

# Regulatory and Other Legislation (Amendments and Repeals) Act 2016 No 60

[2016-60]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Regulatory and Other Legislation (Amendments and Repeals) Act 2016 No 60



New South Wales

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# Regulatory and Other Legislation (Amendments and Repeals) Act 2016 No 60



New South Wales

An Act to amend regulatory and other Acts and instruments; and to repeal certain Acts and instruments for the purpose of statute law revision.

## 1 Name of Act

This Act is the *Regulatory and Other Legislation (Amendments and Repeals) Act 2016*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as otherwise provided by this section.
- (2) Schedules 1 and 2 (except for items [1], [2], [4], [6] and [8]–[16] of Schedule 2.4) and clause 1 of Schedule 3 commence on a day or days to be appointed by proclamation.

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

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

***regulated functions*** means the functions of a real estate agent, stock and station agent, business agent, strata managing agent, community managing agent or on-site residential property manager.

### [2] Section 10 Salespersons and managers require certificate of registration

Omit “in the employment of a person licensed (or required to be licensed) under this Act” from section 10 (1) (b).

### [3] Section 11 Registered salespersons and managers required to be employed and supervised by licensee

Insert after section 11 (2):

**Note—**

See Division 2 of Part 3 for requirements for a place at which a business is carried on under a licence to be in the charge of a licensee and for staff to be properly supervised.

**[4] Section 11 (3A)**

Insert after section 11 (3):

(3A) A person carrying on business as an auctioneer must ensure that the holder of a certificate of registration does not act for or on behalf of the person as an auctioneer, except as permitted by subsection (4).

**[5] Section 11A**

Insert after section 11:

**11A Person carrying on business of agent to ensure staff exercising regulated functions hold licence or certificate**

A person carrying on the business of an agent must not make use of the services of another person (a **service provider**) to exercise any regulated functions in the course of the business unless:

- (a) the person is the holder of a licence that authorises the regulated functions concerned to be exercised by the person, and
- (b) the service provider is the holder of a licence or a certificate of registration that authorises the service provider to exercise the regulated functions concerned, and
- (c) in the case of a service provider required to hold a certificate of registration to exercise the regulated functions concerned—the service provider is an employee of the person.

Maximum penalty: 100 penalty units.

**[6] Section 32 Duty of licensee and person in charge to properly supervise business**

Omit “employees” from section 32 (3) (a). Insert instead “persons”.

**[7] Section 32 (5)**

Insert after section 32 (4):

(5) A reference in this section to a person who is engaged in a business carried on by a

licensee is a reference to a person:

- (a) who is engaged in the business as an employee of the licensee, or
- (b) who is engaged by the licensee, other than as an employee of the licensee, to provide services in the course of the business, or
- (c) whose services are provided to the licensee in the course of the business, other than as an employee of the licensee, under an arrangement entered into by the licensee with another person.

**[8] Part 3, Division 3, heading**

Insert “**and others**” after “**Employees**”.

**[9] Section 40A**

Insert before section 41:

**40A Interpretation—persons engaged by licensees**

Without limiting the circumstances in which a person is to be regarded, for the purposes of this Division, as being engaged by a licensee to exercise regulatory functions in the course of the business conducted by the licensee, a person is taken to be so engaged if:

- (a) the services of the person are provided to the licensee under an arrangement entered into by the licensee with another person, and
- (b) the services are or include exercising regulated functions in the course of the business.

**[10] Section 43 Duty of licensee not to engage certain persons**

Insert “, or engage a person to exercise any regulated functions in the course of the business,” after “the licensee” in section 43 (1).

**[11] Section 43 (2)**

Insert “or engagement” after “employment”.

**[12] Sections 44 and 45**

Omit the sections. Insert instead:

**44 Duty of licensee to notify disqualification of employees and others**

A licensee must notify the Secretary in writing within 7 days after becoming aware that any of the following persons has become a disqualified person:

- (a) a person employed by the licensee (other than a person whose disqualification is on a ground that does not disqualify the person from eligibility to hold a certificate of registration),
- (b) a person engaged by the licensee, other than as an employee of the licensee, to exercise regulated functions in the course of the business conducted by the licensee.

Maximum penalty: 50 penalty units.

#### **45 Employees and others required to notify disqualification**

A person must notify a licensee within 7 days after the person becomes a disqualified person if the person is:

- (a) employed by the licensee (except where the person's disqualification is on a ground that does not disqualify the person from eligibility to hold a certificate of registration), or
- (b) engaged by the licensee, other than as an employee of the licensee, to exercise regulated functions in the course of the business conducted by the licensee.

Maximum penalty: 50 penalty units.

#### **[13] Section 72 Definitions**

Insert after section 72 (3):

- (4) A reference in this Division to a person who is engaged by a real estate agent or stock and station agent is a reference to a person who is:
  - (a) an employee of the agent, or
  - (b) engaged by the agent, other than as an employee of the agent, to provide services in the course of the business carried on by the agent, or
  - (c) a person whose services are provided, other than as an employee of the agent, in the course of the business carried on by the agent under an arrangement entered into by the agent with another person.

#### **[14] Section 73A Underquoting in representations by real estate agents**

Omit section 73A (1) and the penalty to section 73A (1). Insert instead:

- (1) A real estate agent or any person engaged by a real estate agent must not, in the course of marketing a residential property, make any statement to any person that indicates or suggests that the property may be sold for a price that is less than the

estimated selling price for the property.

(1A) A real estate agent must ensure that any person engaged by the real estate agent does not, in the course of marketing a residential property, make any statement to any person that indicates or suggests that the property may be sold for a price that is less than the estimated selling price for the property.

(1B) It is a defence to a prosecution for an offence under subsection (1A) if the real estate agent establishes that the real estate agent took all reasonable precautions against committing the offence.

**[15] Section 73A (2)**

Insert “, or the person engaged by the real estate agent,” after “agent”.

**[16] Section 73A, penalty to section**

Insert at the end of the section:

Maximum penalty: 200 penalty units.

**[17] Section 73B Real estate agents to keep records of quotes**

Omit the penalty to section 73B (1).

**[18] Section 73B (1A) and (1B)**

Insert after section 73B (1):

(1A) A real estate agent must ensure that any person engaged by the real estate agent who makes a statement, in the course of marketing a residential property, of a kind referred to in subsection (1) makes a written record in accordance with subsection (2).

(1B) It is a defence to a prosecution for an offence under subsection (1A) if the real estate agent establishes that the real estate agent took all reasonable precautions against committing the offence.

**[19] Section 73B, penalty to section**

Insert at the end of the section:

Maximum penalty: 200 penalty units.

**[20] Section 76A Marketing statements about vendor bids when property passed in**

Omit “an employee of” from section 76A (1). Insert instead “a person engaged by”.

**[21] Section 115 Qualifications of auditors**

Omit section 115 (2) (a). Insert instead:

- (a) has been, at any time within 2 years before the last day of the period in respect of which the audit is to be made, or is:
  - (i) an employee or partner of the person whose records or documents are to be audited, or
  - (ii) engaged in the business carried on by the person whose records or documents are to be audited, other than as an auditor for the purposes of this Division, or

**[22] Section 115 (3)**

Insert after section 115 (2):

- (3) A reference in this section to a person engaged in a business carried on by another person (a **regulated person**) is a reference to a person:
  - (a) who is engaged by the regulated person, other than as an employee of the regulated person, to provide services in the course of the business conducted by the regulated person, or
  - (b) whose services are or have been provided to the regulated person in the course of the business carried on by the regulated person, other than as an employee of the regulated person, under an arrangement entered into by the regulated person with another person.

**[23] Section 118 Secretary may freeze licensee's accounts in particular cases**

Insert after section 118 (1) (c):

- (d) any other person connected or formerly connected with a licensee.

**Schedule 2 Amendment of other Acts and regulations**

**2.1 Conveyancers Licensing Act 2003 No 3**

**[1] Section 17**

Omit the section. Insert instead:

**17 Duration**

- (1) A licence has effect for the term specified in the licence (not exceeding 3 years)



unless it is sooner cancelled.

(2) The suspension of a licence does not affect the term of the licence.

**[2] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 2 (1):

any other Act that amends this Act

**[3] Schedule 1**

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

**Part Provision consequent on enactment of [Regulatory and Other Legislation \(Amendments and Repeals\) Act 2016](#)**

**Duration of licences**

Section 17, as in force immediately before its substitution by the [Regulatory and Other Legislation \(Amendments and Repeals\) Act 2016](#), continues to have effect in relation to a licence in force immediately before that substitution.

**2.2 Conveyancers Licensing Regulation 2015**

**[1] Clause 5A**

Insert after clause 5:

**5A Refund of application fees for certain 3-year licences**

- (1) This clause applies to an application fee paid by or on behalf of a person who has surrendered a licence granted under the Act or has died, but only if the term of the licence was 3 years.
- (2) A person may apply to the Secretary for a refund of an application fee to which this clause applies if the person:
  - (a) paid the application fee, or
  - (b) is the legal representative of a deceased person who paid the application fee, or
  - (c) is applying for or on behalf of the person who paid the application fee.
- (3) A person who makes an application under subclause (2) is:

- (a) if the surrender or death occurred not more than one year after the date of the grant, renewal or restoration of the licence—to be refunded two-thirds of the application fee (excluding the processing component) so paid, or
- (b) if the surrender or death occurred more than one year but not more than 2 years after the date of the grant, renewal or restoration of the licence—to be refunded one-third of the application fee (excluding the processing component) so paid.

(4) In this clause:

**application fee** means any of the following:

- (a) an application fee for the grant of a new licence,
- (b) an application fee for the renewal of a licence,
- (c) an application fee for the restoration of a licence.

**processing component** of an application fee is the amount set out in Column 3 of Schedule 2 in relation to the fee.

## [2] Schedule 2 Fees

Omit the table to the Schedule. Insert instead:

Item	Column 1	Column 2	Column 3
	Type of fee	Fixed component	Processing component
1	Application for grant of licence—1 year	\$229	\$209
2	Application for grant of licence—3 years	\$687	\$209
3	Application for renewal of licence—1 year	\$229	\$68
4	Application for renewal of licence—3 years	\$687	\$68
5	Application for restoration of licence—1 year	\$229	\$139
6	Application for restoration of licence—3 years	\$687	\$139
7	Application for replacement of licence	Nil	\$45

## 2.3 Fair Trading Act 1987 No 68

### [1] Section 58 Scheme for publication of service station fuel prices

Insert after paragraph (e) of the definition of *prescribed fuel* in section 58 (6):

(e1) hydrogen,

### [2] Section 58 (6), definition of “prescribed fuel”

Insert after paragraph (f) of the definition:

(g) electricity.

### [3] Section 58 (6), definition of “service station”

Insert “by a person operating or controlling the operation of the building or place” after “prescribed fuel”.

### [4] Section 58 (6), definition of “standard retail price”

Insert “(or, if the fuel is hydrogen or electricity, the price per kilogram or kilowatt hour)” after “litre”.

### [5] Section 58 (7)

Insert after section 58 (6):

(7) A reference in this section to the fuelling of a motor vehicle includes a reference to the charging of a battery, or other energy storage device, used to power the motor of an electric motor vehicle.

## 2.4 Funeral Funds Act 1979 No 106

### [1], [2] (Repealed)

### [3] Section 11 Contributory funeral benefit business to be carried on only by companies registered under this Act

Insert after section 11 (2):

(3) A person is exempt from the application of subsection (1) if the person is a friendly society within the meaning of the *Life Insurance Act 1995* of the Commonwealth.

**[4] (Repealed)**

**[5] Section 34 Trustee under pre-arranged contract to be registered under this Act**

Insert after section 34 (1):

- (2) A person is exempt from the application of subsection (1) if:
- (a) the person is a friendly society within the meaning of the *Life Insurance Act 1995* of the Commonwealth, or
  - (b) the person is a Crown cemetery trust within the meaning of the *Cemeteries and Crematoria Act 2013*.

**[6] (Repealed)**

**[7] Section 40 Payment of money and giving of consideration under pre-paid contract to pre-paid funeral fund**

Insert after section 40 (3):

- (4) This section does not apply to a Crown cemetery trust that agrees to supply a funeral service under a pre-paid contract.

**[8]-[16] (Repealed)**

## **2.5 Pawnbrokers and Second-hand Dealers Act 1996 No 13**

**[1] Section 10**

Omit the section. Insert instead:

**10 Duration of licence**

- (1) A licence has effect for the term specified in the licence (not exceeding 3 years) unless it is sooner cancelled.
- (2) The suspension of a licence does not affect the term of the licence.

**[2] Section 43 Regulations**

Insert after section 43 (1) (g):

- (g1) the waiver or refund of the whole or any part of a fee chargeable for any service provided by the Secretary under this Act or the regulations,

**[3] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 2 (1):

any other Act that amends this Act

**[4] Schedule 2**

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

**Part Provision consequent on enactment of [Regulatory and Other Legislation \(Amendments and Repeals\) Act 2016](#)**

**Duration of licences**

Section 10, as in force immediately before its substitution by the [Regulatory and Other Legislation \(Amendments and Repeals\) Act 2016](#), continues to have effect in relation to a licence in force immediately before that substitution.

**2.6 Pawnbrokers and Second-hand Dealers Regulation 2015**

**[1] Clause 8A**

Insert after clause 8:

**8A Refund of application fees for certain 3-year licences**

- (1) This clause applies to an application fee paid by or on behalf of a person who has surrendered a licence granted under the Act or has died, but only if the term of the licence was 3 years.
- (2) A person may apply to the Secretary for a refund of an application fee to which this clause applies if the person:
  - (a) paid the application fee, or
  - (b) is the legal representative of a deceased person who paid the application fee, or
  - (c) is applying for or on behalf of the person who paid the application fee.
- (3) A person who makes an application under subclause (2) is:
  - (a) if the surrender or death occurred not more than one year after the date of the grant, renewal or restoration of the licence—to be refunded two-thirds of the application fee (excluding the processing component) so paid, or

(b) if the surrender or death occurred more than one year but not more than 2 years after the date of the grant, renewal or restoration of the licence—to be refunded one-third of the application fee (excluding the processing component) so paid.

(4) In this clause:

**application fee** means any of the following:

- (a) an application fee for the grant of a new licence,
- (b) an application fee for the renewal of a licence,
- (c) an application fee for the restoration of a licence.

**processing component** of an application fee is the amount set out in Column 3 of Schedule 3 in relation to the fee.

## [2] Schedule 3

Omit the table to the Schedule. Insert instead:

Item	Column 1	Column 2	Column 3	Column 4
	Type of fee	Fixed component	Processing component	Total
1	Application for granting of licence—1 year	\$329	\$188	\$517
2	Application for granting of licence—3 years	\$987	\$188	\$1,175
3	Application for renewal of licence—1 year	\$329	\$44	\$373
4	Application for renewal of licence—3 years	\$987	\$44	\$1,031
5	Application for restoration of licence—1 year	\$329	\$90	\$419
6	Application for restoration of licence—3 years	\$987	\$90	\$1,077
7	Application for replacement of licence	Nil	\$45	\$45
8	Application for extract of register (per entry)	\$18	Nil	\$18

## 2.7 Residential Tenancies Act 2010 No 42

### Section 159 Payment of bonds

Insert after section 159 (1):

- (1A) A landlord, landlord's agent or any other person must not require or receive from a tenant a rental bond unless:
- (a) the landlord or landlord's agent is registered as a user of the online rental bond service established under section 157A, and
  - (b) the tenant has been invited by the landlord or the landlord's agent to provide an address that can be used to invite the tenant (using the online service) to use the online service to deposit the rental bond with the Secretary, and
  - (c) if the tenant has provided such an address:
    - (i) the landlord or landlord's agent has invited the tenant (using the online service) to use the online service to deposit the rental bond with the Secretary, and
    - (ii) the tenant has been given a reasonable opportunity to use the online service to deposit the rental bond with the Secretary or has declined the invitation.

## Schedule 3 Repeals

### 1 Repeals by way of regulatory reform

The following Acts or instruments, or provisions of Acts or instruments, are repealed:

<b>Act or instrument</b>	<b>Provisions repealed</b>
<i>Architects Act 2003 No 89</i>	Section 36 (2)
<i>Architects Regulation 2012</i>	Clause 15
<i>Building Professionals Act 2005 No 115</i>	Section 21 (2) (c)
<i>Photo Card Act 2005 No 20</i>	Section 6 (1) (c) and (2)
<i>Road Transport (Driver Licensing) Regulation 2008</i>	Clause 47 (2)

### 2, 3 (Repealed)

## Schedule 4 (Repealed)