



New South Wales

Better Regulation Legislation Amendment Bill 2019

Explanatory note

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

Overview of Bill

The object of this Bill is to amend various Acts and repeal a regulation administered by the Minister for Better Regulation and Innovation, including as follows—

- (a) to amend the *Building and Construction Industry Security of Payment Act 1999* to increase the maximum penalty that may be imposed by the regulations under that Act in respect of a failure to comply with trust account requirements for retention money,
- (b) to amend the *Building and Development Certifiers Act 2018* to make it clear that short sessions of training can be approved and to permit the regulations under that Act to authorise the Commissioner for Fair Trading to approve, by order published in the Gazette, training, persons to conduct training and persons to assess persons undergoing training, for the purposes of that Act,
- (c) to amend the *Building Professionals Act 2005* to authorise the Building Professionals Board to investigate the work and activities of accredited certifiers when they are carrying out all types of certification work,
- (d) to amend the *Charitable Fundraising Act 1991* to remove a requirement for the registered office of an applicant for an authority to conduct a fundraising appeal to be an address in New South Wales and to permit the regulations under that Act to impose requirements with respect to registered offices,
- (e) to amend the *Community Gaming Act 2018* to clarify the stated objects of that Act to recognise that some permitted gaming activities under that Act will be conducted for social purposes,

- (f) to amend the *Fair Trading Legislation Amendment (Reform) Act 2018* for the following purposes—
 - (i) to provide for 4 year terms for certificates of registration granted under the *Property, Stock and Business Agents Act 2002*,
 - (ii) to provide that certificates of registration cannot be restored or renewed,
 - (iii) to provide exceptions in respect of existing certificates of registration generally and a subset of existing certificates of registration as a stock and station salesperson,
- (g) to amend the *Harness Racing Act 2009* to allow appointed members of Harness Racing New South Wales to hold office for a total of 10 years,
- (h) to amend the *Property, Stock and Business Agents Act 2002* for the following purposes—
 - (i) to make it a condition of all licences and certificates of registration that the holder complies with continuing professional development requirements determined by the Secretary,
 - (ii) to enable the regulations made under that Act to prescribe additional requirements relating to trust accounts in which money received by a licensee (in connection with the licensee's business as a licensee) for or on behalf of any person is to be held until it is paid to the person or disbursed as the person directs,
- (i) to amend the *Residential Tenancies Act 2010* for the following purposes—
 - (i) to provide that the provisions of that Act do not apply to short-term rental accommodation arrangements, unless the person given the right to occupy the premises under the arrangement is occupying those premises as that person's principal place of residence,
 - (ii) to provide that the regulations may prescribe circumstances in which a tenant is not liable to pay particular utility charges,
 - (iii) to provide that the regulations may prescribe circumstances in which a landlord is not liable to pay particular charges,
 - (iv) to clarify that a tenant who is the victim of a domestic violence offence, or an exempted co-tenant, is not responsible for damage caused by another tenant during the commission of the domestic violence offence,
 - (v) to permit landlords to enter residential premises without consent to carry out, inspect or assess the need for repairs to, or replacement of, a smoke alarm if they have given notice of those activities to the tenant in accordance with the regulations,
 - (vi) to clarify that a tenant may give a termination notice to terminate the tenant's tenancy only if the tenant, or a dependent child of the tenant, is the victim of domestic violence or is the person for whose protection a DVO has been made or an injunction has been granted under the *Family Law Act 1975* of the Commonwealth,
 - (vii) to clarify that a competent person may use personal information about a relevant domestic violence offender for the purposes of making a declaration to accompany a domestic violence termination notice,
 - (viii) to provide that it is an offence for a person to knowingly provide false or misleading information to a competent person for the purposes of the competent person making a declaration to accompany a domestic violence termination notice,
 - (ix) to extend the requirement under section 105I of the Act that the Minister review the operation of particular provisions, relating to termination of residential tenancy agreements in circumstances of domestic violence, within 3 years of the commencement of those provisions to proposed section 54A,
- (j) to amend the *Residential Tenancies Amendment (Review) Act 2018* for the following purposes—
 - (i) to make it clear that it is the landlord's obligation to ensure smoke alarms at residential premises are in working order,

- (ii) to allow regulations to be made to specify the persons who may repair or replace a smoke alarm, the circumstances in which particular persons may or must repair or replace a smoke alarm and the time period within which a person must repair or replace a smoke alarm,
 - (iii) to enable regulations to be made to provide for the kinds of fixtures, or alterations, additions or renovations that are of a minor nature in relation to which it would be unreasonable for a landlord to withhold consent, and the circumstances in which the landlord may require the fixture to be installed, or the alteration, addition or renovation to be carried out, by an appropriately qualified person,
- (k) to amend the *Retail Trading Act 2008* for the following purposes—
- (i) to provide that an application for an exemption from a requirement under that Act must be in the form approved by the Secretary,
 - (ii) to require the Secretary to undertake public consultation before determining an application to exempt a shop from the requirements under that Act,
 - (iii) to replace a provision applying the investigation powers of an inspector under the *Industrial Relations Act 1996* with a provision applying the investigation powers of an investigator under the *Fair Trading Act 1987*,
- (l) to amend the *Thoroughbred Racing Act 1996* to allow appointed members of Racing NSW to hold office for a total of 10 years,
- (m) to make other necessary consequential and related amendments, including savings and transitional amendments.

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.

Clause 3 makes it clear that explanatory notes in Schedule 1 do not form part of the proposed Act.

Schedule 1 Amendments

Schedule 1 amends the following Acts—

- (a) *Building and Construction Industry Security of Payment Act 1999* No 46,
- (b) *Building and Development Certifiers Act 2018* No 63,
- (c) *Building Professionals Act 2005* No 115,
- (d) *Charitable Fundraising Act 1991* No 69,
- (e) *Community Gaming Act 2018* No 60,
- (f) *Fair Trading Legislation Amendment (Reform) Act 2018* No 65,
- (g) *Harness Racing Act 2009* No 20,
- (h) *Property, Stock and Business Agents Act 2002* No 66,
- (i) *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018* No 5,
- (j) *Residential Tenancies Act 2010* No 42,
- (k) *Residential Tenancies Amendment (Review) Act 2018* No 58,
- (l) *Retail Trading Act 2008* No 49,
- (m) *Thoroughbred Racing Act 1996* No 37.

Schedule 1 also repeals the *Retail Trading Regulation 2014*.

The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 1.