

## **CLAUSE NOTES**

### **RESIDENTIAL PROPERTY TRANSACTIONS BILL 2013**

#### **PART I            PRELIMINARY**

##### **Clause 1            Short title**

Cites the name (short title) of the Act.

##### **Clause 2            Commencement**

Provides for the Act to commence by proclamation.

##### **Clause 3            Interpretation**

Contains definitions and other interpretive provisions used in the Act.

##### **Clause 4            Application**

Provides which contracts for sale of residential property the Act will apply to.

##### **Clause 5            Non-application of Act**

Provides which contracts for the sale of residential property the Act will not apply to.

##### **Clause 6            Crown to be bound**

Provides that the Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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

### **Clause 7                    Disclosure documents in relation to residential property**

Contains the disclosure documents that must be included as part of the contract for the sale of residential property.

### **Clause 8                    Warning notice**

Provides that a contract for sale of residential property must include a warning notice in the form prescribed.

### **Clause 9                    Purchaser's right to rescind contract for non-compliance with this Part**

Contains the purchaser's right to rescind a contract for the sale of residential property if it does not comply with Part 2 of the Act.

### **Clause 10                  Vendor must ensure contract complies with this Part**

Contains the vendor's obligation to ensure that a contract for the sale of residential property complies with the requirements of Part 2 of the Act.

### **Clause 11                  Offence to provide false or incorrect disclosure document**

Provides that it is an offence for a vendor to knowingly include in a contract for the sale of residential property a disclosure document that is false, misleading or incorrect in relation to a material particular, provided that the contract for the sale of residential

property does not include a statement by the vendor as allowed under subsection (4).

Also provides that a person who is guilty of including false or incorrect disclosure documents must compensate the purchaser under the relevant contract for any loss or expense suffered as a result of the offence.

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

Provides that, in respect of specified disclosure documents, a purchaser may exercise the rights, powers and immunities that the purchaser would have had if the disclosure document had been issued to the purchaser.

**PART 3      ADDITIONAL PURCHASER'S RIGHTS IN RELATION TO CONTRACTS**

**Clause 13      Purchaser's right to apply for building condition inspection report**

Contains the right for a purchaser under a contract for the sale of residential property to apply for a building condition inspection report during the period commencing on the date on which the contract is made and ending on the fifth business day after that date.

Sub-clauses (3) and (4) provide that a purchaser must give written notice to the vendor that the purchaser has elected to arrange for a building condition inspection report, a vendor must then allow reasonable access to the residential property to enable a building inspector to inspect.

Sub-clause (5) provides that if a vendor breaches the obligation to provide reasonable access to a building inspector, then, that breach by the vendor is to be taken as a breach of the contract by the vendor and the purchaser may exercise the same rights for that breach as if the obligation had been included in the contract.

Sub-clause (6) contains the purchaser's right to rescind the contract if:

- the building condition inspection report states that the residential building has one or more building defects and the reasonable cost of making good those defects will exceed 1% of the purchase price payable under the contract; or
- the building condition inspection report has not been received by the purchaser by the end date; or
- the vendor does not allow access to enable the building inspector to inspect the property.

within the time specified and by written notice in accordance with the Act.

Sub-clause (9) defines the term end date.

## **Clause 14**

### **Qualification to the purchaser's right to rescind under section 13(6)(a)**

Contains a qualification to the purchaser's right to rescind the contract contained in section 13(6)(a).

Provides that, if the parties agree, a contract for the sale of residential property may include a building condition inspection report obtained by the vendor and the details to be included in the report for the purposes of the Act. Also contains a right for a purchaser to elect to rescind the contract by written notice to the vendor if a contract for the sale of residential property includes a building condition inspection report that does not comply with the Act.

## **Clause 15      Purchaser's right to apply for a building certificate**

Contains the right for a purchaser under a contract for the sale of residential property to request a building certificate during the period commencing on the date on which the contract is made and ending on the fifth business day after that date.

Sub-clauses (3) and (4) provide that a purchaser must give written notice to the vendor that the purchaser has elected to request a building certificate. A vendor must then allow reasonable access to the residential property to enable the general manager of the council for the municipal areas where the residential building is located to determine whether or not to issue a building certificate.

Sub-clause (5) provides that if a vendor breaches the obligation to provide reasonable access, then that breach by the vendor is to be taken as a breach of the contract by the vendor and the purchaser may exercise the

same rights for that breach as if the obligation had been included in the contract.

Sub-clause (6) contains an obligation on the Purchaser who elects to apply for a building certificate, and obtains one, to give the vendor written notice as soon as practicable after the purchaser receives the building certificate.

Sub-clause (8) contains the purchaser's right to rescind the contract if the purchaser applied for a building certificate and the general manager of the council does not issue a building certificate.

Sub-clause (10) contains the vendor's right to rescind the contract by written notice to the purchaser, if the purchaser has not provided notice of receiving the building certificate, or the purchaser did not waive the purchaser's rights under section 15 of the Act, after the vendor provided notice.

**Clause 16      Purchaser's right to rescind in relation to legal restrictions and unapproved works in relation to a residential building**

Contains the right for the purchaser to a contract for the sale of residential property, that includes a residential building to rescind the contract by written notice if there is any legal restriction that hinders or prevents the use of the residential property for the purposes of a dwelling or if there are any unapproved works.

Provides that the right to rescind cannot be exercised if the legal restriction or unapproved works were described in the contract in the form required by the Act.

**Clause 17                    Purchaser's right to rescind for legal restrictions in relation to vacant residential land**

Contains the right for the purchaser to a contract for the sale of residential property that does not include a residential building, to rescind the contract by written notice if there is any legal restriction that may hinder or prevent the use of the residential property for the purposes of a residential building allotment.

Provides that the right to rescind cannot be exercised if the legal restriction was described in the contract in the form required by the Act.

**Clause 18                    Purchaser's right to rescind if dwelling is damaged or destroyed**

Contains the right for a purchaser to a contract for the sale of residential property, which includes a residential building, to elect to rescind the contract by written notice to the vendor if the residential building is substantially uninhabitable as a result of damage or destruction.

Sub-clause (3) provides that the purchaser's right to rescind the contract lapses on the completion of the contract and 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.

Sub-clause (5) provides that if a purchaser rescinds a contract for the sale of residential



property, the risk in relation to the residential property is taken never to have passed from the vendor to the purchaser. Sub-clause (4) provides that the Act does not otherwise change the law relating to the passing of risk at the time of entering into a contract.

## **PART 4**

### **PROSPECTIVE BIDDER'S RIGHTS BEFORE PUBLIC AUCTION**

#### **Clause 19**

#### **Prospective bidder's right to arrange building inspection**

Contains the right for a prospective bidder at a public auction for residential property to elect to arrange a building condition inspection report by providing written notice to a property agent during the pre-auction period.

Sub-clause (3) contains the obligation on a property agent who receives such a notice to provide a copy of that notice to the prospective vendor as soon as practicable.

Sub-clause (4) contains the obligation on a prospective vendor who receives a copy of such a notice to allow reasonable access to the residential property during the pre-auction period to enable a building inspector to inspect for the purpose of providing a building condition inspection report. Sub-clause (5) provides that a vendor who fails to comply with that obligation is guilty of an offence.

## **PART 5**

### **COOLING-OFF PERIOD**

#### **Clause 20**

#### **Cooling-off period**

Provides that there is a cooling-off period for a contract for the sale of residential property, during which the purchaser can elect to exercise the right to rescind the contract.

Sub-clauses (3) and (4) provide that there is no cooling-off period for certain contracts for the sale of residential property.

## **Clause 21      Commencement and ending of cooling-off period**

Contains the cooling-off period.

The cooling-off period commences on the date on which the contract is made and:

- if the contract contains the cooling-off statement required by the Act, ends at 5pm on the fifth business day after the cooling-off period commenced or at the time when the contract is completed, whichever is earlier; or
- if the contract does not contain the cooling-off statement required by the Act, ends at the time the contract is completed or if the vendor gives written notice setting out the details of each matter where the contract did not contain the cooling-off statement required by the Act, then at 5 pm on the fifth business day after the giving of the notice or at the time when the contract is completed whichever is the earlier.

Sub-clause (4) provides that the cooling-off period may be extended by a provision in the

contract or by the vendor giving written notice to the Purchaser.

Sub-clause (5) provides that the cooling-off period will be extended if there is a delay as to when the purchaser receives a copy of the contract.

**Clause 22      Right to rescind contract during cooling-off period**

Contains the purchaser's right to rescind a contract for the sale of residential property at any time during the cooling-off period.

**Clause 23      Contract to contain statement regarding cooling-off**

Provides that a contract for the sale of residential property must include an information statement, in the form required by the Act, as to whether the contract is subject to a cooling-off period.

**PART 6           MISCELLANEOUS PROVISIONS**

**Clause 24      Property agent to provide copy of contract**

Provides obligation on a property agent to provide a copy of the signed contract for the sale of residential property to the purchaser, and purchaser's legal practitioner or conveyancer where required, by no later than 5 pm on the second business day after the date on which the contract is made.

Also details what a copy of the contract means for the purposes of the Act.

**Clause 25      Documents included as part of contract**

Details how a document is included as part of a contract for the sale of residential property for the purposes of the Act.

**Clause 26      Dating of contracts**

Provides that a contract for the sale of residential property cannot be dated earlier than the date on which it was made. A contract which is dated before it is made is taken to be dated on the date the contract was made.

**Clause 27      Contracting out, &c.**

Provides that any provision of a contract for the sale of residential property, is void to the extent that it has the effect of excluding, changing or restriction the operation of the Act, unless the purchaser receives a written certificate relating to legal advice received as to the consequences of such a provision before entering into the contract.

Sub-clause (3) provides the form a written certificate relating to legal advice must be in to be effective for the purposes of the Act.

**Clause 28      Waiver**

Provides how a purchaser can effectively waive any rights under the Act.

**Clause 29      Purchaser's other rights not affected**

Provides that the Act does not affect any other right or remedy available to a purchaser.

**Clause 30      Notices**

Provides for the way in which a notice or document for the purpose of the Act may be given, and is taken to be given, under the Act.

**Clause 31                    Consequences of rescission**

Provides for the consequences in the event a contract for the sale of residential property is rescinded pursuant to a right to rescind given under the Act.

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

Provides that the Act does not affect the operation of the *Conveyancing and Law of Property Act 1884*.

**Clause 33                    Regulations**

Provides for the Governor to make regulations for the purposes of the Act.

**Clause 34                    Administration of Act**

Assigns administration of the Act to the Minister for Corrections and Consumer Protection and the Department of Justice.

**Clause 35                    Consequential amendments**

Provides that the legislation specified in Schedule 2 of the Act is amended as specified in that Schedule.

**Schedule I                  FORMS**

**Schedule I                  Forms**

Contains the form of the prescribed Purchaser's Warning Notice required under

the Act to be attached to a contract for the sale of residential property.

Contains the form of the prescribed Cooling-off Period Information Statement required under the Act to be attached to a contract for the sale of residential property.

## **Schedule 2**

### **CONSEQUENTIAL AMENDMENTS**

#### **Schedule 2      Consequential amendments**

Contains the amendments to the *Property Agents and Land Transactions Act 2005* and repeals Part 10 of that Act.