24(Sch. item 53), repealed by No. 6/2008 s. 30.	*	*	*	*	*
S. 5 amended by No. 53/1988 s. 45(Sch. 3 item 67) (as amended by No. 47/1989 s. 23(2)), repealed by No. 6/2008 s. 30.	*	*	*	*	*

* * * * *

S. 6
amended by
Nos 7052
s. 2(e), 9554
s. 2(2)(Sch. 2
item 288),
42/1989
s. 4(a),
18/2005
s. 18(Sch. 1
item 94.2),
75/2006
s. 192(Sch. 2
item 5.2),
repealed by
No. 6/2008
s. 30.

* * * * *

S. 7
amended by
Nos 7052
s. 2(f), 7272
s. 3, 9554
s. 2(2)(Sch. 2
item 288),
repealed by
No. 6/2008
s. 30.

8 Apportionment of mortgage moneys where land subdivided

- (1) Where any land which is subject to a mortgage is or has been subdivided into separate lots or parcels the mortgagor may require the mortgagee to apportion the mortgage moneys to the respective lots or parcels of land which are subject to the mortgage.
- (2) If the mortgagee fails to apportion the mortgage moneys to the respective lots or parcels or if the mortgagor is dissatisfied with the proposed apportionment the mortgagor may apply to an arbitrator for a determination as to the amount to be apportioned to each such lot or parcel.
- (3) Where the mortgage moneys have been apportioned to the respective lots or parcels pursuant to this section the mortgagee shall on tender of—

S. 8(1)
amended by
No. 53/1988
s. 45(Sch. 2
item 40).

S. 8(2)
amended by
No. 53/1988
s. 45(Sch. 2
items 40, 41).

S. 8(3)
amended by
No. 53/1988
s. 45(Sch. 2
item 40).

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S. 8(3)(a)
amended by
No. 53/1988
s. 45(Sch. 2
item 41).

(a) the amount apportioned to any particular lot or parcel; or

S. 8(3)(b)
amended by
No. 53/1988
s. 45(Sch. 2
item 41).

(b) a registrable instrument of mortgage to secure payment of all moneys apportioned to that lot or parcel—

execute and deliver to the mortgagor a discharge of the first-mentioned mortgage in so far as it relates to that lot or parcel.

- (4) A mortgage tendered under this section shall contain all such powers in favour of the mortgagee and all such covenants on the part of the mortgagor as are usual in mortgages and shall fully accord with and provide for the observance of all obligations of the mortgagor pursuant to the mortgage to be discharged and shall be prepared and registered at the cost of the mortgagor.
- (5) Any question as to the sufficiency of any instrument of mortgage tendered pursuant to this section shall in the absence of agreement between the parties be determined by an arbitrator.

S. 8A
inserted by
No. 7898 s. 2,
substituted by
No. 53/1988
s. 45(Sch. 2
item 42) (as
amended by
No. 47/1989
s. 18(1)(m)
(i)–(vii)),
amended by
No. 48/1991
s. 53(1).

8A Land which can be disposed of without being subdivided

- (1) The following land can be dealt with without being subdivided—
- (a) any land under the operation of the **Transfer of Land Act 1958** which is—

-
- (i) a lot on a plan of subdivision certified or registered under the **Subdivision Act 1988** and which is not the subject of a later registered plan; or
- (ii) an allotment on the latest Crown plan for disposal in fee simple of Crown land which is not the subject of a later registered plan; or
- (iii) an allotment on a plan of subdivision approved by the Registrar under section 97 of the **Transfer of Land Act 1958** or on any map or plan deposited or lodged under section 97 of the **Transfer of Land Act 1954** or a corresponding previous or subsequent enactment, which is not the subject of a later registered plan; or
- (iv) a lot on a registered plan of strata subdivision, subject to any restriction on the plan, which is not the subject of a later registered plan; or
- (v) a lot on a registered cluster plan, subject to any restriction on the plan, which is not the subject of a later registered plan; or
- (vi) a parcel of land for which a declaration has been given under section 569D(3A) of the **Local Government Act 1958** if the registration of any instrument or dealing to which the declaration relates occurs within 5 years of the commencement of section 44 of the **Subdivision Act 1988**; or
- S. 8A(1)(a)(i) amended by No. 48/1991 s. 53(2)(a).
- S. 8A(1)(a)(ii) amended by No. 48/1991 s. 53(2)(b).
- S. 8A(1)(a)(iii) amended by No. 48/1991 s. 53(2)(c).
- S. 8A(1)(a)(iv) substituted by No. 48/1991 s. 53(2)(d).
- S. 8A(1)(a)(v) substituted by No. 48/1991 s. 53(2)(d).

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s. 8A

S. 8A(1)(a)(vii)
amended by
No. 48/1991
ss 53(2)(e), 57.

(vii) the whole of the land in a folio of the Register under the **Transfer of Land Act 1958** which is not the subject of a later registered plan; or

S. 8A(1)(a)(viii)
substituted by
No. 48/1991
s. 53(2)(f).

(viii) a separate parcel of land or a separate part of a parcel of land if the parcel or part existed and could be sold separately prior to the commencement of section 44 of the **Subdivision Act 1988** (whether the land is disposed of before or after that commencement); or

S. 8A(1)(a)(ix)
repealed by
No. 48/1991
s. 53(2)(g).

* * * * *

(b) any land not under the **Transfer of Land Act 1958** which is—

S. 8A(1)(b)(i)
substituted by
No. 48/1991
s. 53(3)(a).

(i) an allotment on the latest Crown plan for disposal in fee simple of Crown land which is not the subject of a later plan of subdivision sealed under section 569B of the **Local Government Act 1958**; or

S. 8A(1)(b)(ii)
amended by
No. 48/1991
s. 53(3)(b).

(ii) a parcel of land or a separate part of a parcel of land granted by a conveyance dated more than 15 years before the commencement of section 44 of the **Subdivision Act 1988**; or

S. 8A(1)(b)(iia)
inserted by
No. 48/1991
s. 53(3)(c).

(iia) a separate parcel of land or a separate part of a parcel of land granted by a conveyance dated 15 or less than 15 years before the commencement of section 44 of the **Subdivision Act 1988** and which lawfully subdivided the land; or

-
- (iii) a parcel of land on a plan of subdivision sealed under section 569B of the **Local Government Act 1958** before 1 March 1963; or
- (iiia) a parcel of land on a plan of subdivision containing not more than 2 allotments sealed under section 569B of the **Local Government Act 1958** on or after 1 March 1963; or
- (iv) a separate parcel of land or a separate part of a parcel of land if the parcel or part existed and could be sold separately prior to the commencement of section 44 of the **Subdivision Act 1988** (whether the land is disposed of before or after that commencement); or
- (c) any land (whether or not under the operation of the **Transfer of Land Act 1958**) which is a part of any land referred to in a subparagraph of paragraph (a) or (b), if the remainder of that land—
- (i) was disposed of under section 569(2A) of the **Local Government Act 1958**, to the Crown or a public statutory body; or
- (ii) was compulsorily acquired by an acquiring authority under the **Land Acquisition and Compensation Act 1986** or any corresponding previous enactment; or
- (iii) was disposed of to an adjoining owner under section 569D(3A) of the **Local Government Act 1958**; or
- S. 8A(1)(b)(iv) substituted by No. 48/1991 s. 53(3)(d).
- S. 8A(1)(c)(i) amended by No. 48/1991 s. 53(4)(a).
- S. 8A(1)(c)(iii) amended by No. 48/1991 s. 53(4)(a)(b).

s. 8A

S. 8A(1)(c)(iv)
inserted by
No. 48/1991
s. 53(4)(b).

(iv) was purchased by a person or transferred to a municipality under section 527 of the **Local Government Act 1958** or any corresponding previous enactment; or

S. 8A(1)(c)(iva)
inserted by
No. 48/1991
s. 53(4)(b).

(iva) was proclaimed as a public highway before the commencement of the **Subdivision Act 1988**; or

S. 8A(1)(c)(v)
inserted by
No. 48/1991
s. 53(5).

(v) is transferred or disposed of under section 207 of the **Local Government Act 1989** and a plan of subdivision is not required under that section.

S. 8A(2)
inserted by
No. 48/1991
s. 53(6).

(2) Expressions used in this section and defined in the **Subdivision Act 1988** have the same meanings in this section as they have in that Act.

S. 8A(3)
inserted by
No. 48/1991
s. 53(6).

(3) For the purposes of subsection (1)(a)(viii) and (b)(iv), land must be taken to be a separate parcel or a separate part of a parcel of land which existed and could be sold separately prior to the commencement of section 44 of the **Subdivision Act 1988** only if the parcel or part existed prior to that commencement and—

(a) the land—

(i) is under the operation of the **Transfer of Land Act 1958**; and

(ii) does not fall under subsection (1)(a)(i) to (vii); and

(iii) is not part of a plan of consolidation; and

(iv) either—

(A) is not part of an allotment on a plan sealed by a Council or confirmed under the **Local Government Act 1958** or of a Crown grant issued on or after

1 August 1969 and showing the allotment in two or more pieces;
or

(B) is part of an allotment on a plan or of a Crown grant mentioned in sub-subparagraph (A) but is dealt with by a person who is the registered proprietor of that and no other part of the land in the allotment or grant; or

(C) is part of the land in a folio of the register, but that part does not touch on any other land in the folio and is not part of an allotment on a plan or of a Crown grant mentioned in sub-subparagraph (A); or

(b) the land—

(i) is not under the operation of the **Transfer of Land Act 1958**; and

(ii) does not fall under subsection (1)(b)(i) to (iiia); and

(iii) either—

(A) is not part of an allotment on a plan sealed by a Council or confirmed under the **Local Government Act 1958** on or after 1 August 1969 showing that allotment in two or more pieces;
or

(B) is part of an allotment mentioned in sub-subparagraph (A) but is dealt with by a person who is the owner of an estate in fee simple in that part and no other part; or

s. 9AA

(C) is part of a parcel of land granted by a conveyance which lawfully brought about a subdivision, if that part does not touch on any other part of the parcel and is not part of an allotment mentioned in sub-subparagraph (A); or

(c) the land is part of a plan of consolidation approved by the Registrar and is dealt with by a person who is the registered proprietor of that part and no other part of the land in the plan.

S. 9
amended by
Nos 7052
s. 2(g)(i)(ii),
8661
s. 40(a)(b),
9128
s. 8(2)(a)–(c),
10216
s. 4(a)–(c),
repealed by
No. 53/1988
s. 45(Sch. 2
item 43).

* * * * *

S. 9AA
inserted by
No. 10216 s. 5.

9AA Sale of land prior to approval of plan

S. 9AA(1)
amended by
Nos 53/1988
s. 45(Sch. 2
items 44, 46),
48/1991
s. 55(1)(a)(b).

(1) A person shall not sell a lot in a plan of subdivision (whether certified or not) to anyone except a statutory body or authority if the plan has not been registered by the Registrar, unless—

S. 9AA(1)(a)
amended by
No. 53/1988
s. 45(Sch. 2
item 45).

(a) the contract for the sale of that lot provides that the deposit moneys payable by the purchaser are to be paid—

-
- (i) to a legal practitioner, conveyancer or licensed estate agent acting for the vendor to be held by the legal practitioner, conveyancer or licensed estate agent on trust for the purchaser until the registration of the plan of subdivision; or
- (ii) into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the registration of the plan of subdivision; and
- (b) the deposit moneys payable under the contract do not exceed 10 per cent of the purchase price of the lot.
- (2) The deposit moneys paid by the purchaser prior to the registration of the plan under a prescribed contract of sale of a lot shall be paid (as the case requires)—
- (a) to the legal practitioner, conveyancer or licensed estate agent acting for the vendor; or
- S. 9AA(1)(a)(i) amended by Nos 53/1988 s. 45(Sch. 2 item 45), 35/1996 s. 453(Sch. 1 item 73.2(a)(i)), 75/2006 s. 192(Sch. 2 item 5.2).
- S. 9AA(1)(a)(ii) amended by Nos 53/1988 s. 45(Sch. 2 item 45), 35/1996 s. 453(Sch. 1 item 73.2(a)(ii)), 11/2001 s. 3(Sch. item 67.2(a)).
- S. 9AA(1)(b) amended by No. 53/1988 s. 45(Sch. 2 item 45).
- S. 9AA(2) amended by No. 53/1988 s. 45(Sch. 2 items 46, 47).
- S. 9AA(2)(a) amended by Nos 35/1996 s. 453(Sch. 1 item 73.2(b)(i)), 75/2006 s. 192(Sch. 2 item 5.2).

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s. 9AA

S. 9AA(2)(b)
amended by
Nos 35/1996
s. 453(Sch. 1
item
73.2(b)(ii)),
11/2001
s. 3(Sch.
item 67.2(b)).

(b) into a special purpose account in the authorised deposit-taking institution in Victoria specified in the contract in the joint names of the purchaser and the vendor.

S. 9AA(3)
amended by
No. 35/1996
s. 453(Sch. 1
item 73.2(c)).

(3) An account established under subsection (2)(b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be).

S. 9AA(4)
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.2(d)),
11/2001
s. 3(Sch.
item 67.2(b)).

(4) Nothing in this section shall impose any additional liability upon the authorised deposit-taking institution in respect of any money deposited pursuant to subsection (2)(b).

S. 9AA(5)
repealed by
No. 53/1988
s. 45(Sch. 2
item 48),
new s. 9AA(5)
inserted by
No. 48/1991
s. 55(2).

(5) A person may sell land under a prescribed contract despite anything in section 8A.

S. 9AA(6)
amended by
Nos 53/1988
s. 45(Sch. 2
items 49, 50)
(as amended
by No.
47/1989
s. 19(z)),
48/1991
s. 55(1)(c),
11/2001
s. 3(Sch.
item 67.2(c)).

(6) In this section (except subsection (1)(b)) and sections 9AF, and 9AH *deposit moneys* in relation to the sale of a lot includes any moneys which are part of the purchase price received by the vendor or on behalf of the vendor before the purchaser becomes entitled to a transfer or conveyance of the lot and, in the case of any moneys paid into a special purpose account pursuant to subsection (2)(b), includes any interest from time to time accruing to that account in respect of those moneys.

- (7) In this section and in sections 9AB to 9AF and 10 *prescribed contract of sale* means a contract of sale of a kind referred to in subsection (1) of this section.

S. 9AA(7) amended by No. 53/1988 s. 45(Sch. 2 item 50) (as amended by No. 47/1989 s. 19(za)).

9AAA Insurance

If an owners corporation for a plan of subdivision will be required by the **Owners Corporations Act 2006** to effect insurance after the plan is registered, the vendor must effect insurance in accordance with that Act as if the vendor were the owners corporation, until—

S. 9AAA inserted by No. 53/1988 s. 45(Sch. 2 item 51) (as amended by No. 47/1989 s. 19(zb)(i)(ii)), substituted by No. 69/2006 s. 217.

- (a) if the owners corporation meets within 6 months after the plan is registered, the end of one month after its first meeting; and
- (b) in any other case, the end of 6 months after the plan is registered.

9AB Disclosure of works

S. 9AB inserted by No. 10216 s. 5.

- (1) The vendor shall disclose in a prescribed contract of sale of a lot details of any works affecting the natural surface level of the land in the lot or any land abutting the lot which is in the same subdivision as the lot which to the vendor's knowledge—

S. 9AB(1) amended by No. 53/1988 s. 45(Sch. 2 items 53, 54).

- (a) have been carried out on that land after the certification of the plan of subdivision and before the date of the contract; or
- (b) are at the date of the contract being carried out or proposed to be carried out on that land.

S. 9AB(1)(a) amended by No. 53/1988 s. 45(Sch. 2 item 52).

Sale of Land Act 1962
No. 6975 of 1962
Part I—Sale of Land

s. 9AB

S. 9AB(2)
amended by
No. 53/1988
s. 45(Sch. 2
items 53, 54).

(2) The vendor under a prescribed contract of sale of a lot shall disclose to the purchaser details of any works affecting the natural surface level of the land in the lot or of any land abutting the lot which is in the same subdivision as the lot which have not been disclosed in the prescribed contract of sale and which to the vendor's knowledge—

S. 9AB(2)(a)
amended by
No. 53/1988
s. 45(Sch. 2
item 55).

(a) have been carried out on that land after the date of the contract and before the registration of the plan of subdivision; or

S. 9AB(2)(b)
amended by
No. 53/1988
s. 45(Sch. 2
item 55).

(b) after the date of the contract and before the registration of the plan of subdivision have been commenced to be carried out or are proposed to be carried out on the land.

(3) The vendor shall make a disclosure under subsection (2) in writing as soon as practicable after the details required to be disclosed come to the knowledge of the vendor.

(4) If—

(a) any works referred to in subsection (1) or (2) have been, are being or are to be carried out at the direction of a municipality or public authority; and

(b) the vendor has been required to submit plans of the works or proposed works to the municipality or public authority—

the vendor shall—

(c) in the case of a disclosure under subsection (1), include a copy of the plans in the prescribed contract of sale; and

(d) in the case of a disclosure under subsection (2), provide the purchaser with a copy of the plans at the time of that disclosure.

- (5) If the vendor under a prescribed contract of sale knowingly or recklessly—
- (a) supplies false information to the purchaser under this section; or
 - (b) fails to supply all the information required to be supplied to the purchaser under this section—

the vendor shall be guilty of an offence and liable to a penalty of not more than 50 penalty units.

9AC Amendments to plan

S. 9AC
inserted by
No. 10216 s. 5.

- (1) If after a prescribed contract has been entered into and before the registration of the relevant plan of subdivision an amendment to the plan is required by the Registrar or requested by the vendor, the vendor shall within 14 days after the receipt of the requirement of the Registrar or the making of the request by the vendor (as the case requires) advise the purchaser in writing of the proposed amendment.
- (2) The purchaser may rescind a prescribed contract of sale within 14 days after being advised by the vendor under subsection (1) of an amendment to the plan of subdivision which will materially affect the lot to which the contract relates.

S. 9AC(1)
amended by
No. 53/1988
s. 45(Sch. 2
item 56).

S. 9AC(2)
amended by
No. 53/1988
s. 45(Sch. 2
item 57).

9AD Possession

S. 9AD
inserted by
No. 10216 s. 5.

- (1) The purchaser under a prescribed contract of sale is not entitled to possession of the lot to which the contract relates before the registration of the relevant plan of subdivision.

S. 9AD(1)
amended by
No. 53/1988
s. 45(Sch. 2
items 58, 59)
(as amended
by No.
47/1989
s. 22(c)).

s. 9AE

S. 9AD(2)
amended by
No. 53/1988
s. 45(Sch. 2
item 59) (as
amended by
No. 47/1989
s. 22(c)).

- (2) The vendor under a prescribed contract of sale shall not require the purchaser under the contract to take possession of the lot to which the contract relates before the registration of the relevant plan of subdivision.

Penalty: 50 penalty units.

S. 9AD(3)
amended by
No. 53/1988
s. 45(Sch. 2
item 58) (as
amended by
No. 47/1989
s. 22(c)).

- (3) The vendor shall allow the purchaser under a prescribed contract of sale reasonable access to the lot for any purpose connected with the proposed development or use of the lot.

S. 9AD(4)
inserted by
No. 53/1988
s. 45(Sch. 2
item 58) (as
amended by
No. 47/1989
s. 19(zc)).

- (4) This section does not apply to possession of a lot by a purchaser in consideration of a payment of an occupation fee.

S. 9AE
inserted by
No. 10216 s. 5.

9AE Rescission of prescribed contract

S. 9AE(1)
amended by
No. 53/1988
s. 45(Sch. 2
items 60, 61).

- (1) If the vendor under a prescribed contract of sale of a lot fails to comply with section 9AA or 9AB the purchaser may rescind the contract of sale at any time before the registration of the plan of subdivision.

S. 9AE(2)
amended by
Nos 53/1988
s. 45(Sch. 2
items 60, 62)
(as amended
by No.
47/1989
s. 19(zd)),
48/1991
s. 55(3)(a)(b).

- (2) If the plan of subdivision is not registered within 18 months after the date of the prescribed contract of sale of a lot on that plan of subdivision, or, if the contract specifies another period, before the end of that specified period, the purchaser may, at any time after the expiration of that period but before the plan is so registered, rescind the contract.

9AF Repayment of deposit moneys

(1) If—

- (a) the vendor rescinds a prescribed contract of sale of a lot as a result of a default by the purchaser, the vendor shall be immediately entitled to be paid the deposit money in the vendor's own right; or
- (b) the purchaser rescinds a prescribed contract of sale of a lot as a result of a default by the vendor or pursuant to section 9AC or 9AE, the purchaser shall be entitled to the immediate return of the deposit moneys less the amount of any occupation fees paid by the purchaser.

S. 9AF
inserted by
No. 10216 s. 5.

S. 9AF(1)(a)
amended by
No. 53/1988
s. 45(Sch. 2
item 63).

S. 9AF(1)(b)
amended by
Nos 53/1988
s. 45(Sch. 2
item 63),
48/1991
s. 55(4).

(2) Nothing in subsection (1) shall limit or affect the power of the court—

- (a) to order the repayment of the deposit moneys (whether that order is made pursuant to section 49(2) of the **Property Law Act 1958** or otherwise); or
- (b) to relieve a purchaser against forfeiture of the deposit.

* * * * *

S. 9AG
inserted by
No. 53/1988
s. 46 (as
amended by
No. 47/1989
s. 19(s)(t)(u)),
repealed by
No. 48/1991
s. 55(5).

9AH Where land sold does not accord with land in plan

- (1) This section applies to the sale of land if, at date the contract is entered into, section 20A of the **Subdivision Act 1988** applies to the land and has not been complied with.

S. 9AH
inserted by
No. 53/1988
s. 46 (as
amended by
No. 47/1989
s. 19(v)).

-
- (2) If a contract for the sale of land to which this section applies has been entered into, the purchaser may avoid the sale if—
- (a) the contract has not been completed; and
 - (b) the purchaser has not disposed of the land; and
 - (c) after the date the contract is entered into, the applicant under the **Subdivision Act 1988** gives to the Council advice by a licensed surveyor under section 20A of that Act that there is a substantial discrepancy between any boundary of the land and that boundary as shown on the plan; and
 - (d) not more than 18 months have passed since the contract was entered into.
- (3) If the purchaser avoids the sale, all money paid by the purchaser under the contract is recoverable by the purchaser except for any money paid by the purchaser as an occupation fee for any time during which the purchaser was in actual occupation of the land the subject of the sale.

S. 9A
inserted by
No. 9128
s. 8(1),
amended by
Nos 9427
s. 6(1)(Sch. 5
item 163),
9720
s. 3(2)(Sch.
item 90),
44/1987
s. 36(2),
repealed by
No. 53/1988
s. 45(Sch. 2
item 64).

* * * * *

10 Amendment affecting pre-sold lots

- (1) If any amendment to a plan of subdivision is made after a prescribed contract of sale of a lot is entered into which restricts or limits the use of the lot the purchaser may avoid the sale at any time before the plan of subdivision is registered unless the amendment results from any recommendation of a public authority or government department.
- (2) A contract of sale may provide that subsection (1) does not apply in respect of the final location of an easement shown on a certified plan.

S. 10 amended by Nos 7228 s. 7(Sch. 5 Pt 3(a)(b)), 8661 s. 40(c)–(e), 121/1986 s. 112, substituted by No. 53/1988 s. 45(Sch. 2 item 64) (as amended by No. 47/1989 s. 19(ze)(i)).

11 Owners corporation must have insurance policy

- (1) A person cannot sell a lot affected by an owners corporation unless the vendor or the owners corporation has a current insurance policy in accordance with the **Owners Corporations Act 2006** for any insurance required by that Act to be effected by the owners corporation.
- (2) If a lot is sold in contravention of subsection (1) the purchaser may avoid the sale at any time before the contract is completed.

S. 11 amended by No. 8661 s. 40(c)(e)(f), substituted by Nos 53/1988 s. 45(Sch. 2 item 64) (as amended by No. 47/1989 s. 19(ze)(ii)), 69/2006 s. 218.

12 Offences in relation to the sale of land

Any person who, with the intention of inducing any person to buy any land—

- (a) knowingly or recklessly makes or publishes any false representation or wilfully false promise;
- (b) states or publishes any statement that he or some other person named by him will buy, at a profit to be received in the future by such prospective purchaser—
 - (i) the land in question or any part thereof;
 - (ii) any interest in that land or in any part thereof; or

No. 6685 s. 2.
S. 12 amended by No. 9554 s. 2(2)(Sch. 2 item 289).

- (iii) any other land or chattel owned by the prospective purchaser;
- (c) states or publishes any statement that he or some other person named by him will at some future time obtain for the prospective purchaser a profit on the sale of the land in question or any part thereof or any interest in that land or in any part thereof;
- (d) makes or publishes any statement promise or forecast which he knows to be misleading or deceptive or fraudulently conceals any material facts or recklessly makes any statement or forecast which is misleading or deceptive; or
- (e) makes any statement promise or forecast concerning the provision of amenities or services which are normally provided by the State or by any statutory authority unless he has been advised in writing by the State or by the authority in question that such amenities or services will be so provided—

shall be guilty of an offence against this Act and shall for every such offence be liable to a penalty of not more than 50 penalty units or to imprisonment for a term of not more than twelve months.

No. 3933 s. 44.

13 Burden of proof as to knowledge of falsity of representation

- (1) In any action commenced in respect of the sale of any land if it is proved that any representation made on such sale was false and that any party to such action was induced by such representation to enter into a contract to purchase such land the person making such representation shall be deemed to have made the same with knowledge of its falsity unless he proves—

- (a) that he had reasonable ground to believe and did believe that the representation was true or that he had no reason to suspect that the representation was false; and
- (b) that otherwise he had acted innocently.
- (2) No term or provision of any agreement (whether entered into before or after the commencement of this Act) for the sale and purchase of any land therein shall be so construed as in any way to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connexion with the purchase of such land.

No. 3933 s. 45.

14 Certain agreements void

Any agreement under which a person purports to waive any right the person may have under this Act to avoid a contract is void.

S. 14
amended by
No. 7052
s. 2(h),
substituted by
No. 6/2008
s. 31.

* * * * *

S. 14A
inserted by
No. 7272 s. 4,
amended by
No. 7898
s. 3(b),
substituted by
No. 8661
s. 40(g),
amended by
No. 10216
s. 6(2),
repealed by
No. 53/1988
s. 45(Sch. 2
item 65).

s. 14B

S. 14B
inserted by
No. 10216
s. 6(1).

14B Further powers of arbitrator with respect to subdivisional land

- (1) If any difference or dispute arises between the vendor and the purchaser with respect to—
 - (a) the non-compliance by either party with any of the requirements of sections 9AA to 9AH;
or
 - (b) a purported rescission by the purchaser of the contract of sale pursuant to section 9AC, 9AE or 9AH—

either party may refer the difference or dispute to an arbitrator for determination.

- (2) Without affecting the generality of section 21, the arbitrator may make an order under this section requiring the vendor to pay compensation to the purchaser in respect of any loss suffered by the purchaser arising out of the contract.

15 Notices

- (1) A notice in writing required or authorized to be given by this Act shall be sufficiently served upon any person—
 - (a) if it is served personally or left at his last known place of abode in Victoria; or
 - (b) if served personally or by post upon his legal practitioner or conveyancer named in the contract or otherwise authorized by the person to be served to act in the particular matter.
- (2) A person shall be deemed not to have complied with a requirement contained in such notice if the requirement is not complied with—
 - (a) within ninety days of service;

S. 15(1)(b)
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.3),
75/2006
s. 192(Sch. 2
item 5.2A) (as
amended by
No. 17/2007
s. 32(2)).

- (b) within any extension of time agreed to by the parties within ninety days of the service; or
- (c) within the time allowed by an arbitrator on application made within ninety days of the service—

whichever is the longer.

16 Offences

- (1) Any person who sells any land in contravention of the provisions of this Act shall be guilty of an offence against this Act and where no other penalty is expressly provided be liable to a penalty of not more than 10 penalty units.
* * * * * S. 16(1) amended by Nos 7272 s. 5(a), 9554 s. 2(2)(Sch. 2 item 288).
- * * * * * S. 16(2) amended by No. 7272 s. 5(b), repealed by No. 103/2004 s. 68.
- * * * * * S. 16(3) repealed by No. 103/2004 s. 68.
- (4) Notwithstanding anything in this section it shall be a defence to a prosecution under this section if the accused satisfies the court—
 - (a) that at the time of the alleged contravention of the provisions of this Act—
 - (i) he was a licensed estate agent within the meaning of the **Estate Agents Act 1980**; and
 - (ii) he had acted only as agent for the vendor in connexion with the sale; and
 - (b) that he had acted honestly and reasonably and ought fairly to be excused in all the circumstances of the case.

17 Regulations

The Governor in Council may make regulations for or with respect to all matters and things authorized or required to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Division 2—Arbitrators

18 Power to Governor in Council to appoint arbitrators

- (1) For the purposes of this Act the Governor in Council may appoint so many persons to be arbitrators as he thinks fit.
- (2) No person shall be appointed an arbitrator unless he is a judge of the county court or a person qualified to be appointed a judge of the county court.

19 Appointment of arbitrators

A person appointed to be an arbitrator shall be—

- (a) appointed for such term as the Governor in Council thinks fit;
- (b) eligible for re-appointment; and
- (c) entitled to such salary and allowances as are prescribed.

20 Power to arbitrators to appoint assessors

- (1) An arbitrator may if he thinks fit call in the aid of one or more assessors to assist him in determining any matter under this Act.
- (2) An arbitrator shall not be bound by the opinion or finding of any such assessor.

- (3) Any assessor called in by an arbitrator shall be selected from a panel of persons appointed by notice in writing under the hand of the Attorney-General published in the Government Gazette.
- (4) Assessors shall be paid such sitting fees as are prescribed.

21 Jurisdiction and powers of arbitrators

- (1) An arbitrator shall entertain, inquire into and decide upon all matters which an arbitrator is empowered to determine by this Act and for that purpose may do all such matters and things relating thereto including the ordering of the payment of costs by any party and in the same manner and to the same extent as the Supreme Court is empowered to do in the exercise of its ordinary jurisdiction and the decision of an arbitrator shall be enforceable as if it were a judgment or an order of the Supreme Court and shall be final and without appeal.
- (2) An arbitrator may if he thinks fit reserve any question in the form of a special case for the opinion of the Court of Appeal which opinion shall be given.
- (3) In deciding any matter an arbitrator shall be guided by the real justice of the matter without regard to the legal forms and solemnities.
- (4) An arbitrator shall not make any order affecting the Register kept under the **Transfer of Land Act 1958** without prior consultation with the Registrar or his nominee.

S. 21(1)
amended by
Nos 7052
s. 2(i), 7272
s. 7(2), 8149
s. 25(1),
110/1986
s. 140(2).

S. 21(2)
amended by
No. 109/1994
s. 34(13).

S. 21(4)
amended by
No. 18/1989
s. 13(Sch. 2
item 76(e)).

22 Regulations

The Governor in Council may make regulations for or with respect to applications to and proceedings before arbitrators including regulations fixing the fees to be paid on or with respect to any such application or proceedings.

S. 22
amended by
Nos 7052
s. 2(j),
104/1994
s. 35(Sch. 2
item 11).

s. 23

Division 3—Deposits

Pt 1 Div. 3
(Heading and
ss 23–28)
inserted by
No. 9423
s. 2(2).

23 Definitions

New s. 23
inserted by
No. 9423
s. 2(2).

In this Division unless inconsistent with the
context or subject-matter—

S. 23 def. of
commission
amended by
No. 74/2000
s. 3(Sch. 1
item 112).

commission has the same meaning as in section 4
of the **Estate Agents Act 1958**¹;

S. 23 def. of
*deposit
moneys*
amended by
Nos 9471 s. 2,
9549
s. 2(1)(Sch.
item 202).

deposit moneys in relation to a transaction for the
sale of land includes any moneys which are
part of the purchase price received by the
vendor or on behalf of the vendor before the
purchaser becomes entitled to a transfer or
conveyance of the land which is the subject
of the transaction, or in the case of a terms
contract any moneys received by the vendor
or on behalf of the vendor before the
purchaser becomes entitled to possession or
to the receipt of rent and profits pursuant to
the contract;

S. 23 def. of
estate agent
amended by
No. 11/2002
s. 3(Sch. 1
item 58).

estate agent has the same meaning as in section 4
of the **Estate Agents Act 1980**;

S. 23 def. of
solicitor
repealed by
No. 35/1996
s. 453(Sch. 1
item 73.4).

* * * * *

**24 Deposit moneys held by legal practitioner,
conveyancer or estate agent to be held as
stakeholder**

S. 24
(Heading)
inserted by
No. 75/2006
s. 192(Sch. 2
item 5.3).

New s. 24
inserted by
No. 9423
s. 2(2).

S. 24(1)
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.5(a)),
75/2006
s. 192(Sch. 2
item 5.4).

(1) Any deposit moneys received by a legal practitioner, conveyancer or estate agent in the course of a transaction for the sale of land shall be held by that legal practitioner, conveyancer or estate agent as a stakeholder until—

- (a) in the case of a cash transaction, the purchaser becomes entitled to a transfer or conveyance of the land; or
- (b) in the case of a terms contract, the purchaser becomes entitled to possession or to the receipt of rents and profits—

at which time the deposit moneys may be paid to the vendor in his own right or as the vendor directs.

* * * * *

S. 24(1A)
inserted by
No. 9471 s. 3,
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.5(a)),
75/2006
s. 192(Sch. 2
item 5.5),
repealed by
No. 1/2010
s. 75.

s. 25

S. 24(2)
repealed by
No. 35/1996
s. 453(Sch. 1
item 73.5(b)),
new s. 24(2)
inserted by
No. 1/2010
s. 75.

- (2) This section does not prevent the transfer of deposit moneys from—
- (a) a legal practitioner, estate agent or conveyancer to another legal practitioner, estate agent or conveyancer if that other legal practitioner, estate agent or conveyancer is acting for the vendor in relation to the sale; or
 - (b) a vendor to a legal practitioner, estate agent or conveyancer acting for that vendor.

S. 24(3)
inserted by
No. 1/2010
s. 75.

- (3) Any deposit moneys transferred under subsection (2) must continue to be held by the person to whom they were transferred as a stakeholder under this Division.

S. 25
(Heading)
inserted by
No. 75/2006
s. 192(Sch. 2
item 5.6).
New s. 25
inserted by
No. 9423
s. 2(2).

25 Deposit moneys to be paid into special purpose account or held by legal practitioner, conveyancer or estate agent

S. 25(1)
substituted by
No. 9471
s. 4(a).

- (1) Any deposit moneys received by a vendor in the course of a transaction for the sale of land other than deposit moneys released pursuant to section 27 shall be paid within seven days after their receipt by the vendor—

S. 25(1)(a)
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.6(a)(i)),
75/2006
s. 192(Sch. 2
item 5.7).

- (a) to a conveyancer, an estate agent or legal practitioner acting for the vendor; or

-
- (b) into a special purpose account in an authorised deposit-taking institution in Victoria to be nominated by the vendor in the joint names of the purchaser and the vendor.
- (2) An account established under this section may be drawn upon only with the signature of both vendor and purchaser or the personal representative of the vendor or purchaser (as the case may be).
- (3) Nothing in this section shall impose any additional liability upon the authorised deposit-taking institution in respect of any money deposited pursuant to this section.
- (4) Where a vendor or purchaser fails to comply with any of the provisions of this section he shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units.
- 26 Application of deposit moneys where contract rescinded**
- (1) Notwithstanding sections 24 and 25, where in a transaction for the sale of land—
- (a) the vendor rescinds the contract as the result of a default by the purchaser, the vendor shall be immediately entitled to be paid the deposit moneys in his own right; or
- (b) the purchaser rescinds the contract as the result of a default by the vendor, the purchaser shall be entitled to the immediate return of the deposit moneys.
- S. 25(1)(b) amended by Nos 35/1996 s. 453(Sch. 1 item 73.6(a) (ii)), 11/2001 s. 3(Sch. item 67.3(a)).
- S. 25(2) amended by No. 9471 s. 4(b).
- S. 25(3) amended by Nos 35/1996 s. 453(Sch. 1 item 73.6(b)), 11/2001 s. 3(Sch. item 67.3(b)).
- S. 25(4) amended by No. 9554 s. 2(2)(Sch. 2 item 290).
- New s. 26 inserted by No. 9423 s. 2(2), amended by No. 9471 s. 5(a).

s. 27

S. 26(2)
inserted by
No. 9471
s. 5(b).

- (2) Nothing in subsection (1) shall limit or affect the power of the court—
- (a) to order the repayment of the deposit moneys (whether that order is made pursuant to section 49(2) of the **Property Law Act 1958** or otherwise); or
- (b) to relieve a purchaser against forfeiture of the deposit.

New s. 27
inserted by
No. 9423
s. 2(2),
substituted by
No. 9471 s. 6.

27 Release of deposit moneys in certain circumstances

S. 27(1)
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.7),
75/2006
s. 192(Sch. 2
item 5.8).

- (1) Where a legal practitioner, conveyancer or estate agent is holding deposit moneys as a stakeholder under section 24, the purchaser may by authorization in writing empower the legal practitioner, conveyancer or estate agent (as the case may be) to release those deposit moneys to the vendor in his own right or as the vendor directs.

- (2) Subsection (1) shall only operate—
- (a) where the contract is not subject to any condition enuring for the benefit of the purchaser; and
- (b) where the purchaser has accepted title or may be deemed to have accepted title.

S. 27(3)
amended by
No. 42/1989
s. 4(b).

- (3) An authorization in writing shall not be effective unless and until the vendor has given the purchaser a notice in writing setting out—

S. 27(3)(a)
substituted by
No. 42/1989
s. 4(b).

- (a) if there is a mortgage over the land which is the subject of the transaction, the particulars specified in Schedule 1; and

S. 27(3)(b)
repealed by
No. 42/1989
s. 4(b).

* * * * *

(c) particulars of any caveat lodged under the **Transfer of Land Act 1958** in respect of the land which is the subject of the transaction—

S. 27(3)(c)
amended by
No. 42/1989
s. 4(c).

and the purchaser has given notice under subsection (4) that he is satisfied with those particulars.

(4) Where the purchaser is satisfied—

(a) that the particulars provided under paragraphs (a) and (c) of subsection (3) are accurate; and

(b) that the particulars provided under paragraph (a) of subsection (3) indicate that the purchase price is sufficient to discharge all mortgages over the property—

S. 27(4)(b)
amended by
No. 48/1991
s. 56(3).

he shall give the vendor notice in writing to that effect within 28 days of receiving the particulars.

(5) A notice in writing under subsection (4) stating that the purchaser is satisfied with the particulars shall be deemed to be the authorization required by subsections (1)(2) and (3).

(6) Where the purchaser is not satisfied with the particulars he shall within 28 days of receiving them give notice in writing stating that he is not satisfied with the particulars and giving the reasons why he is not satisfied.

(7) Where the purchaser fails to give a notice under either subsection (4) or (6) within the time limited by the subsection he shall—

(a) be deemed to be satisfied with the particulars provided; and

(b) be deemed to have given the authorization required by subsection (1).

(8) Where a vendor knowingly or recklessly supplies false information to the purchaser regarding any particulars required to be given under subsection (3)—

S. 27(8)(a)
amended by
No. 9858
s. 4(2).

(a) he shall be guilty of an offence against this Act and liable to a penalty of not more than 50 penalty units; and

(b) the purchaser shall be entitled to rescind the contract for the sale of the land and recover the deposit moneys.

S. 27(9)
amended by
No. 9688 s. 2.

(9) Where an estate agent is empowered to pay deposit moneys to the vendor pursuant to subsection (1) the estate agent may retain out of the deposit moneys an amount equal to the commission and any auction expenses that he is or will become entitled to and any other moneys that he is or will become entitled to by law in relation to the transaction.

(10) Notwithstanding section 2(1) of this Act, for the purposes of this section *mortgage* means a charge or lien on land for securing money or money's worth.

S. 27(11)
amended by
Nos 10216
s. 7, 53/1988
s. 45(Sch. 2
item 66) (as
amended by
No. 47/1989
s. 19(zf)),
35/1996
s. 453(Sch. 1
item 73.7),
75/2006
s. 192(Sch. 2
item 5.8).

(11) This section shall not operate to authorize the release of deposit moneys which are being held by a legal practitioner, conveyancer or estate agent under section 9AA.

**28 Powers of purchaser where contract in
contravention of this Division**

New s. 28
inserted by
No. 9423
s. 2(2),
substituted by
No. 9471 s. 7.

- (1) Where any contract for the sale of land contains provisions in contravention of this Division—
 - (a) those provisions shall be void and of no effect; and
 - (b) the contract shall be voidable by the purchaser at any time before completion and any person who has paid money under the contract shall be entitled to recover it.
- (2) Notwithstanding paragraph (b) of subsection (1) the contract shall not be voidable by the purchaser if the Court is satisfied that the vendor has acted honestly and reasonably and ought fairly to be excused for the contravention and that the purchaser is substantially in as good a position as if all the relevant provisions of this Division had been complied with.

29 Effect on terms contract deposit provisions

Nothing in this Division affects the operation of section 29O.

New s. 29
inserted by
No. 9471 s. 8,
substituted by
No. 6/2008
s. 32.

Division 4—Terms contracts

Subdivision 1—Introductory

Pt 1 Div. 4
(Heading and
ss 29A–29W)
inserted by
No. 6/2008
s. 33.

29A What is a terms contract?

- (1) For the purposes of this Act a contract is a terms contract if it is an executory contract for the sale and purchase of any land under which the purchaser is—
 - (a) obliged to make 2 or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and

S. 29A
inserted by
No. 6/2008
s. 33.

before the purchaser is entitled to a conveyance or transfer of the land; or

- (b) entitled to possession or occupation of the land before the purchaser becomes entitled to a conveyance or transfer of the land.

- (2) In subsection (1)—

deposit means a payment made to the vendor or to a person on behalf of the vendor before the purchaser becomes entitled to possession or to the receipt of rents and profits under the contract;

final payment means a payment on the making of which the purchaser becomes entitled to a conveyance or transfer of the land.

Subdivision 2—Certain terms contracts prohibited

29B Which terms contracts are prohibited?

- (1) A person must not sell, under a terms contract, land that is in an identified folio under the **Transfer of Land Act 1958** or is not under the operation of that Act unless—
- (a) at the date of the making of the contract, the person has a good safe holding and marketable title to the land; and
- (b) the person—
- (i) holds an estate in fee simple in the land; or
 - (ii) is, as mortgagee, entitled to an estate in fee simple in the land; or
 - (iii) is, as mortgagor, entitled in fee simple to the equity of redemption in the land; or

S. 29B
inserted by
No. 6/2008
s. 33.

- (iv) is empowered by or under an Act to deal with an estate in fee simple in the land.
- (2) A person must not sell, under a terms contract, land that is under the **Transfer of Land Act 1958** (other than land in an identified folio under that Act) unless, at the date of the making of the contract, the person is—
- (a) the registered proprietor of the land; or
 - (b) presently entitled to become the registered proprietor of the land; or
 - (c) empowered by or under an Act to execute a registrable transfer of the land.

29C Exceptions to prohibition

S. 29C
inserted by
No. 6/2008
s. 33.

Section 29B does not prevent a person from selling land under a terms contract if—

- (a) the person has first obtained the consent of an arbitrator to enter into the contract; or
- (b) the contract is of a prescribed class and is entered into in accordance with the regulations.

29D When is a person presently entitled to become the registered proprietor?

S. 29D
inserted by
No. 6/2008
s. 33.

- (1) For the purposes of section 29B(2), a person is not presently entitled to become the registered proprietor of land unless the person is, at the date of making the relevant contract, entitled to be registered as proprietor under—
- (a) one or more registrable instruments lodged in the Office of Titles; or
 - (b) one or more applications under Division 2 of Part IV of the **Transfer of Land Act 1958** lodged in the Office of Titles.

s. 29E

- (2) For the purposes of this section, an instrument or application that is, at the relevant time, lodged in the Office of Titles is deemed to be and always to have been registrable despite any defect in the instrument or application if—
- (a) the instrument is registered or the application is granted without having been returned by the Registrar or withdrawn from the Office of Titles; or
 - (b) the Registrar certifies in writing that he or she is satisfied that the defect was not of a substantial nature and that it has been remedied.

S. 29E
inserted by
No. 6/2008
s. 33.

29E Mistakes or mis-statements as to description

- (1) A failure to comply with section 29B in respect of land agreed to be sold under a terms contract because of a mistake or mis-statement in the contract relating to the description, measurement or area of the land agreed to be sold is to be disregarded for the purposes of this Act unless it is a material mistake or mis-statement.
- (2) Any dispute as to whether a failure is to be disregarded under subsection (1) may be determined by an arbitrator.
- (3) In this section *material mistake or mis-statement* means a mistake or mis-statement that would entitle the purchaser to be discharged from the contract irrespective of the provisions of this Act.

S. 29F
inserted by
No. 6/2008
s. 33.

29F Purchaser may avoid prohibited terms contract

- (1) Except where otherwise expressly provided, if a terms contract is entered into in contravention of this Act—
 - (a) the contract is voidable by the purchaser at any time before completion of the contract; and

- (b) if the contract is avoided, a person is entitled to recover any money paid by that person under that contract.
- (2) A terms contract is not voidable by the purchaser if a court is satisfied that—
- (a) the vendor has acted honestly and reasonably and ought fairly to be excused for the contravention; and
- (b) the purchaser is substantially in as good a position as if all the relevant provisions of this Act had been complied with.
- (3) Despite subsection (1), if a terms contract is entered into in contravention of this Act and is avoided by the purchaser before the completion of the contract, the purchaser is liable to pay an occupation rent for the period during which the purchaser was—
- (a) in actual possession of the land; or
- (b) entitled to the receipt of the rents and profits of the land.

29G Certain provisions of terms contract void

A provision in a terms contract or in any other document under which any right, conferred by this Act on the purchaser under the terms contract, is excluded, modified or restricted is void.

S. 29G
inserted by
No. 6/2008
s. 33.

Subdivision 3—Transfer and mortgage back

29H Purchaser may call for a transfer on giving a mortgage back

- (1) A purchaser under a terms contract who is not in default under the contract may require the vendor to convey or transfer the land to the purchaser freed and discharged from all mortgages.

S. 29H
inserted by
No. 6/2008
s. 33.

S. 29H(4)
amended by
No. 63/2010
s. 58.

- (2) The power under subsection (1) may be exercised at any time after acceptance of title and before payment in full of the purchase money.
- (3) A requirement under subsection (1) must be made by written notice served on the vendor.
- (4) The power to require the vendor to convey or transfer land is conditional on the purchaser at the same time executing a mortgage or mortgages in favour of the vendor, or any other person the vendor requires, to secure the payment of all money that would have become payable by the purchaser under the contract if the mortgage had not been executed.
- (5) If land sold under a terms contract is subject to a mortgage or mortgages and the terms and conditions of the mortgage or mortgages are not more onerous than the terms and conditions under the contract, the vendor may comply with a requirement under subsection (1) by transferring the land subject to the existing mortgage or mortgages.
- (6) The power of the vendor under subsection (5) is conditional on the purchaser executing a mortgage to secure the amount that should be payable to the vendor having regard to the liabilities to be assumed by the purchaser under the existing mortgage or mortgages.
- (7) This section applies to a terms contract entered into before or after the commencement of Part 6 of the **Consumer Credit (Victoria) and Other Acts Amendment Act 2008**.

29I What must the mortgage provide

S. 29I
inserted by
No. 6/2008
s. 33.

- (1) The mortgage required under section 29H to be executed must—
 - (a) contain all the powers and covenants on the part of the mortgagor that are usual in mortgages of land that is similar in kind to the land that is the subject of the relevant terms contract; and
 - (b) fully accord with and provide for observance of all obligations of the purchaser under the terms contract; and
 - (c) be prepared at the cost of the purchaser and registered under the **Transfer of Land Act 1958**.
- (2) If, in compliance with a requirement made by a purchaser under section 29H, a mortgage is accepted, the mortgage is deemed to be a proper mortgage and to comply with subsections (1)(a) and (1)(b).

29J Failure of vendor to comply with requirement

S. 29J
inserted by
No. 6/2008
s. 33.

- (1) If a purchaser serves a notice on a vendor under section 29H and the vendor, without lawful excuse, fails to convey or transfer the land to the purchaser—
 - (a) the vendor is deemed to have breached a condition of the terms contract and the purchaser is entitled to all civil remedies for that breach; and
 - (b) the vendor is guilty of an offence and liable to a penalty of not more than 60 penalty units, in the case of a natural person or 300 penalty units, in the case of a body corporate.

s. 29K

- (2) In this section a lawful excuse includes where the vendor disputes in good faith the purchaser's entitlement to serve the notice.

S. 29K
inserted by
No. 6/2008
s. 33.

29K Subdivision to apply despite Trustee Act 1958 and other Acts

This Subdivision applies despite anything in the **Trustee Act 1958** or in any other Act (other than the Charter of Human Rights and Responsibilities).

S. 29L
inserted by
No. 6/2008
s. 33.

29L Arbitrator may determine questions

Any question as to the sufficiency of any instrument of transfer, conveyance or mortgage submitted pursuant to this Subdivision is, in the absence of agreement between the parties, to be determined by an arbitrator.

Subdivision 4—Mortgages and terms contracts

S. 29M
inserted by
No. 6/2008
s. 33.

29M Restrictions on sale of land

If land is subject to a mortgage, the mortgagor must not sell the land under a terms contract unless—

- (a) the mortgage relates only to that land; and
- (b) the contract expressly states that the land is subject to a mortgage; and
- (c) the contract provides that the consideration for the sale of the land is to be satisfied, to the extent of any mortgage money owing at the date on which the purchaser is entitled to possession or receipt of the rents and profits of the land sold, by the purchaser assuming as from that date the obligations of the mortgagor under the mortgage; and
- (d) the contract gives the particulars of the mortgage referred to in Schedule 1.

29N Purchaser may avoid contract

S. 29N
inserted by
No. 6/2008
s. 33.

If a terms contract is entered into in contravention of section 29M—

- (a) the contract is voidable by the purchaser at any time before the completion of the contract; and
- (b) the vendor is guilty of an offence and liable to a penalty of not more than 60 penalty units, in the case of a natural person or 300 penalty units, in the case of a body corporate.

29O Exception if mortgage to be discharged

S. 29O
inserted by
No. 6/2008
s. 33.

(1) Section 29M does not apply to the sale of land under a terms contract if the contract provides that—

- (a) any mortgage affecting the land sold is to be discharged as to that land before the purchaser becomes or on the purchaser becoming entitled under the contract to possession or to the receipt of the rents and profits; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to discharge the mortgage) are to be paid to a legal practitioner, conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

(2) If a terms contract provides for the matters in subsection (1) and the mortgage is not discharged within 90 days of the making of the contract and the purchaser is not in default under the contract—

- (a) the contract is voidable by the purchaser at any time before the mortgage is discharged; and

s. 29P

- (b) if the contract is avoided, the purchaser is entitled to recover all money paid under the contract.

S. 29P
inserted by
No. 6/2008
s. 33.

29P Land subject to a terms contract not to be mortgaged by vendor

The vendor under a terms contract must not mortgage the land that is subject to the contract.

S. 29Q
inserted by
No. 6/2008
s. 33.

29Q Vendor may require purchaser to execute mortgage

- (1) A vendor may, by written notice to the purchaser, require the purchaser—
- (a) to take a transfer or conveyance of any land subject to a terms contract; and
 - (b) at the vendor's expense, to execute any mortgage or mortgages in favour of the vendor and other persons that the vendor may require.
- (2) The obligations of the purchaser under the mortgage or mortgages referred to in subsection (1) must be not more onerous to the purchaser than the obligations of the purchaser under the terms contract.

S. 29R
inserted by
No. 6/2008
s. 33.

29R Vendor to advance amount for duty payable

- (1) Subject to subsection (2), if the purchaser to whom notice is given under section 29Q requires, the vendor must advance to the purchaser an amount equal to the duty payable by the purchaser under the **Duties Act 2000** on the transfer or conveyance.
- (2) The vendor is only required to advance the amount if the purchaser agrees to the amount advanced being added to the principal sum secured by the mortgage or by one of the mortgages specified by the vendor (as the case requires).

29S Contravention of mortgage requirements

S. 29S
inserted by
No. 6/2008
s. 33.

- (1) If land is mortgaged in contravention of section 29P, 29Q or 29R—
- (a) the terms contract is voidable by the purchaser at any time before the completion of the contract; and
 - (b) the vendor is guilty of an offence and liable to a penalty of not more than 60 penalty units, in the case of a natural person or 300 penalty units, in the case of a body corporate; and
 - (c) if the mortgagee had actual or constructive notice of the interest of the purchaser under the terms contract—
 - (i) the mortgagee is not entitled to exercise the mortgagee's remedies under the mortgage; and
 - (ii) the mortgagee must execute a proper discharge of the mortgage in respect of the land sold and obtain registration of that discharge; and
 - (iii) any amount paid by the mortgagee to the vendor may be recovered by the mortgagee from the vendor.
- (2) If land under the operation of the **Transfer of Land Act 1958** is mortgaged in contravention of section 29P, 29Q or 29R—
- (a) on the registration of a transfer in accordance with the section 77 of the **Transfer of Land Act 1958**—
 - (i) the title of the purchaser from the mortgagee is not impeachable on the ground that the power of sale was exercised in contravention of this section; and

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- (ii) for the purposes of Part III of the **Transfer of Land Act 1958**, the purchaser from the mortgagee is deemed to have dealt with the registered proprietor of the land; and
 - (b) the purchaser under the terms contract has a remedy in damages against the mortgagee for exercising the power of sale if the mortgagee had actual or constructive notice of the interest of the purchaser; and
 - (c) Division 9 of Part IV of the **Transfer of Land Act 1958** applies, except so far as it is inconsistent with the express provisions of this section.

S. 29T
inserted by
No. 6/2008
s. 33.

29T Failure by purchaser to comply with notice

- (1) If a notice in writing has been served on a purchaser by a vendor under section 29Q and the purchaser, without lawful excuse, fails to comply with the notice—
 - (a) the purchaser is deemed to have breached a condition of the contract and the vendor is entitled to all civil remedies for that breach; and
 - (b) the purchaser is guilty of an offence and liable to a penalty of not more than 60 penalty units, in the case of a natural person or 300 penalty units, in the case of a body corporate.
- (2) In this section a lawful excuse includes where the purchaser disputes in good faith the terms of the mortgage.

29U Arbitrator may determine questions

Any question as to the sufficiency of any transfer, conveyance or mortgage submitted pursuant to this Subdivision must, in the absence of agreement between the parties, be determined by an arbitrator.

S. 29U
inserted by
No. 6/2008
s. 33.

29V Constructive notice

- (1) For the purposes of section 29S, a mortgagee is deemed not to have constructive notice of the interest of a purchaser under a terms contract unless notice of the interest of the purchaser under the terms contract would have come to the mortgagee's knowledge if the mortgagee had made—
- (a) a proper inspection of the relevant land; and
 - (b) such inquiries as ought reasonably to be made by the mortgagee of the mortgagor as to the rights of any person in possession of the relevant land; and
 - (c) inquiries of the municipal council of the municipal district in which the relevant land is situated as to who is shown on the rate book as owner of the relevant land; and
 - (d) such searches, inquiries and inspections in the Office of the Registrar of Titles and Registrar-General as reasonably ought to have been made by the mortgagee.
- (2) Nothing in subsection (1) limits or affects the operation of section 42(2)(e) of the **Transfer of Land Act 1958**.

S. 29V
inserted by
No. 6/2008
s. 33.

Subdivision 5—Restrictions on legal practitioners

S. 29W
inserted by
No. 6/2008
s. 33.

29W Legal practitioner not to act for both vendor and purchaser under a terms contract

(1) A legal practitioner whose principal place of business is within a 50 kilometre radius of the intersection of Elizabeth and Bourke Streets in Melbourne must not act for both vendor and purchaser under a terms contract.

Penalty: 60 penalty units.

(2) If a legal practitioner is prohibited under subsection (1) from acting for one party to a terms contract, a legal practitioner who is in partnership with that legal practitioner, or any person employed by that legal practitioner must not act for that party.

Penalty: 60 penalty units.

(3) If a legal practitioner contravenes this section, the purchaser for whom the practitioner has acted may rescind the contract at any time before the purchaser becomes entitled to possession or to the receipt of rents and profits.

(4) Despite subsection (3), the purchaser may not rescind the contract if the court is satisfied that—

(a) the legal practitioner has acted honestly and reasonably and ought fairly to be excused for the contravention; and

(b) the purchaser is substantially in as good a position as if all the relevant provisions of this section had been complied with.

(5) Any provision in any contract for the sale of land or other document under which any provision of this section is excluded, modified or rescinded is void.

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- (6) This section does not apply if any of the parties to the transaction are related to each other.
- (7) For the purposes of subsection (6) a person is related to another person if the first-mentioned person is—
- (a) the spouse, domestic partner, brother, sister, parent, child, grand-parent, grand-child, uncle, aunt, nephew or niece; or
 - (b) the spouse or domestic partner of a brother, sister, parent, child, grand-parent, grand-child, uncle, aunt, nephew or niece—
- of the second-mentioned person.
-

Pt 2
(Heading and
ss 23–25)
repealed by
No. 7332
s. 4(Sch. 2),
new Pt 2
(Heading and
ss 30–36)
inserted by
No. 9858 s. 3.

S. 30
inserted by
No. 9858 s. 3.

PART II—MISCELLANEOUS PROVISIONS

30 Definitions

- (1) In this Part unless inconsistent with the context or subject-matter—

business day means any day except—

- (a) a Saturday or Sunday; or
- (b) any other day the whole or any part of which is observed as a public holiday throughout Victoria;

deposit moneys has the same meaning as in Division 3 of Part I;

dwelling-house includes a flat or unit and also includes outbuildings fences and other appurtenances to a house flat or unit;

metropolitan area means—

- (a) *metropolitan area* within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal); or
- (b) any area declared by the Governor in Council under subsection (3) to be the metropolitan area;

S. 30(1) def. of
*metropolitan
area*
inserted by
No. 42/1989
s. 5(1)(a),
substituted by
No. 85/2006
s. 173(Sch. 1
item 12.1).

planning instrument includes a planning scheme;

S. 30(1) def. of *planning instrument* amended by No. 45/1987 s. 205(Sch. item 123).

* * * * *

S. 30(1) def. of *prescribed amount* inserted by No. 42/1989 s. 6(a)(ii), repealed by No. 41/2003 s. 4(a).

purchaser includes any person acting as agent for the purchaser or a nominee of the purchaser;

rescission or any derivative thereof in relation to a contract, means avoidance of the contract as from its beginning;

* * * * *

S. 30(1) def. of *residential land* repealed by No. 42/1989 s. 6(a)(i).

* * * * *

S. 30(1) def. of *solicitor* repealed by No. 35/1996 s. 453(Sch. 1 item 73.8).

vendor includes any person acting as agent for the vendor.

(2) In this Part a reference to a dwelling-house also includes a reference to a dwelling-house which is in the course of being built.

(3) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.

S. 30(3) inserted by No. 85/2006 s. 173(Sch. 1 item 12.2).

s. 31

S. 30(4)
inserted by
No. 85/2006
s. 173(Sch. 1
item 12.2).

- (4) An Order made under subsection (3) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—
- (a) wholly or partially or as amended by order or other instrument; or
 - (b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

S. 30(5)
inserted by
No. 85/2006
s. 173(Sch. 1
item 12.2).

- (5) Subsection (4) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment.

Division 1—Cooling-off periods

31 Power of purchaser to terminate a contract for sale of land

S. 31
inserted by
No. 9858 s. 3.

S. 31(1)
amended by
Nos 42/1989
s. 6(b),
41/2003
s. 4(b).

- (1) This section applies to a contract for the sale of land other than—
- (a) land used primarily for industrial or commercial purposes; and
 - (b) land which is more than 20 hectares and is used primarily for farming—
together with chattels (if any).
- (2) Where a purchaser under a contract for the sale of land signs that contract he may at any time before the expiration of three clear business days after he has signed the contract give notice to the vendor that he wishes to terminate the contract and where he has signed that notice and given it in accordance with the provisions of this section the contract shall be terminated.

-
- (3) A notice under subsection (2) shall be given to the vendor or his agent or left at the address for service of the vendor specified in the contract or the address of his agent within three clear business days after the purchaser has signed the contract.
- (4) Where a contract for the sale of land has been terminated in accordance with the provisions of this section the purchaser shall be entitled to the return of all moneys paid by him under that contract except for the sum of \$100 or 0·2 per centum of the purchase price (whichever is the greater) which may be retained by the vendor.
- (5) This section does not apply to a contract for the sale of land where—
- (a) the sale is by publicly advertised auction;
 - (b) the land is sold—
 - (i) within three clear business days before the day on which a publicly advertised auction for the sale of that land is to be held;
 - (ii) on the day on which a publicly advertised auction for the sale of that land is held; or
 - (iii) within three clear business days after the day on which a publicly advertised auction for the sale of that land was held;
 - (c) the vendor and purchaser have previously entered into a contract for the sale of the same land in substantially the same terms;
 - (d) the purchaser is an estate agent within the meaning of the **Estate Agents Act 1980** or a corporate body; or

S. 31(5)
amended by
No. 10087
s. 3(1)(Sch. 1
item 216).

s. 32

S. 31(5)(e)
amended by
No. 35/1996
s. 453(Sch. 1
item 73.9).

- (e) the purchaser has sought and received independent advice from a legal practitioner before signing the contract.
- (6) A contract to which this section applies shall contain a conspicuous notice advising the purchaser that he may before the expiration of three clear business days after he signs the contract give notice that he wishes to terminate the contract.
- (7) Where a contract to which this section applies does not contain the notice required by subsection (6) the purchaser may rescind that contract at any time before he becomes entitled to possession or to the receipt of rents and profits.
- (8) Any provision in the contract or in any other document whereby any right conferred by this section on the purchaser is excluded, modified or restricted shall be void and of no effect.

Division 2—Vendor's statements

32 Statement of matters affecting land being sold

S. 32
inserted by
No. 9858 s. 3.

- (1) A vendor under a contract for the sale of land shall—
- (a) give to the purchaser before he signs the contract a statement signed by the vendor;
and
- (b) include in the contract a statement—
containing the matters specified in subsection (2).

- (1A) A vendor under a contract for the sale of land on which there is a residence must give to the purchaser before the purchaser signs the contract, a statement signed by the vendor giving particulars of—
- (a) any building permit under the **Building Act 1993** in the preceding 7 years in relation to a building on the land; and
 - (b) in the case of a residence to which Part 2 of the **House Contracts Guarantee Act 1987** applies which was constructed by an owner-builder within the meaning of that Act within the preceding 7 years, any guarantee under that Act applying to that residence; and
 - (c) in the case of a residence to which section 137B of the **Building Act 1993** applies which was constructed within the preceding 6 years, any required insurance under that Act applying to that residence.
- (2) The statements required by subsection (1) shall contain the following matters—
- (a) particulars of any mortgage (whether registered or unregistered) over the land, which is not to be discharged before the purchaser becomes entitled to possession or to the receipt of rents and profits, including the particulars specified in Schedule 1;
 - (aa) particulars of any charge (whether registered or not) over the land imposed by or under an Act to secure an amount due under that Act, including the amount owing under the charge;

S. 32(1A) inserted by No. 44/1987 s. 36(1), amended by No. 126/1993 s. 264(Sch. 5 item 19), substituted by No. 34/1997 s. 31.

S. 32(1A)(c) amended by No. 41/2003 s. 5(1).

S. 32(2)(a) amended by No. 42/1989 s. 4(d).

S. 32(2)(aa) inserted by No. 42/1989 s. 5(1)(b).

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- (b) a description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered) and particulars of any existing failure to comply with the terms of that easement, covenant or restriction;
- (c) in the case of land to which a planning instrument applies a statement containing—
- (i) the name of the planning instrument;
 - (ii) the name of the responsible authority;
 - (iii) the zoning of the land under that instrument or, in a case where the land is reserved under that instrument, the purpose for which it is reserved;
 - (iv) where a planning instrument prohibits the construction of a dwelling house on land outside the metropolitan area, notice of such prohibition;
- (ca) a warning to the following effect—
- 'Important notice to purchasers:
- The use to which you propose to put the property may be prohibited by planning or building controls applying to the locality or may require the consent or permit of the municipal council or other responsible authority. It is in your interest to undertake a proper investigation of permitted land use before you commit yourself to buy.';
- S. 32(2)(c)(ii)**
amended by
No. 42/1989
s. 5(1)(c).
- S. 32(2)(c)(iii)**
substituted by
No. 121/1986
s. 112.
- S. 32(2)(c)(iv)**
inserted by
No. 42/1989
s. 5(1)(d).
- S. 32(2)(ca)**
inserted by
No. 42/1989
s. 5(1)(e).

(cb) a warning to the following effect—

'Important notice to purchasers:

The property may be located in an area where commercial agricultural production activity may affect your enjoyment of the property. It is therefore in your interest to undertake an investigation of the possible amenity and other impacts from nearby properties and the agricultural practices and processes conducted there.';

S. 32(2)(cb) inserted by No. 44/2002 s. 30, amended by No. 10/2005 s. 3(Sch. 1 item 18).

(d) in any case—

- (i) the amount of any rates, taxes, charges or other similar outgoings affecting the land and any interest payable on any part of those rates, taxes, charges or outgoings which is unpaid including any rates, taxes, charges or outgoings for which the purchaser may become liable in consequence of the sale and which the vendor might reasonably be expected to have knowledge of; or
- (ii) a statement that the total amount of those rates, taxes, charges or other similar outgoings and interest does not exceed the sum specified;

(da) in the case of land in respect of which there is a GAIC recording (within the meaning of Part 9B of the **Planning and Environment Act 1987**), a warning to the following effect—

S. 32(2)(da) inserted by No. 23/2010 s. 17(1), amended by No. 31/2011 s. 29(1).

'Important notice to purchasers:

You may be liable to pay a growth areas infrastructure contribution when you purchase this property. The instrument of transfer cannot be lodged for registration with the Registrar of Titles until the

contribution is paid in full or an exemption from, or reduction of, the whole or part of the liability to pay the contribution is granted and any remainder of the contribution is paid or there has been a deferral of the whole or part of the liability to pay the contribution or an approval has been given for staged payment of the contribution. The transfer may also be exempted from a growth areas infrastructure contribution in certain situations. It is in your interest to obtain advice as to any potential liability before you commit yourself to buy.;

S. 32(2)(db)
inserted by
No. 31/2011
s. 29(2).

- (db) whether the land, in accordance with a work-in-kind agreement (within the meaning of Part 9B of the **Planning and Environment Act 1987**), is—
- (i) land that is to be transferred under the agreement; or
 - (ii) land on which works are to be carried out under the agreement (other than Crown land); or
 - (iii) land in respect of which a growth areas infrastructure contribution is imposed;

S. 32(2)(e)
substituted by
No. 121/1986
s. 112,
amended by
Nos 53/1988
s. 45(Sch. 2
item 67),
48/1991
s. 54(1),
103/2004 s. 69.

- (e) particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal affecting the land, including any notice of intention to acquire served under section 6 of the **Land Acquisition and Compensation Act 1986**, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge;

- (ea) a list of the following services, indicating in respect of each whether the service is connected to the land and, in the case of any service connected, the name of the authority supplying the service:
- Electricity supply;
 - Gas supply;
 - Water supply;
 - Sewerage;
 - Telephone services;
- (eaa) in the case of any water supply or sewerage service connected to the land that is not of the standard level available in the locality, particulars of the level of service provided;
- (eb) a warning to the effect that purchasers should check with the appropriate authorities as to the availability of, and the cost of providing, any essential services not connected to the land;
- (ec) if there is no access to the property by road, a statement that there is no such access;
- (f) in the case of a terms contract where the purchaser is obliged to make two or more payments to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land, the information set out in Schedule 2; and
- (g) where the contract does not provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits particulars of any policy of insurance maintained by the

S. 32(2)(ea)
inserted by
No. 42/1989
s. 5(1)(f).

S. 32(2)(eaa)
inserted by
No. 121/1994
s. 210(1).

S. 32(2)(eb)
inserted by
No. 42/1989
s. 5(1)(f).

S. 32(2)(ec)
inserted by
No. 42/1989
s. 5(1)(f).

S. 32(2)(f)
substituted by
No. 42/1989
s. 5(1)(g).

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s. 32

vendor in respect of any damage to or
destruction of the land;

S. 32(2)(h)
inserted by
No. 53/1988
s. 45(Sch. 2
item 68),
repealed by
No. 69/2006
s. 219(1).

* * * * *

S. 32(2)(i)
inserted by
No. 53/1988
s. 45(Sch. 2
item 68),
substituted by
No. 46/1992
s. 78(3) (as
amended by
No. 73/1994
s. 56(1)(d)).

(i) particulars of any current land use restriction
notice given in relation to the land under the
**Agricultural and Veterinary Chemicals
(Control of Use) Act 1992** due to
contamination.

(3) The vendor shall attach to the statement required
by paragraph (a) of subsection (1) and to the
contract—

S. 32(3)(a)
amended by
No. 48/1991
s. 54(2)(a).

(a) a copy of (or, in the case of land under the
Transfer of Land Act 1958, a reproduction
of, or statement of information as to, being a
reproduction or statement provided by the
Registrar) either—

S. 32(3)(a)(i)
amended by
No. 18/1989
s. 13(Sch. 2
item 76(f)).

(i) in the case of land under the **Transfer
of Land Act 1958** the Certificate of
Title; or

(ii) in any other case—

(A) the last conveyance in the chain of
title to the land; or

(B) any other document which gives
evidence of the vendor's title to
the land;

- (b) where the vendor is not the registered proprietor of the land or the owner of the estate in fee simple in the land, evidence of his right or power to sell the land;
- (ba) in the case of land which is the subject of a subdivision other than a subdivision referred to in paragraphs (c), (d) or (e), a copy of (or a reproduction provided by the Registrar of or a statement provided by the Registrar as to the information in) the plan of subdivision which has been approved by the Registrar under section 97 of the **Transfer of Land Act 1958** or registered under the **Subdivision Act 1988**, or where the plan has not been approved or registered, a copy of the plan of subdivision which has been sealed or certified by the council of the municipality concerned or, where the plan has not yet been sealed or certified, a copy of the latest version of the plan, together with details of any amendments proposed to the plan and, in the case of a staged subdivision within the meaning of section 37 of the **Subdivision Act 1988**—
- (i) if the land is in the second or a subsequent stage, a copy of (or a reproduction provided by the Registrar of or a statement provided by the Registrar as to the information in) the plan for the first stage; and
- (ii) details of any requirements in a statement of compliance relating to the stage in which the land is included that have not been complied with; and
- (iii) details of any proposals relating to subsequent stages that are known to the vendor; and

S. 32(3)(ba) inserted by No. 10216 s. 8, amended by Nos 53/1988 s. 45(Sch. 2 item 69) (as amended by No. 47/1989 ss 8(1)(e), 22(d)), 48/1991 s. 54(2)(b)(i), 57/1993 s. 18(a)(b).

S. 32(3)(ba)(i) amended by No. 48/1991 s. 54(2)(b)(i).

S. 32(3)(c)
amended by
No. 48/1991
s. 54(2)(b)(ii).

S. 32(3)(d)
amended by
No. 48/1991
s. 54(2)(b)(iii).

S. 32(3)(e)
amended by
Nos 48/1991
s. 54(2)(b)(iv),
23/2010
s. 17(2).

- (iv) a statement of the contents of any permit under the **Planning and Environment Act 1987** authorising the staged subdivision;
- (c) in the case of land which is the subject of a strata subdivision, a copy of (or a reproduction provided by the Registrar of or a statement provided by the Registrar as to the information in) the plan of strata subdivision which has been registered under the **Strata Titles Act 1967**, or where the plan has not been registered or a proposed plan of redevelopment has not been approved, a copy of the plan which is proposed to be registered or approved;
- (d) in the case of land which is the subject of a cluster subdivision, a copy of (or a reproduction provided by the Registrar of or a statement provided by the Registrar as to the information in) the plan of cluster subdivision which has been registered under the **Cluster Titles Act 1974** or where the plan has not been registered or a proposed plan of redevelopment has not been approved, a copy of the plan which is proposed to be registered or approved; and
- (e) in the case of a building or building and land which has been subdivided under section 97 of the **Transfer of Land Act 1958**, a copy of (or a reproduction provided by the Registrar of or a statement provided by the Registrar as to the information in) the plan of subdivision which has been approved by the Registrar;

(f) in the case of land in respect of which there is a GAIC recording (within the meaning of Part 9B of the **Planning and Environment Act 1987**), the following certificates or notices—

S. 32(3)(f)
inserted by
No. 23/2010
s. 17(3).

- (i) any certificate of release from liability to pay a growth areas infrastructure contribution imposed in respect of the land issued under that Part;
- (ia) any certificate of deferral of the liability to pay the whole or part of a growth areas infrastructure contribution imposed in respect of the land issued under that Part;
- (ii) any certificate of exemption from liability to pay a growth areas infrastructure contribution imposed in respect of the land issued under that Part;
- (iia) any certificate of staged payment approval;
- (iii) any certificate of no GAIC liability relating to the land issued under that Part;
- (iv) any notice given under that Part providing evidence of the grant of a reduction of the whole or part of the liability to pay a growth areas infrastructure contribution imposed in respect of the land or an exemption from that liability;
- (v) if no certificate or notice of a type specified in subparagraphs (i) to (iv) is provided, a GAIC certificate relating to the land issued under that Part.

S. 32(3)(f)(iia)
inserted by
No. 31/2011
s. 29(3).

S. 32(3A)
inserted by
No. 69/2006
s. 219(2).

- (3A) If the land is affected by an owners corporation within the meaning of the **Owners Corporations Act 2006**, the vendor must attach to the statement required by subsection (1)(a) and to the contract—
- (a) a copy of the current owners corporation certificate issued in respect of the land under the **Owners Corporations Act 2006**; and
 - (b) a copy of the documents required to accompany the owners corporation certificate under section 151(4)(b) of the **Owners Corporations Act 2006**.
- (4) Where the information required by any one of paragraphs (c), (d) or (e) of subsection (2) is contained in a certificate issued by the relevant authority it shall be sufficient compliance with the requirements of that paragraph of subsection (2) if that certificate or a copy of that certificate is attached to the statement required by paragraph (a) of subsection (1) or to the contract.
- (5) Where a vendor—
- (a) supplies false information to the purchaser in the statements or certificates required to be given by this section; or
 - (b) fails to supply all the information required to be supplied in the statements or certificates required to be given by this section—

the purchaser may rescind any contract for the sale of the land which has been entered into on the basis of that information at any time before he accepts title and becomes entitled to possession or to the receipt of rents and profits.

(5A) Where—

S. 32(5A)
inserted by
No. 121/1986
s. 112.

(a) a notice of intention to acquire land has been served under section 6 of the **Land Acquisition and Compensation Act 1986**; and

(b) the land is subject to a contract of sale—
the purchaser may rescind the contract at any time before the purchaser accepts title and becomes entitled to possession or to the receipt of rents and profits.

(6) Where a vendor knowingly or recklessly—

(a) supplies false information to the purchaser in the statements or certificates required to be given by this section; or

(b) fails to supply all the information required to be supplied in the statements or certificates required to be given by this section—

he shall be guilty of an offence and liable to a penalty of not more than 50 penalty units.

(7) Notwithstanding subsection (5) the purchaser may not rescind the contract if the court is satisfied that the vendor has acted honestly and reasonably and ought fairly to be excused for the contravention and that the purchaser is substantially in as good a position as if all the relevant provisions of this section had been complied with.

(8) A provision in a contract for the sale of land whereby any provision of this section is excluded, modified or restricted shall be void and of no effect.

(9) Where a vendor and purchaser have entered into a contract for the sale of land in respect of which statements under this section have been given and that vendor and purchaser enter into a subsequent contract in relation to the same land in

s. 34

substantially the same terms as the original contract the vendor shall not be required in respect of the subsequent contract to give to the purchaser the statements required by this section.

S. 32(10)
inserted by
No. 26/2001
s. 17.

- (10) It is and is to be taken always to have been sufficient compliance with subsection (1A)(c) if particulars are or were given of a HIH policy (within the meaning of Part 6 of the **House Contracts Guarantee Act 1987**) applying to the residence.

S. 32(11)
inserted by
No. 54/2010
s. 80.

- (11) To avoid doubt, an agreement to transfer a forest carbon right within the meaning of the **Climate Change Act 2010** is not a contract of sale of land for the purposes of this section.

S. 33
inserted by
No. 9858 s. 3,
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.10),
27/2001
s. 3(Sch. 1
item 12.3),
repealed by
No. 6/2008
s. 34.

* * * * *

Division 3—Insurance

34 Power of purchaser to rescind contract where house destroyed

S. 34
inserted by
No. 9858 s. 3.

S. 34(1)
amended by
Nos 35/1996
s. 453(Sch. 1
item 73.11),
75/2006
s. 192(Sch. 2
item 5.9) (as
amended by
No. 17/2007
s. 32(3)).

- (1) Where a contract for the sale of land upon which there is a dwelling-house has been entered into, and where the dwelling-house is so destroyed or damaged as to be unfit for occupation as a dwelling-house, before the purchaser becomes entitled to possession or to the receipt of rents and profits he may, at his option, rescind the contract by notice in writing given to the vendor or his

legal practitioner or conveyancer within fourteen days after the purchaser becomes aware of the destruction of or damage to the dwelling-house.

- (2) Upon rescission of a contract for the sale of land pursuant to this section—
 - (a) any moneys paid by the purchaser shall be refunded to him;
 - (b) any documents of title or transfer shall be returned to the vendor; and
 - (c) the provisions of section 35 shall not apply and the vendor and any other person entitled to benefit from any insurance policy shall be entitled to do so to the same extent as they would have been if the land had not been subject to the contract.
- (3) Any provision in any contract for the sale of land or other document whereby any provision of this section is excluded, modified or rescinded shall be void and of no effect.

35 Insurance held by vendor to enure for benefit of purchaser

S. 35
inserted by
No. 9858 s. 3.

- (1) During the period between the making of a contract for the sale of land and the purchaser becoming entitled to possession or to the receipt of rents and profits pursuant to the terms of the contract, any policy of insurance maintained by the vendor in respect of any damage to or destruction of any part of the land agreed to be sold pursuant to the contract shall in respect of the said land, to the extent that the purchaser is not entitled to be indemnified under any other policy of insurance, enure for the benefit of the purchaser as well as for the vendor and the purchaser shall be entitled to be indemnified by the insurer under any such insurance policy in the same manner and

to the same extent as the vendor would have been if the land had not been subject to the contract.

- (2) It shall not be a defence or answer to any claim by the purchaser against the insurer made under subsection (1) hereof that the vendor otherwise would not be entitled to be indemnified by the insurer because the vendor has suffered no loss or has suffered diminished loss by reason of the fact that the vendor is entitled to be paid the purchase price or the balance thereof by the purchaser.
- (3) A policy of insurance shall not enure for the benefit of a purchaser under subsection (1) hereof if the insurer establishes that a prudent insurer would not have insured the purchaser against the risk covered by the policy.
- (4) At any time prior to the happening of the risk insured against an insurer made liable to a purchaser under subsection (1) may terminate that liability by giving notice of such termination to the purchaser in not less than three clear business days.
- (5) A notice under subsection (4) shall be in writing and shall be served upon the purchaser personally or in the case of a company by leaving it at the company's registered office.
- (6) The contract of insurance shall terminate at the expiration of the period specified in the notice.
- (7) The service of a notice under subsection (4) shall not affect the liability of the insurer to the vendor under the policy of insurance.
- (8) Where money becomes payable under a policy of insurance in respect of any damage to or destruction of part of the land agreed to be sold the money shall, on completion of the contract be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser

on completion of the sale or as soon as the money is received by the vendor (whichever is the later).

- (9) Notwithstanding subsection (1) an insurer shall not be entitled to deny liability to the purchaser because of a fault on the part of the vendor by reason of which the vendor would not be entitled to make a claim under the policy.
- (10) This section—
- (a) shall apply to a contract for the sale of land made after the commencement of section 3 of the **Sale of Land (Amendment) Act 1982**; and
 - (b) shall have effect notwithstanding any stipulation or term to the contrary contained in the contract of sale or any policy of insurance as referred to in subsection (1).
- (11) This section shall apply mutatis mutandis to a sale or exchange by order of a court.

36 Damage to land

Where land has been destroyed or damaged, the vendor may restore that damage and where the vendor does so before the purchaser becomes entitled to possession or to the receipt of rents and profits, the purchaser shall not be entitled to rely on the provisions of section 34 or 35.

S. 36
inserted by
No. 9858 s. 3.

Division 4—Public auctions

Pt 2 Div. 4
(Heading and
ss 37–48)
inserted by
No. 41/2003
s. 3.

37 This Division applies to publicly advertised auctions

For the purposes of this Division an auction is a public auction if it has been publicly advertised.

S. 37
inserted by
No. 41/2003
s. 3.

S. 38
inserted by
No. 41/2003
s. 3.

38 Dummy bidding prohibited

- (1) A vendor of land must not make a bid at a public auction of the land.

Penalty: In the case of a body corporate:
600 penalty units.

In any other case: 240 penalty units.

- (2) A person must not make a bid at a public auction of land knowing that the bid is being made on behalf of a vendor of the land.

Penalty: In the case of a body corporate:
600 penalty units.

In any other case: 240 penalty units.

- (3) For the purposes of subsection (2), a bid may be found to have been made on behalf of a vendor even though it is not made at the request of, or with the knowledge of, the vendor.

- (4) Evidence that a person who made a bid at a public auction had the intention of benefiting the vendor in making the bid is evidence that the person made the bid on behalf of the vendor.

- (5) It is immaterial that a person making a bid in contravention of this section is not in Victoria at the time the bid is made.

- (6) Subsections (1) and (2) do not apply to a bid made by a vendor who is a co-owner of the land or by a person (other than the auctioneer of the land) on behalf of a vendor who is a co-owner of the land if—

- (a) the bid was made to enable the vendor to purchase the interest of another co-owner in the land; and

S. 38(6)
inserted by
No. 103/2004
s. 70(1).

- (b) the conditions under which the auction is conducted permit the making of bids by a vendor to purchase the interest of another co-owner in the land; and
- (c) before any bidding started, the auctioneer orally declared at the auction that a vendor may make bids to purchase the interest of a co-owner in the land.

- (7) In subsection (6), *co-owner* means a joint tenant, whether at law or in equity or a tenant in common, whether at law or in equity, of the land.

S. 38(7)
inserted by
No. 103/2004
s. 70(1).

39 Offences by auctioneers

S. 39
inserted by
No. 41/2003
s. 3.

- (1) The auctioneer of land at a public auction must not accept a bid at the auction if he or she knows that the bid was made by, or on behalf of, a vendor of the land.

Penalty: 240 penalty units.

- (2) The auctioneer of land at a public auction must not acknowledge the making of a bid at the auction if no bid was made.

Penalty: 240 penalty units.

- (3) Subsection (1) does not apply to a bid made in accordance with section 38(6).

S. 39(3)
inserted by
No. 103/2004
s. 70(2).

40 Offence to procure dummy bid

S. 40
inserted by
No. 41/2003
s. 3.

A person must not procure another person to make a bid at a public auction of land that is contrary to section 38.

Penalty: In the case of a body corporate:
600 penalty units.

In any other case: 240 penalty units.

s. 41

S. 41
inserted by
No. 41/2003
s. 3.

41 Permissible vendor bids

- (1) Despite section 38(2), the auctioneer of land at a public auction may make a bid on behalf of a vendor of the land if—
 - (a) the conditions under which the auction is conducted permit the making of the bid; and
 - (b) before any bidding started, the auctioneer orally declared at the auction that the conditions permit the making of the bid; and
 - (c) immediately before, or in the process of, making the bid, the auctioneer audibly states that the bid is being made on behalf of the vendor; and
 - (d) the bid is not made on behalf of a vendor who is a co-owner to enable the vendor to purchase the interest of a co-owner in the land.
- (2) It is sufficient compliance with the requirement under subsection (1)(c) to identify a bid as a vendor bid if the auctioneer states "vendor bid" in making the bid.
- (3) It is not sufficient compliance with the requirement under subsection (1)(c) to identify a bid as a vendor bid if the auctioneer merely identifies the vendor by name without stating that the vendor is a vendor.

S. 41(1)(c)
amended by
No. 103/2004
s. 70(3).

S. 41(1)(d)
inserted by
No. 103/2004
s. 70(4).

S. 42
inserted by
No. 41/2003
s. 3.

42 Offence to falsely acknowledge bid

A person at a public auction of land must not falsely claim to have made a bid, or falsely acknowledge that he or she made a bid.

Penalty: 240 penalty units.

43 Conditions of auctions to be made available before auction starts

S. 43
inserted by
No. 41/2003
s. 3.

Before a public auction of land starts, the auctioneer of the land must cause a copy of the conditions under which the auction is to be conducted to be available for inspection at the location where the auction is to take place by any person attending the auction.

Penalty: 60 penalty units.

44 Right to compensation if Division breached

S. 44
inserted by
No. 41/2003
s. 3.

- (1) A purchaser of land at a public auction is entitled to compensation from any person who fails to comply with this Division (other than section 47) for any loss or damage suffered by the purchaser as a result of that failure to comply.
- (2) An application for compensation under this section—
 - (a) must be lodged with the Victorian Civil and Administrative Tribunal; and
 - (b) must be lodged before the second anniversary of the date of the auction.
- (3) If compensation is sought under this section from a vendor of the land and the Tribunal is satisfied that the application for compensation is frivolous, vexatious or without substance, it may order the applicant to pay compensation to the vendor for any loss or damage the vendor has suffered as a result of the application.
- (4) The power conferred by subsection (3) is in addition to any power the Tribunal has to order the payment of costs in relation to the application.

s. 45

S. 45
inserted by
No. 41/2003
s. 3.

45 Contrary conditions are void

Any conditions applying to the sale of any land at public auction that are contrary to, or that purport to restrict or modify, any requirement imposed by or under this Division are void.

S. 46
inserted by
No. 41/2003
s. 3.

46 Last vendor bids must be identified if property passed in

- (1) This section applies if a public auction of land is held at which the land is not sold, and the last bid made before the auction stopped was a bid made by the auctioneer of the land on behalf of a vendor of the land.
- (2) In making any statement while marketing the land, a person must not state the amount of the last bid without also stating that the bid was a bid made on behalf of a vendor of the land.

Penalty: In the case of a body corporate:
600 penalty units.

In any other case: 240 penalty units.

- (3) For the purposes of subsection (2), a statement is made while marketing land if—
 - (a) it is made in an advertisement in respect of the land that is published, or caused to be published, by the person; or
 - (b) it is made (whether orally or in writing) to a person as a prospective purchaser of the land.

- (4) A person who advises another person of the amount of the last bid to enable that amount to be published must not knowingly fail to disclose to the other person that the bid was a bid made on behalf of a vendor of the land.

Penalty: In the case of a body corporate:
200 penalty units.

In any other case: 80 penalty units.

- (5) A person who is a publisher of land auction sales results must not publish the fact that the land was passed in for the amount of the last bid without also stating that the bid was a bid made on behalf of a vendor of the land.

Penalty: In the case of a body corporate:
200 penalty units.

In any other case: 80 penalty units.

- (6) It is a defence to a charge against subsection (2) or (5) if the person making the statement, or publishing the amount—

- (a) was not present at the auction; and
- (b) relied on a statement made by a person who purported to know what happened at the auction.

- (7) It is sufficient compliance with subsection (2) or (5) if the amount is described as a "vendor bid".

47 Disruption of auction prohibited

- (1) This section applies to—

- (a) a person intending to make a bid on his or her own behalf, or on behalf of another person, at a public auction of land;
- (b) a person acting on behalf of a person intending to make a bid at a public auction of land.

S. 47
inserted by
No. 41/2003
s. 3.

- (2) The person must not knowingly prevent or hinder any other person whom he or she knows or believes is an actual or potential rival bidder from attending, participating in, or bidding at, the auction.

Penalty: 60 penalty units.

- (3) The person must not harass any other person whom he or she knows or believes is an actual or potential rival bidder with the intention of interfering with that other person's attendance at, participation in, or bidding at, the auction.

Penalty: 60 penalty units.

- (4) The person must not induce, or attempt to induce, another person whom he or she knows or believes is an actual or potential rival bidder to not attend the auction, or to not make a bid at the auction.

Penalty: 60 penalty units.

- (5) The person must not do any thing with the intention of preventing, causing a major disruption to, or causing the cancellation of, the auction.

Penalty: 60 penalty units.

- (6) Subsection (5) is not intended to preclude a person at the auction from asking, in good faith, a reasonable number of questions about the land, the contract of sale and the conduct of the auction.

S. 48
inserted by
No. 41/2003
s. 3.

48 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) regulating the conduct of public auctions of land;
 - (b) prescribing standard rules for the conduct of public auctions of land;

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- (c) regulating signs and documents relating to public auctions of land;
 - (d) requiring the provision of specified information to potential purchasers of land that is to be sold at public auction;
 - (e) prescribing any other matter or thing authorised or required to be prescribed or necessary or convenient to be prescribed for the purposes of this Division.
- (2) The regulations—
- (a) may be of general, or of specially limited, application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by, or to the satisfaction of, a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii);
 - (d) may apply, adopt or incorporate any matter contained in any existing document either wholly, or partially, or as amended by the regulations;
 - (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person;
 - (f) may provide, in a specified case or class of case, for the exemption of people or things from any of the provisions of the regulations, whether unconditionally or on specified

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conditions, and either wholly or to the extent specified;

- (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
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PART IIA—ENFORCEMENT

Pt 2A
(Heading and
s. 48A)
inserted by
No. 103/2004
s. 71.

48A Application of Fair Trading Act 1999

S. 48A
inserted by
No. 103/2004
s. 71.

- (1) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except section 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.
- (1AA) For the purposes of subsection (1), section 152A of the **Fair Trading Act 1999** applies as if—
- (a) a reference in that section to any section of the **Fair Trading Act 1999** were a reference to section 106HA of that Act (as applied by subsection (1)); and
 - (b) section 152A(2) did not apply.
- (1A) For the purposes of subsection (1), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2A or 6 of the **Fair Trading Act 1999** were a reference to this Act.
- (2) For the purposes of subsection (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
- (a) proceedings for an offence against a provision of this Act; or

S. 48A(1)
amended by
No. 17/2007
s. 36(Sch.
item 13.1).

S. 48A(1AA)
inserted by
No. 2/2008
s. 60(Sch.
item 12).

S. 48A(1A)
inserted by
No. 17/2007
s. 36(Sch.
item 13.2),
amended by
No. 72/2010
s. 48(Sch.
item 21).

s. 48B

S. 48A(2)(b)
amended by
No. 17/2007
s. 36(Sch.
item 13.3).

- (b) proceedings on an application for an injunction under section 149, 149A, 150, 151A or 151B of the **Fair Trading Act 1999** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act; or
- (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by subsection (1)).

S. 48B
inserted by
No. 63/2010
s. 66.

48B Infringement notices

- (1) An authorised officer may serve an infringement notice on any person who the officer has reason to believe has committed an offence against this Act or the regulations that is prescribed for the purposes of this subsection.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence prescribed for the purposes of subsection (1) is the prescribed infringement penalty.
- (4) In this section *authorised officer* means—
 - (a) a person appointed under section 114 of the **Fair Trading Act 1999**;
 - (b) a member of the police force;
 - (c) a person authorised in writing by the Director of Consumer Affairs Victoria.

PART 3—TRANSITIONAL PROVISIONS

**49 Application of amendment to section 32—
Agriculture Legislation (Amendments and Repeals)
Act 2002**

Despite the commencement of section 30 of the **Agriculture Legislation (Amendments and Repeals) Act 2002**, section 32, as in force immediately before that commencement, continues to apply to any contract for the sale of land entered into before that commencement.

**50 Transitional provision—Purchaser may deduct
growth areas infrastructure contribution from
purchase price**

(1) This section applies to a contract for the sale of land in respect of which there is a GAIC recording (within the meaning of Part 9B of the **Planning and Environment Act 1987**) entered into on or after the relevant day for that land (within the meaning of that Part) and before 1 December 2009 if—

- (a) the land is to be transferred after the commencement of section 9 of the **Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010**; and

Pt 3
(Heading and
ss 26–28)
repealed by
No. 7332
s. 4(Sch. 2),
new Pt 3
(Heading and
s. 37)
inserted by
No. 44/2002
s. 31.

S. 37
re-numbered
as s. 49 by
No. 41/2003
s. 5(2).

S. 50
inserted by
No. 23/2010
s. 18.

- (b) a growth areas infrastructure contribution is to be imposed in respect of the transfer; and
 - (c) the contract contains a term requiring the vendor to pay any growth areas infrastructure contribution that may be imposed in respect of the transfer.
- (2) The purchaser under the contract for the sale of the land, on the settlement of the contract, may deduct from the purchase price the amount of the growth areas infrastructure contribution that the purchaser is liable to pay in respect of the transfer of the land at the time of the settlement.
- (3) The purchaser may deduct an amount from the purchase price despite any term of the contract that is inconsistent with the deduction of such an amount.
- (4) In this section *settlement* in relation to a contract for the sale of land, means the time at which the purchaser becomes entitled to possession or to the receipt of rents and profits.

Note

Under Part 9B of the **Planning and Environment Act 1987**, the vendor, before settlement of a contract for the sale of land to which this section applies, may apply to the Growth Areas Infrastructure Contribution Hardship Relief Board established under that Part for relief for the purchaser from any liability to pay a growth areas infrastructure contribution to be imposed in respect of the transfer of the land. If this relief is provided, then at the time of settlement the amount of the contribution that the purchaser is liable to pay may have been partly or wholly reduced or the purchaser may have been exempted from paying the whole of the contribution. In that case the purchaser will only have the right to deduct the amount of the contribution remaining to be paid (if any) at the time of settlement.

SCHEDULES

SCHEDULE 1

PARTICULARS OF MORTGAGE

Particulars to be Supplied When Land Sold Subject to a Mortgage.

- (a) The amount secured by the mortgage is
- (b) The mortgage ¹ *does not provide for further advances by the mortgagee.*
¹ provides for further advances as follows:
2
- (c) The rate of interest presently payable under the mortgage is
- (d) Subject to compliance with the terms and conditions of the mortgage the amount secured by the mortgage is to be repaid by the _____ day of _____ 20 ____ ;
- (e) Instalments under the mortgage must be made as follows: ³
Amount _____ at _____ intervals.
- (f) The vendor is ¹ *not in default under the mortgage.*
¹ in default under the mortgage in the following respects:
- (g) At the date of giving these particulars, the amount required to discharge the mortgage is;
- (h) The mortgagee's name and address are as follows:
Name:
Address:

Section 6.
Sch. 1
(Heading)
substituted by
No. 42/1989
s. 4(e).

Sch. 1(d)
substituted by
No. 7052
s. 2(k)(i),
amended by
No. 6/2008
s. 35.

Sch. 1(e)
substituted by
No. 7052
s. 2(k)(i).

Sch. 1(g)
inserted by
No. 42/1989
s. 4(f).

Sch. 1(h)
inserted by
No. 42/1989
s. 4(f).

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Sch. 1

Sch. 1(i)
inserted by
No. 42/1989
s. 4(f).

(i) (to be completed if the contract is a terms contract and the consideration is to be satisfied in part by the purchaser assuming the obligations of the mortgagor)—

the mortgagee—

¹ has consented to the purchaser assuming the mortgagor's obligations under the mortgage—

¹ has not consented to the purchaser assuming the mortgagor's obligations under the mortgage.

⁴

Footnote
amended by
No. 7052
s. 2(k)(ii).

¹ As the case requires.

² Insert summary of relevant provisions.

³ Not required if mortgage does not provide for repayment by instalments.

⁴ Give details of defaults.

SCHEDULE 2

DETAILS OF COST OF VENDOR FINANCE

Sch. 2
inserted by
No. 42/1989
s. 5(2).

Deposit payable	\$
Balance of purchase money including total interest but less deposit	\$
Final payment when periodical payments completed	\$
Purchase price excluding total interest and deposit if shown in contract	\$
Lowest price at which land may be bought for cash where contract does not show purchase price less interest and deposit	\$
Number of repayments	No.
Amount of each repayment	\$ *5
When repayments due	Date
Annual percentage interest rate	% *1
Whether variable	Yes/No *2
Total interest payable	\$
Charge for late payment	\$

NOTES:

- *1. The annual percentage rate is the percentage rate which, as applied to the daily unpaid balance of purchase money excluding interest (if shown in the contract) or, if that is not shown in the contract, the lowest cash price at which the land might be bought, will yield the amount equal to the total interest.
- *2. Delete where inapplicable.
3. If the interest rate is variable the amount in the Schedule should be calculated as if the rate did not vary.
4. Amounts in the Schedule must be calculated as if all payments were made as and when they fall due, but the penalty for late payment must still be shown.
- *5. If the payments vary in amount, specify the amount of each repayment.

ENDNOTES

1. General Information

The **Sale of Land Act 1962** was assented to on 18 December 1962 and came into operation as follows:

Part 2 (sections 23–25) on 1 March 1963: Government Gazette 13 February 1963 page 263; sections 9, 27, 28 on 1 March 1963: Government Gazette 20 February 1963 page 307; rest of Act on 1 June 1963: Government Gazette 20 February 1963 page 307.

2. Table of Amendments

This Version incorporates amendments made to the **Sale of Land Act 1962** by Acts and subordinate instruments.

Sale of Land (Amendment) Act 1963, No. 7052/1963

Assent Date: 26.11.63
Commencement Date: 26.11.63
Current State: All of Act in operation

Public Lands and Works Act 1964, No. 7228/1964

Assent Date: 15.12.64
Commencement Date: 15.3.65: Government Gazette 11.3.65 p. 557
Current State: All of Act in operation

Sale of Land Act 1965, No. 7272/1965

Assent Date: 1.6.65
Commencement Date: 1.9.65: Government Gazette 21.7.65 p. 2314
Current State: All of Act in operation

Statute Law Revision Act 1965, No. 7332/1965

Assent Date: 14.12.65
Commencement Date: 14.12.65
Current State: All of Act in operation

Sale of Land (Amendment) Act 1969, No. 7898/1969

Assent Date: 9.12.69
Commencement Date: 1.3.70: Government Gazette 19.12.69 p. 4134
Current State: All of Act in operation

Local Government (Further Amendment) Act 1971, No. 8149/1971

Assent Date: 4.5.71
Commencement Date: S. 25(1) on 1.10.72: Government Gazette 27.9.72 p. 3198
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Cluster Titles Act 1974, No. 8661/1974

Assent Date: 20.12.74
Commencement Date: Ss 40, 41 on 15.8.75: Government Gazette 13.8.75 p. 2926; rest of Act on 1.10.75: Government Gazette 10.9.75 p. 3253
Current State: All of Act in operation

Cluster Titles (Amendment) Act 1978, No. 9128/1978

Assent Date: 23.5.78
Commencement Date: 1.7.78: Government Gazette 14.6.78 p. 1644
Current State: All of Act in operation

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Sale of Land (Deposits) Act 1980, No. 9423/1980

Assent Date: 20.5.80
Commencement Date: 1.8.80: Government Gazette 2.7.80 p. 2256
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80: subject to s. 6(2)
Current State: All of Act in operation

Estate Agents Act 1980, No. 9428/1980

Assent Date: 27.5.80
Commencement Date: S. 3(1)(Sch.) on 30.6.81: Government Gazette 17.6.81 p. 1902
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Sale of Land (Deposits Amendment) Act 1980, No. 9471/1980

Assent Date: 16.12.80
Commencement Date: 22.12.80: Government Gazette 17.12.80 p. 4271
Current State: All of Act in operation

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: subject to s. 2(2)
Current State: All of Act in operation

Sale of Land (Deposits) Act 1981, No. 9688/1981

Assent Date: 5.1.82
Commencement Date: 5.1.82
Current State: All of Act in operation

Building Control Act 1981, No. 9720/1981

Assent Date: 12.1.82
Commencement Date: S. 3(2)(Sch. item 90) on 2.8.82: Government Gazette 28.4.82 p. 1174
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Sale of Land (Amendment) Act 1982, No. 9858/1982

Assent Date: 5.1.83
Commencement Date: 2.5.83: Government Gazette 8.4.83 p.753
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: s. 3(2)
Current State: All of Act in operation

Sale of Land (Allotments) Act 1985, No. 10216/1985

Assent Date: 3.12.85
Commencement Date: 1.1.86: Government Gazette 18.12.85 p. 4697
Current State: All of Act in operation

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Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Land Acquisition and Compensation Act 1986, No. 121/1986

Assent Date: 23.12.86
Commencement Date: 29.11.87: Government Gazette 25.11.87 p. 3224
Current State: All of Act in operation

House Contracts Guarantee Act 1987, No. 44/1987

Assent Date: 19.5.87
Commencement Date: S. 36 on 1.5.88: Government Gazette 30.3.88 p. 752
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Planning and Environment Act 1987, No. 45/1987

Assent Date: 27.5.87
Commencement Date: S. 205(Sch. item 123) on 16.2.88: Government Gazette 10.2.88 p. 218
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Subdivision Act 1988, No. 53/1988 (as amended by Nos 18/1989, 47/1989)

Assent Date: 31.5.88
Commencement Date: 30.10.89: Government Gazette 4.10.89 p. 2532
Current State: All of Act in operation

Transfer of Land (Computer Register) Act 1989, No. 18/1989

Assent Date: 16.5.89
Commencement Date: 3.2.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

Sale of Land (Amendment) Act 1989, No. 42/1989

Assent Date: 6.6.89
Commencement Date: 30.10.89: Government Gazette 25.10.89 p. 2698
Current State: All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: Ss 38(2)(f)(3), 56(2)(3), 65 on 30.10.89: s. 2(2); rest of Act (*except* ss 50, 53(5), 57) on 25.6.91: s. 2(4); s. 53(5) on 1.10.92: s. 2(1); ss 50, 57 on 3.2.92: i.e. same day as Act No. 18/1989
Current State: All of Act in operation

Agricultural and Veterinary Chemicals (Control of Use) Act 1992, No. 46/1992
(as amended by No. 73/1994)

Assent Date: 23.6.92
Commencement Date: S. 78(3) on 20.12.95: Government Gazette 14.12.95 p. 3489
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

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Subdivision (Amendment) Act 1993, No. 57/1993

Assent Date: 8.6.93
Commencement Date: S. 17(4) on 30.10.89: s. 2(1); rest of Act on 8.6.93:
s. 2(2)
Current State: All of Act in operation

Building Act 1993, No. 126/1993

Assent Date: 14.12.93
Commencement Date: S. 264(Sch. 5 item 19) on 1.7.94: Special Gazette
(No. 42) 1.7.94 p. 1
Current State: This information relates only to the provision/s
amending the **Sale of Land Act 1962**

Subordinate Legislation Act 1994, No. 104/1994

Assent Date: 13.12.94
Commencement Date: 1.1.95: s. 2
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95:
Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Water Industry Act 1994, No. 121/1994

Assent Date: 20.12.94
Commencement Date: Ss 1, 2 on 20.12.94: s. 2(1); rest of Act on 1.1.95:
Special Gazette (No. 105) 23.12.94 p. 1
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 73.1–73.11) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Sale of Land Act 1962**

Building (Further Amendment) Act 1997, No. 34/1997

Assent Date: 3.6.97
Commencement Date: S. 31 on 1.8.97: Special Gazette (No. 84) 29.7.97 p. 1.
Current State: This information relates only to the provision/s
amending the **Sale of Land Act 1962**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 53) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Sale of Land Act 1962**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: S. 45 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s
amending the **Sale of Land Act 1962**

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No. 6975 of 1962

Endnotes

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 112) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 67) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

House Contracts Guarantee (HIH) Act 2001, No. 26/2001

Assent Date: 7.6.01
Commencement Date: S. 17 on 8.6.01: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 3(Sch. 1 item 12) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 58) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Agriculture Legislation (Amendments and Repeals) Act 2002, No. 44/2002

Assent Date: 22.10.02
Commencement Date: Ss 30, 31 on 20.3.03: Government Gazette 13.3.03 p. 418
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Estate Agents and Sale of Land Acts (Amendment) Act 2003, No. 41/2003

Assent Date: 11.6.03
Commencement Date: Ss 3–5 on 1.2.04: Government Gazette 29.1.04 p. 179
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 68–71 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

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Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 18) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 94) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: Ss 217–219 on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Conveyancers Act 2006, No. 75/2006 (as amended by No. 17/2007)

Assent Date: 10.10.06
Commencement Date: S. 192(Sch. 2 item 5) on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Water (Governance) Act 2006, No. 85/2006

Assent Date: 17.10.06
Commencement Date: S. 173(Sch. 1 item 12) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 13) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 60(Sch. item 12) on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Consumer Credit (Victoria) and Other Acts Amendment Act 2008, No. 6/2008

Assent Date: 18.3.08
Commencement Date: Ss 29–35 on 31.10.08: Government Gazette 30.10.08 p. 2530
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

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Endnotes

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 54) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 107) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 75 on 1.3.10: Government Gazette 25.2.10 p. 351
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010, No. 23/2010

Assent Date: 1.6.10
Commencement Date: Ss 17, 18 on 1.7.10: Special Gazette (No. 242) 25.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Climate Change Act 2010, No. 54/2010

Assent Date: 14.9.10
Commencement Date: S. 80 on 1.7.11: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: Ss 58, 66 on 1.11.10: Government Gazette 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 21) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

Sale of Land Act 1962
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Endnotes

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011, No. 31/2011

Assent Date: 29.6.11

Commencement Date: S. 29 on 30.6.11: s. 2(1)

Current State: This information relates only to the provision/s amending the **Sale of Land Act 1962**

3. Explanatory Details

¹ S. 23 def. of *commission*: See section 4 of the **Estate Agents Act 1980**, No. 9428.