



New South Wales

Better Regulation Legislation Amendment Act 2020 No 25

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New South Wales

Better Regulation Legislation Amendment Act 2020 No 25

Act No 25, 2020

An Act to amend various Acts and Regulations administered by the Minister for Better Regulation and Innovation; and for related purposes. [Assented to 28 September 2020]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Better Regulation Legislation Amendment Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act, except as follows—

- (a) Schedule 2.1 commences on the later of the following—
 - (i) the date of assent to this Act,
 - (ii) the commencement of Schedule 1[26] to the *Charitable Fundraising Amendment Act 2018*,
- (b) Schedules 3 and 7.2[3] and [5] commence on a day or days to be appointed by proclamation.

Schedule 1 Amendments relating to motor dealers and repairers licences, repairs on transport service vehicles and the Motor Dealers and Repairers Compensation Fund

1.1 Motor Dealers and Repairers Act 2013 No 107

[1] Section 5 Motor dealers

Insert after section 5(4)—

- (5) A person does not carry on the business of a motor dealer merely because the person sells a trailer for the conveyance of a second-hand boat sold by the person.

[2] Section 10, heading

Omit the heading. Insert instead—

10 Definition

[3] Section 10, definition of “transport service vehicle”

Omit the definition of *transport service owner*.

Insert instead—

transport service vehicle means a motor vehicle used for the carriage of passengers or goods in connection with a business.

[4] Section 15 Repair work must be done by licensed motor vehicle repairers

Omit “or a transport service owner” from section 15(1).

[5] Section 15(1A)

Insert after section 15(1)—

- (1A) The owner of a transport service vehicle or other person having control of a transport service vehicle must not, in the course of business, enter into an agreement for any repair work to be done on the vehicle by a person who is not the holder of a motor vehicle repairer’s licence.

Note. An offence against subsection (1A) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 159.

[6] Section 16 Repair work must be done by holder of tradesperson’s certificate

Omit “, a motor dealer or a transport service owner” from section 16(1).

Insert instead “or a motor dealer”.

[7] Section 16(1A)

Insert after section 16(1)—

- (1A) The owner of a transport service vehicle or other person having control of a transport service vehicle must not permit an employee of the owner or person to do repair work on the vehicle unless the person doing the work—

- (a) holds a tradesperson’s certificate for a class of repair work that includes that work, or

- (b) is doing the work in the course of an apprenticeship or traineeship under the supervision of a person who holds a tradesperson's certificate for a class of repair work that includes that work, or
- (c) is doing the work in other circumstances prescribed by the regulations for the purposes of this section.

Note. An offence against subsection (1A) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 159.

[8] Section 22A

Insert after section 22—

22A Revocation of licences by Secretary

- (1) The Secretary may, by notice in writing given to a licence holder (a *cancellation notice*), cancel the licence if the Secretary is satisfied that—
 - (a) the licence was granted, renewed or restored because of a misrepresentation made by the holder, or
 - (b) the licence was granted, renewed or restored in error (whether as a result of a misrepresentation by the holder or not).
- (2) A cancellation notice takes effect on the day that it is given to the licence holder or on a later day specified in the notice.
- (3) The Secretary may, by further notice given to the licence holder (a *restoration notice*), restore a licence cancelled under this section if the Secretary is satisfied that—
 - (a) the licence holder acted in good faith, or
 - (b) the error has been rectified, or
 - (c) the licence should be restored.
- (4) A restoration notice takes effect on the day that it is given to the licence holder, or on a later day specified in the notice.

[9] Section 159 Liability of directors etc for offences by corporation—offences attracting executive liability

Omit section 159(1)(b). Insert instead—

- (b) section 15(1) or (1A) or 16(1) or (1A).

[10] Section 171 Certification of loss

Omit “\$40,000” from section 171(2).

Insert instead “the amount prescribed by the regulations”.

1.2 Motor Dealers and Repairers Regulation 2014

Clause 53A

Insert after clause 53—

53A Certification of loss

For the purposes of section 171(2) of the Act, the amount of \$40,000 is prescribed.

Schedule 2 Amendments relating to search warrants

2.1 Charitable Fundraising Act 1991 No 69

[1] Section 25I Search warrants (as inserted by the Charitable Fundraising Amendment Act 2018)

Omit “, when accompanied by a police officer,” from section 25I(2).

[2] Section 25I(2A)

Insert after section 25I(2)—

- (2A) A police officer may accompany an authorised officer who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.

2.2 Community Gaming Act 2018 No 60

[1] Section 26 Search warrants

Omit “, when accompanied by a police officer,” from section 26(2).

[2] Section 26(2A)

Insert after section 26(2)—

- (2A) A police officer may accompany an authorised officer who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.

2.3 Entertainment Industry Act 2013 No 73

[1] Section 28 Search warrants

Omit “, when accompanied by a police officer,” from section 28(2).

[2] Section 28(2A)

Insert after section 28(2)—

- (2A) A police officer may accompany an authorised officer who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.

2.4 Home Building Act 1989 No 147

[1] Section 126 Power of entry

Omit section 126 (4)–(6) and (7).

[2] Section 126A

Insert after section 126—

126A Search warrants

- (1) An authorised person may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so,

issue a search warrant authorising an authorised person named in the warrant and any other person named in the warrant—

- (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) A police officer may accompany an authorised person who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section—

authorised person means a person authorised to enter premises by section 126.

issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

2.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “section 126” from the matter relating to the *Home Building Act 1989*.

Insert instead “section 126A”.

2.6 Motor Dealers and Repairers Act 2013 No 107

[1] Section 154 Search warrants

Omit “, when accompanied by a police officer,” from section 154(2).

[2] Section 154(2A)

Insert after section 154(2)—

- (2A) A police officer may accompany an authorised officer who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.

2.7 Residential (Land Lease) Communities Act 2013 No 97

[1] Section 183 Search warrants

Omit “, when accompanied by a police officer,” from section 183(2).

[2] Section 183(2A)

Insert after section 183(2)—

- (2A) A police officer may accompany an investigator who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.

2.8 Residential Tenancies Act 2010 No 42

[1] Section 200 Search warrants

Omit “, when accompanied by a police officer,” from section 200(2).

[2] Section 200(2A)

Insert after section 200(2)—

- (2A) A police officer may accompany an investigator who enters premises and searches for evidence under a search warrant as if the police officer were named in the warrant.

Schedule 3 Amendments relating to unclaimed money under Storage Liens Act 1935

3.1 Storage Liens Act 1935 No 19

[1] Section 8 Disposition of proceeds of sale

Omit section 8(2)–(4). Insert instead—

- (2) If the surplus is not demanded by a person entitled to the surplus within 14 days after the sale, the surplus is to be dealt with as if the storer were an enterprise and the surplus were unclaimed money for the purposes of the *Unclaimed Money Act 1995*.

[2] Schedule 1

Insert at the end of the Act—

Schedule 1 Savings and transitional provisions

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision—
 - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
 - (b) has effect despite anything to the contrary in this Schedule.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

Part 2 Provision consequent on enactment of Better Regulation Legislation Amendment Act 2020

2 Disposition of proceeds of sale

- (1) Section 8(2)–(4), and the regulations made under those sections, as in force immediately before their repeal by the *Better Regulation Legislation Amendment Act 2020*, continue to apply in respect of the surplus proceeds arising from goods sold before that repeal.

- (2) Section 8(2), as substituted by the *Better Regulation Legislation Amendment Act 2020*, does not apply in respect of surplus proceeds arising from goods sold before that substitution.

3.2 Storage Liens Regulation 2019

Clauses 5 and 6

Omit the clauses.

Schedule 4 Amendments relating to exemptions under Retail Trading Act 2008

4.1 Retail Trading Act 2008 No 49

[1] Section 11 Applications for exemptions

Omit “prescribed by the regulations” from section 11(1)(a).

Insert instead “approved by the Secretary”.

[2] Section 11(4)

Insert after section 11(3)—

- (4) Before determining an application, the Secretary must—
 - (a) cause the application to be publicly exhibited for a period of at least 14 days, and
 - (b) seek public comment on the application during the public exhibition period, and
 - (c) have regard to any public comment received during that period.

[3] Schedule 2 Savings, transitional and other provisions

Insert after clause 10—

Part 5 Provision consequent on repeal of Retail Trading Regulation 2014

11 Existing applications for exemptions

Clause 6 of the *Retail Trading Regulation 2014* continues to apply in respect of an application made, but not finally determined, before the repeal of that Regulation.

4.2 Retail Trading Regulation 2014

Repeal

The *Retail Trading Regulation 2014* is repealed.

Schedule 5 Amendments relating to landlords not ordinarily residing in New South Wales and standard form agreement

5.1 Residential Tenancies Act 2010 No 42

Section 27 Names and addresses to be provided

Omit section 27(1)(a). Insert instead—

- (a) the name and telephone number or other contact details of the landlord,
- (a1) if the landlord does not ordinarily reside in New South Wales, the State, Territory or, if not in Australia, country in which the landlord ordinarily resides,
- (a2) if there is a landlord’s agent, the name, telephone number and business address of the landlord’s agent,

5.2 Residential Tenancies Regulation 2019

[1] Schedule 1 Standard Form Agreement

Omit “[*Insert name and telephone number or other contact details of landlord(s)*]” from the matter under the heading **Landlord**.

Insert instead—

*[Insert name and telephone number or other contact details of landlord(s).
If the landlord does not ordinarily reside in New South Wales, specify the State, Territory or, if not in Australia, country in which the landlord ordinarily resides]*

[2] Schedule 1, clause 37

Insert at the end of clause 37.4—

, and

- 37.5** if the State, Territory or country in which the landlord ordinarily resides changes, to give the tenant notice in writing of the change within 14 days.

[3] Schedule 2 Condition report

Omit “a minimum” from paragraph (b) of the matter under the heading “WATER USAGE CHARGING AND EFFICIENCY DEVICES”.

Insert instead “a minimum”.

[4] Schedule 3 Declaration by competent person

Omit “*child if not*” from Part 4. Insert instead “*child*” if not”.

Schedule 6 Amendments relating to exemptions under Pawnbrokers and Second-hand Dealers Act 1996

6.1 Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1] Section 4A

Insert after section 4—

4A Exemptions

- (1) The Secretary may, by notice in writing given to a person, exempt the person from the operation of this Act or specified provisions of this Act.
- (2) An exemption under this section—
 - (a) takes effect on the day the notice is given to the person or a later day specified in the notice, and
 - (b) if the notice provides for the expiry of the exemption, expires in accordance with the notice, and
 - (c) is subject to the conditions (if any) specified in the notice, and
 - (d) may be amended, varied or revoked by the Secretary by further notice in writing to the person.
- (3) As soon as practicable after giving a person an exemption under this section, the Secretary is to publish details of exemptions granted under this section on a publicly accessible website.

[2] Section 43 Regulations

Insert “for classes of persons” after “exemptions” in section 43(1)(i).

[3] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule—

Part 6 Provision consequent on enactment of Better Regulation Legislation Amendment Act 2020

23 Existing exemptions

- (1) In this clause—

amendment day means the day on which section 4A was inserted into the Act by the *Better Regulation Legislation Amendment Act 2020*.

existing exemption means an exemption under clause 39 of the *Pawnbrokers and Second-hand Dealers Regulation 2015*, as in force immediately before the amendment day.
- (2) An existing exemption remains in force, as if it were an exemption granted under section 4A until the later of the following—
 - (a) the day on which the Secretary grants an exemption under section 4A replacing the existing exemption,
 - (b) 6 months after the amendment day.

6.2 Pawnbrokers and Second-hand Dealers Regulation 2015

Clause 39 Specific exemptions from certain requirements

Omit the clause.

Schedule 7 Miscellaneous amendments to other Acts

7.1 Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 No 122

[1] Section 9 Constitution of Long Service Leave Committee

Omit “United Voice (NSW Branch)” from section 9(2)(c).

Insert instead “United Workers Union (NSW Branch)”.

[2] Section 9(2)(e)

Omit the paragraph. Insert instead—

- (e) 2 persons appointed by the Minister who, in the opinion of the Minister, have knowledge of, and experience in, the contract cleaning industry.

[3] Section 9(4)

Omit “(2)(b), (c), (d) or (e)”. Insert instead “(2)(b), (c) or (d)”.

7.2 Gas and Electricity (Consumer Safety) Act 2017 No 15

[1] Section 4 Definitions

Insert after paragraph (a) of the definition of *electrical installation* in section 4(1)—

- (a1) a meter used, or intended for use, in the generation, transmission or distribution of electricity that is—
 - (i) owned or used by an electricity supply authority, and
 - (ii) located at a place owned or occupied by the authority,

[2] Section 5 Act not to apply to certain gas or autogas installations or gas appliances

Insert “(other than regulations made under this Act relating to the examination and testing of gas meters)” after “This Act”.

[3] Section 21 Restrictions on sale of gas appliances

Insert after section 21(1)—

- (1A) The Secretary may, by order in writing, exempt a person or a specified class of persons, or gas appliance or type of gas appliance, from subsection (1).
- (1B) An exemption takes effect when—
 - (a) in relation to a person—it is given to the person, or
 - (b) in relation to a class of persons or a gas appliance or class of gas appliances—it is published on a publicly accessible website that, in the opinion of the Secretary, is appropriate for the publication.
- (1C) An exemption is subject to the terms and conditions (if any) specified in the order.

[4] Section 33 Work to be carried out by qualified persons

Insert at the end of paragraph (b) of the definition of *trade certificate* in section 33(3)—

- , or
- (c) in relation to autogas work carried out on an installation that is designed for use with liquefied natural gas (LN Gas), a tradesperson’s certificate granted under the *Motor Dealers and Repairers Act 2013* in respect of

a class of repair work that includes work of a liquefied natural gas mechanic.

[5] Section 37 Restrictions on connection of gas appliances to certain gas installations

Insert after section 37(2)—

- (2A) Subsections (1) and (2) do not apply in respect of a person or class of persons, or gas appliance or class of gas appliances exempt from section 21(1).

[6] Section 46, heading

Omit the heading. Insert instead—

46 Definitions

[7] Section 46, definition of “autogas installation”

Insert in alphabetical order—

autogas installation includes the vehicle, vessel or machine that an autogas installation is installed in, or forms part of.

[8] Section 48 Inspection of documents evidencing prohibited conduct

Insert after section 48(b)—

- (b1) an autogas installation, or

[9] Section 50, heading

Omit the heading. Insert instead—

50 Prohibition of sale of certain electrical articles, gas appliances and autogas installations and labelling of those articles, appliances and installations

[10] Section 50(1)

Omit “or a gas appliance or more than one gas appliance of a particular type”.

Insert instead “a gas appliance or more than one gas appliance of a particular type, or an autogas installation or more than one autogas installation of a particular class”.

[11] Section 50(1)(a)(ii) and (iii)

Omit “, and” from section 50(1)(a)(ii). Insert instead—

- , or
(iii) having possession of the autogas installation or autogas installations of that class, prohibit the sale by that person of the autogas installation or of all autogas installations of that class, and

[12] Section 50(1)(b)(i)

Omit “or the gas appliance or each of the gas appliances”.

Insert instead “, the gas appliance or each of the gas appliances or the autogas installation or each of the autogas installations”.

[13] Section 50(1)(b)

Omit “electrical article or gas appliance” wherever occurring.

Insert instead “electrical article, gas appliance or autogas installation”.

- [14] Section 50(1)(b)**
Omit “article or appliance”. Insert instead “article, appliance or installation”.
- [15] Section 50(3)(a) and (b)**
Omit “electrical article or a gas appliance” wherever occurring.
Insert instead “electrical article, gas appliance or autogas installation”.
- [16] Section 51, heading**
Omit the heading. Insert instead—
51 Investigation of unsafe use of electrical articles, gas appliances or autogas, electrical or gas installations
- [17] Section 51**
Omit “electrical installation or a gas installation”.
Insert instead “electrical installation or autogas installation or a gas installation”.
- [18] Section 51(a)–(c)**
Omit “electrical or gas installation” wherever occurring.
Insert instead “electrical, autogas or gas installation”
- [19] Section 52, heading**
Omit the heading. Insert instead—
52 Prohibition of unsafe use of electrical articles, gas appliances or autogas, electrical or gas installations
- [20] Section 52(1) and (3)**
Omit “electrical installation or a gas installation” wherever occurring.
Insert instead “electrical installation, an autogas installation or a gas installation”.
- [21] Section 52(1)**
Omit “electrical or gas installation”.
Insert instead “electrical, autogas or gas installation”.
- [22] Section 54, heading**
Omit the heading. Insert instead—
54 Inspection of electrical, autogas and gas installations
- [23] Section 54(1)**
Insert “, autogas installation” before “or gas installation”.
- [24] Section 54(2)(a) and (b)**
Insert “, autogas work” before “or gasfitting work” wherever occurring.
- [25] Section 54(2)(b)**
Omit “that gasfitting work”. Insert instead “that autogas work or gasfitting work”.

[26] Section 54(3)

Insert “, autogas work” before “or gasfitting work”.

7.3 Property, Stock and Business Agents Act 2002 No 66

Section 217 Time for laying information

Omit “proceedings that are to be dealt with on indictment”.

Insert instead “proceedings for an indictable offence, whether or not proceedings for the offence are taken on indictment”.

7.4 Residential Tenancies Act 2010 No 42

Section 228A Definitions

Omit “15 October 2020” from the definition of *moratorium period*.

Insert instead “26 March 2021”.

[Second reading speech made in—
Legislative Assembly on 3 March 2020
Legislative Council on 27 August 2020]