

[Act 2002 No 28]



New South Wales

# Licensing and Registration (Uniform Procedures) Bill 2002

## Explanatory note

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

### Overview of Bill

The object of this Bill is to establish uniform procedures with respect to the administration of certain licensing and registration schemes. It achieves this object:

- (a) by enacting common licensing procedures (proposed Part 2) that are adopted (pursuant to amendments effected by Part 1 of Schedule 4) in relation to certain licensing schemes (listed in Schedule 1), and
  - (b) by enacting common registration procedures (proposed Part 3) that are adopted (pursuant to amendments effected by Part 2 of Schedule 4) in relation to certain general registration schemes (listed in Schedule 2), and
  - (c) by enacting common registration procedures (proposed Part 4) that are adopted (pursuant to amendments effected by Part 3 of Schedule 4) in relation to certain registration schemes affecting health professionals (listed in Schedule 3).
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The Bill also makes consequential amendments to other Acts and statutory rules (Part 4 of Schedule 4) and contains a Schedule of savings, transitional and other provisions (Schedule 5).

## Outline of provisions

### **Part 1 Preliminary**

**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 on a day or days to be appointed by proclamation. The clause enables a provision of Schedule 1, 2 or 3 to be commenced differently for different Acts and statutory rules and different provisions of different Acts and statutory rules and enables a provision of Schedule 4 to be commenced differently so as to commence the amendments effected by the provision on different days.

### **Part 2 Uniform licensing procedures**

This Part establishes uniform procedures for licensing schemes. For the purposes of the proposed Part, a licence is taken to include a permit, approval, certificate, exemption or other such authority. The provisions of the proposed Part are supplemented, and occasionally modified as a consequence of the amendments made by Part 1 of Schedule 4, by the provisions of the legislation under which each individual licensing scheme is established.

#### **Division 1 Preliminary**

**Clause 3** applies the proposed Part to licensing schemes arising under the legislative provisions referred to in Schedule 1. It also enables that Schedule to be amended by any statutory rule that establishes, amends or repeals a licensing scheme. That Schedule can, of course, be amended by any Act that establishes, amends or repeals a licensing scheme without the need for any express provision to that effect in the proposed Act. The clause further provides that the proposed Act is to give way to any licensing legislation in the event of any inconsistency between the proposed Act and that legislation, and further provides that the proposed Act does not limit or otherwise affect mutual recognition legislation.

**Clause 4** defines certain words and expressions for the purposes of the proposed Part.

**Clause 5** provides for the proposed Part to bind the Crown.

## **Division 2      Applications**

**Clause 6** enables an application for the granting of a licence to be made by any individual, partnership or corporation.

**Clause 7** enables a licensee to apply for the amendment of the licence, but only if the relevant licensing legislation allows licences to be amended.

**Clause 8** enables a licensee to apply for the transfer of the licence, but only if the relevant licensing legislation allows licences to be transferred.

**Clause 9** enables a licensee to apply for the renewal of the licence at any time while the licence is in force.

**Clause 10** enables a licensee to apply for the restoration of the licence at any time after the licence has expired.

**Clause 11** enables a licensee to apply for the replacement of the licence if the licence is lost, damaged or destroyed.

**Clause 12** sets out the procedure for making an application, and expressly authorises applications to be made either in writing or by means of electronic communication.

**Clause 13** provides for the payment of fees in connection with an application, and reduces any fee payable for processing the application where the application is made by means of electronic communication.

## **Division 3      Determination of applications**

**Clause 14** allows the relevant licensing authority to require an applicant to provide further information in relation to, or evidence in support of, an application, and allows it to refuse to deal with the application if the required information or evidence is not provided.

**Clause 15** sets out the procedure to be followed for advertising applications where the relevant licensing legislation requires them to be advertised.

**Clause 16** enables an applicant to withdraw an application.

**Clause 17** provides that an application that has not been determined within 28 days after it was made is taken to have been refused for the purposes of any right of review. Certain periods are discounted from the calculation of the 28-day period, being periods during which the licensing authority is unable to deal with the application because of (for example) an unfulfilled request for further information from the applicant.

**Clause 18** requires a licensing authority to determine an application by granting the application, either conditionally or unconditionally, or by refusing the application.

**Clause 19** requires a licensing authority to notify the applicant of its decision on an application and, if the applicant (or, in the case of an advertised application to which there have been objections, any objector) so requests, to notify the applicant (or objector) of its reasons for the decision.

**Clause 20** sets out the manner and form in which a licence must be issued.

**Clause 21** states when a licence commences and the period for which it has effect. In particular, it extends the period of a licence for which an application for renewal has been made until the date the application is determined.

**Clause 22** provides for the refund of certain fees if an application is refused.

**Clause 23** provides the applicant (and, in the case of an advertised application, an objector) with a right of review by the Administrative Decisions Tribunal in respect of a licensing authority's decision on an application.

#### **Division 4 Administration of licensing schemes**

**Clause 24** makes it a condition of a licence that the licensee must notify the relevant licensing authority of certain matters as they occur and, in the case of a continuing licence (that is, a licence that has no fixed term), must periodically notify the licensing authority that specified particulars with respect to the licensee remain unchanged.

**Clause 25** makes it a condition of a continuing licence that the licensee must periodically pay a licence administration fee to the relevant licensing authority.

**Clause 26** enables a licensing authority to issue evidentiary certificates as to certain matters, such certificates being admissible in legal proceedings as to the matters to which they certify.

**Clause 27** provides for the manner in which a licensing authority may serve notices on a person for the purposes of the proposed Act and, in particular, specifies when such a notice may be served by means of electronic communication.

**Clause 28** enables applications to be sent by facsimile, and gives the facsimile signature on such an application the same effect as an original signature.

**Clause 29** enables a licensing authority to recover any unpaid fees as a debt in any court of competent jurisdiction.

**Clause 30** allows a licensing authority's functions under the proposed Part to be exercised on its behalf by its principal officer or by any other person whom it may authorise.

**Clause 31** applies sections 13 and 14 of the *Electronic Transactions Act 2000* to electronic communications made for the purposes of the proposed Part.

### **Part 3 Uniform registration procedures**

This Part establishes uniform procedures for registration schemes (other than registration schemes with respect to health professionals, which are dealt with by proposed Part 4). For the purposes of the proposed Part, registration is taken to include enrolment, accreditation or other such authority. The provisions of the proposed Part are supplemented, and occasionally modified as a consequence of the amendments made by Part 2 of Schedule 4, by the provisions of the legislation under which each individual registration scheme is established.

#### **Division 1 Preliminary**

**Clause 32** applies the proposed Part to registration schemes arising under the legislative provisions referred to in Schedule 2. It also enables that Schedule to be amended by any statutory rule that establishes, amends or repeals a registration scheme. That Schedule can, of course, be amended by any Act that establishes, amends or repeals a registration scheme without the need for any express provision to that effect in the proposed Act. The clause further provides that the proposed Act is to give way to any registration legislation in the event of any inconsistency between the proposed Act and that legislation, and further provides that the proposed Act does not limit or otherwise affect mutual recognition legislation.

**Clause 33** defines certain words and expressions for the purposes of the proposed Part.

**Clause 34** provides for the proposed Part to bind the Crown.

## **Division 2      Applications**

**Clause 35** enables an application for the granting of registration to be made by any individual, partnership or corporation.

**Clause 36** enables a registered person to apply for the amendment of registration, but only if the relevant registration legislation allows registration to be amended.

**Clause 37** enables a registered person to apply for the transfer of registration, but only if the relevant registration legislation allows registration to be transferred.

**Clause 38** enables a registered person to apply for the renewal of registration at any time while registration is in force.

**Clause 39** enables a registered person to apply for the restoration of registration at any time after registration has expired.

**Clause 40** enables a registered person to apply for the replacement of a certificate of registration if the certificate is lost, damaged or destroyed.

**Clause 41** sets out the procedure for making an application, and expressly authorises applications to be made either in writing or by means of electronic communication.

**Clause 42** provides for the payment of fees in connection with an application, and reduces any fee payable for processing the application where the application is made by means of electronic communication.

## **Division 3      Determination of applications**

**Clause 43** allows the relevant registration authority to require an applicant to provide further information in relation to, or evidence in support of, an application, and allows it to refuse to deal with the application if the required information or evidence is not provided.

**Clause 44** sets out the procedure to be followed for advertising applications where the relevant registration legislation requires them to be advertised.

**Clause 45** enables an applicant to withdraw an application.

**Clause 46** provides that an application that has not been determined within 28 days after it was made is taken to have been refused for the purposes of any right of review. Certain periods are discounted from the calculation of the 28-day period,

being periods during which the registration authority is unable to deal with the application because of (for example) an unfulfilled request for further information from the applicant.

**Clause 47** requires a registration authority to determine an application by granting the application, either conditionally or unconditionally, or by refusing the application.

**Clause 48** requires a registration authority to notify the applicant of its decision on an application and, if the applicant (or, in the case of an advertised application to which there have been objections, any objector) so requests, to notify the applicant (or objector) of its reasons for the decision.

**Clause 49** sets out the manner and form in which registration must be effected and a certificate of registration issued.

**Clause 50** states when registration commences and the period for which it has effect. In particular, it extends the period of registration for which an application for renewal has been made until the date the application is determined.

**Clause 51** provides for the refund of certain fees if an application is refused.

**Clause 52** provides the applicant (and, in the case of an advertised application, an objector) with a right of review by the Administrative Decisions Tribunal in respect of a registration authority's decision on an application.

#### **Division 4 Administration of registration schemes**

**Clause 53** makes it a condition of registration that a registered person must notify the relevant registration authority of certain matters as they occur and, in the case of continuing registration (that is, registration that has no fixed term), must periodically notify the registration authority that specified particulars with respect to the registered person remain unchanged.

**Clause 54** makes it a condition of continuing registration that the registered person must periodically pay a registration administration fee to the relevant registration authority.

**Clause 55** enables a registration authority to issue evidentiary certificates as to certain matters, such certificates being admissible in legal proceedings as to the matters to which they certify.

**Clause 56** provides for the manner in which a registration authority may serve notices on a person for the purposes of the proposed Act and, in particular, specifies when such a notice may be served by means of electronic communication.

**Clause 57** enables applications to be sent by facsimile, and gives the facsimile signature on such an application the same effect as an original signature.

**Clause 58** enables a registration authority to recover any unpaid fees as a debt in any court of competent jurisdiction.

**Clause 59** allows a registration authority's functions under the proposed Part to be exercised on its behalf by its principal officer or by any other person whom it may authorise.

**Clause 60** applies sections 13 and 14 of the *Electronic Transactions Act 2000* to electronic communications made for the purposes of the proposed Part.

## **Part 4 Uniform registration procedures for health professionals**

This Part establishes uniform procedures for registration schemes with respect to health professionals. The provisions of the proposed Part are supplemented, and occasionally modified as a consequence of the amendments made by Part 3 of Schedule 4, by the provisions of the legislation under which each individual registration scheme is established. What distinguishes the proposed Part from Part 3 is that it contains only those provisions that are relevant to the various health professional registration schemes. These schemes are all virtually identical.

### **Division 1 Preliminary**

**Clause 61** applies the proposed Part to registration schemes arising under the legislative provisions referred to in Schedule 2. It also enables that Schedule to be amended by any statutory rule that establishes, amends or repeals a registration scheme. That Schedule can, of course, be amended by any Act that establishes, amends or repeals a registration scheme without the need for any express provision to that effect in the proposed Act. The clause further provides that the proposed Act is to give way to any registration legislation in the event of any inconsistency between the proposed Act and that legislation, and further provides that the proposed Act does not limit or otherwise affect mutual recognition legislation.

**Clause 62** defines certain words and expressions for the purposes of the proposed Part.

**Clause 63** provides for the proposed Part to bind the Crown.



## **Division 2      Applications**

**Clause 64** enables an application for the granting of registration to be made by any individual.

**Clause 65** enables a registered person to apply for the amendment of registration.

**Clause 66** enables a registered person to apply for the restoration of registration at any time after registration has expired.

**Clause 67** enables a registered person to apply for the replacement of a certificate of registration if the certificate is lost, damaged or destroyed.

**Clause 68** sets out the procedure for making an application, and expressly authorises applications to be made either in writing or by means of electronic communication.

**Clause 69** provides for the payment of fees in connection with an application.

## **Division 3      Determination of applications**

**Clause 70** allows the relevant registration authority to require an applicant to provide further information in relation to, or evidence in support of, an application, and allows it to refuse to deal with the application if the required information or evidence is not provided.

**Clause 71** enables an applicant to withdraw an application.

**Clause 72** provides that an application that has not been determined within 3 months after it was made is taken to have been refused for the purposes of any right of review. Certain periods are discounted from the calculation of the 3-month period, being periods during which the registration authority is unable to deal with the application because of (for example) an unfulfilled request for further information from the applicant.

**Clause 73** requires a registration authority to determine an application by granting the application, either conditionally or unconditionally, or by refusing the application.

**Clause 74** requires a registration authority to notify the applicant of its decision on an application and, if the applicant so requests, to notify the applicant of its reasons for the decision.

**Clause 75** sets out the manner and form in which registration must be effected and a certificate of registration issued.

**Clause 76** states when registration commences.

**Clause 77** provides for the refund of certain fees if an application is refused.

#### **Division 4 Administration of registration schemes**

**Clause 78** provides for the manner in which a registration authority may serve notices on a person for the purposes of the proposed Act and, in particular, specifies when such a notice may be served by means of electronic communication.

**Clause 79** enables applications to be sent by facsimile, and gives the facsimile signature on such an application the same effect as an original signature.

**Clause 80** applies sections 13 and 14 of the *Electronic Transactions Act 2000* to electronic communications made for the purposes of the proposed Part.

### **Part 5 Miscellaneous**

**Clause 81** is a formal provision giving effect to a Schedule of amendments to other Acts and statutory rules.

**Clause 82** is a formal provision giving effect to a Schedule of savings, transitional and other provisions.

**Clause 83** requires the Minister administering the proposed Act to review the Act after 5 years and to table in Parliament a report on the outcome of the review.

### **Schedule 1 Licences to which Part 2 of Act applies**

This Schedule contains a list of statutory provisions that provide for the granting of certain licences. By virtue of proposed section 3, and corresponding provisions being inserted into the relevant Act or statutory rule by the amendments in proposed Part 1 of Schedule 4, the granting of such a licence will be subject to the provisions of Part 2 of the proposed Act. The statutory provisions belong to the following Acts and statutory rules:

*Charitable Fundraising Act 1991*

*Conveyancers Licensing Act 1995*

*Dangerous Goods Act 1975*

*Dangerous Goods (General) Regulation 1999*

*Employment Agents Act 1996*

*Home Building Act 1989*

*Lotteries and Art Unions Act 1901*

*Motor Dealers Act 1974*

*National Parks and Wildlife Act 1974*

*Occupational Health and Safety Regulation 2001*

*Pawnbrokers and Second-hand Dealers Act 1996*

*Property, Stock and Business Agents Act 1941*

*Trade Measurement Act 1989*

*Travel Agents Act 1986*

## **Schedule 2 Registration to which Part 3 of Act applies**

This Schedule contains a list of statutory provisions that provide for the granting of certain registration (other than registration with respect to health professionals). By virtue of proposed section 3, and corresponding provisions being inserted into the relevant Act or statutory rule by the amendments in proposed Part 2 of Schedule 4, the granting of such registration will be subject to the provisions of Part 3 of the proposed Act. The statutory provisions belong to the following Acts and statutory rules:

*Occupational Health and Safety Regulation 2001*

*Property, Stock and Business Agents Act 1941*

*Valuers Registration Act 1975*

## **Schedule 3 Registration to which Part 4 of Act applies**

This Schedule contains a list of statutory provisions that provide for the granting of certain registration with respect to health professionals. By virtue of proposed section 3, and corresponding provisions being inserted into the relevant Act or

statutory rule by the amendments in proposed Part 3 of Schedule 4, the granting of such registration will be subject to the provisions of Part 4 of the proposed Act. The statutory provisions belong to the following Acts:

*Chiropractors Act 2001*

*Dental Technicians Registration Act 1975*

*Optical Dispensers Act 1963*

*Optometrists Act 1930*

*Osteopaths Act 2001*

*Physiotherapists Act 2001*

*Podiatrists Act 1989*

*Psychologists Act 2001*

## **Schedule 4 Amendment of other Acts and statutory rules**

Parts 1, 2 and 3 of this Schedule contains amendments to each of the Acts and statutory rules listed in Schedules 1, 2 and 3. These amendments insert provisions that apply the provisions of proposed Part 2, 3 or 4, with appropriate modifications, and amend or repeal other provisions as a consequence of their application.

Part 4 of this Schedule contains a number of other amendments:

- (a) amendments to the *Business Names Act 1962* to facilitate the electronic lodgment of applications, statements and notices, and to ensure that certain private information is not improperly disclosed,
- (b) an amendment to the *Crimes Act 1900* to create an offence of wilfully or recklessly providing false or misleading information, or of withholding information, in response to the requirements of an Act or statutory rule or in connection with an application under an Act or statutory rule (an offence punishable by imprisonment for 2 years, or a fine of 200 penalty units, or both),
- (c) an amendment to the *Dental Technicians Registration Act 1975* to omit a provision with respect to the giving of false or misleading information,
- (d) an amendment to the *Home Building Act 1989* to update certain references to electrical wiring work and gasfitting work,

- (e) an amendment to the *Motor Dealers Act 1974* to omit a provision with respect to the giving of false or misleading information,
- (f) an amendment to the *Optical Dispensers Act 1963* to omit a provision with respect to the giving of false or misleading information,
- (g) an amendment to the *Travel Agents Act 1986* to omit a provision with respect to the giving of false or misleading information.

## **Schedule 5 Savings, transitional and other provisions**

This Schedule contains a number of savings, transitional and other provisions consequent on the enactment of the proposed Act, and enables the regulations under any Act amended by proposed Schedule 4 to make further regulations of a savings or transitional nature. In particular, the provisions of this Schedule facilitate the lodgment of electronic applications for licences and registration by providing that, pending the commencement of the amendments made by Schedule 4, certain statutory requirements for signatures, statutory declarations and accompanying documentation are not to have effect.