



New South Wales

Better Regulation Legislation Amendment Act 2019 No 23

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Better Regulation Legislation Amendment Act 2019 No 23

Act No 23, 2019

An Act to amend various Acts and Regulations administered by the Minister for Better Regulation and Innovation; and other related matters. [Assented to 26 November 2019]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Better Regulation Legislation Amendment Act 2019*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1.4, 1.8[3] and [4] and 1.10[1] and [9] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1.8[1] and [2] commence on the commencement of Schedule 2.12 to the *Fair Trading Legislation Amendment (Reform) Act 2018*.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

1.1 Building and Construction Industry Security of Payment Act 1999 No 46

Section 12A Trust account requirements for retention money

Omit “200 penalty units” from section 12A(4). Insert instead “1,000 penalty units”.

Explanatory note

The proposed amendment increases the maximum penalty that may be imposed by the regulations in respect of a failure to comply with trust account requirements for retention money.

1.2 Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Omit “Department of Finance, Services and Innovation” wherever occurring in the definitions of *Department* and *Secretary*.

Insert instead “Department of Customer Service”.

[2] Sections 89(3), 91(1), 93(3) and 107(3)

Omit “registration” wherever occurring.

[3] Section 111 Disclosure and misuse of information

Omit “any registration” from section 111(1)(c). Insert instead “those”.

[4] Section 120 Regulations

Omit “courses of training” from section 120(2)(a). Insert instead “training”.

[5] Section 120(2A)

Insert after section 120(2)—

- (2A) Without limiting subsection (2)(a), the regulations may authorise the approval of training and persons under that paragraph to be done by order of the Secretary published in the Gazette.

Explanatory note

Item [1] of the proposed amendments updates a reference to a renamed Department.

Items [2] and [3] are statute law amendments that remove redundant references to registration from the *Building and Development Certifiers Act 2018*.

Item [4] removes a reference to “courses of training” and replaces it with “training” to make it clear that short sessions of training can be approved.

Item [5] permits the regulations under that Act to authorise the Commissioner for Fair Trading to approve, by order published in the Gazette, the following for the purposes of that Act—

- (a) training,
- (b) persons to conduct training,
- (c) persons to assess persons undergoing training.

1.3 Building Professionals Act 2005 No 115

Section 46 Investigation of accredited certifiers and building professionals

Omit “in his, her or its capacity as a certifying authority” from section 46(1)(a).

Insert instead “when carrying out certification work other than on behalf of an accredited body corporate or a council”.

Explanatory note

The proposed amendment authorises the Building Professionals Board to investigate the work and activities of accredited certifiers when they are carrying out all types of certification work, including swimming pool certification work. Currently, investigations may only be carried out when accredited certifiers are carrying out work and activities in their capacity as a certifying authority.

1.4 Charitable Fundraising Act 1991 No 69

[1] Section 15 Application to nominate registered office

Omit “in New South Wales” wherever occurring.

[2] Section 55 Regulations

Insert after section 55(2)—

- (3) Without limiting subsection (1), the regulations may impose requirements with respect to registered offices (including requirements with respect to the location of registered offices).

Explanatory note

Item [1] of the proposed amendments removes 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. Item [2] permits the regulations to impose requirements with respect to registered offices.

1.5 Community Gaming Act 2018 No 60

[1] Section 3 Objects of Act

Insert “social,” after “charitable,” in section 3(1)(a).

[2] Section 10 Permitted gaming activities

Insert “, social” after “charitable” in the note to section 10(1).

Explanatory note

Item [1] of the proposed amendments clarifies the stated objects of the *Community Gaming Act 2018* to recognise that some permitted gaming activities under that Act will be conducted for social purposes. Item [2] makes a consequential amendment.

1.6 Fair Trading Legislation Amendment (Reform) Act 2018 No 65

[1] Schedule 2 Amendments relating to 1, 3 and 5 year terms and restorations

Omit “or certificate of registration” wherever occurring in Schedule 2.12[3] and [4].

[2] Schedule 2.12[3]

Omit “or certificate” where secondly and thirdly occurring in proposed section 25(3).

[3] Schedule 2.12[3]

Omit “or certificate” wherever occurring in proposed section 25A(1)(a) and (b).

[4] Schedule 2.12[4A]

Insert after Schedule 2.12[4]—

[4A] Sections 26A and 26B

Insert after section 26—

26A Duration of certificate of registration

- (1) The term of duration for a certificate of registration is 4 years.

- (2) The Secretary may grant a certificate of registration for a term longer than 4 years if the Secretary is satisfied that exceptional circumstances exist, being exceptional circumstances prescribed by the regulations.
- (3) The suspension of a certificate of registration does not affect the term of the certificate.

26B Time period for application for further certificate of registration

- (1) An application for a certificate of registration may not be made within 1 year of the expiry or cancellation of a certificate of registration previously held by the applicant.
- (2) A certificate of registration may not be renewed or restored.

[5] Schedule 2.12[6]

Insert after Schedule 2.12[5]—

[6] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Fair Trading Legislation Amendment (Reform) Act 2018

Definitions

In this Part—

amending Act means the *Fair Trading Legislation Amendment (Reform) Act 2018*.

commencement day means the day on which Schedule 2.12 to the amending Act commences.

Existing certificates of registration

- (1) Subject to subclause (3), section 26A does not affect the term of a certificate of registration granted under this Act and in force immediately before the commencement day (an *existing certificate*).
- (2) Despite section 26B(2), an application for the renewal of an existing certificate may be made within 6 weeks before the certificate expires and, if renewed, the certificate is no longer an existing certificate for the purposes of this clause.
- (3) A certificate of registration as an assistant stock and station agent subject to a condition limiting the holder to activities relating to livestock that was in force immediately before the commencement day is taken to be a licence granted under this Act for the purposes of sections 25, 25A and 26(6) (as inserted by the amending Act) only.
- (4) Subclause (3) ceases to apply to a certificate of registration if the certificate is cancelled, surrendered or not restored following its expiry.

Explanatory note

The proposed amendments amend uncommenced provisions in the *Fair Trading Legislation Amendment (Reform) Act 2018* which amend the *Property, Stock and Business Agents Act 2002*. Item [4] provides for 4 year terms for certificates of registration granted under the *Property, Stock and Business Agents Act 2002*. It also provides that certificates of registration cannot be restored or renewed. Item [5] provides for exceptions to the new provisions in respect of existing certificates of registration generally and a subset of existing certificates of registration as a stock and station

salesperson (taken to be certificates of registration as an assistant stock and station agent on the commencement of the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018*).

Items [1]–[3] are consequential amendments.

1.7 Harness Racing Act 2009 No 20

Section 6 Membership

Omit “8 years” from section 6(4). Insert instead “10 years”.

Explanatory note

The proposed amendment to the *Harness Racing Act 2009* will allow appointed members of Harness Racing New South Wales to hold office for no more than a total of 10 years. This is an increase from 8 years.

1.8 Property, Stock and Business Agents Act 2002 No 66

[1] Section 17 Application to licences of Licensing and Registration (Uniform Procedures) Act 2002

Insert “in respect of a licence—” before “the references to” in section 17(3)(d).

[2] Section 17(3)(d1)

Insert after section 17(3)(d)—

- (d1) section 9 of that Act does not have effect in respect of a certificate of registration, and

[3] Section 20 Conditions—general

Insert at the end of the section—

- (2) A licence or certificate of registration is subject to the condition that the holder must comply with any continuing professional development requirements issued and notified to the holder by the Secretary from time to time.

[4] Section 86 Trust money to be paid into trust account

Insert after section 86(6)—

- (7) A licensee must also comply with any additional requirements relating to trust accounts prescribed by the regulations.

Explanatory note

Item [3] of the proposed amendments makes it a condition of all licences and certificates of registration that the holder complies with continuing professional development requirements determined by the Secretary.

Item [4] enables the regulations under the *Property, Stock and Business Agents Act 2002* 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.

Items [1] and [2] are consequent on proposed amendments to the *Fair Trading Legislation Amendment (Reform) Act 2018* in this Schedule.

1.9 Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018 No 5

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

Omit Schedule 1[29].

Explanatory note

The proposed amendment is consequent on proposed amendments to the *Fair Trading Legislation Amendment (Reform) Act 2018* in this Schedule.

1.10 Residential Tenancies Act 2010 No 42

[1] Section 8 Agreements to which Act does not apply

Insert after section 8(1)(ba)—

- (bb) short-term rental accommodation arrangements, within the meaning of section 54A of the *Fair Trading Act 1987*, under which the person given the right to occupy the residential premises to which the arrangement relates does not occupy the premises as the person's principal place of residence,

[2] Section 38 Utility charges payable by tenant

Insert after section 38(1)—

- (1A) The regulations may exempt a tenant, or class of tenants, in specified circumstances, from the requirement to pay a charge under this section.

[3] Section 40 Payment of rates, taxes and certain utility charges by landlord

Insert after section 40(1)—

- (1A) The regulations may exempt a landlord, or class of landlords, in specified circumstances, from the requirement to pay a charge under this section.

[4] Section 54 Liability of tenant for actions of others

Omit “section 105B)” from section 54(1B). Insert instead “section 105A)”.

[5] Section 54A

Insert after section 54—

54A Limit on liability of tenant for actions of other tenants occurring during domestic violence offences

- (1) A tenant (the *exempted tenant*) is not responsible to the landlord for any act or omission by a co-tenant that is a breach of the residential tenancy agreement if—
 - (a) the act or omission—
 - (i) constitutes or resulted in damage to the residential premises, and
 - (ii) occurred during the commission of a domestic violence offence, and
 - (b) the exempted tenant is—
 - (i) the victim of the domestic violence offence, or
 - (ii) an exempted co-tenant.
- (2) In this section—
 - exempted co-tenant* means a person who—
 - (a) is a tenant under the same residential tenancy agreement as the tenant who is the victim of the domestic violence offence, and
 - (b) is not a relevant domestic violence offender (within the meaning of Division 3A of Part 5) nominated in a document referred to in section

105C(2) and annexed to a domestic violence termination notice (within the meaning of section 105A) for the residential tenancy agreement.

(3) This section is a term of every residential tenancy agreement.

[6] Section 55 Access generally by landlord to residential premises without consent

Insert after section 55(2)(c)—

(c1) to carry out, inspect or assess the need for repairs to, or replacement of, a smoke alarm installed at the residential premises if the tenant has been given notice in accordance with the regulations,

[7] Section 105A Definitions

Insert in alphabetical order—

dependent child, of a tenant, means an occupant (whether in permanent occupation or occupation from time to time) who is a child and is wholly or partly dependent for support on the tenant.

[8] Section 105A

Omit the definition of *domestic violence termination notice*. Insert instead—

domestic violence termination notice means a termination notice given by a tenant under section 105B(1).

[9] Section 105A

Omit the definition of *competent person*. Insert instead—

competent person means any of the following persons—

- (a) a health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)* who is eligible for registration in a health profession under Division 1 or 2 of Part 7 of that Law,
- (b) a person registered as a social worker with the Australian Association of Social Workers,
- (c) an employee of a government agency that provides services relating to child welfare,
- (d) an employee of a non-government agency in receipt of government funding to provide services relating to—
 - (i) domestic violence or sexual assault, or
 - (ii) refuge or emergency accommodation,
- (e) a person approved by the Commissioner of Victims Rights under the *Victims Rights and Support Act 2013* to provide approved counselling services for the purposes of that Act,
- (f) a person prescribed by the regulations.

[10] Section 105B Right of early termination

Omit section 105B(1). Insert instead—

(1) A tenant may give a termination notice to the landlord and each co-tenant, if any, for a residential tenancy agreement if the tenant or a dependent child of the tenant is in circumstances of domestic violence.

[11] Section 105B(2)(a)

Omit “or co-tenant of, or dependent child in”.

Insert instead “of, or a dependent child of a tenant of”.

[12] Section 105C Domestic violence termination notice

Insert after section 105C(2)—

- (2A) A competent person is authorised to collect, hold, use and disclose personal information about a relevant domestic violence offender that the competent person requires for the purposes of making a declaration under subsection (2)(d).

[13] Section 105H False or misleading information

Insert at the end of the section—

- (2) A person must not give a competent person information that the person knows, at the time of providing the information, is false or misleading in a material particular for the purposes of the competent person making a declaration under section 105C(2)(d).

Maximum penalty—100 penalty units or imprisonment for 2 years, or both.

[14] Section 105I Review of this Division and other provisions

Insert “54A,” after “sections” in section 105I(2).

[15] Section 105I, note

Insert “, 54A” after “(1B)”.

Explanatory note

Item [1] of the proposed amendments provides that the *Residential Tenancies Act 2010* does not apply to short-term rental accommodation arrangements, as defined in the *Fair Trading Act 1987* (as amended by the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*), 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.

Item [2] provides that the regulations may prescribe circumstances in which a tenant is not liable to pay particular utility charges.

Item [3] provides that the regulations may prescribe circumstances in which a landlord is not liable to pay particular charges.

Item [4] updates a cross-reference as a consequence of the proposed amendments in items [7] and [8].

Item [5] clarifies 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.

Item [6] permits 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.

Items [7] and [8] relocate definitions as a consequence of amendments in items [10] and [11].

Items [10] and [11] 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.

Item [12] clarifies 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.

Item [13] provides 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.

Item [14] extends 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.

Item [15] makes a consequential amendment.

1.11 Residential Tenancies Amendment (Review) Act 2018 No 58

[1] Schedule 1 Amendment of Residential Tenancies Act 2010 No 42

Omit proposed section 64A from Schedule 1[14]. Insert instead—

64A Carrying out repairs to smoke alarms as a matter of urgency

- (1) A landlord must ensure that a smoke alarm installed in the residential premises is repaired or replaced in accordance with the regulations.
Maximum penalty—20 penalty units.
- (2) Without limiting subsection (1), the regulations may prescribe the following—
 - (a) the circumstances in which a particular person, or class of persons, must repair or replace a smoke alarm,
 - (b) the circumstances in which a person, or class of persons, may repair or replace a smoke alarm,
 - (c) the time period within which the person must repair or replace a smoke alarm.
- (3) A tenant who repairs or replaces a smoke alarm installed in the residential premises under this section is entitled to reimbursement in accordance with the regulations.
- (4) This section is a term of every residential tenancy agreement.
- (5) In this section—
repair a smoke alarm includes maintaining the smoke alarm in working order by installing or replacing a battery in the smoke alarm.
smoke alarm includes a heat alarm.

[2] Schedule 1[19]

Omit the item. Insert instead—

[19] Section 66 Tenant must not make alterations to premises without consent

Insert after section 66(2)—

- (2A) The regulations may make provision for or with respect to the following—
 - (a) 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,
 - (b) the circumstances in which the giving of consent by the landlord to the fixture, alteration, addition or renovation may be conditional on the fixture only being installed, or the alteration, addition or renovation only being carried out, by a person appropriately qualified to install a fixture, or carry out alterations, additions or renovations, of that kind.

Explanatory note

Item [1] of the proposed amendments makes it clear that it is the landlord's obligation to ensure smoke alarms at residential premises are in working order.

Item [1] also allows regulations to be made to specify the following matters—

- (a) the circumstances in which particular persons may or must repair or replace a smoke alarm,
- (b) the time period within which a person must repair or replace a smoke alarm.

Item [1] also clarifies definitions for the purposes of the proposed section.

Item [2] enables the regulations to provide for—

- (a) 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
- (b) 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.

1.12 Thoroughbred Racing Act 1996 No 37

[1] Section 6 Membership

Omit “8 years” from section 6(4). Insert instead “10 years”.

[2] Schedule 1 Savings and transitional provisions

Omit “8 years” from clause 36(3). Insert instead “10 years”.

Explanatory note

The proposed amendments to the *Thoroughbred Racing Act 1996* will allow appointed members of Racing NSW to hold office for no more than a total of 10 years. This is an increase from 8 years.

[Second reading speech made in—

Legislative Council on 23 October 2019

Legislative Assembly on 20 November 2019]