

TASMANIA

**RESIDENTIAL PROPERTY TRANSACTIONS BILL
2013**

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RESIDENTIAL PROPERTY TRANSACTIONS BILL 2013

*(Brought in by the Minister for Corrections and Consumer
Protection, the Honourable Nicholas James McKim)*

A BILL FOR

**An Act to make provision in relation to the sale of
residential property, and for other related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Residential
Property Transactions Act 2013*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Interpretation

- (1) In this Act, unless the contrary intention
appears –

asbestos means any or any combination of the
fibrous form of mineral silicates that

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belong to the serpentine or amphibole groups of rock-forming minerals;

auction time means the publicly advertised time at which a public auction is to be held;

building includes part of a building;

building certificate means a building certificate referred to in section 119 of the *Building Act 2000*;

building defect in relation to a residential building means –

- (a) a defect that makes the building unfit for normal human habitation; or
- (b) a safety, structural, roofing, electrical, plumbing or drainage defect that affects the building; or
- (c) a part of the building that is affected by damp; or
- (d) damage to the building caused by wood decay or insects; or
- (e) a part of the building that includes asbestos that is in an unsafe condition;

building condition inspection report means a report as to the condition of a residential building obtained, or to be obtained, from a building inspector;

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building inspector means –

- (a) an accredited building practitioner within the meaning of the *Building Act 2000*; or
- (b) a prescribed person;

building work has the same meaning as in the *Building Act 2000*;

business day means, in relation to a matter concerning a contract or public auction for the sale of residential property, any day excluding Easter Tuesday, a Saturday, a Sunday, a statutory holiday for the purposes of the *Statutory Holidays Act 2000* observed in the locality of that residential property, and any day in the period commencing on 27 December and ending on 31 December;

conveyancer has the same meaning as in the *Conveyancing Act 2004*;

dealing has the same meaning as in the *Land Titles Act 1980*;

Director means the Director of Consumer Affairs and Fair Trading within the meaning of the *Consumer Affairs Act 1988*;

disclosure document means a document required to be included in a contract for the sale of residential property in accordance with section 7;

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land includes a lot created, or to be created, by the registration of a strata plan within the meaning of the *Strata Titles Act 1998*;

legal practitioner means an Australian legal practitioner within the meaning of the *Legal Profession Act 2007*;

plumbing work has the same meaning as in the *Building Act 2000*;

pre-auction period means, in relation to residential property that is advertised for sale by public auction, the period commencing on the day that is 5 clear business days before the auction time for that public auction and ending immediately before that time;

property agent has the same meaning as in the *Property Agents and Land Transactions Act 2005*;

public auction means an auction that has been publicly advertised;

purchaser means a person who agrees to purchase land pursuant to a contract for the sale of land;

Register has the same meaning as in the *Land Titles Act 1980*;

related person has the same meaning as in the *Duties Act 2001*;

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residential building means a building affixed to land that is used, or currently designed or adapted for use, as a dwelling, and includes inground swimming pools, outdoor decks, patios, retaining walls, carports, and garages, that are incidental to any such use;

residential land means –

- (a) land on which there is under construction a building that is designed for use as a dwelling; or
- (b) land which is the subject of a contract for sale that includes provisions to the effect that a building designed for use as a dwelling must be constructed on the land prior to the completion of the contract; or
- (c) land which is the subject of a contract for sale that includes provisions to the effect that the purchaser is not required to complete the contract unless the land can be used for the purposes of constructing a dwelling or as a residential building allotment; or
- (d) vacant land on which the construction of a residential building alone is not prohibited by law;

residential property means –

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- (a) land on which there is a residential building; or
- (b) residential land;

vendor means a person who agrees to sell land pursuant to a contract for the sale of land.

- (2) For the avoidance of doubt, a residential building does not include a fence, glasshouse, garden shed, separate workshop building or separate workshop shed or outdoor garden structure.

4. Application

This Act applies to a contract for the sale of residential property made on or after the date on which this section commences.

5. Non-application of Act

- (1) This Act does not apply to a contract for the sale of residential property if –
 - (a) the contract arises from the exercise of an option to purchase the property and –
 - (i) the option was contained in a will; or
 - (ii) the option was contained in a residential tenancy agreement, within the meaning of the *Residential Tenancy Act 1997*, to which that Act applies, or a lease, entered into at least 6 months

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-
- prior to the date on which the contract is made; or
- (iii) the period for the exercise of the option by the purchaser was longer than 60 days; or
 - (iv) the option was granted before the commencement of this section; or
- (b) the contract arises from the acceptance of a tender that is lodged after the commencement of this section in response to an invitation calling for tenders that was issued before the commencement of this section; or
- (c) the purchaser is a related person of the vendor and the contract includes a provision stating that this Act does not apply to the contract because the purchaser is a related person of the vendor; or
- (d) the purchase price payable under the contract exceeds the prescribed amount and –
- (i) the purchaser is purchasing the property predominantly for investment purposes; and
 - (ii) the contract includes a provision stating that the purchaser is purchasing the residential property predominantly for investment purposes and that this

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Act does not apply to the
contract; or

- (e) the contract is for the sale of 3 or more residential properties by the same vendor to the same purchaser.
- (2) This Act does not apply to a contract for the sale of land, whether or not the land includes residential building, if –
 - (a) the area of land exceeds 20 hectares; or
 - (b) the land is predominantly used to conduct a business that does not involve the leasing of that land, and that business, or a substantial part of the business, is being sold as part of the same transaction for the sale of that land.
- (3) This Act does not apply to a contract for the sale of residential property if the application of this Act to the contract is wholly excluded in accordance with section 27.
- (4) This Act does not apply to a contract for the sale of residential land that does not include a residential building if –
 - (a) the residential land adjoins another parcel of land owned by the purchaser at the date on which the contract is made; and
 - (b) the residential land is to be adhered to all or part of that other parcel of land.

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- (5) This Act does not apply to a contract for the sale of a share or shares in a company that confers on the owner of the share or shares an exclusive right to occupy part of a building on land owned by the company.
 - (6) This Act does not apply to a contract of a kind prescribed by the regulations.
 - (7) For the avoidance of doubt, this Act does not apply to a disposition of residential property by way of –
 - (a) a residential tenancy agreement within the meaning of the *Residential Tenancy Act 1997* to which that Act applies; or
 - (b) a grant of a lease, licence or easement.

6. Crown to be bound

This Act binds the Crown not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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Part 2 – Documents to be Included in a Contract

**PART 2 – DOCUMENTS TO BE INCLUDED IN A
CONTRACT**

7. Disclosure documents in relation to residential property

- (1) A contract for the sale of residential property that is registered land under the *Land Titles Act 1980*, and for which a separate title exists at the date on which the contract is made, must include the following documents as part of the contract:
 - (a) a copy of a search of the relevant folio of the Register for the residential property, being a search dated not more than 6 months before the date on which the contract is made;
 - (b) a copy of the plan, diagram or conveyance referred to in the folio of the Register to describe the residential property;
 - (c) a copy of each dealing shown in schedule 2 of that search other than a registered mortgage or registered encumbrance;
 - (d) a copy of any agreement made under Part 5 of the *Land Use Planning and Approvals Act 1993* in relation to the residential property;
 - (e) a copy of a certificate issued under section 337 of the *Local Government Act 1993* in respect of the residential

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property, being a certificate dated not more than 9 months before the date on which the contract is made;

- (f) a copy of a certificate issued under section 56ZQ of the *Water and Sewerage Industry Act 2008* in respect of the residential property, being a certificate dated not more than 9 months before the date on which the contract is made;
- (g) if the residential property is also a lot as part of a strata scheme within the meaning of the *Strata Titles Act 1998*, then, subject to subsection (2) –
 - (i) a copy of the by-laws for the strata scheme if different from the by-laws set out in Schedule 1 to that Act; and
 - (ii) a copy of a certificate under section 83(5) of that Act in relation to the residential property, being a certificate dated not more than 6 months before the date on which the contract is made; and
 - (iii) written evidence, dated not more than 6 months before the date on which the contract is made, showing the insurances held by the body corporate for the strata scheme; and

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- (iv) a statement signed by the vendor showing the names and contact details of the secretary or manager of the body corporate or, if no such person exists, a statement to that effect.
- (2) A vendor is not required to include in a contract a document mentioned in subsection (1)(g) if –
 - (a) the document is not available to the vendor after making reasonable efforts to obtain it; or
 - (b) the document does not exist because the body corporate for the strata scheme is not active.
- (3) If subsection (2) applies, the contract for the sale of the residential property must also include a statement signed by the vendor stating the reasons why a document mentioned in subsection (1)(g) is not available to be included in the contract.
- (4) A contract for the sale of residential property that is general law land that is not to be subdivided before the completion of the contract must include the following documents as part of the contract:
 - (a) a copy of all deeds necessary to establish that the vendor has title to the residential property;

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- (b) a copy of all deeds containing easements or covenants that affect the residential property;
 - (c) a copy of any agreement made under Part 5 of the *Land Use Planning and Approvals Act 1993* in relation to the residential property;
 - (d) a copy of a certificate issued under section 337 of the *Local Government Act 1993* in respect of the residential property, being a certificate dated not more than 6 months before the date on which the contract is made;
 - (e) a copy of a certificate issued under section 56ZQ of the *Water and Sewerage Industry Act 2008* in respect of the residential property, being a certificate dated not more than 6 months before the date on which the contract is made.
- (5) A contract for the sale of residential property for which a separate title does not exist at the date on which the contract is made must include the following documents as part of the contract:
- (a) a copy of a plan that identifies the residential property;
 - (b) any other prescribed document.
- (6) A contract for the sale of residential property is to include a provision that describes or lists each disclosure document that is included in the contract as mentioned in section 25.

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- (7) The inclusion of a disclosure document in a contract for the sale of residential property is taken not to constitute notice by the vendor to the purchaser, or acceptance by the purchaser, of –
 - (a) any defect in the vendor's title that may be disclosed or evidenced by a disclosure document; or
 - (b) any restriction that may hinder or prevent the use of the property for a purpose set out in the contract.

8. Warning notice

- (1) A contract for the sale of residential property must include a warning notice in the form required by this section.
- (2) Subject to subsection (3), the warning notice is to be in accordance with Form 1 in Schedule 1.
- (3) If the contract does not have a cooling-off period, the warning notice is to be in accordance with Form 2 in Schedule 1.
- (4) The warning notice –
 - (a) must be printed in at least 12-point type; and
 - (b) must be set out on a separate page of the contract that is signed and dated by the purchaser.

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- (5) For the purposes of subsection (4)(b), the separate page of the contract may include the information statement required by section 23.

9. Purchaser’s right to rescind contract for non-compliance with this Part

- (1) Subject to subsection (2), if a contract for the sale of residential property does not comply with this Part, the purchaser under the contract may, at any time before the relevant date, rescind the contract by giving written notice to the vendor.
- (2) A purchaser may not rescind a contract under subsection (1) for non-compliance that occurs because of the omission from a contract of a disclosure document, or part of a disclosure document, unless –
- (a) the disclosure document, or part of the disclosure document, that is omitted concerns the existence of a matter affecting or relating to the residential property; and
 - (b) the purchaser was unaware of the existence of the matter when the contract was entered into; and
 - (c) the matter is such that the purchaser would not have entered into the contract had he or she been aware of its existence.
- (3) For the purposes of subsection (1), the –
- relevant date*** is –

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- (a) if paragraph (b) does not apply, the date of completion of the contract; or
 - (b) if the vendor gives written notice to the purchaser's legal practitioner or conveyancer setting out the details of a matter in respect of which the contract does not comply with this Part, the earlier of the following dates:
 - (i) the date 5 business days after the date of the giving of that notice;
 - (ii) the date of completion of the contract.
- (4) A notice under paragraph (b) of the definition of *relevant date* in subsection (3) –
 - (a) cannot be given earlier than the first business day after the date on which the contract is made; and
 - (b) is of no effect unless the notice states that it is a notice for the purposes of this section.

10. Vendor must ensure contract complies with this Part

- (1) A vendor must ensure that a contract for the sale of residential property to which the vendor is a

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party complies with the requirements of this Part.

Penalty: Fine not exceeding 50 penalty units.

- (2) In any proceedings against a vendor for failure to comply with subsection (1), it is a defence if the vendor proves that he or she had reasonable grounds to believe, and did believe, that a property agent, legal practitioner or conveyancer was responsible for ensuring that the contract complied with the requirements of this Part.
- (3) Subsection (1) does not apply to the extent that the application of this Part to the contract is excluded, changed or restricted as provided by section 27.

11. Offence to provide false or incorrect disclosure document

- (1) For the purposes of this section –

incorrect, in relation to a disclosure document, means being incorrect in relation to a material particular as at the date of the disclosure document.

- (2) A vendor, or a person acting on behalf of a vendor, who knowingly includes in a contract for the sale of residential property a disclosure document that is false, misleading or incorrect, is guilty of an offence.

Penalty: Fine not exceeding 50 penalty units.

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- (3) A person who is guilty of an offence under subsection (2) must compensate the purchaser under that contract for any loss or expense suffered by the purchaser as a result of the disclosure document being false, misleading or incorrect.
- (4) Subsection (2) does not apply to the extent that the contract for the sale of the residential property includes a statement by the vendor –
 - (a) stating that a required document is, to the vendor's knowledge, false, misleading or incorrect; and
 - (b) setting out, or referring to, that material particular.

12. Purchaser's rights in relation to document supplied by third parties

- (1) This section applies if –
 - (a) a purchaser buys residential property under a contract; and
 - (b) the contract includes a disclosure document referred to in section 7(1)(e), (f) or (g)(ii) or section 7(4)(d) or (e); and
 - (c) the disclosure document was incorrect, at the date it was prepared, or was prepared without the exercise of reasonable skill and care.
- (2) The purchaser may exercise, in respect of a disclosure document referred to in

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subsection (1)(b), the rights, powers and immunities that the purchaser would have had if the disclosure document had been issued to the purchaser.

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**PART 3 – ADDITIONAL PURCHASER’S RIGHTS IN
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13. Purchaser’s right to apply for building condition inspection report

- (1) This section applies to a contract for the sale of residential property that –
 - (a) includes a residential building; and
 - (b) is not a contract referred to in section 20(2)(a).
- (2) The purchaser under a contract to which this section applies has the right, during the period commencing on the date on which the contract is made and ending on the fifth business day after that date, to arrange for a building condition inspection report to be provided in relation to the residential building.
- (3) A purchaser who exercises the right referred to in subsection (2), as soon as practicable after the exercising of that right, is to give written notice to the vendor that the purchaser has done so.
- (4) A vendor who receives a notice under subsection (3) must allow reasonable access to the residential property at reasonable times to enable a building inspector to inspect the residential building for the purpose of providing a building condition inspection report to the purchaser.

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- (5) A breach by the vendor of the vendor’s obligations under subsection (4) is taken to be a breach of the contract for the sale of the residential property by the vendor and in respect of which the purchaser may exercise the same rights as the purchaser would have had as if this section had been included as part of the contract.
- (6) Subject to subsection (7) and section 14(1), a purchaser who exercises the right in subsection (2) to obtain a building condition inspection report may rescind the contract by written notice to the vendor if –
- (a) the building condition inspection report received by the purchaser states that –
 - (i) the residential building has one or more building defects; and
 - (ii) in the opinion of the author of the report, the reasonable cost of making good those defects will exceed 1% of the purchase price payable under the contract; or
 - (b) the building condition inspection report has not been received by the purchaser by the end date; or
 - (c) the vendor without reasonable excuse does not allow access to the property for the purpose of enabling the building inspector to inspect the property.
- (7) A purchaser cannot exercise the right to rescind referred to in subsection (6) –

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- (a) after the completion of the contract; or
 - (b) later than 5 p.m. on the second business day after the end date.
- (8) A purchaser’s notice rescinding a contract in accordance with subsection (6)(a) is to be accompanied by a copy of the building condition inspection report obtained by the purchaser.
- (9) In this section –
 - end date* means the tenth business day after the date on which the contract is made or a later date agreed to in writing by the vendor.

14. Qualification to the purchaser’s right to rescind under section 13(6)(a)

- (1) A purchaser cannot exercise the right to rescind referred to in section 13(6)(a) in relation to a building defect described in the building condition inspection report obtained by the purchaser if –
 - (a) the nature, extent and approximate location of that building defect was described in reasonable detail in a building condition inspection report included as part of the contract in accordance with subsection (2); and
 - (b) the building condition inspection report referred to in paragraph (a) states an opinion by the author of the report as to

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the estimated cost of rectifying that defect; and

(c) the difference, if any, between –

(i) the cost of making good all defects identified in the building condition inspection report obtained by the purchaser, as estimated in that report by the author of the report; and

(ii) the cost of making good all defects identified in the building condition inspection report referred to in paragraph (a), as estimated in that report by the author of that report –

does not exceed 1% of the purchase price.

(2) A contract for the sale of residential property that includes a residential building may, by agreement between the vendor and the purchaser, include a building condition inspection report obtained by the vendor in respect of that residential building if the report –

(a) is addressed to the vendor; and

(b) includes an acknowledgement by the building inspector that the report has been obtained by the vendor for the purposes of this section; and

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- (c) includes a statement that a person who enters into a contract to purchase the property may rely on the statements contained in the report as to the condition of the property as at date of the inspection stated in the report; and
 - (d) states an opinion by the author of the report as to the estimated cost of making good all defects identified in that report.
- (3) If a contract for the sale of residential property includes a building condition inspection report that does not comply with subsection (2), the purchaser under the contract may, at any time before the relevant date, rescind the contract by giving written notice to the vendor.
- (4) For the purposes of subsection (3), the –
 - relevant date* is –
 - (a) if paragraph (b) does not apply, the date of completion of the contract; or
 - (b) if the vendor gives written notice to the purchaser’s legal practitioner or conveyancer setting out the details of a matter in respect of which a building condition inspection report included in the contract did not comply with subsection (2), the earlier of the following dates:

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-
- (i) the date that is 5 business days after the date of the giving of that notice;
 - (ii) the date of completion of the contract.
 - (5) A notice under paragraph (b) of the definition of *relevant date* in subsection (4) –
 - (a) cannot be given earlier than the first business day after the date on which the contract is made; and
 - (b) is of no effect unless the notice states that it is a notice for the purposes of this section.
 - (6) A purchaser under a contract for the sale of residential property may exercise, in respect of a building condition inspection report obtained by the vendor and included in that contract, the same rights and powers that the purchaser would have had if the report had been obtained by the purchaser.
 - (7) Nothing in subsection (6) affects the operation of subsection (1).
 - (8) Nothing in this section requires a contract for the sale of residential property to include a building condition inspection report obtained by the vendor.

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15. Purchaser’s right to apply for a building certificate

- (1) This section applies to a contract for the sale of residential property that includes a residential building.
- (2) The purchaser under a contract to which this section applies has the right during the period commencing on the date on which the contract is made and ending at 5 p.m. on the fifth business day after that date to request a building certificate in relation to the residential property.
- (3) A purchaser who exercises the right referred to in subsection (2), as soon as practicable after the exercise of that right, is to give written notice to the vendor that the purchaser has done so.
- (4) A vendor who receives a notice under subsection (3) must allow an authorised person, within the meaning of the *Building Act 2000*, reasonable access to the residential building at reasonable times so that the general manager of the council for the municipal area where the residential building is located may determine whether or not to issue a building certificate in relation to the residential building.
- (5) A breach of the vendor’s obligations under subsection (4) is taken to be a breach of the contract for the sale of the residential property by the vendor and in respect of which the purchaser may exercise the same rights the purchaser would have had as if this section had been included as part of the contract.
- (6) If –

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- (a) a purchaser exercises the right referred to in subsection (2); and
- (b) the general manager of the council for the municipal area where the residential property is located issues a building certificate in respect of the residential property –

the purchaser is to give the vendor written notice to that effect as soon as practicable after the receipt of the certificate.

- (7) For the purposes of subsection (2), a purchaser applies for a building certificate if an application for the certificate is sent, during the period referred to in that subsection, to the council for the municipal area where the residential property is located.
- (8) Subject to subsections (9) and (10), a purchaser who exercises the right in subsection (2) to apply for a building certificate has the right to rescind the contract by written notice to the vendor if the general manager of the council for the municipal area where the residential property is located does not issue a building certificate before the completion of the contract.
- (9) The right to rescind the contract under subsection (8) cannot be exercised –
 - (a) after the completion of the contract; or
 - (b) more than 4 business days after the purchaser is notified that the general manager has refused to issue a building

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certificate in relation to the residential property.

(10) The vendor may rescind the contract by written notice to the purchaser if –

- (a) by 5 p.m. on the twentieth business day after the date on which the contract is made the purchaser has not given a notice to the vendor under subsection (6) stating that the purchaser has received the building certificate; and
- (b) on or after the twentieth business day after the date on which the contract is made the vendor gives written notice to the purchaser stating that the vendor intends to rescind the contract under this subsection if the purchaser does not waive the purchaser’s rights under this section by written notice to the vendor; and
- (c) the purchaser did not waive by written notice to the vendor the purchaser’s rights under this section by 5 p.m. on the date 2 business days after the purchaser received the vendor’s notice under paragraph (b).

(11) The right to rescind the contract in subsection (10) –

- (a) only applies to a contract in respect of which the purchaser has exercised the right referred to in subsection (2); and

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- (b) cannot be exercised by the vendor to the extent that any delay in the issuing of a building certificate, or a notice refusing to issue a building certificate, is attributable to a breach of subsection (4) by the vendor; and
 - (c) lapses on the completion of the contract.
- (12) For the avoidance of doubt, nothing in this section affects or limits a purchaser’s rights under section 119 of the *Building Act 2000*.

16. Purchaser’s right to rescind in relation to legal restrictions and unapproved works in relation to a residential building

- (1) This section applies to a contract for the sale of residential property that –
 - (a) includes a residential building; or
 - (b) is not to be completed before the completion, or construction, of a building that is intended to be used as a dwelling after the completion of the contract.
- (2) The purchaser under a contract to which this section applies may by written notice to the vendor rescind the contract if –
 - (a) in the case of a contract that includes a residential building in existence at the date on which the contract is made –
 - (i) there is any legal restriction, at the date on which the contract is

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made, that hinders or prevents the use of the residential property for the purposes of a dwelling; or

(ii) there are any unapproved works, at the date on which the contract is made, on the residential property; or

(b) in the case of a contract that is not to be completed before the completion, or construction, of a building that is intended to be used as a dwelling after the completion of the contract –

(i) there is any legal restriction, at the date of completion of the contract, that hinders or prevents the use of the residential property for the purposes of a dwelling; or

(ii) there are any unapproved works, at the date of completion of the contract, on the residential property.

(3) The purchaser cannot exercise the right to rescind in relation to unapproved works if the unapproved works were carried out by or on behalf of the purchaser.

(4) The purchaser cannot exercise the right to rescind in respect of a particular legal restriction, or particular unapproved works, as the case may be, if the contract includes a provision in 12-point bold type –

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-
- (a) describing in reasonable detail the nature and extent of the particular legal restriction, or the particular unapproved works, as the case may be; and
 - (b) stating that, for the purposes of this section, the purchaser will not be entitled to rescind the contract in respect of that particular legal restriction or those particular unapproved works; and
 - (c) stating that the purchaser should seek independent legal advice from a legal practitioner or conveyancer about the restriction, or unapproved works, before signing the contract.

(5) For the purposes of this section –

unapproved works means –

- (a) building work or plumbing work in relation to a residential building for which no certificate of completion has been issued as required by law, and in respect of which no building certificate has been issued; or
- (b) building work in relation to a residential building for which no building permit has been obtained as required by law, and in respect of which no building certificate has been issued; or

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- (c) plumbing work in relation to a residential building for which no plumbing permit has been obtained as required by law, and in respect of which no building certificate has been issued; or
 - (d) any structure on residential property which required a permit under a law relating to planning at the time of its construction, and in respect of which a council is entitled to take any legal action.
- (6) The right to rescind the contract in subsection (2) lapses on the completion of the contract.

17. Purchaser’s right to rescind for legal restrictions in relation to vacant residential land

- (1) This section applies to a contract for the sale of residential property that does not –
 - (a) include a residential building; or
 - (b) require, before the completion of the contract, the completion, or construction, of a building that is intended to be used as a dwelling after the completion of the contract.
- (2) The purchaser under a contract to which this section applies may rescind the contract by written notice to the vendor if at the date of the completion there is any legal restriction that may hinder or prevent the use of the residential

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property for the purposes of a residential building allotment.

- (3) The purchaser cannot exercise the right to rescind in respect of a particular legal restriction if the contract includes a provision in at least 12-point bold type –
 - (a) describing in reasonable detail the nature and extent of the particular legal restriction; and
 - (b) stating that, for the purposes of this section, the purchaser will not be entitled to rescind the contract in respect of that particular legal restriction; and
 - (c) stating that the purchaser should seek independent advice from a legal practitioner or conveyancer about the restriction before signing the contract.
- (4) The right to rescind the contract in subsection (2) lapses on the completion of the contract.

18. Purchaser’s right to rescind if dwelling is damaged or destroyed

- (1) This section applies to a contract for the sale of residential property that includes a residential building.
- (2) The purchaser under a contract to which this section applies may rescind the contract by written notice to the vendor if, through no fault of the purchaser, the residential building is made

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substantially uninhabitable as a result of damage or destruction occurring after the date on which the contract is made and before –

- (a) if paragraph (b) does not apply, the completion of the contract; or
 - (b) if the purchaser was not a tenant or occupier of the residential property before the date on which the contract is made and takes possession of the residential property before the completion of the contract, the date the purchaser takes possession of the residential property.
- (3) The right to rescind the contract in subsection (2) –
- (a) lapses on the completion of the contract; and
 - (b) cannot be exercised later than 10 business days after the vendor gives written notice to the purchaser informing the purchaser of the damage or destruction.
- (4) Subject to subsection (5), nothing in this section changes the law relating to the passing of risk at the time of entering into a contract to which this section applies.
- (5) If a purchaser rescinds a contract for the sale of residential property in accordance with this section, the risk in relation to the residential

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property is taken never to have passed from the
vendor to the purchaser.

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Part 4 – Prospective Bidder’s Rights before Public Auction

**PART 4 – PROSPECTIVE BIDDER’S RIGHTS BEFORE
PUBLIC AUCTION**

19. Prospective bidder’s right to arrange building inspection

(1) In this section –

pre-auction period means the period commencing on the date that an auction is publicly advertised and ending on –

- (a) the day before the date of the auction; or
- (b) if the auction is cancelled, the date the auction is cancelled;

prospective vendor means, in relation to residential property that is advertised for sale by public auction, the person who will become the vendor of the property if it is sold at that auction.

(2) A person who is a prospective bidder at a public auction for residential property that includes a residential building may, during the pre-auction period, give written notice to the property agent for the prospective vendor stating that –

- (a) the person is a prospective bidder at the auction; and
- (b) the person requires access to the property for the purpose of enabling a building inspector to provide to the person a

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Part 4 – Prospective Bidder’s Rights before Public Auction

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building condition inspection report in
relation to the residential building.

- (3) A property agent who receives a notice under subsection (2) must give a copy of the notice to the prospective vendor as soon as practicable.

Penalty: Fine not exceeding 20 penalty units.

- (4) A prospective vendor who receives a copy of a notice under subsection (3) is to allow reasonable access to the residential property at reasonable times during the pre-auction period to enable a building inspector to inspect the residential building for the purpose of providing a building condition inspection report to the prospective bidder.

- (5) A prospective vendor who fails without reasonable excuse to comply with subsection (4) is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units.

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Part 5 – Cooling-off Period

PART 5 – COOLING-OFF PERIOD

20. Cooling-off period

- (1) Subject to subsections (2) and (3), there is a cooling-off period for every contract for the sale of residential property during which the purchaser may exercise the right to rescind the contract under section 22.
- (2) There is no cooling-off period for a contract for the sale of residential property if –
 - (a) the contract is entered into pursuant to the acceptance of a bid made at a public auction; or
 - (b) the contract is made not later than 5 p.m. on the fifth business day after the date the property was offered for sale at a public auction but was passed in; or
 - (c) the vendor and purchaser have previously entered into a contract for the sale of the same residential property on substantially the same terms and conditions.
- (3) There is no cooling-off period for a contract for the sale of residential property that was publicly advertised for sale by public auction if the contract is made during the pre-auction period.
- (4) There is no cooling-off period in respect of a contract for the sale of residential property if –
 - (a) at the time of entering into that contract the purchaser is a purchaser under a pre-

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existing contract in respect of another residential property; and

- (b) the vendor in relation to the first-mentioned contract is not a party to the pre-existing contract; and
 - (c) the pre-existing contract has a cooling-off period that has not ended at that time; and
 - (d) the residential property that is the subject of the pre-existing contract is within a radius of 75 kilometres of the residential property which is the subject of the first-mentioned contract.
- (5) A purchaser who enters into a contract for the sale of residential property that does not have a cooling-off period by virtue of subsection (4) must disclose to the vendor under that contract, or to the property agent for the vendor under that contract, that the contract does not have a cooling-off period.
- (6) A person who suffers any loss as a result of a purchaser failing to comply with subsection (5) has a right of action against that purchaser to recover that loss.

21. Commencement and ending of cooling-off period

- (1) The cooling-off period commences on the date on which the contract is made.

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Part 5 – Cooling-off Period

- (2) Subject to subsections (3) and (4), the cooling-off period ends –
- (a) if the contract complies with section 23, at 5 p.m. on the fifth business day after the day on which the cooling-off period commenced or at the time when the contract is completed, whichever is the earlier; or
 - (b) if the contract does not comply with section 23 –
 - (i) if subparagraph (ii) does not apply, at the time when the contract is completed; or
 - (ii) if the vendor gives written notice to the purchaser, or the purchaser's legal practitioner or conveyancer, setting out the details of each matter in respect of which the contract did not comply with section 23, at 5 p.m. on the fifth business day after the giving of that notice or at the time when the contract is completed, whichever is the earlier.
- (3) A notice under subsection (2)(b)(ii) –
- (a) cannot be given earlier than the first business day after the date on which the contract is made; and

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-
- (b) is of no effect unless the notice states that it is a notice for the purposes of this section.
- (4) The cooling-off period may be extended by –
- (a) a provision in the contract; or
- (b) the vendor giving written notice to the purchaser.
- (5) If –
- (a) the vendor’s property agent arranges for the purchaser to sign a contract for sale of residential property; and
- (b) the purchaser does not actually receive a copy of the contract for sale by 5 p.m. on the next business day after the date on which the contract is made –
- the cooling-off period is to be extended until 5 p.m. on the fourth business day after the date on which the purchaser actually receives a copy of the contract for sale from the vendor’s property agent.
- (6) For the purposes of subsection (5), a copy of the contract for sale is taken to be received by the purchaser as follows:
- (a) in the case where a copy of the contract is hand-delivered to the purchaser, at the time of delivery;
- (b) in the case where a copy of the contract is sent by fax to the purchaser, before 5

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Part 5 – Cooling-off Period

p.m. on a business day, on completion of the transmission if there is no evidence of incomplete transmission;

- (c) in the case where a copy of the contract is sent by fax to the purchaser, after 5 p.m. on a business day, at 9 a.m. on the next business day after it is sent if there is no evidence of incomplete transmission;
 - (d) in the case where a copy of the contract is sent by email to the purchaser, when receipt of the email is acknowledged;
 - (e) in the case where a copy of the contract is sent by post to the purchaser, at the time when the envelope enclosing the contract would be delivered in the ordinary course of post.
- (7) For the purposes of this section, a copy of the contract means –
- (a) an original of the contract signed by all parties that shows the date on which the contract was made; or
 - (b) an original counterpart of the contract signed by the vendor that shows the date on which the contract was made; or
 - (c) a copy of the original of the contract referred to in paragraph (a) or a copy of the original counterpart of the contract referred to in paragraph (b).

22. Right to rescind contract during cooling-off period

The purchaser under a contract for the sale of residential property for which there is a cooling-off period may rescind the contract at any time during the cooling-off period by written notice to the vendor.

23. Contract to contain statement regarding cooling-off period

- (1) A contract for the sale of residential property must include an information statement as to whether the contract is subject to a cooling-off period.
- (2) If the contract is subject to a cooling-off period, the information statement is to be in accordance with Form 3 in Schedule 1.
- (3) If the contract is not subject to a cooling-off period, the information statement is to be in accordance with Form 4 in Schedule 1.
- (4) The information statement –
 - (a) must be printed in at least 12-point type; and
 - (b) must be set out on a separate page of the contract that is signed and dated by the purchaser.
- (5) For the purposes of subsection (4)(b), the separate page of the contract may include the warning notice required by section 8.

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Part 6 – Miscellaneous Provisions

PART 6 – MISCELLANEOUS PROVISIONS

24. Property agent to provide copy of contract

- (1) If the vendor's property agent arranges for the purchaser to sign a contract for the sale of residential property, the vendor's property agent must give a copy of the contract for sale to the purchaser by no later than 5 p.m. on the second business day after the date on which the contract is made.
- (2) If –
 - (a) the vendor's property agent arranges for the purchaser to sign a contract for the sale of residential property; and
 - (b) on or before the date on which the contract is made, the purchaser told the property agent that a legal practitioner or conveyancer is to act for the purchaser in relation to the contract –

the vendor's agent must, in addition to providing the copy of the contract under subsection (1) to the purchaser, give a copy of the contract to that legal practitioner or conveyancer by no later than 5 p.m. on the second business day after the date on which the contract is made.

- (3) For the purposes of this section, a copy of the contract means –

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-
- (a) an original of the contract signed by all parties that shows the date on which the contract was made; or
 - (b) an original counterpart of the contract signed by the vendor that shows the date on which the contract was made; or
 - (c) a copy of the original of the contract referred to in paragraph (a) or a copy of the original counterpart of the contract referred to in paragraph (b).

25. Documents included as part of contract

- (1) A document is included as part of a contract for the sale of residential property if, and only if –
 - (a) the document is physically annexed, attached or stapled to the contract; or
 - (b) in the case where a contract is sent, by electronic means, to a party for signing by that party, the contract when sent is accompanied by a copy of the document; or
 - (c) the document is taken to be included as part of the contract in accordance with subsection (2).
- (2) A document is taken to be included as part of a contract for the sale of residential property if the document was given by the vendor, or by the vendor's property agent, to the purchaser before the date on which the contract is made and –

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- (a) before entering into the contract, the purchaser signed an acknowledgement of receipt for that document; and
- (b) the receipt describes the document in sufficient detail to identify the document; and
- (c) a copy of the receipt is –
 - (i) physically annexed, attached or stapled to the contract; or
 - (ii) in the case where a contract is sent, by electronic means, to a party for signing by that party, the contract when sent is accompanied by a copy of the receipt.

26. Dating of contracts

- (1) A contract for the sale of residential property must not be dated earlier than the date on which the contract was made.
- (2) For the purposes of this Act, if a contract for the sale of residential property bears a date which is before the date on which the contract was made, the first-mentioned date is taken to be the date on which the contract was made.

27. Contracting out, &c.

- (1) Subject to subsection (2), a provision of a contract for the sale of residential property, or of

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any other agreement, understanding or arrangement, is void to the extent that it has the effect of excluding, changing or restricting the operation of this Act.

- (2) A provision in a contract for the sale of residential property, or in any agreement made after the contract is made, may exclude, change or restrict the operation of all or any part of this Act, as between the parties to the contract, if –
- (a) the purchaser received advice from a legal practitioner or conveyancer as to the consequences of that provision before entering into the contract or agreement; and
 - (b) the legal practitioner or conveyancer is not acting for the vendor; and
 - (c) the legal practitioner or conveyancer gives a written certificate to the purchaser which complies with subsection (3) before the purchaser enters into the contract or agreement, as the case may be; and
 - (d) a copy of that certificate is included in the contract or agreement.
- (3) A certificate for the purposes of subsection (2) must –
- (a) state that the certificate is given for the purposes of this section; and

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- (b) contain a statement setting out the provisions of this Act to be excluded, changed or restricted by the contract or agreement; and
- (c) set out the names of the parties to the contract and details of the residential property the subject of the contract; and
- (d) contain a statement to the effect that the legal practitioner or conveyancer has explained to the purchaser the nature and effect of the certificate.

28. Waiver

The waiver by a purchaser of any rights under this Act is of no effect unless the waiver is given in writing by a legal practitioner or conveyancer, acting on behalf of the purchaser, who does not act for the vendor.

29. Purchaser's other rights not affected

This Act does not affect any right or remedy available to a purchaser otherwise than under this Act.

30. Notices

- (1) Any notice or document for the purposes of this Act may –

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-
- (a) be given on behalf of a person by that person's legal practitioner or conveyancer; and
 - (b) be served on or given to a person's legal practitioner or conveyancer.
 - (2) If 2 or more persons comprise the purchaser under a contract for the sale of residential property, a notice or document for the purposes of this Act –
 - (a) is taken to be given by the purchaser if the notice or document is given by any of those persons; and
 - (b) is taken to be given to the purchaser if the notice or document is given to any of those persons.
 - (3) If 2 or more persons comprise the vendor under a contract for the sale of residential property, a notice or document for the purposes of this Act –
 - (a) is taken to be given by the vendor if the notice or document is given by any of those persons; and
 - (b) is taken to be given to the vendor if the notice or document is given to any of those persons.
 - (4) For the purposes of this Act, a notice or document is effectively given to a person if –
 - (a) in the case of a natural person, it is –
 - (i) given to the person; or

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- (ii) left at, or sent by post to, the person's postal or residential address or place or address of business employment last known to the server of the notice or document; or
 - (iii) faxed to the person's fax number; or
 - (iv) emailed to the person's email address; or
- (b) in the case of the Crown –
 - (i) it is given in accordance with the contract for the sale of the residential property; or
 - (ii) if the contract does not include an address for notices to be given to the Crown, it is –
 - (A) left at, or sent by post to, the office of the Crown Solicitor; or
 - (B) faxed to the office of the Crown Solicitor; or
 - (C) emailed to the email address for the Crown Solicitor; or
- (c) in the case of any other person, it is –
 - (i) left at, or sent by post to, the person's principal or registered

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office or principal place of
business; or

(ii) addressed to the person and
delivered to the facilities of a
document exchange of which the
person is a member; or

(iii) faxed to the person's fax number;
or

(iv) emailed to the person's email
address.

(5) Nothing in subsection (4) –

(a) affects the operation of any other law that
authorises the service of a notice or
document otherwise than as provided by
that subsection; or

(b) affects the power of a court or person
acting judicially to authorise service of a
notice or document otherwise than as
provided in that subsection.

31. Consequences of rescission

If a contract for the sale of residential property is
rescinded pursuant to a right to rescind the
contract given by this Act –

(a) the contract is taken to be rescinded from
the time it was made; and

(b) the deposit must be refunded to the
purchaser; and

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- (c) the purchaser and vendor are not liable to pay to each other any other amounts for damages, costs or expenses in relation to the contract or its rescission; and
- (d) a property agent is not entitled to any commission in relation to the contract.

32. *Conveyancing and Law of Property Act 1884* not affected

Nothing in this Act affects the operation of the
Conveyancing and Law of Property Act 1884.

33. Regulations

- (1) The Governor may make regulations for the purpose of this Act.
- (2) The regulations may provide that this Act does not apply to the following:
 - (a) any contract of a prescribed class;
 - (b) any residential property of a prescribed class.
- (3) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

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(5) The regulations may –

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

34. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Protection; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

35. Consequential amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

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SCHEDULE 1 – FORMS

Form 1 – Purchaser’s Warning Notice

Section 8(2)

PURCHASER’S WARNING NOTICE

Residential Property Transactions Act 2013

This warning notice is required by the *Residential Property Transactions Act 2013* (the *Act*). A reference in this notice to 'you' means the purchaser.

BEFORE YOU SIGN THIS CONTRACT

You should read this contract, and the disclosure documents, before signing this contract.

You should seek advice from your legal practitioner or conveyancer before signing this contract.

THINGS YOU SHOULD KNOW

You may have been provided with disclosure documents about the property before signing this contract. If so, this contract should include a receipt signed by you for the disclosure documents.

Alternatively, the disclosure documents may form part of this contract.

You should carefully read the disclosure documents before you sign this contract.

Information contained in the disclosure documents may not be up-to-date or contain all material information in relation to the property. Circumstances may change after the date of a disclosure document.

AFTER YOU SIGN THIS CONTRACT

The Act gives important rights to a purchaser of a residential property.

If the property includes a residential building, you may be entitled to seek either or both of the following:

- (a) a building certificate under the *Building Act 2000* in relation to the property;
- (b) a building condition inspection report in relation to the property.

If you have these rights, there is only a limited time within which you can exercise the rights.

You should seek advice from your legal practitioner or conveyancer about your rights under the Act as soon as possible after signing this contract.

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Form 2 – Purchaser’s Warning Notice

Section 8(3)

PURCHASER’S WARNING NOTICE

Residential Property Transactions Act 2013

This warning notice is required by the *Residential Property Transactions Act 2013* (the *Act*). A reference in this notice to 'you' means the purchaser.

THINGS YOU SHOULD KNOW

The Act gives important rights to a purchaser of a residential property.

If the property includes a residential building, you may be entitled to seek a building certificate under the *Building Act 2000* in relation to the property.

If you have these rights, there is only a limited time within which you can exercise the rights.

You should seek advice from your legal practitioner or conveyancer about your rights under the Act as soon as possible following the signing of this contract.

WARNING

If you sign this contract and the property includes a residential building, you will **NOT** be entitled to arrange for a building condition inspection report in relation to the property in accordance with the Act.

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sch. 1

Form 3 – Cooling-off Period Information Statement

Section 23(2)

COOLING-OFF PERIOD INFORMATION STATEMENT

Residential Property Transactions Act 2013

THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD

This contract is subject to a cooling-off period under the *Residential Property Transactions Act 2013* (the *Act*).

The purchaser may rescind this contract, without penalty, in accordance with the Act, during the cooling-off period. If the purchaser rescinds this contract during the cooling-off period, the purchaser is entitled to the return of the deposit (if previously paid).

The cooling-off period usually ends at 5 p.m. on the fifth business day after the date on which this contract is made. The cooling-off period may be extended by a provision in the contract or by the vendor giving written notice to the purchaser.

If –

- (a) the vendor's property agent arranges for the purchaser to sign this contract; and
- (b) the purchaser does not actually receive a copy of the contract for sale by 5 p.m. on the next business day after the date on which the contract is made –

the cooling-off period is to be extended until 5 p.m. on the fourth business day after the date on which the purchaser actually receives a copy of the contract for sale.

The purchaser should seek independent advice from a legal practitioner or conveyancer about the cooling-off period as soon as possible following the date on which this contract is made.

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Form 4 – Cooling-off Period Information Statement

Section 23(3)

COOLING-OFF PERIOD INFORMATION STATEMENT

Residential Property Transactions Act 2013

THIS CONTRACT IS NOT SUBJECT TO A COOLING-OFF PERIOD

The *Residential Property Transactions Act 2013* provides that a contract is not subject to a cooling-off period if –

- (a) the purchaser purchased the property at an auction; or
- (b) the purchaser purchased the property during the period of 5 business days before an auction or not later than 5 p.m. on the fifth business day after the date of an auction; or
- (c) the purchaser and the vendor previously entered into a contract for the sale of the property on substantially the same terms and conditions as this contract; or
- (d) the purchaser is a purchaser under another contract –
 - (i) for the purchase of a different property that is within a radius of 75 kilometres of the property that is the subject of this contract; and
 - (ii) with a different vendor; and
 - (iii) which has a cooling-off period that has not expired as at the date on which this contract is made.

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sch. 2

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Section 35

Property Agents and Land Transactions Act 2005

1. Section 18 is amended by omitting subsection (8) and substituting the following subsection:
 - (8) Insofar as a written appointment mentioned in subsection (1) is an agency agreement, on and after the commencement of the *Residential Property Transactions Act 2013* it is not valid for a period exceeding 90 days commencing on the date of the agency agreement.
2. Part 10 is repealed.