



New South Wales

# Better Regulation Legislation Amendment (Miscellaneous) Bill 2021

## 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 a regulation, and to repeal a regulation, administered by the Minister for Better Regulation and Innovation, including as follows—

- (a) to amend the *Associations Incorporation Act 2009* for the following purposes—
  - (i) to provide that, on the winding up of an association or on the involuntary cancellation of the association's registration, the surplus property of the association must be distributed in accordance with—
    - (A) if the association's constitution addresses the distribution—the constitution, or
    - (B) a special resolution of the association, or
    - (C) a direction by the Secretary,
  - (ii) to provide that, on the voluntary cancellation of the registration of an association, the assets of the association must be distributed in accordance with a special resolution passed by the association,
  - (iii) to clarify that surplus property and assets must not be distributed to a member or former member of an association unless the member or former member is an entity or organisation, whether incorporated or unincorporated, that is prohibited from distributing property to its members,
  - (iv) to enable a committee of an association to appoint sufficient members to constitute a quorum,
  - (v) to remove the penalty for the offence of a former committee member or public officer failing to deliver documents belonging to an association after vacating office,

- (vi) to extend the Secretary's power to require the production of information and documents from an association to include the production of information and documents from a previously registered association,
- (vii) to provide that an audit of an association's financial records may be carried out by an authorised audit company or a qualified member of a professional accounting body,
- (b) to amend the *Biofuels Act 2007* to enable the Minister to appoint to the Expert Panel an additional person who has recent experience or expertise in the petroleum or biofuels industry,
- (c) to amend the *Building and Construction Industry Long Service Payments Act 1986* to permit the issuing of penalty notices under that Act,
- (d) to amend the *Building Products (Safety) Act 2017* to provide that the register of building product undertakings is to be made available, free of charge, on a NSW Government website,
- (e) to amend the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* for the following purposes—
  - (i) to allow the issuing of penalty notices under that Act,
  - (ii) to require employers for the contract cleaning industry to keep a copy of the employment contract for each employee,
  - (iii) to empower inspectors to require the production of employee records and to take possession of records to be used as evidence,
  - (iv) to enable the Secretary to enter into information sharing arrangements with relevant agencies,
- (f) to amend the *Design and Building Practitioners Act 2020* for the following purposes—
  - (i) to consolidate the concepts of 'equivalent authorisation' and 'relevant authorisation', as used in that Act and the *Design and Building Practitioners Regulation 2021*, by inserting a single definition of **relevant authorisation** to refer to certain qualifications or authorisations related to practitioners under that Act,
  - (ii) to provide that, if a practitioner is a registered body corporate, the Secretary may take disciplinary action under that Act, Part 6 against a director of the body corporate, including action intended to prevent the director from being a director of other registered body corporates,
- (g) to amend the *Electricity Supply Act 1995* to replace references to 'metering provider' with 'metering co-ordinator' to ensure consistency with how the terms are used in the national electricity laws,
- (h) to amend the *Fair Trading Act 1987* to provide that the register of enforceable undertakings is to be made available, free of charge, on a NSW Government website,
- (i) to amend the *Funeral Funds Act 1979* for the following purposes—
  - (i) to provide that a registered company auditor or an authorised audit company may be appointed as an independent auditor of a pre-paid funeral fund,
  - (ii) to provide for the publication and provision of annual returns of pre-paid funeral funds lodged with the Secretary, and, as a consequence, remove the need for a person to attend a government office to request a copy of a return,
- (j) to amend the *Funeral Funds Regulation 2016* as a consequence of the amendments made to the *Funeral Funds Act 1979* by the proposed Act,
- (k) to amend the *Home Building Act 1989* for the following purposes—
  - (i) to clarify that the holder of a contractor licence is guilty of improper conduct if the holder does not comply with the requirements of a rectification order under that Act, Part 3A, Division 2 before the date specified in the order,

- (ii) to provide that, if the holder of an authority is a partnership or corporation, the Secretary may take disciplinary action against members of the partnership, officers of corporations that are members of the partnership and officers of the corporation,
- (l) to amend the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020* for the following purposes—
  - (i) to provide that the Secretary may accept an undertaking from a developer to provide a bank guarantee, bond or other form of security (a **rectification bond**) to the Secretary that may be applied to the costs of eliminating, minimising or remediating a serious defect or a potential serious defect in a residential apartment building,
  - (ii) to enable the Secretary to make an order prohibiting the issue of an occupation certificate in relation to a residential apartment building if a developer fails to provide the Secretary with a rectification bond required under the terms of an undertaking given by the developer,
  - (iii) to enable the Secretary to give a building work rectification order to a developer if the Secretary has a reasonable belief that a residential apartment building has a serious defect or that building work was or is being carried out in a way that could result in a serious defect in a residential apartment building,
  - (iv) to remove the requirement for the Registrar-General to be notified of, and given the opportunity to make written representations about, a proposed building work rectification order,
  - (v) to enable a court order to be made requiring a person convicted of an offence under that Act, or the regulations under that Act, to publicise the offence and require the person to publicise other matters, including if a prohibition order, building work rectification order or stop work order has been made in connection with the person,
- (m) to amend the *Retirement Villages Act 1999* for the following purposes—
  - (i) to provide that a surplus, or part of a surplus, in the annual accounts of a retirement village may, with the agreement of the existing residents of the village, be distributed equally based on the number of existing residential premises in the village rather than the number of existing residents,
  - (ii) to clarify that if a former occupant of residential premises in a retirement village applies for an exit entitlement order and the Secretary does not make the order, the former occupant may not make another application for an exit entitlement order until the expiration of a further prescribed period or a longer period approved by the Secretary,
  - (iii) to impose a maximum penalty of 50 penalty units for the failure of a person appointed by a resident of a retirement village to sell the resident's premises to notify the resident of offers to purchase the premises or give the resident reports on the marketing of, and inquiries relating to, the premises,
  - (iv) to enable the regulations to prescribe additional information that a valuer must include in a valuation of residential premises in a retirement village,
- (n) to amend the *Storage Liens Act 1935* to relocate the requirements for a notice served on a storer by a person claiming to be the owner of goods or to have an interest in goods from the *Storage Liens Regulation 2019*,
- (o) to repeal the *Storage Liens Regulation 2019* as a consequence of the amendments to the *Storage Liens Act 1935* by the proposed Act,
- (p) to amend the *Tow Truck Industry Act 1998* for the following purposes—
  - (i) to provide additional licence conditions for tow truck operators, which require a licensee to release a vehicle from their holding yard after the vehicle's owner or owner's agent has paid the fees charged by the licensee for the licensee's dealings with the vehicle, and prohibit a licensee from sending a vehicle away from the holding yard for repairs without the vehicle owner's or owner's agent's permission,

- (ii) to enable payments to be made from the Tow Truck Industry Fund to fund the prosecution of offences under other legislation that may be committed by tow truck operators in the course of operating their business,
- (q) to make other necessary consequential and related amendments to instruments listed in this overview, 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 and instrument—

- (a) *Associations Incorporation Act 2009* No 7,
- (b) *Biofuels Act 2007* No 23,
- (c) *Building and Construction Industry Long Service Payments Act 1986* No 19,
- (d) *Building Products (Safety) Act 2017* No 69,
- (e) *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* No 122,
- (f) *Design and Building Practitioners Act 2020* No 7,
- (g) *Electricity Supply Act 1995* No 94,
- (h) *Fair Trading Act 1987* No 68,
- (i) *Funeral Funds Act 1979* No 106,
- (j) *Funeral Funds Regulation 2016*,
- (k) *Home Building Act 1989* No 147,
- (l) *Residential Apartment Buildings (Compliance and Enforcement) Act 2020* No 9,
- (m) *Retirement Villages Act 1999* No 81,
- (n) *Storage Liens Act 1935* No 19,
- (o) *Tow Truck Industry Act 1998* No 111.

**Schedule 1** also repeals the *Storage Liens Regulation 2019*.

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.