

Make it a rule to include water information certificates

There is a good reason why you should always include a water information certificate in a section 32 statement. The certificates will show the water and sewer lines, which are unregistered easements, and need to be disclosed.



Section 32C of the Sale of Land Act 1962 (Vic) says that the section 32 statement must contain:

- (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;

For those who doubt that sewer pipes constitute unregistered easements they should look at the case of [Payne and Anor v Morrison \[1991\] VSC 166](#). In that case the purchaser was able to rescind the contract because the vendor had not disclosed, in the section 32 statement, the existence of a main drain which ran under part of the house on the property. The court found the main drain was an unregistered easement and the failure to disclose was in contravention of the equivalent to the current section 32C(a).

We have seen claims involving section 32 statements where firms have just included the client's water bills. The problem with this strategy is water bills do not contain a description of any water and sewer easements. When acting for a vendor, make it a rule that water information certificates are always obtained and included. It's worthwhile regularly reviewing the list of certificates you include in a section 32 statement and consider what could be missing.

When acting for purchasers always obtain a water information certificate if it is not included in the section 32 statement. Check if any easements are disclosed and advise your client where they are. Ask whether the easements will interfere with what the client intends to do with the property, and advise about any entitlements to rescind the contract.

For more information on preparing section 32 statements see the May 2019 LIJ feature article [Section 32 statements: the basics](#).