



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:SSgl130722

13 July 2022

Conveyancing (Sale of Land) Regulation 2022
Office of the Registrar General
McKell Building
Level 7, 2-24 Rawson Place
SYDNEY NSW 2000

By email: ORG-Admin@customerservice.nsw.gov.au

Dear Sir/Madam,

Draft Conveyancing (Sale of Land) Regulation 2022

The Law Society of NSW welcomes the opportunity to provide feedback on the proposed Conveyancing (Sale of Land) Regulation 2022 ("Regulation"). The Law Society's Property Law Committee has contributed to this submission. Our comments in relation to the Regulatory Impact Statement are set out in the attached short table and we have two further comments below.

Transitional period

We note that under section 26 of the Regulation the "transitional period" is defined as the "period from the commencement of this Regulation until 1 March 2023." We suggest that it would be more appropriate if the transitional period instead concluded on 28 February 2023, meaning that from and including 1 March 2023, contracts for the sale of land must comply with the Regulation, including the amended prescribed warnings and statutory cooling off notice. This effective changeover date of 1 March 2023 would be much clearer for communication to industry.

It is critical that legal practitioners and real estate agents are made aware of the changes to prescribed warnings and statutory cooling off notice once the Regulation is published. We look forward to working with the Office of the Registrar General to ensure our members are made aware of the effective changeover date.

Options and changes to the *Conveyancing Act 1919*

The Regulatory Impact Statement flags a number of important potential changes to the *Conveyancing Act 1919* to provide much needed clarity in relation to options. Clarification of issues in relation to prescribed documents, prescribed warranties and implied terms in put and call options should all be considered as a matter of priority, and we look forward to further consultation.

Any questions in relation to this matter should be directed to Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,

A handwritten signature in blue ink that reads "Sonja Stewart". The signature is written in a cursive style with a large initial 'S'.

Sonja Stewart
Chief Executive Officer

Encl

**Conveyancing (Sale of Land) Regulation 2022 – Regulatory Impact Statement
Comments for discussion from the Law Society of NSW – July 2022**

NO.	Question	Law Society comments
Size of the contract		
1.	If the information a vendor must disclose cannot be reduced, what other methods could be considered for vendors to disclose key information about the property, without attaching documents to the contract?	<p>In our members' experience, with the increased use of electronic contracts and electronic execution of contracts, the size of contracts is less problematic. A reduction in the size of some of the vendor disclosure documents by streamlining their contents could provide some assistance, but that is outside the scope of this review.</p> <p>The Discussion Paper mentions the potential use of hyperlinks to material excluded from the contract. However, in addition to the risk of purchasers not viewing this external material, as identified in the Discussion Paper, we also have concerns that this may give rise to difficulties in ascertaining the exact content of the disclosure at a specified point in time such as at the date of the contract. Links are often replaced and may become outdated or inoperative. Additionally, issues in relation to access to technology become relevant to the effectiveness of using links as a means of disclosure. For these reasons we are opposed to the use of hyperlinks as an alternative to including the prescribed documents in the contract itself.</p>
Prescribed documents and warranties		
2.	What additional matters, if any, should the vendor be required to disclose in the contract? Should these be addressed as a prescribed document in Schedule 1, or by a prescribed warranty in Schedule 2?	<p>In our view, no additional matters should be disclosed by the vendor. We regard the current framework as striking the appropriate balance between consumer protection and the complexity of contracts for the sale of land.</p> <p>In relation to the prescribed warranties, we note that since the commencement of the <i>Conveyancing (Sale of Land) Regulation 2017</i> ("2017 Regulation"), Parliament has enacted the <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020</i> ("the RAB Act"). The 2017 Regulation was amended to include a building work rectification order under the RAB Act as an adverse affectation. We believe that there is currently no need to make additional reference to the RAB Act in the Regulation, but as the activity of the Building Commissioner expands, the interplay between the RAB Act and the Regulation should be monitored.</p>
3.	Are there any currently prescribed documents or warranties that should be omitted when the Regulation is remade? If so, please explain why this disclosure is considered unnecessary.	No, we regard all of the current prescribed documents and warranties as pertinent and appropriate.

NO.	Question	Law Society comments
Issues affecting options		
4.	Should the Act be clarified to confirm that vendor disclosure requirements apply to put options in the same way that they apply to call options?	Yes, the different requirements that apply to put and call options are complex and such clarification would be welcome. As noted in the Discussion Paper, clarification of issues in relation to prescribed documents, prescribed warranties and implied terms in put and call options should all be considered.
5.	Should the cooling off period exemption in Section 17 of the Regulation be progressed separately to any clarifications about put options in the Act?	Yes, in our view the cooling off period exemption in section 17 of the Regulation should be progressed separately, to promptly address the current uncertainty following the Supreme Court decision of <i>BP7 Pty Ltd v Gavancorp Pty Ltd</i> [2021] NSWSC 265. However, we also submit that the legislative changes to the <i>Conveyancing Act 1919</i> foreshadowed in the Discussion Paper be progressed as a matter of priority and we would be pleased to be involved in future consultation on such changes.
6.	Are there any other circumstances in which an option or a contract arising from an option should be exempted from complying with disclosure requirements in the Act or Regulation?	No, we do not consider any exemptions are appropriate in relation to the Regulation, but we look forward to further consultation in relation to such potential changes to the <i>Conveyancing Act 1919</i> .