



“Off the plan” and “digital savvy” property Bill introduced

“This reform recognises that the property industry is moving towards a 100 per cent digital future.”
The Hon. David Clarke, Second Reading Speech

A new bill was introduced into Parliament on 16 October 2018 to provide off the plan protections for consumers and to smooth the way for fully electronic and paperless conveyancing transactions.

NEW OFF THE PLAN PROTECTIONS

Referencing a ten (10) year history of over 29,022 off the plan sales of the residential property; in his Second Reading Speech the Hon David Clarke said *“Regulation was not keeping up with changing industry practices”*

Although New South Wales has robust vendor disclosure requirements for residential properties that are already constructed, according to the Second Reading Speech, the disclosure information has not been sufficient for off the plan sales.

The challenge which the Government acknowledged it faced in dealing with off the plan sales however, was to provide legislation that gave greater protection for purchasers but at the same time retain *“sufficient flexibility for developers so they could innovate and continue to take the risk on development...”*¹

To balance the interests of both purchaser and developers, the Bill includes:

- a requirement for a disclosure statement to be attached to a contract for sale which includes copy of draft plan and other disclosure documents to be prescribed by regulations following stakeholder consultation;
- an extension of the cooling off period extended from five (5) days to ten (10) days;

- the requirement for (21) days' notice for a vendor will be required for a vendor to disclose any changes in the disclosure statement, plan, by laws or other material particulars before requiring the Purchaser to complete;
- new rescission right triggers for purchasers when served with a notice of change
- new provisions dealing with rescission under sunset clauses together with matters which the Court is to take into account where a vendor wishes to rescind a contract;
- amendments which provide a more transparent process to buy and sell future existing assets.

E CONVEYANCING REFORMS

Following an announcement in July 2016; the Government introduced plans to transition to electronic conveyancing known as **“eConveyancing”**

Although the *Electronic Transactions Act 2000* permits requirements for writing and signing to be satisfied electronically, it was observed in the second reading speech that *“there is a general reluctance in the conveyancing industry to use electronic land contracts because of concerns about the validity of electronic agreements.”*²

To address these concerns the proposed reforms of the Government include:

- clear confirmation that reference to a contract includes an electronic data file containing a contract in electronic form;
- that a disclosure document, required to be provided by the vendor can be given electronically;
- any requirement for an instrument to be in writing is taken to be met if the information is given by means of electronic communication;
- that a Deed may be created in electronic form and electronically signed and attested;
- a contract to sell or dispose of land is not invalidated or rendered unenforceable only because it has been created in electronic form and electronically signed or attested;
- service can be effected by email;
- any document that supports the electronic lodgement of a dealing, memorandum, caveat or priority notice is not invalidated only because it has been executed electronically;
- certain statements, caveats, notices, applications and other information may be verified in the manner

approved by the Registrar-General, as an alternative to providing a statutory declaration; and

- a client authorisation produced in electronic form may also be electronically signed.

Many of these proposals are already allowed for in various Electronic Transactions Acts across the nations various jurisdictions.

If this Bill passes, the majority of perceived barriers to paperless conveyancing will be removed.

For more information about eConveyancing please click [here](#) for our previous articles.

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¹ Second Reading Speech

² Second Reading Speech

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