



New South Wales

Regulatory and Other Legislation (Amendments and Repeals) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Property, Stock and Business Agents Act 2002* (Schedule 1):
 - (i) to ensure that certain controls applying to property, stock and business agents who are employers and to their employees also apply to agents who engage staff under non-traditional employment arrangements and to those staff (including independent contractors), and
 - (ii) to strengthen obligations for persons exercising functions as property, stock and business agents to be licensed or hold a certificate of registration under that Act by ensuring that persons carrying on business as property, stock and business agents may only engage staff who are licensed or hold a certificate of registration, and
 - (iii) to strengthen obligations for property, stock and business agents to ensure that their staff are properly supervised and that those staff comply with requirements under that Act,
- (b) to enable licences under the *Conveyancers Licensing Act 2003* and *Pawnbrokers and Second-hand Dealers Act 1996* to have effect for up to 3 years, rather than only 1 year, as at present (Schedule 2.1 and 2.5),
- (c) to amend the *Fair Trading Act 1987* to extend the scheme for the publication of standard retail prices of fuels available for fuelling of motor vehicles at service stations to hydrogen and electricity (Schedule 2.3),

- (d) to amend the *Funeral Funds Act 1979* (Schedule 2.4) to ensure the following:
 - (i) that a friendly society (within the meaning of the *Life Insurance Act 1995* of the Commonwealth) is not required to be registered under the *Funeral Funds Act 1979* to carry on contributory funeral benefit business,
 - (ii) that friendly societies and Crown cemetery trusts are not required to be registered under the *Funeral Funds Act 1979* to act as trustees of trust funds under pre-paid contracts for the supply of funeral services,
 - (iii) that a Crown cemetery trust can both enter into a pre-paid contract for the supply of funeral services and act as trustee of the money paid in advance for that supply (rather than the money having to be paid to a separate trustee who is registered under the *Funeral Funds Act 1979*),
- (e) to encourage the use of the online rental bond service established under the *Residential Tenancies Act 2010* by ensuring that a landlord or agent cannot require or receive a rental bond from a tenant unless the landlord or agent is registered as a user of the online service and has invited the tenant to use the online service to deposit the rental bond (Schedule 2.7),
- (f) to repeal provisions of certain Acts that, for policy reasons, are no longer required (clause 1 of Schedule 3),
- (g) to repeal certain other Acts and instruments for the purpose of statute law revision (clauses 2 and 3 of Schedule 3),
- (h) to make amendments to various other Acts and instruments consequent on or related to the proposed repeals, including amendments relating to the abolition of the Compensation Court in 2004 (Schedule 4).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, except for specified provisions, which commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Property, Stock and Business Agents Act 2002 No 66

Schedule 1 [1] inserts a definition of *regulated functions* for the purposes of the amendments made by Schedule 1 [5] and [9]–[12].

Generally, the *Property, Stock and Business Agents Act 2002* (*the PSBA Act*) requires a person exercising any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or registered manager (a *registrable person*) to hold a certificate of registration. It is an offence for a person who is not the holder of a certificate of registration to represent that the person is a registrable person employed by a person licensed (or required to be licensed) under the PSBA Act. **Schedule 1 [2]** ensures that it is an offence for a person who is not the holder of a certificate of registration to represent that the person is a registrable person, whether or not the person also represents that the person is employed by a person licensed (or required to be licensed) under that Act.

Schedule 1 [3] inserts a note.

The PSBA Act makes it an offence for the holder of a certificate of registration to act as an auctioneer, except in certain circumstances. The relevant circumstances include that the holder is registered as a stock and station salesperson and conducts the auction as an employee of the holder of a stock and station agent's licence. **Schedule 1 [4]** inserts a corresponding requirement for a person carrying on business as an auctioneer to ensure that the holder of a certificate of registration does not act for or on behalf of the person as an auctioneer, except in the relevant circumstances.

Schedule 1 [5] makes it an offence for a person carrying on the business of an agent to make use of the services of another person (a *service provider*) to exercise any functions of an agent in the course of the business unless the following requirements are met:

- (a) the person must hold a licence authorising the functions concerned to be exercised by the person,
- (b) the service provider must hold a licence or certificate of registration authorising the service provider to exercise those functions,
- (c) in the case of a service provider required to hold a certificate of registration to exercise those functions—the service provider must be an employee of the person.

The proposed amendment made by Schedule 1 [5] is consistent with requirements in the PSBA Act for a person acting as or carrying on business as an agent to hold a licence, for persons exercising any functions of an agent to hold a licence or a certificate of registration and for holders of certificates of registration to only exercise functions of an agent as an employee of the holder of a licence.

The PSBA Act requires a licensee carrying on business as an agent, and any licensee employed as the person in charge at another licensee's place of business, to properly supervise employees engaged in the business. **Schedule 1 [6] and [7]** extend those requirements to ensure that any person engaged in the business who is not an employee must also be properly supervised.

The PSBA Act generally prohibits a licensee from employing a person who is a disqualified person (and, therefore, not eligible to hold a licence or a certificate of registration). It also generally requires a licensee to notify the Commissioner for Fair Trading, Department of Finance, Services and Innovation (the *Secretary*) on becoming aware that an employee of the licensee is a disqualified person and requires an employee of a licensee to notify the licensee if the employee becomes a disqualified person.

Schedule 1 [10]–[12] extend that prohibition and those requirements to licensees who engage staff, and to staff engaged, other than as employees if the staff are engaged to exercise regulated functions in the course of the business conducted by the licensee. **Schedule 1 [9]** inserts a related provision that describes the circumstances in which a person is taken to be engaged by a licensee to exercise regulated functions in the course of the business conducted by the licensee. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [13] inserts a provision that provides for the meaning of references to a person who is engaged by a real estate agent or a stock and station agent. The proposed provision is related to the amendments made by Schedule 1 [14], [18] and [20].

Schedule 1 [14] strengthens a prohibition on a real estate agent, or an agent's employee, making any statement to a buyer or prospective buyer of residential property, in the course of marketing the property, that the property is likely to be sold for a price that is less than the estimated selling price for the property. The estimated selling price is required to be set out in the agency agreement for the sale of the property.

In particular, Schedule 1 [14] extends the prohibition to any person engaged to provide services in the course of the business carried on by a real estate agent and (in line with the prohibition on underquoting in advertisements for residential property) to any statement made to any person, in the course of marketing the property, that the property may be sold for a price that is less than the estimated selling price for the property. Schedule 1 [14] also requires a real estate agent to ensure that any person engaged by the agent does not make any such statement in the course of marketing the property. It is a defence to a prosecution for an offence of failing to comply with that requirement for the real estate agent to establish that the agent took all reasonable precautions against committing the offence. **Schedule 1 [15] and [16]** make consequential amendments.

Schedule 1 [18] strengthens a requirement for a real estate agent to keep written records of statements made in the course of marketing a residential property that the property is likely to be sold for a specified price or within a specified price range. In particular, Schedule 1 [18] requires a real estate agent to ensure that any person engaged by the real estate agent who makes such a

statement also makes a written record of the statement. In line with the amendment made by Schedule 1 [14], it is a defence to a prosecution for an offence of failing to comply with the new requirement for the real estate agent to establish that the agent took all reasonable precautions against committing the offence. **Schedule 1 [17] and [19]** make consequential amendments.

The PSBA Act prohibits a real estate agent or stock and station agent, or an employee of such an agent, from making a statement, in the course of marketing a property passed in at an auction, indicating the amount of the last bid accepted at the auction if the last bid was a vendor bid, unless the statement clearly indicates that the bid was a vendor bid. **Schedule 1 [20]** extends the prohibition to any person engaged by a real estate agent or stock and station agent.

Schedule 1 [21] and [22] extend a provision that disqualifies a person from acting as an auditor in relation to a licensee's trust account if the person has been, at any time within a 2 year period, or is, an employee or partner of the licensee, so that the person is also disqualified if the person has been at any time within the 2 year period, engaged in the business of the licensee to provide services in the course of that business.

Schedule 1 [23] amends a provision that enables the Secretary to direct that a trust account be frozen if it appears to the Secretary that a licensee, the person in charge of a licensee's business at a place or a licensee's employee has, or may have, stolen, misappropriated or misapplied trust money. In particular, the proposed amendment extends the provision to cases in which it appears to the Secretary that any other person connected with a licensee has, or may have, stolen, misappropriated or misapplied trust money.

Schedule 2 Amendment of other Acts and regulations

Amendments enabling certain licences to be issued for up to 3 years

Schedule 2.1 [1] and 2.5 [1] amend the *Conveyancers Licensing Act 2003* and the *Pawnbrokers and Second-hand Dealers Act 1996* to enable licences under those Acts to have effect for up to 3 years, rather than only 1 year.

Schedule 2.1 [3] and 2.5 [4] insert savings provisions consequent on the amendments made by the proposed Act to those Acts.

Schedule 2.1 [2] enables the Governor to make regulations of a savings or transitional nature consequent on any Act that amends the *Conveyancers Licensing Act 2003* (including the proposed Act). **Schedule 2.5 [3]** makes a corresponding amendment to the *Pawnbrokers and Second-hand Dealers Act 1996*.

Schedule 2.5 [2] inserts a provision enabling the Governor to make regulations for or with respect to the waiver or refund of fees chargeable for any service provided by the Secretary under the *Pawnbrokers and Second-hand Dealers Act 1996*.

Schedule 2.2 and 2.6 make amendments to the regulations made under the *Conveyancers Licensing Act 2003* and the *Pawnbrokers and Second-hand Dealers Act 1996* that provide for the fees payable in relation to 3 year licences and the refund of those fees in certain cases.

Publication of standard retail prices for hydrogen or electricity supplied to motor vehicles

Schedule 2.3 [1] and [2] amend the *Fair Trading Act 1987* to enable the Commissioner for Fair Trading, Department of Finance, Services and Innovation to publish standard retail prices of hydrogen and electricity available for the fuelling (including charging) of motor vehicles at service stations. Section 58 (4) makes it an offence for the operator of a service station to offer fuel at a standard retail price other than the price notified under the scheme. **Schedule 2.3 [4] and [5]** make consequential amendments.

Currently, *service station* is defined to generally mean a building or place used for the fuelling of motor vehicles involving the sale by retail of the fuels to which the scheme for publishing standard retail prices applies. **Schedule 2.3 [3]** makes an amendment to that definition that is consequent on the inclusion of electricity as a fuel to which the scheme applies, so that it is clear that the sale

by retail must be by a person operating or controlling the operation of the building or place (and that the sale by retail of electricity for the purpose of supplying it to a building or place that is used to charge electric motor vehicles is excluded from the definition).

Exemptions from registration under Funeral Funds Act 1979 and other amendments

Schedule 2.4 [3] exempts friendly societies (within the meaning of the *Life Insurance Act 1995* of the Commonwealth) that carry on contributory funeral benefit business from being required to be registered to carry on that business under the *Funeral Funds Act 1979*.

Schedule 2.4 [5] exempts friendly societies and Crown cemetery trusts (within the meaning of the *Cemeteries and Crematoria Act 2013*) from being required to be registered under the *Funeral Funds Act 1979* to act as trustees of trust funds under pre-paid contracts for the supply of funeral services (which include burial and cremation services).

Schedule 2.4 [7] exempts Crown cemetery trusts from a provision that prohibits a person from agreeing to supply a funeral service under a pre-paid contract unless the money to be paid under the contract is required to be paid to a trustee who has entered into an agreement with the person to act as trustee of that money and who:

- (a) is registered under the *Funeral Funds Act 1979* to act as trustee of trust funds under pre-paid contracts for the supply of funeral services, or
- (b) is exempt from the requirement to be registered under that Act to act as such a trustee.

The effect of the exemption is that Crown cemetery trusts will be able to both enter into pre-paid contracts for the supply of funeral services and act as trustee of the money paid in advance for that supply.

Schedule 2.4 [4] and [6] replace sections that are generally redundant and re-enact, or save the effect of, provisions within those sections that have ongoing effect. **Schedule 2.4 [1], [2] and [8]–[16]** make consequential and related amendments.

Encouraging use of online rental bond service

Schedule 2.7 amends the *Residential Tenancies Act 2010* to prohibit a person (generally a landlord or landlord's agent) from requiring or receiving from a tenant a rental bond unless the landlord or landlord's agent is a registered user of the online rental bond service established under that Act and (if the tenant has provided an address that can be used to invite the tenant to use the service to deposit the rental bond) has invited the tenant to use that service to deposit the bond.

Schedule 3 Repeals

Schedule 3 provides for the repeal of various Acts, instruments and provisions.

Clause 1 provides for the repeal of provisions of the *Architects Act 2003* and *Building Professionals Act 2005* that require complaints made under those Acts against architects and accreditation holders, respectively, to be verified by statutory declaration.

Clause 1 also provides for the repeal of provisions of the *Photo Card Act 2005* that prevent the holder of a driver licence from being issued with a New South Wales Photo Card. The repeal of a provision of the *Road Transport (Driver Licensing) Regulation 2008* by clause 1 is a consequential amendment.

Clause 2 provides for the repeal of redundant Acts, instruments and provisions. The Acts and instruments repealed include the *Compensation Court Repeal Act 2002* and *Energy Services Corporations (Dissolution of Energy Distributors) Regulation 2001*. Certain provisions of that Act and Regulation that have possible ongoing effect are transferred to the *District Court Act 1973* and the *Energy Services Corporations Act 1995* by Schedule 4.1 [7] and 4.2, respectively.

Clause 3 provides for the repeal of a number of uncommenced amending Acts and amending provisions.

The repeal of the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001* is at the request of the portfolio concerned.

The repeals of the *Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Act 2004* and Schedule 2 to the *Photo Card Act 2005* are related and are also at the request of the portfolios concerned. All of the amendments in the *Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Act 2004* have been commenced, except for an amendment that inserts a provision that Schedule 2 to the *Photo Card Act 2005* (a later Act) provides is to be repealed. It has never been necessary to commence that repeal as the provision concerned has not commenced.

The uncommenced amendment made by the *State Insurance and Care Governance Act 2015* is unnecessary and can be repealed because the amendment was provided for elsewhere in that Act.

Schedule 4 Amendments consequent on other repeals and the abolition of the Compensation Court

Schedule 4 makes amendments consequent on the repeal of the *Compensation Court Repeal Act 2002* and the *Energy Services Corporations (Dissolution of Energy Distributors) Regulation 2001* by Schedule 3 to the proposed Act. It also makes amendments consequent on the abolition of the Compensation Court by the *Compensation Court Repeal Act 2002* (including amendments relating to the jurisdiction conferred on the District Court by that Act).

Schedule 4.1 [7] transfers the substance of provisions of the *Compensation Court Repeal Act 2002* having possible ongoing effect to the *District Court Act 1973*. **Schedule 4.2** transfers the substance of provisions of the *Energy Services Corporations (Dissolution of Energy Distributors) Regulation 2001* having possible ongoing effect to the *Energy Services Corporations Act 1995*. In accordance with section 30A of the *Interpretation Act 1987*, the transfer of provisions by Schedule 4.1 [7] and 4.2 does not affect the operation or meaning of those provisions.

Schedule 4.1 [2] makes an amendment to the *District Court Act 1973* that replaces a definition of *residual jurisdiction* and a related note, with a new definition of *compensation jurisdiction* that, in effect, has the same meaning. When the Compensation Court was abolished by the *Compensation Court Repeal Act 2002* on 1 January 2004, that Court's jurisdiction (over both existing and new matters) was split between the Workers Compensation Commission and the District Court. The jurisdiction conferred on the District Court is currently known as the "residual jurisdiction". Matters in existence when the Compensation Court was abolished have been finally disposed of, and the proposed change to the name of the jurisdiction reflects the fact that the jurisdiction applies to new matters and is ongoing. **Schedule 4.1 [1], [4] and [6] and Schedule 4.4** make consequential amendments to the *District Court Act 1973* and the *Supreme Court Act 1970*.

Schedule 4.1 [3] removes cross-references to provisions that were repealed by the *Civil Procedure Act 2005*.

Schedule 4.1 [5] omits a provision from the *District Court Act 1973* that conferred on the District Court, for the purposes of exercising its residual jurisdiction, the same powers, authorities, duties and functions as the Compensation Court had under the *Compensation Court Act 1984* immediately before its repeal by the *Compensation Court Repeal Act 2002*. The provision is redundant because the District Court has sufficient powers, authorities, duties and functions under other provisions (including provisions of the *District Court Act 1973*, the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005*).

Schedule 4.3 omits a redundant reference in the *Judicial Officers Act 1986* to a Commissioner of the abolished Compensation Court.

Schedule 4.5 amends the *Workers Compensation Act 1987* to ensure that the Principal Registrar of the District Court (rather than "the Registrar of the District Court") has responsibility for appointing and nominating medical referees for coal miner matters, which are dealt with in the District Court's residual jurisdiction. There is no single Registrar of the District Court and instead

registrars are appointed for each place at which the District Court may sit. The proposed amendments reflect the administrative practice of the District Court relating to coal miner matters.