# Background information - Sale of Land Amendment (Exemption) Regulations 2020

## Terms contracts – Prescribed amount

### What is a terms contract?

A terms contract for the sale of land is a contract where a seller and buyer agree that the buyer will pay the purchase price of the property in instalments prior to the seller completing a transfer of land in the buyer’s favour. They are sometimes called ‘vendor terms’ contracts or ‘vendor finance’ contracts.

During the Victorian Government’s [Consumer Property Law Review](https://www.consumer.vic.gov.au/resources-and-tools/legislation/public-consultations-and-reviews/consumer-property-law-review), it was suggested that:

* market changes over the past 50 years, in particular in the competitive mortgage market, mean that there is no longer a compelling reason to continue to allow the use of terms contracts, and
* these contracts should be restricted to avoid exploitation of vulnerable consumers who cannot access conventional mortgage finance.

### Relevant sections to be inserted into the *Sale of Land Act 1962*

New sections 29EA, 29EB and 29EC to be inserted into the *Sale of Land Act 1962* (the Principal Act) by the *Sale of Land Amendment Act 2019* (the Amendment Act), establish a number of new offences where the price of residential land under a terms contract ‘is less than the prescribed amount’.

These new sections will provide:

29EA Additional prohibited terms contracts

A person must not knowingly sell any residential land (other than residential land that is agricultural land) under a terms contract where the sale price of the land is less than the prescribed amount.

Penalty: For a natural person, 240 penalty units or imprisonment for 2 years or both;

For a body corporate, 1200 penalty units

29EB Offence to arrange, broker or induce certain terms contracts

1. A person must not knowingly arrange or broker the sale of any residential land (other than residential land that is agricultural land) under a terms contract where the sale price of the land is less than the prescribed amount.

Penalty: For a natural person, 240 penalty units or imprisonment for 2 years or both;

For a body corporate, 1200 penalty units.

1. A person must not knowingly induce another person to enter into a sale of any residential land (other than residential land that is agricultural land) under a terms contract where the sale price of the land is less than the prescribed amount.

Penalty: For a natural person, 240 penalty units or imprisonment for 2 years or both;

For a body corporate, 1200 penalty units.

29EC Offence to advertise certain terms contracts

A person must not knowingly advertise the sale of any residential land (other than residential land that is agricultural land) under a terms contract where the sale price of the land is less than the prescribed amount.

Penalty: For a natural person, 120 penalty units;

For a body corporate, 500 penalty units.

### Further information regarding suggested amounts to be prescribed

For the purposes of consultation, two amounts are being considered for the proposed Sale of Land Amendment (Exemption) Regulations 2020 (Regulations), which will support the Amendment Act:

* $750,000. This is the value below which a person is still eligible for a first home owners grant; it is a useful benchmark of the price range where vulnerable purchasers are most likely to purchase.

This threshold reflects that terms contracts can be a useful and appropriate arrangement for the sale of property in higher value sales (such as rural farming land), where it is commercially desirable for the purchaser to pay the purchase price in multiple instalments over a defined period, and regular payments are acceptable to the vendor. These types of contracts are commonly formed by professional and financially literate parties, with relatively equal bargaining power.

* The Melbourne median house price (currently, approximately $810,000).

This approach is potentially problematic given that:

* the median sale price frequently changes, and
* such changes would need to be updated by amending the Regulations from time to time.

### Feedback sought

We are seeking your submissions about:

* which of the above amounts listed above should be prescribed in the Regulations, or
* if a different option is proposed, what that different option is. We welcome further feedback on the reasons for that option, but it is not essential.

## Rent-to-buy arrangements

The Amendment Act addresses predatory conduct by prohibiting rent-to-buy arrangements. The prohibitions are set out in Division 5 of the Amendment Act. If Regulations are made, they will prescribe persons or classes of persons and/or conditions and requirements which, if met, would exempt compliant rent-to-buy arrangements from the prohibitions.

### What is a rent-to-buy arrangement?

While individual contacts may vary, in general there are two main components to a rent-to-buy arrangement. These are the:

* ‘rent part’ - this is a residential tenancy agreement allowing the tenant/buyer to occupy the property for a fee. The tenant must sign a residential tenancy agreement and pay a bond, as well as rent over an agreed period, and
* ‘buy part’ – this takes the form of a sale option/sale deed. This is not a contract of sale but an option that gives the tenant the right to purchase the property in an agreed time period. The tenant needs to qualify for a home loan at the end of the rental period and then sign a contract of sale.

### Relevant sections to be inserted into the *Sale of Land Act 1962*

Pursuant to new section 29WA, the following rent-to-buy arrangements are exempted:

1. *rent-to-buy arrangement that involves a contract entered into by:*
   * 1. *the Director of Housing appointed under section 9(1) of the Housing Act 1983; or*
     2. *a registered housing association within the meaning of the Housing Act 1983; or*
     3. ***a prescribed person or class of person****; or*
2. *a rent-to-buy arrangement that* ***complies with the requirements*** *prescribed under section 17(2).*

(emphasis added)

New section 17(2) will provide:

### Feedback sought

Should any person/s be exempt from the new rent-to-buy prohibitions? We welcome further feedback about:

* your reasons for why a person or class of person should be exempt, and
* what impact (if any) you think this would have on the market and on business if any persons were to be exempt from the new rent-to-buy prohibitions.

*Without limiting subsection (1), for the purposes of section 29WA(b), the Governor in Council may make regulations for or with respect to requirements for rent-to-buy arrangements, in particular -*

1. ***money paid*** *for or with respect to the rights or obligations that are the subject of such arrangements, including the following—*
2. *the holding of the money on trust on behalf of purchasers;*
3. *the money being held in interest bearing accounts;*
4. *other matters as to interest on the money, including the application of the interest and dealing with the interest if the purchaser's right is not exercised; and*
5. *the inclusion of* ***certain conditions*** *in rent-to-buy arrangements, including conditions for or with respect to any obligation in the arrangement on a purchaser to purchase any land that is the subject of the arrangement; and*
6. *any* ***other requirements*** *as to the effect of, or terms and conditions of, rent-to-buy arrangements.*

(emphasis added)

The effect of the new section 29WA, and its interaction with section 17(2) of the Principal Act, is that Regulations may be made that prescribe persons or classes of persons, and/or conditions and requirements which if met, would exempt compliant rent-to-buy arrangements from the prohibitions described in Division 5 of the Amendment Act.

### Feedback sought

In relation to section 17(2) (above) what, if any:

* **requirements** should be set regarding money paid in a rent-to-buy arrangement? We welcome further feedback explaining:
* your reasons for why such requirements should be set, and
* what impact (if any) you think this would have on the market and on business if your suggested conditions were to be included in the regulations.
* **conditions** should be included?We welcome further feedback explaining:
* your reasons for why such conditions should be made, and
* what impact (if any) you think this would have on the market and on business if your suggested conditions were to be included.
* **other requirements** should be prescribed? We welcome further feedback about:
* your reasons for why such requirements should be prescribed, and
* what impact (if any) you think this would have on the market and on business if your suggested requirements were to be prescribed.

## Consultation process

Public consultation seeking feedback to these questions is open until Friday 25 October 2019. Send your submissions to [cav.consultations@justice.vic.gov.au](mailto:cav.consultations@justice.vic.gov.au).