



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: MM:LJB:Property Law 2010
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Ms Kye Tran
Land and Property Management Authority
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Dear Ms Tran

Conveyancing (Sale of Land) Regulation 2010 – Regulatory Impact Statement

The Law Society appreciates the opportunity to comment on the Regulatory Impact Statement and the proposed Regulation.

The Society's Property Law Committee (Committee) has considered the proposed Regulation. The Committee also commented on the Discussion Paper prepared by Land and Property Management Authority (LPMA) at an earlier stage of this review. The Committee considers that it is worthwhile repeating some of the comments made to LPMA at that time. These observations are set out below as general comments. The Committee also makes some specific comments on provisions of the proposed Regulation.

General Comments

The Committee noted in its comments on the earlier Discussion Paper, that the existing regulatory regime has worked well over a period of in excess of 20 years, is well-understood by stakeholders in conveyancing, provides an appropriate balance between the competing interests of vendor and purchaser and has generated relatively little litigation. For these reasons a "root and branch" change is considered unnecessary.

Vendor Disclosure Regime

The Committee discussed the underlying rationale for a vendor disclosure regime, namely that there are a number of topics which are of such fundamental importance to all (or most) prospective purchasers that they should be addressed in a document attached to (or notice forming part of) the proposed contract.

It is important for the vendor to be able to determine easily which prescribed documents are relevant to their transaction and for these documents to be available quickly and at a reasonable cost. The relevant criteria for determining whether a document should be prescribed include cost, quality of information and its importance to a purchaser, availability and whether this is the most effective way to communicate the particular information.

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Vendor Warranty

The “touchstone” for vendor warranty is that there are a number of matters which are important to purchasers and which, in the absence of statutory or contractual warranties would need to be investigated prior to a typical purchaser entering into a contract. The warranties should be clear in their terms, easily researched by a vendor (if necessary) and readily testable by a purchaser.

The Committee considers that the proposed Regulation generally satisfies the criteria set out above. The comments below address some minor drafting issues.

Specific Comments

Clause 7 and Schedule 2 Item 3

The 2005 Regulation refers to a “dwelling-house”. The 2010 Regulation refers to a “dwelling house”.

Neither term is defined in the respective Regulations.

The *Conveyancing Act 1919* consistently uses the term “dwelling-house” (in s 66O, which deals with contracting out of the passing of risk provisions with the term “dwelling-house” defined for the purposes of the section; also in s 129(6)(c)(iv) and Schedule 4 covenant 15 regarding leases).

The word “dwelling” appears in s66Q of that Act as part of the definition of “place of residence”.

The *Environmental Planning and Assessment Act 1979* uses neither term (“dwelling” is only used in as part of the phrase “moveable dwelling”).

The *Environmental Planning and Assessment Regulation 2000* defines “dwelling”, in relation to a BASIX affected building, to mean “a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile”. The Regulation uses “dwelling-house” throughout, with one exception – item 7A in the prescribed content of a section 149 certificate relating to flood related development controls refers to a “dwelling house”.

It is not immediately apparent why the change has been made, and whether it is intended to have any significance. Consistency would suggest that “dwelling-house” should be retained.

Part 3 Note preceding Clause 11

The 2010 Note suggests that [all] contracts for sale of residential property have a cooling off period. The corresponding 2005 Note included the qualification “(with certain exceptions)”. The qualification accurately expresses the law, and should be retained.

Clause 16(4) line 2

Should the reference to 4(d) be 3(d)?

Clause 20 line 3

Should the mention of 1 September 2000 instead refer to 1 September 2005?

Schedule 1 Item 1 Note

Given that notes do not form part of the Regulation (clause 3(4)) should the sanctioning of a single section 149 certificate for more than one lot in a strata plan be elevated to a substantive clause?

Schedule 1 Item 2

With the change in responsibility for the supply of sewerage diagrams so that Fair Trading is now the issuing authority, is it still appropriate to limit the requirement for a diagram to one from a "**recognised sewerage authority**" given the definition of that term in clause 3 of the Regulation"?

Schedule 1 Item 4 (as redrafted)

Should the word "or" appear at the end of each of paragraphs (a), (b) and (c)? This would be consistent with the drafting style evidenced in Item 5 of the Schedule (and mirrors the 2005 Regulation)?

Schedule 1 prescribed notices

The draft Regulation accompanying the Regulatory Impact Statement was couched in terms of the notices at item 14 of Schedule 1 being in the prescribed form. The Committee had in its earlier submission urged that the 2010 Regulation retain the phrase "in or to the effect of" which appears in the 2005 Regulation. The Committee notes that the subsequent draft returns to the use of the phrase "in or to the effect of", and supports the change made in that subsequent draft.

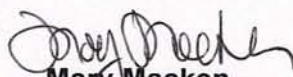
Schedule 3 Items 2(a) and 4(a)

The 2010 Regulation refers to "anything listed in Part 3 of Schedule 3 to the *Conveyancing (Sale of Land) Regulation 2010*". This could be more concisely expressed as "anything listed in Part 3 of this Schedule".

Conclusion

Once again the Committee thanks you for the opportunity to provide these comments.

Yours sincerely,


Mary Macken
President