

PARLIAMENT OF VICTORIA

Sale of Land Amendment Bill 2014

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Sale of Land Amendment Bill 2014

A Bill for an Act to amend the **Sale of Land Act 1962** in relation to statements made under section 32 of that Act, to make related and consequential amendments to the **Owners Corporations Act 2006** and to consequentially amend other Acts and for other purposes.

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to amend the **Sale of Land Act 1962** to re-enact, reform and modernise the provisions relating to statements made under section 32 of that Act; and

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(b) to make related and consequential amendments to the **Owners Corporations Act 2006**; and

(c) to consequentially amend other Acts.

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2 Commencement

(1) This Part and Part 3 (other than section 7) come into operation on the day after the day on which this Act receives the Royal Assent.

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(2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in subsection (2) does not come into operation before 1 July 2015, it comes into operation on that day.

PART 2—AMENDMENT OF SALE OF LAND ACT 1962

3 Definitions

- (1) **Insert** the following definition in section 30(1) of the **Sale of Land Act 1962**—

"section 32 statement means a statement required to be given by a vendor under section 32 in accordance with Division 2;"

See:
Act No.
6975.
Reprint No. 15
as at
24 January
2013
and
amending
Act Nos
92/1990 and
35/2012.
LawToday:
www.
legislation.
vic.gov.au

- (2) In section 30(1) of the **Sale of Land Act 1962**, the definitions of *metropolitan area* and *planning instrument* are **repealed**.

- (3) Section 30(3), (4) and (5) of the **Sale of Land Act 1962** are **repealed**.

4 Division 2 of Part II substituted

For Division 2 of Part II of the **Sale of Land Act 1962** substitute—

"Division 2—Section 32 statement

32 Statement of matters affecting land being sold

- (1) A vendor under a contract for the sale of land must give to a purchaser, before the purchaser signs the contract, a statement signed by the vendor that contains the matters and attaches the documents specified in this Division.
- (2) For the purposes of subsection (1), a vendor may sign the statement to be given to a purchaser under this section by electronic signature.

32A Financial matters in respect of the land to be disclosed in section 32 statement

A section 32 statement must contain the following financial matters in respect of the land—

- (a) particulars of any mortgage (whether registered or unregistered) over the land, which is not to be discharged before the purchaser becomes entitled to possession or to the receipt of rents and profits, including the particulars specified in Schedule 1;
- (b) particulars of any charge (whether registered or not) over the land imposed by or under an Act to secure an amount due under that Act, including the amount owing under the charge;
- (c) in any case—
 - (i) the amount of any rates, taxes, charges or other similar outgoings affecting the land and any interest payable on any part of those rates, taxes, charges or outgoings which is unpaid including any rates, taxes, charges or outgoings for which the purchaser may become liable in consequence of the sale and which the vendor might reasonably be expected to have knowledge of; or

(ii) a statement that the total amount of those rates, taxes, charges or other similar outgoings and interest does not exceed the amount specified;

(d) in the case of a terms contract where the purchaser is obliged to make 2 or more payments to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land, the information set out in Schedule 2.

32B Insurance details in respect of the land to be disclosed in section 32 statement

A section 32 statement must contain the following insurance details in respect of the land—

(a) if the contract for the sale of the land does not provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits, particulars of any policy of insurance maintained by the vendor in respect of any damage to or destruction of the land;

(b) if there is a residence on the land which was constructed within the preceding 6 years and section 137B of the **Building Act 1993** applies to the residence, particulars of any required insurance under that Act applying to that residence.

32C Matters relating to land use to be disclosed in section 32 statement

A section 32 statement must contain the following matters in relation to the use of the land—

- (a) a description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered) and particulars of any existing failure to comply with the terms of that easement, covenant or restriction;
- (b) if the land is in a designated bushfire prone area within the meaning of regulations made under the **Building Act 1993**, a statement that the land is in such an area;
- (c) if there is no access to the property by road, a statement that there is no such access;
- (d) in the case of land to which a planning scheme applies a statement specifying—
 - (i) the name of the planning scheme;
 - (ii) the name of the responsible authority;
 - (iii) the zoning of the land;
 - (iv) the name of any planning overlay affecting the land.

32D Notices made in respect of land to be disclosed in section 32 statement

A section 32 statement must contain the following details in respect of any notices made in respect of the land—

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- (a) particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge;
 - (b) whether there are any notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes;
 - (c) particulars of any notice of intention to acquire served under section 6 of the **Land Acquisition and Compensation Act 1986**.

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32E Building permits issued in respect of land to be disclosed in section 32 statement

If there is a residence on the land, a section 32 statement must contain particulars of any building permit issued under the **Building Act 1993** in the preceding 7 years in relation to a building on the land.

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32F Information relating to any owners corporation to be disclosed in section 32 statement

- (1) If the land is affected by an owners corporation within the meaning of the **Owners Corporations Act 2006**, a vendor must—

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(a) unless paragraph (b) applies—

(i) either—

(A) specify in the section 32 statement the information prescribed for the purposes of section 151(4)(a) of the **Owners Corporations Act 2006** relating to the owners corporation; or

(B) attach to the section 32 statement a copy of the current owners corporation certificate issued in respect of the land under section 151 of the **Owners Corporations Act 2006**; and

(ii) attach to the section 32 statement a copy of the documents specified in section 151(4)(b)(i) and (iii) of the **Owners Corporations Act 2006** that are required to accompany an owners corporation certificate under that Act; or

(b) if the owners corporation is inactive, specify in the section 32 statement that the owners corporation is inactive.

(2) In this section a reference to an owners corporation that is inactive includes an owners corporation that has not, in the previous 15 months—

- (a) had an annual general meeting; and
- (b) fixed any fees; and
- (c) held any insurance.

32G Growth areas infrastructure contribution details to be disclosed in section 32 statement

(1) A section 32 statement must specify whether the land, in accordance with a work-in-kind agreement (within the meaning of Part 9B of the **Planning and Environment Act 1987**), is—

- (a) land that is to be transferred under the agreement; or
- (b) land on which works are to be carried out under the agreement (other than Crown land); or
- (c) land in respect of which a growth areas infrastructure contribution is imposed.

(2) The following certificates or notices must be attached to a section 32 statement in the case of land in respect of which there is a GAIC recording (within the meaning of Part 9B of the **Planning and Environment Act 1987**)—

- (a) any certificate of release from liability to pay a growth areas infrastructure contribution imposed in respect of the land issued under that Part;
- (b) any certificate of deferral of the liability to pay the whole or part of a growth areas infrastructure contribution imposed in respect of the land issued under that Part;

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(c) any certificate of exemption from liability to pay a growth areas infrastructure contribution imposed in respect of the land issued under that Part;

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(d) any certificate of staged payment approval;

(e) any certificate of no GAIC liability relating to the land issued under that Part;

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(f) any notice given under that Part providing evidence of the grant of a reduction of the whole or part of the liability to pay a growth areas infrastructure contribution imposed in respect of the land or an exemption from that liability;

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(g) if no certificate or notice of a type specified in paragraphs (a) to (f) is provided, a GAIC certificate relating to the land issued under that Part.

32H Disclosure of non-connected services in section 32 statement

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A section 32 statement must specify if any of the following services are not connected to the land—

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(a) electricity supply;

(b) gas supply;

(c) water supply;

(d) sewerage;

(e) telephone services.

**32I Evidence of title required to be disclosed
in section 32 statement**

The following documents must be attached
to a section 32 statement—

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- (a) in the case of land under the **Transfer of Land Act 1958**, a copy of the Register Search Statement and the document, or part of the document, referred to as the diagram location in the Register Search Statement that identifies the land and its location;
 - (b) in any other case, a copy of—
 - (i) the last conveyance in the chain of title to the land; or
 - (ii) any other document which gives evidence of the vendor's title to the land;
 - (c) if the vendor is not the registered proprietor of the land or the owner of the estate in fee simple in the land, evidence of the vendor's right or power to the sell the land;
 - (d) in the case of land that is subject to a subdivision—
 - (i) if the plan of subdivision has not been registered, a copy of the plan of subdivision which has been certified by the relevant municipal council; or
 - (ii) if the plan of subdivision has not yet been certified, a copy of the latest version of the plan;

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(e) in the case of land that is part of a staged subdivision within the meaning of section 37 of the **Subdivision Act 1988**—

(i) if the land is in the second or a subsequent stage, a copy of the plan for the first stage; and

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(ii) details of any requirements in a statement of compliance relating to the stage in which the land is included that have not been complied with; and

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(iii) details of any proposals relating to subsequent stages that are known to the vendor; and

(iv) a statement of the contents of any permit under the **Planning and Environment Act 1987** authorising the staged subdivision;

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(f) in the case of land that is subject to a subdivision and in respect of which a further plan within the meaning of the **Subdivision Act 1988** is proposed—

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(i) if the later plan has not been registered, a copy of the plan which has been certified by the relevant municipal council; or

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(ii) if the later plan has not yet been certified, a copy of the latest version of the plan.

32J Information required for a section 32 statement contained in a certificate, notice, policy of insurance or other document

- 5 (1) If any information required to be contained
in a section 32 statement is specified in a
certificate, notice or other document issued
by a relevant authority, the vendor may
attach that certificate, notice or other
10 document (or a copy of that certificate,
notice or other document) to the section 32
statement for the purpose of complying with
the relevant provision of this Division
requiring the information.
- 15 (2) If the information required under
section 32B is contained in a policy of
insurance, the vendor may attach a copy of
the policy or an extract of the policy to the
20 statement for the purpose of complying with
that section.

32K Supply of false information or failure to supply information in section 32 statement or failure to supply section 32 statement may result in rescission

- 25 (1) This section applies if a vendor—
- (a) supplies false information to a
purchaser in a section 32 statement or
in any certificates, notices, policies
or other documents attached to a
30 section 32 statement for the purposes of
complying with the requirements of this
Division; or

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- (b) fails to supply all the information required to be supplied to a purchaser, either in a section 32 statement or attached to the section 32 statement, as required by this Division; or
- (c) fails to give a purchaser a section 32 statement signed by the vendor before the purchaser signs the contract for the sale of land.
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- (2) The purchaser may rescind any contract for the sale of land which has been entered into on the basis of information contained in the section 32 statement or attached to the
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- section 32 statement at any time before the purchaser accepts title and becomes entitled to possession or to the receipt of rents and profits.
- (3) The purchaser may rescind any contract for the sale of land where the vendor fails to
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- give the purchaser a section 32 statement before the purchaser signs the contract at any time before the purchaser accepts title and becomes entitled to possession or to the receipt of rents and profits.
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- (4) Despite subsection (2) and (3), the purchaser may not rescind a contract for the sale of land if the court is satisfied that—
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- (a) the vendor has acted honestly and reasonably and ought fairly to be excused for the contravention; and
- (b) the purchaser is substantially in as good a position as if all the relevant provisions of this Division had been complied with.

32L Offence to provide false or incomplete information in section 32 statement or fail to provide statement

A vendor must not knowingly or recklessly—

- (a) supply false information to the purchaser in a section 32 statement or any certificate, notice, policy or other document attached to the section 32 statement that is required to be given under this Division; or
- (b) fail to supply all the information required to be given under this Division in the section 32 statement or any certificate, notice, policy or other document attached to the section 32 statement; or
- (c) fail to give a purchaser a section 32 statement signed by the vendor before the purchaser signs the contract for the sale of land.

Penalty: 300 penalty units in the case of a body corporate;
60 penalty units in any other case.

32M Other circumstance where purchaser may rescind contract of sale

The purchaser may rescind a contract for the sale of land if, at any time before the purchaser accepts title and becomes entitled to possession or to the receipt of rents and profits, a notice of intention to acquire land has been served under section 6 of the **Land Acquisition and Compensation Act 1986** in respect of the land subject to the contract of sale.

32N Contract provision that excludes, modifies or restricts Division is void

A provision in a contract for the sale of land that excludes, modifies or restricts any provision of this Division is void and of no effect.

32O Circumstance where vendor is not required to give purchaser another section 32 statement

If a vendor and a purchaser have entered into a contract for the sale of land in respect of which a section 32 statement has been given and the vendor and purchaser enter into a subsequent contract in relation to the same land in substantially the same terms as the original contract, the vendor is not required, in respect of the subsequent contract, to give to the purchaser another section 32 statement.

32P Agreement to transfer forest carbon right not a contract for the sale of land

To avoid doubt, an agreement to transfer a forest carbon right within the meaning of the **Climate Change Act 2010** is not a contract for the sale of land for the purposes of this Division."

5 New Division 2A inserted in Part II

After Division 2 of Part II of the **Sale of Land Act 1962** insert—

"Division 2A—Due diligence checklist

33 Definitions

In this Division—

licensed estate agent has the same meaning as in the **Estate Agents Act 1980**;

vacant residential land means any vacant land on which the building of a residence is permitted.

33A What is a due diligence checklist?

A due diligence checklist is a checklist prepared for prospective purchasers of vacant residential land or land on which there is a residence to assist purchasers in identifying information they may wish to obtain in respect of the land for sale.

33B Due diligence checklist to be made available

- (1) A vendor offering land for sale that is vacant residential land or land on which there is a residence must ensure that a due diligence checklist is made available to any prospective purchaser from the time the land is offered for sale.

Penalty: 60 penalty units.

- (2) A vendor must ensure that the due diligence checklist is in the form approved by the Director of Consumer Affairs Victoria.

Penalty: 60 penalty units.

- (3) Subsections (1) and (2) do not apply to a vendor if the vendor has engaged a person who is a licensed estate agent to act for the vendor.

- (4) A person who is a licensed estate agent and acting for a vendor, offering land for sale that is vacant residential land or land on which there is a residence, must ensure that a due diligence checklist is made available to any prospective purchaser from the time the land is offered for sale.

Penalty: 60 penalty units.

5 (5) A person who is a licensed estate agent and acting for a vendor, must ensure that the due diligence checklist is in the form approved by the Director of Consumer Affairs Victoria.

Penalty: 60 penalty units.

(6) For the purposes of this section, a due diligence checklist is made available if—

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(a) copies of the due diligence checklist are on display or offered to prospective purchasers at any inspection held of the land; and

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(b) any Internet site maintained by the vendor and any person acting as the licensed estate agent of the vendor where the land is offered for sale allows access to a copy of the due diligence checklist either directly or by linking to another Internet site where a copy may be obtained.

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33C Due diligence checklist to be published on Internet

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The Director of Consumer Affairs Victoria must publish a copy of the due diligence checklist approved by the Director under section 33B on the Internet site for Consumer Affairs Victoria."

6 Transitional provisions

After section 51 of the **Sale of Land Act 1962**
insert—

**"52 Substitution of Division 2 of Part II—Sale
of Land Amendment Act 2014**

(1) In this section—

Amending Act means the **Sale of Land
Amendment Act 2014**;

commencement day means the day on which
section 4 of the Amending Act comes
into operation;

old section 32 means section 32 as in force
immediately before the commencement
day.

(2) Subject to subsection (4), old section 32
(other than subsection (1)(b)) continues to
apply to a vendor in respect of the sale of
land on and after the commencement day
if—

(a) before the commencement day, a
statement or statements under old
section 32 have been prepared and the
vendor has signed that statement or
statements; and

(b) on and after the commencement day
that land remains for sale.

(3) If subsection (2) applies to a vendor and the
vendor, on or after the commencement day,
is required to amend or update the statement
or statements prepared under old section 32,
the vendor may amend or update the
statement or statements in accordance with
old section 32.

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Part 2—Amendment of Sale of Land Act 1962

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(4) If land offered for sale before the commencement day is withdrawn from sale and the vendor again offers the same land for sale on or after the commencement day, the vendor must comply with Divisions 2 and 2A of Part II.

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(5) If subsection (2) applies to a vendor, on and after the commencement day, the vendor is not required to comply with Division 2A of Part II."

**PART 3—AMENDMENT OF OWNERS CORPORATIONS
ACT 2006**

7 Owners corporation certificate

- 5 (1) In section 151(2) of the **Owners Corporations Act 2006**, after "must not exceed the" insert "relevant".

See:
Act No.
69/2006.
Reprint No. 1
as at
16 August
2012
and
amending
Act No.
78/2013.
LawToday:
www.
legislation.
vic.gov.au

- (2) After section 151(4) of the **Owners Corporations Act 2006** insert—

10 "(5) The owners corporation must not charge a person making an application under this section a fee in excess of the relevant prescribed fee for the issue of an owners corporation certificate.

Penalty: 60 penalty units."

15 **8 Regulation-making powers**

- (1) After section 204(1)(d) of the **Owners Corporations Act 2006** insert—

"(da) prescribing fees generally under this Act;

20 (db) prescribing the fees that may be imposed by an owners corporation for the provision of an owners corporation certificate;"

- (2) After section 204(3) of the **Owners Corporations Act 2006** insert—

25 "(4) A power conferred by subsection (1) to make regulations providing for the imposition of fees for the provision of an owners corporation certificate may be exercised by

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Part 3—Amendment of Owners Corporations Act 2006

providing for all or any of the following matters—

- (a) specific fees;
 - (b) maximum fees;
 - 5 (c) minimum fees;
 - (d) fees that vary according to value, time, complexity or urgency;
 - (e) fees that vary based on the number and regularity of requests made by a person;
 - 10 (f) differential fees for different classes of request or based on the number of lots in a property."
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PART 4—AMENDMENT OF OTHER ACTS

9 Amendment of Catchment and Land Protection Act 1994

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In section 41(1)(b) of the **Catchment and Land Protection Act 1994** for "in a statement under section 32" **substitute** "in a section 32 statement prepared in accordance with Division 2 of Part II".

10 Amendment of Electricity Industry (Residual Provisions) Act 1993

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Section 84AB of the **Electricity Industry (Residual Provisions) Act 1993** is repealed.

11 Amendment of Fire Services Property Levy Act 2012

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In the note at the foot of section 32(2) of the **Fire Services Property Levy Act 2012**, for "statement under section 32" **substitute** "section 32 statement prepared in accordance with Division 2 of Part II".

12 Amendment of Mineral Resources (Sustainable Development) Act 1990

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Item 24 of Schedule 1 to the **Mineral Resources (Sustainable Development) Act 1990** is repealed.

PART 5—REPEAL OF AMENDING ACT

13 Repeal of amending Act

This Act is **repealed** on 1 July 2016.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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ENDNOTES

By Authority. Government Printer for the State of Victoria.