



New South Wales

Property, Stock and Business Agents Amendment (Property Industry Reform) Bill 2017

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 consolidate the number of licences and certificates of registration under the *Property, Stock and Business Agents Act 2002* (the **principal Act**),
- (b) to provide for 2 classes of licence (one of which is required to be held by a licensee in charge of a business) and to permit regulations under the principal Act to specify which functions in the principal Act may be exercised only by the holder of a particular class of licence,
- (c) to permit working experience to be approved as a qualification for a licence or certificate of registration,
- (d) to permit a licence or certificate of registration to be granted for a period of 1 year or 5 years,
- (e) to provide that the offence of an agent failing to disclose a material fact is limited to material facts of a kind prescribed by the regulations under the principal Act,
- (f) to prohibit the holder of a licence or certificate of registration from receiving certain gifts,
- (g) to require the lodgment of auditor's reports,
- (h) to specify circumstances in which a licence or certificate of registration may be suspended for more than 60 days.

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 by proclamation.

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

Schedule 1 [3] omits a number of definitions from the *Property, Stock and Business Agents Act 2002* (the *principal Act*) and inserts new definitions. This reflects the reduction in the number of licences and certificates of registration under the principal Act, with the removal of separate licences and certificates of registration for business agents and on-site residential property managers and instead consolidating these with real estate agents and the consolidation of community managing agents with strata managing agents. The amendment also reflects a change in terminology for the persons required to hold certificates of registration. These are changed from salespersons or registered managers to assistant agents. Some of the definitions inserted include **agent** (being a real estate agent, stock and station agent or strata managing agent), **assistant agent** (being an assistant real estate agent, assistant stock and station agent or assistant strata managing agent), **regulated functions** (being the functions of an agent) and **real estate agent** (being a person who for reward exercises real estate agent functions in the course of carrying on a business). **Schedule 1 [11], [14], [17], [19], [25], [28], [32]–[34], [37] and [38]** make amendments to give effect to the consolidated licences and certificates of registration and the change of terminology.

Schedule 1 [8] inserts proposed sections 3A and 3B into the principal Act. Proposed section 3A sets out the functions that are real estate agent functions. These are functions that were previously the functions of real estate agents (**real estate sale or leasing functions**), business agents (**business agent functions**) and on-site residential property managers (**on-site residential property manager functions**). Proposed section 3B sets out who is a strata managing agent. These include persons exercising functions that were previously those exercised by strata managing agents and community managing agents. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [5], [6] and [9] make amendments consequential on the removal of the separate business agent licence and the requirement for persons exercising business agent functions to hold a real estate agent licence. **Schedule 1 [1] and [2]** amend the long title and the name of the Act as a consequence of removal of the concept of business agents.

Schedule 1 [13] and [15] provide that an agent who holds a licence may be referred to as a licensed agent and an assistant agent who holds a certificate of registration may be referred to as a registered agent.

Schedule 1 [25] also permits the **Secretary** (being the Commissioner of Fair Trading) to issue a licence (other than a corporation licence) as a class 1 licence or a class 2 licence. **Schedule 1 [12], [20] and [22]** make consequential amendments.

Schedule 1 [16] permits the regulations under the principal Act to prescribe that specified regulated functions may be exercised only by or under the supervision of the holder of a licence or the holder of a licence of a particular class. The regulations may also prescribe that references in the principal Act to the holder of a licence are to be construed as references to the holder of a licence of a particular class.

Schedule 1 [30] specifies that the holder of a class 1 licence must be in charge of any business carried on under a licence. This means that if the business owner holds a corporation licence or a class 2 licence, the business owner must employ an individual who holds a class 1 licence of a kind that would permit the employed individual to carry on that business. **Schedule 1 [18]** makes a consequential amendment.

Schedule 1 [21] permits the Minister for Innovation and Better Regulation (the **Minister**) to approve specified working experience as a qualification for a licence or certificate of registration.

Schedule 1 [27] makes it clear that conditions of a licence or certificate of registration can prohibit the holder from exercising specified functions or functions other than specified functions.

Schedule 1 [29] permits a licence or certificate of registration to be granted for a period of 1 year or 5 years.

Schedule 1 [35] limits the offence of an agent failing to disclose a material fact to material facts of a kind prescribed by the regulations under the principal Act.

Schedule 1 [36] creates an offence (maximum penalty \$2,200) if the holder of a licence or certificate of registration requests or accepts a gift or other benefit in circumstances that may reasonably be considered to give rise to a conflict of interest. Things provided by an employer, under an agency agreement or under a prescribed amount are exempt as are things of a kind prescribed by the regulations under the principal Act.

Schedule 1 [40] requires auditors' reports of audits of licensees, former licensees or personal representatives of licensees to be lodged with the Secretary.

Schedule 1 [41] specifies circumstances in which a licence or certificate of registration may be suspended for more than 60 days such as in the case of suspensions relating to a failure to lodge an audit report (in which case the suspension may be imposed until the failure is remedied). If the Secretary considers that the grounds for disciplinary action to which the suspension relates are serious, the suspension may be imposed for such time as required to enable the Secretary to investigate the matter. **Schedule 1 [42]** provides that in the case of a suspension of more than 60 days for the purposes of an investigation, the Secretary must, as soon as practicable after imposing the suspension, afford the person who is suspended an opportunity to be heard.

Schedule 1 [3], [23], [24] and [31] permit the regulations under the principal Act to prescribe what Acts of other jurisdictions correspond to the principal Act and remove duplicate provisions.

Schedule 1 [7] and [10] move a provision relating to notes.

Schedule 1 [11], [13] and [20] also replace references to natural persons with references to individuals to make terminology in the principal Act more consistent.

Schedule 1 [26] corrects terminology.

Schedule 1 [39] omits a provision that has been made redundant by the inclusion of definitions of *association* and *owners corporation* for the whole of the principal Act by Schedule 1 [3].

Schedule 1 [44] inserts a number of savings and transitional provisions consequent on the other amendments contained in Schedule 1. **Schedule 1 [43]** updates a Schedule heading.

Schedule 2 Consequential amendments to other Acts

Schedule 2 contains amendments to other Acts consequential on the change of the name of the principal Act and other amendments contained in Schedule 1.