

Land and Business (Sale and Conveyancing) Variation Regulations 2013

Under section 7 of the *Land and Business (Sale and Conveyancing) Act 1994*, vendors are usually responsible for providing potential purchasers of land with a statement ("the vendor's statement") which provides comprehensive details as to actual and potential liabilities in respect of land.

Section 12 of the Act then provides for a mechanism whereby vendors can request certain information from councils and State Government authorities for a fee.

The *Land and Business (Sale and Conveyancing) Variation Regulations 2013* which commenced on 1 January 2014, have brought about a number of long-awaited changes to the manner in which council search reports (or "Search Certificates as some councils call them) are provided to vendors and other persons and the contents of those reports.

In respect of the delivery of reports, the definition of "council search report" has been amended to make it **patently clear** that a report can be provided wholly or partially in electronic form.

Reports provided wholly or partially in electronic form attract the same fees as hard-copy reports under Schedule 8 of the regulations.

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In respect of the contents of a council search report, the following changes have been made to Form 1 of Schedule 1 of the regulations, which contains the matters in respect of a vendor must provide information to a purchaser and, in turn, the information which a vendor can request from a council:

- caveats registered upon a title to land must be disclosed. Caveats are registered over titles to land in some circumstances to protect financial and other interests in land. It is not unheard of for councils to register caveats over land. If a council holds the benefit of a caveat over land which is to be sold, then information about the caveat may be requested;

- item 9 of Form 1 which relates to notices issued under the *Fire and Emergency Services Act 2005* in respect of action to prevent outbreak or spread of fire has been amended to include not only the now-repealed sections of that Act, but also the currently-operative section of that Act;
- item 26 of Form 1 which relates to notices and orders issued under the *Public and Environmental Health Act 1987* has been amended to clarify that this Act has now been repealed;
- a new item 28 has been inserted in respect of directions, notices and conditions issued under the *South Australian Public Health Act 2011* and the *South Australian Public Health (Wastewater) Regulations 2013*;
- a new item 30 has been added in respect of notices or orders issued under the *Water Industry Act 2012*.

The regulations have allowed for a two-month grace period (until 1 March 2014) for vendors to comply with the new Form 1 requirements.

However, this grace period does not apply to councils. We understand that a number of conveyancers are in the process of updating their own Form 1 practices and procedures and will be requesting the updated information from councils shortly (if they have not done so already).

As such we recommend that councils ensure that the contents of their search reports are updated to reflect the new requirements as soon as possible.

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If you have any questions please contact Victoria Shute on 8113 7104 or vshute@kellyjones.com.au