

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

[2018-65]



New South Wales

## Status Information

### Currency of version

Historical version for 26 November 2019 to 4 December 2019 (accessed 16 April 2024 at 20:59)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2019 No 14](#) (not commenced — to commence on 5.12.2019)
- **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.
- **Editorial note**  
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

### 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](#).

File last modified 26 November 2019

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



New South Wales

## Contents

<b>Long title</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 Explanatory notes .....	4
<b>Schedule 1 Amendments relating to disclosure of information and prescribing information standards</b> .....	4
<b>Schedule 2 Amendments relating to 1, 3 and 5 year terms and restorations</b> .....	9
<b>Schedule 3 Amendments relating to businesses in external administration</b> .....	36
<b>Schedule 4 Miscellaneous amendments relating to licensing and service agreements</b> .....	38
<b>Schedules 5-7 (Repealed)</b> .....	47
<b>Schedule 8 Amendments relating to approval of forms</b> .....	47

**Schedules 9-12 (Repealed)** .....52

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



New South Wales

An Act to amend various Acts and Regulations administered by the Minister for Innovation and Better Regulation; and other related matters.

## 1 Name of Act

This Act is the *Fair Trading Legislation Amendment (Reform) Act 2018*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1–5, 8 and 11 (other than Schedule 2.7 [2]) commence on 1 July 2020 or on an earlier day or days to be appointed by proclamation.

## 3 Explanatory notes

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

## Schedule 1 Amendments relating to disclosure of information and prescribing information standards

### 1.1 Fair Trading Act 1987 No 68

#### [1] Section 9A Exchange of information

Renumber the section as section 17AB and transfer it in appropriate order to Division 3 of Part 2, as inserted by this Schedule.

#### [2] Part 2, Division 3

Insert after Division 2 of Part 2—

## **Division 3 Disclosure and sharing of information**

### **17AA Publication of certain information for public access**

- (1) The Secretary may from time to time publish any of the following information about a licence holder or trader on the internet for access by a member of the public free of charge—
  - (a) identifying particulars, including the name of the licence holder or trader, the licence number, class or type, the date of issue and expiry date of the licence and details of any licence conditions,
  - (b) information about the surrender, cancellation or suspension of a licence,
  - (c) information about any disciplinary action taken against a licence holder or trader under this Act or any other legislation administered by the Minister,
  - (d) information about any public warnings issued under this Act or any other legislation administered by the Minister,
  - (e) information about any undertakings given under section 86B of this Act,
  - (f) such other information as may be prescribed by the regulations.
- (2) The Secretary must not publish information under this section unless satisfied that it is in the public interest to do so.
- (3) The Secretary may at any time remove information from, or otherwise amend, information published under this section on the Secretary's own initiative or on the application of the person to whom the information relates if the Secretary is of the opinion that the information is false, misleading or unfairly prejudicial to the interests of the person concerned.
- (4) The Secretary may correct any error in or omission from the information published under this section.
- (5) Information published under this section may include information held by the Secretary before the commencement of this section.
- (6) The regulations may specify—
  - (a) the period within which information that is authorised to be published on the internet under this section must be removed from the information published on the internet, and
  - (b) the information that is not to be published on the internet under this section.
- (7) No liability (including liability in defamation) is incurred for publishing in good faith information under this section or a fair report or summary of that

information.

(8) In the event of any inconsistency between this section and any other provisions of this Act or other legislation administered by the Minister, this section prevails to the extent of the inconsistency.

(9) In this section—

**licence** includes any licence, registration or other authority issued under this Act or any other legislation administered by the Minister.

**licence holder** includes a former licence holder.

**trader** means a person carrying on a business regulated under this Act or other legislation administered by the Minister but who does not hold a licence, and includes any such business that has ceased trading.

### [3] Part 4, Division 2A

Insert after Division 2—

## **Division 2A Provisions relating to disclosure requirements and information standards**

### **47A Disclosure of prejudicial terms relating to supply of goods or services**

- (1) A supplier must, before supplying a consumer with goods or services, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.
- (2) Without limiting subsection (1), a term or condition relating to the supply of goods or services to a consumer may substantially prejudice the interests of the consumer if—
  - (a) the term excludes the liability of the supplier, or
  - (b) the term provides that the consumer is liable for damage to goods that are delivered, or
  - (c) the term permits the supplier to provide data about the consumer, or data provided by the consumer, to a third party in a form that may enable the third party to identify the consumer, or
  - (d) the term requires the consumer to pay an exit fee, a balloon payment or other similar payment.

- (3) The regulations may provide for—
- (a) what may or may not constitute reasonable steps taken by suppliers to ensure consumers are aware of the substance and effect of terms or conditions relating to the supply of goods or services, and
  - (b) the type of terms, or classes of terms, that may substantially prejudice the interests of consumers, and
  - (c) the type of terms, or classes of terms, that do not substantially prejudice the interests of consumers, and
  - (d) any other requirements in relation to the way in which consumers must be made aware of terms and conditions relating to the supply of goods that may substantially prejudice the interests of consumers, and
  - (e) exemptions from the requirements of this section.

**47B Disclosure of referral fees, commissions, etc**

- (1) An intermediary must, before acting under an arrangement that provides for the intermediary to receive a financial incentive, take reasonable steps to ensure the consumer who will be supplied with the goods or services to which the financial incentive relates is aware of the existence of the arrangement.
- (2) The regulations may provide for—
- (a) what may or may not constitute reasonable steps taken by intermediaries to ensure consumers are aware of the existence of arrangements that provide for intermediaries to receive financial incentives, and
  - (b) any other requirements in relation to the way in which intermediaries must make consumers aware of the existence of arrangements under which intermediaries receive financial incentives.
- (3) In this section—
- financial incentive** means—
- (a) a commission or referral fee, or
  - (b) another kind of payment prescribed by the regulations.

**intermediary**—

- (a) means a person—
  - (i) who, under an arrangement that provides for a financial incentive, arranges contracts for the supply of goods or services as an agent or refers consumers to another supplier of goods or services, or

(ii) who is prescribed by, or who belongs to a class of persons prescribed by, the regulations, but

(b) does not include a person, or class of persons, excluded by the regulations.

#### **47C Information standards**

- (1) The regulations may prescribe information standards for the supply of goods and services.
- (2) A prescribed information standard may contain any of the following—
  - (a) requirements for certain information to be communicated to a person to whom the goods or services are to be supplied,
  - (b) requirements with respect to the type and form of information to be so communicated and the manner of communication.
- (3) This section does not limit section 134 (Making information standards for goods and services) of the ACL.
- (4) In this section, **supply** includes proposed and prospective supply and offer to supply.

#### **47D Compliance with information standard**

- (1) A person who supplies goods or services that are intended to be used, or are of a kind likely to be used, by a consumer and in relation to which there is an information standard must comply with the standard in relation to the goods or services concerned.

Maximum penalty—50 penalty units.

- (2) If—
  - (a) a person supplies goods or services in contravention of subsection (1), and
  - (b) another person suffers loss or damage by not having particular information relating to the goods or services but would not have suffered the loss or damage if the information standard had been complied with in relation to the goods or services,

the person who suffers the loss or damage is taken, for the purposes of this Act, to have suffered it by the supply of the goods or services.

#### **[4] (Repealed)**

#### **[5] Section 70 Remedy provisions of ACL that extend to local matters**

Insert at the end of the section—



- (3) The following provisions of the ACL apply to a contravention of section 47A (1) or 47B (1) of this Act in the same way as they apply to a contravention of the ACL specified in those provisions—
- (a) section 224 (Pecuniary penalties),
  - (b) section 248 (Order disqualifying a person from managing corporations).

**[6] (Repealed)**

## **1.2 Fair Trading Regulation 2012**

**[1] (Repealed)**

**[2] Schedule 1 Penalty notice offences**

Insert in appropriate order under the heading **Offences under the *Fair Trading Act 1987* (other than the ACL)—**

Section 47A (1)	\$550
Section 47B (1)	\$550
Section 86AB (2)	\$550

**Explanatory note**

Item [1] of the proposed amendments removes a redundant provision consequent on the amendments made by Schedule 1.1.

Item [2] specifies proposed sections 47A and 47B and section 86AB (as inserted by Schedule 1.1 [3] and [6], respectively) as offences for which a penalty notice may be issued with an amount of \$550 payable for each offence.

## **Schedule 2 Amendments relating to 1, 3 and 5 year terms and restorations**

**Explanatory note**

The proposed amendments in this Schedule provide for 1, 3 and 5 year terms for various types of authorities, licences, registrations and certificates (the **relevant authorities**) across the legislation administered by the Minister for Innovation and Better Regulation. The proposed amendments allow the relevant authorities to be restored, if the applicant applies for the restoration within 3 months of the expiry of the relevant authority.

Schedule 2.7 [2] amends uncommenced provisions in the *Fair Trading Amendment (Commercial Agents) Act 2016* (the **amending Act**) in order to give effect to the proposed amendments outlined above. The proposed amendments also provide that the Commissioner may determine that a corporation is not disqualified from carrying out a commercial agent activity for the purposes of the *Fair Trading Act 1987*, despite being the subject of a winding up order or being a corporation for which a controller or administrator has been appointed, if the Commissioner considers it appropriate to do so. The proposed amendments will commence on a day appointed by proclamation, being a day on or after the day on which Part 5 of the amending Act commences.

The proposed amendments allow the NSW Architects Registration Board to remove an architect's name from the register of

architects and the Board of Surveying and Spatial Information to remove a surveyor's name from the register of surveyors if the architect or surveyor fails to comply with requirements relating to continuing professional development or, in the case of an architect, professional indemnity insurance.

Schedule 2.1 [4] removes the minimum age requirement for the registration of an architect.

The Schedule also inserts regulation-making powers to provide for the waiver or refund of fees, savings and transitional provisions and consequential amendments.

## 2.1 Architects Act 2003 No 89

### [1] Section 17A

Insert after section 17—

#### 17A Duration of registration

- (1) An application for full registration or a renewal of registration is to nominate one of the following terms of duration for the registration (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Board may grant or renew registration for the nominated term or, if satisfied that it is in the public interest to do so, a shorter term than the nominated term.
- (3) If an application for renewal of registration has been made but the application is not finally determined by the Board before the expiry of the registration, the registration (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If registration is granted or renewed for a shorter term than the nominated term, the Board is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of registration does not affect the term of the registration.
- (6) This section does not affect the term of any registration granted under this Act and in force immediately before the insertion of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

### [2] Section 20 Power to refuse or impose conditions on full registration

Omit “the duration of registration,” from section 20 (3).

### [3] Section 22 Application to registration of **Licensing and Registration (Uniform**

**Procedures) Act 2002**

Insert “(other than section 39)” after “Part 3” in section 22 (2).

**[4] (Repealed)**

**[5] Section 24 Removal of architect’s name from the Register**

Insert at the end of section 24 (1) (d)—

, or

- (e) the term of the architect’s registration has expired and the registration has not been renewed or restored.

**[6] (Repealed)**

**[7] Section 28 Annual registration fees**

Omit section 28 (1). Insert instead—

- (1) An architect must, on or before 31 March in the year in which the architect’s registration is due to be renewed, pay to the Board the approved fee for the registration.

**[8] Section 28 (2A)-(2C)**

Insert after section 28 (2)—

(2A) An application for the restoration of registration must be made—

- (a) within 3 months of the expiry of the registration, or
- (b) within the further period determined by the Board on the application of the person seeking the restoration of registration.

(2B) Without limiting subsection (2A) (b), the Board may extend the period within which an application for restoration of a licence may be made if the Board is satisfied that—

- (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the registration before it expired was due to inadvertence, or
- (b) it is just and equitable to restore the registration.

(2C) An application for the restoration of registration must nominate a term of duration for the registration.

**[9] Section 28 (7A)**

Insert after section 28 (7)—

(7A) The Board may refuse an application for the restoration of registration in the circumstances prescribed by the regulations.

**[10] Section 84 Regulations**

Insert after section 84 (2) (h)—

(i) the waiver or refund of the whole or any part of a fee for any service provided by the Board under this Act or the regulations.

**[11] (Repealed)**

## **2.2 Architects Regulation 2017**

### **Schedule 2 NSW Architects Code of Professional Conduct**

Omit “during the current registration period” from clause 16 (2).

## **2.3 Building Professionals Act 2005 No 115**

**[1] Sections 10 and 10A**

Omit section 10. Insert instead—

### **10 Duration of certificate of accreditation**

- (1) An application for a certificate of accreditation or renewal of a certificate of accreditation is to nominate one of the following terms of duration for the certificate of accreditation (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Board may grant or renew a certificate of accreditation for the nominated term or, if satisfied that it is in the public interest to do so, a shorter term than the nominated term.
- (3) If an application for renewal of a certificate of accreditation has been made but the application is not finally determined by the Board before the expiry of the certificate of accreditation, the certificate of accreditation (if not suspended or

sooner cancelled) continues in force until the application is finally determined.

- (4) If a certificate of accreditation is granted or renewed for a shorter term than the nominated term, the Board is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of a certificate of accreditation does not affect the term of the certificate of accreditation.
- (6) This section does not affect the term of any accreditation granted under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

### **10A Time period for restoration of certificate of accreditation**

- (1) An application for the restoration of a certificate of accreditation must be made—
  - (a) within 3 months of the expiry of the certificate of accreditation, or
  - (b) within the further period determined by the Board on the application of the person seeking the restoration of the certificate of accreditation.
- (2) Without limiting subsection (1) (b), the Board may extend the period within which an application for the restoration of a certificate of accreditation may be made if the Board is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the certificate of accreditation expired—the failure to apply for renewal of the certificate of accreditation before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the certificate of accreditation.
- (3) A certificate of accreditation that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a certificate of accreditation must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the certificate of accreditation.
- (5) A certificate of accreditation restored at any time is taken to have been restored on and from the day on which the certificate of accreditation expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a certificate of accreditation in the same way as it applies to an application for a

certificate of accreditation.

- (7) The Board may refuse an application for the restoration of a certificate of accreditation in the circumstances prescribed by the regulations.

**[2] Section 94 Regulations**

Insert “or refund” after “waiver” in section 94 (2) (f).

## **2.4 Building Professionals Regulation 2007**

**Clause 21 Fees**

Omit clause 21 (2).

## **2.5 Conveyancers Licensing Act 2003 No 3**

**[1] Section 11 Application to licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Insert “(other than section 10)” after “Part 2” in section 11 (2).

**[2] Section 11 (3) (d)**

Omit the paragraph.

**[3] Section 17**

Omit the section. Insert instead—

### **17 Duration of licence**

- (1) An application for a licence or for renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Secretary may grant or renew a licence for a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (3) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If a licence is granted or renewed for a shorter term than the nominated term,

the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.

- (5) The suspension of a licence does not affect the term of the licence.
- (6) This section does not affect the term of any licence granted under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

#### **[4] Section 18**

Insert after section 17—

### **18 Time period for restoration of licences**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A licence restored at any time is taken to have been restored from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

**[5] Section 172 Regulations**

Insert “(including the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under this Act or the regulations)” after “Act” in section 172 (2) (g).

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

Insert at the end of clause 2 (1)—

any other Act that amends this Act

## **2.6 Explosives Act 2003 No 39**

**[1] Section 12 Application to licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Insert “(other than section 10)” after “Part 2” in section 12 (1).

**[2] Section 16A**

Insert after section 16—

### **16A Time period for restoration of licences**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the regulatory authority on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the regulatory authority may extend the period within which an application for the restoration of a licence may be made if the regulatory authority is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and



(c) nominate a term of duration for the licence.

(5) A licence restored at any time is taken to have been restored on and from the day on which the licence expired.

(6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

**[3] Section 19 Regulations relating to licences**

Insert “, including applications for the restoration of licences” after “licences” in section 19 (2) (c).

## **2.7 Fair Trading Act 1987 No 68**

**[1] Section 92 Regulations**

Insert after section 92 (1A) (c)—

(d) the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under this Act or the regulations.

**[2] (Repealed)**

## **2.8 Home Building Act 1989 No 147**

**[1] Section 19 Application to contractor licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Insert “(other than section 10)” after “Part 2” in section 19 (2).

**[2] Section 19 (3) (c)**

Omit the paragraph.

**[3] Section 24 Application to tradesperson and supervisor certificates of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Insert “(other than section 10)” after “Part 2” in section 24 (2).

**[4] Section 24 (3) (c)**

Omit the paragraph.

**[5] Section 39**

Insert after section 38—

### **39 Time period for restoration of authorities**

- (1) An application for the restoration of an authority must be made—
  - (a) within 3 months of the expiry of the authority, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the authority.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of an authority may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the authority expired—the failure to apply for renewal of the authority before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the authority.
- (3) An authority that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of an authority must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the authority.
- (5) An authority restored at any time is taken to have been restored on and from the day on which the authority expired.
- (6) Subject to this section, this Act applies to an application for the restoration of an authority in the same way as it applies to an application for an authority.

### **[6] Section 40 Renewal of authorities**

Omit section 40 (2). Insert instead—

- (2) The Secretary may also refuse an application for renewal or restoration of an authority if—
  - (a) in the case of an application for renewal, the authority is surrendered or cancelled, or
  - (b) the authority is a provisional authority.

### **[7] Section 40 (5) and (6)**

Omit the subsections.

**[8] Section 42**

Omit the section. Insert instead—

**42 Term of duration of authority**

- (1) An application for an authority (other than an owner-builder permit) or for renewal of an authority is to nominate one of the following terms of duration for the authority (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Secretary may grant or renew an authority for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (3) If an application for renewal of an authority has been made but the application is not finally determined by the Secretary before the expiry of the authority, the authority (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If an authority is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of an authority does not affect the term of the authority.
- (6) This section does not affect the term of any authority issued under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

**[9] Section 140 Regulations**

Insert “including the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under this Act or the regulations,” at the end of section 140 (2) (j).

**2.9 Motor Dealers and Repairers Act 2013 No 107**

**[1]-[4] (Repealed)**

**[5] Sections 33 and 33A**

Omit section 33. Insert instead—

### **33 Duration of licence**

- (1) An application for a licence or for renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Secretary may grant or renew a licence for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (3) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If a licence is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of a licence does not affect the term of the licence.
- (6) This section does not affect the term of any licence granted under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

### **33A Time period for restoration of licences**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been cancelled must not be restored.

- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A licence restored at any time is taken to have been restored from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

**[6] Section 186 Regulations**

Insert “including the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under this Act or the regulations,” at the end of section 186 (2) (d).

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

**[1] Section 9 Application to licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Insert “(other than section 10)” after “Part 2” in section 9 (2).

**[2] Section 9 (3)**

Omit the subsection. Insert instead—

- (3) A licence may be amended under the applied Act.

**[3] Sections 10 and 10A**

Omit section 10. Insert instead—

### **10 Duration of licence**

- (1) An application for a licence or for renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Secretary may grant or renew a licence for the nominated term or a shorter

term than the nominated term if satisfied that it is in the public interest to do so.

- (3) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If a licence is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of a licence does not affect the term of the licence.
- (6) This section does not affect the term of any licence granted under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

#### **10A Time period for restoration of licences**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been cancelled must not be restored.
- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A licence restored at any time is taken to have been restored from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a

licence in the same way as it applies to an application for a licence.

**[4] Section 43 Regulations**

Insert after section 43 (1) (g)—

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

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

Insert at the end of clause 2 (1)—

any other Act that amends this Act

## **2.11 Pawnbrokers and Second-hand Dealers Regulation 2015**

### **Clause 36 Carrying on of business in partnership**

Omit “Accordingly, no amount is payable by any such applicant in connection with an application of a kind referred to in any of those items of that Schedule if, at that time or during the 12 months immediately preceding the application, the requisite amount has been paid by any other partner in the partnership for an application of that kind.” from clause 36 (1).

## **2.12 Property, Stock and Business Agents Act 2002 No 66**

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

Insert “(other than section 10)” after “Part 2” in section 17 (2).

### **[2] Section 17 (3) (e)**

Omit the paragraph.

### **[3] Sections 25 and 25A**

Omit section 25. Insert instead—

#### **25 Duration of licence**

- (1) An application for a licence or for renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,

- (c) 5 years.
- (2) The Secretary may grant or renew a licence for a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (3) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If a licence is granted or renewed for the nominated term or a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of a licence does not affect the term of the licence.
- (6) This section does not affect the term of any licence granted under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

#### **25A Time period for restoration of licence**

- (1) An application for the restoration of a licence must be made—
  - (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.



(5) A licence restored at any time is taken to have been restored from the day on which the licence expired.

(6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

**[4] Section 26 Effect of applying for restoration of expired licence**

Omit section 26 (6). Insert instead—

(6) If an application for the restoration of an expired licence is duly made, anything done by the holder of the expired licence between its expiry and the determination of the application for restoration (whether the application is granted or refused) is taken to have been done as the holder of a licence, except for the purposes of sections 8 (1), 9 (1) and 10.

**[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] Section 230 Regulations**

Insert after section 230 (2) (h)—

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

**[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.

**2.13 Surveying and Spatial Information Act 2002 No 83**

**[1] Section 10 Application to registration of Licensing and Registration (Uniform Procedures) Act 2002**

Insert “(other than section 39)” after “Part 3” in section 10 (2).

**[2] Section 10 (3) (f)**

Omit “each year”. Insert instead “the year in which the registration is due to be renewed”.

**[3] Section 10 (4)**

Omit the subsection.

**[4] Sections 10AA and 10AB**

Insert after section 10—

**10AA Duration of registration**

- (1) An application for registration or renewal of registration is to nominate one of the following terms of duration for the registration (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) The Board may grant or renew registration for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (3) If an application for renewal of registration has been made but the application is not finally determined by the Board before the expiry of the registration, the registration (if not suspended or sooner cancelled) continues in force until the application is finally determined.
- (4) If a registration is granted or renewed for a shorter term than the nominated term, the Board is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (5) The suspension of a registration does not affect the term of the registration.
- (6) This section does not affect the term of any registration granted under this Act and in force immediately before the insertion of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

**10AB Removal of surveyor's name from register**

The Board must remove a registered surveyor's name from the register of surveyors if the surveyor has failed to comply with any continuing professional development requirements.

**[5] Section 10A Re-registration after removal for non-payment of registration administration fee**

Omit "in any year" from section 10A (1).

Insert instead "in the year in which the surveyor's registration is due to be renewed".

**[6] Section 10A (2A)-(2C)**

Insert after section 10A (2)—

(2A) An application for the restoration of registration must be made—

- (a) within 3 months of the expiry of the registration, or
- (b) within the further period determined by the Board on the application of the person seeking the restoration of registration.

(2B) Without limiting subsection (2A) (b), the Board may extend the period within which an application for restoration of a licence may be made if the Board is satisfied that—

- (a) in a case where the applicant failed to apply to renewal before the licence expired—the failure to apply for renewal of the registration before it expired was due to inadvertence, or
- (b) it is just and equitable to restore the registration.

(2C) An application for the restoration of registration must nominate a term of duration for the registration.

**[7] Section 10A (7)**

Insert after section 10A (6)—

(7) The Board may refuse an application for the restoration of registration in the circumstances prescribed by the regulations.

**[8] Section 36 Regulations**

Insert after section 36 (2) (j)—

(j1) the waiver or refund of the whole or any part of a fee chargeable for any service provided by the Board under this Act or the regulations,

## **2.14 Tattoo Parlours Act 2012 No 32**

**[1] Section 13B**

Insert after section 13A—

**13B Restoration of licence**

(1) An application for the restoration of a licence must be made—

- (a) within 3 months of the expiry of the licence, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence may be made if the Secretary is satisfied that—
- (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence.
- (3) A licence that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence must—
- (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence.
- (5) A licence restored at any time is taken to have been restored from the day on which the licence expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence in the same way as it applies to an application for a licence.

**[2] Section 16 Decision of Secretary in relation to licence applications**

Insert “or restoration” after “renewal” wherever occurring in section 16 (1), (2) and (3) (a).

**[3] Section 16 (1), (3) and (4)**

Omit “or renew” wherever occurring. Insert instead “, renew or restore”.

**[4] Section 16 (5)**

Omit “or renewal”. Insert instead “, renewal or restoration”.

**[5] Section 17 Duration of licence**

Omit section 17 (3). Insert instead—

- (3) An application for a licence or renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—

- (a) 1 year,
- (b) 3 years,
- (c) 5 years.

(3A) The Secretary may grant or renew a licence for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.

**Note—**

A licence may cease to be in force by operation of section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

(3B) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.

(3C) If a licence is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.

**[6] Section 17 (5)**

Insert after section 17 (4)—

(5) Subsections (3A)–(3C) do not affect the term of any licence granted under this Act and in force immediately before the amendment of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.

**[7] Section 41 Regulations**

Insert after section 41 (2) (g)—

(h) the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under this Act or the regulations.

## **2.15 Tow Truck Industry Act 1998 No 111**

**[1] Section 17 Application for licence**

Omit section 17 (2) (a1).

**[2] Section 18 Restrictions on granting licence**

Insert “, or renewal or restoration of,” after “application for” in section 18 (4).

**[3] Section 22**

Omit the section. Insert instead—

**22 Term of licence**

- (1) An application for a licence or renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) A licence may only be granted for a term of 3 or 5 years if—
  - (a) the applicant has requested that the licence be granted for a term of either 3 years or 5 years, and
  - (b) the applicant has held a licence for a continuous period of at least 3 years immediately before the date on which the subsequent licence will come into force (that is, during that period of 3 years, the applicant's licence was not suspended or revoked and did not lapse), and
  - (c) neither the applicant nor any of the applicant's close associates is, at the time the application is made, under investigation by the Secretary in relation to any breach of a condition of a licence or any other contravention of this Act or the regulations, and
  - (d) neither the applicant nor any of the applicant's close associates has, in the 5 years immediately before the date of the application—
    - (i) been subject to any prescribed disciplinary action under this Act, or
    - (ii) engaged in any prescribed conduct, and
  - (e) the Secretary is satisfied that a 3-year or a 5-year licence should be granted.
- (3) Subject to subsection (2), the Secretary may grant or renew a licence for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (4) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.

- (5) If a licence is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (6) The suspension of a licence does not affect the term of the licence.
- (7) This section does not affect the term of any licence granted under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.
- (8) In this section—

***prescribed conduct*** means any conduct that—

- (a) if the applicant or close associate applied for a licence or drivers certificate immediately after engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify the application being refused, or
- (b) if the applicant or close associate held a licence or drivers certificate at the time of engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify—
  - (i) the suspension of a licence or drivers certificate held by the applicant or close associate, or
  - (ii) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
  - (iii) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

***prescribed disciplinary action*** means—

- (a) the suspension of a licence or drivers certificate held by the applicant or close associate, or
- (b) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
- (c) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

**[4] Section 25 Application for drivers certificate**

Omit section 25 (2) (a1).

**[5] Section 26 Restrictions on granting drivers certificate**

Insert “, or renewal or restoration of,” after “application for” in section 26 (4).



**[6] Section 31**

Omit the section. Insert instead—

**31 Term of drivers certificate**

- (1) An application for a drivers certificate or renewal of a drivers certificate is to nominate one of the following terms of duration for the drivers certificate (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) A drivers certificate may only be granted for a term of 3 or 5 years if—
  - (a) the applicant has requested that the drivers certificate be granted for a term of either 3 years or 5 years, and
  - (b) the applicant has held a drivers certificate for a continuous period of at least 3 years immediately before the date on which the subsequent drivers certificate will come into force (that is, during that period of 3 years, the applicant's drivers certificate was not suspended or revoked and did not lapse), and
  - (c) the applicant and the applicant's close associates are not, at the time the application is made, under investigation by the Secretary in relation to any breach of a condition of a drivers certificate or any other contravention of this Act or the regulations, and
  - (d) the applicant and the applicant's close associates have not, in the 5 years immediately before the date of the application—
    - (i) been subject to any prescribed disciplinary action under this Act, or
    - (ii) engaged in any prescribed conduct, and
  - (e) the Secretary is satisfied that a 3-year or a 5-year drivers certificate should be granted.
- (3) Subject to subsection (2), the Secretary may grant or renew a drivers certificate for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.
- (4) If an application for renewal of a drivers certificate has been made but the application is not finally determined by the Secretary before the expiry of the

drivers certificate, the drivers certificate (if not suspended or sooner cancelled) continues in force until the application is finally determined.

- (5) If a drivers certificate is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.
- (6) The suspension of a drivers certificate does not affect the term of the drivers certificate.
- (7) This section does not affect the term of any drivers certificate issued under this Act and in force immediately before the substitution of this section by the *Fair Trading Legislation Amendment (Reform) Act 2018*.
- (8) In this section—

***prescribed conduct*** means any conduct that—

- (a) if the applicant or close associate applied for a licence or drivers certificate immediately after engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify the application being refused, or
- (b) if the applicant or close associate held a licence or drivers certificate at the time of engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify—
  - (i) the suspension of a licence or drivers certificate held by the applicant or close associate, or
  - (ii) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
  - (iii) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

***prescribed disciplinary action*** means—

- (a) the suspension of a licence or drivers certificate held by the applicant or close associate, or
- (b) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
- (c) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

**[7] Section 40A**

Insert after section 40—

**40A Restoration of licence or drivers certificate**

- (1) An application for the restoration of a licence or drivers certificate must be made—
  - (a) within 3 months of the expiry of the licence or drivers certificate, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence or drivers certificate.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence or drivers certificate may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence or drivers certificate expired—the failure to apply for renewal of the licence or drivers certificate before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence or drivers certificate.
- (3) A licence or drivers certificate that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence or drivers certificate must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence or drivers certificate.
- (5) A licence or drivers certificate restored at any time is taken to have been restored from the day on which the licence or drivers certificate expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence or drivers certificate in the same way as it applies to an application for a licence or drivers certificate.

**[8] Section 105 Regulations**

Insert after section 105 (2) (p)—

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

## **Schedule 3 Amendments relating to businesses in external administration**

### **3.1 Conveyancers Licensing Act 2003 No 3**

#### **Section 10 Disqualified persons**

Omit section 10 (3A). Insert instead—

(3A) The Secretary may determine that the factors listed in subsection (1) (g) or (j) should be ignored for the purposes of this section if, on the basis of information provided to the Secretary, the Secretary considers it appropriate to make that determination.

#### **Explanatory note**

The proposed amendment allows the Commissioner, when determining whether a person ought to be disqualified from being eligible to hold a licence under the *Conveyancers Licensing Act 2003*, to ignore the fact that the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, if the Commissioner considers it appropriate to do so.

### **3.2 Home Building Act 1989 No 147**

#### **[1] Section 22 Cancellation of contractor licences**

Omit section 22 (1) (c).

#### **[2] Section 22 (2)**

Omit the subsection. Insert instead—

(2) The Secretary may cancel a contractor licence of a kind referred to in subsection (1) if the holder of the contractor licence or, in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

#### **[3] Section 33B General requirements for issue of certain authorities**

Insert after section 33B (4)—

(5) Subsection (1) (a) (xv), (xvi) and (xvii) do not prevent the issuing of an authority if, on the basis of information provided to the Secretary by each relevant person, the Secretary considers it is appropriate to issue the authority.

#### **Explanatory note**

Item [2] of the proposed amendments provides that the Commissioner may cancel a contractor licence that authorises its holder to contract to do residential building work or specialist work, or both, if the holder becomes bankrupt. Currently, the Commissioner is required to cancel the licence if such conditions exist. Item [1] makes a consequential amendment.

Item [3] of the proposed amendments allows the Commissioner to issue a contractor licence to certain applicants concerned in the management of an externally-administered body corporate if the Commissioner considers it appropriate to do so.

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

#### **[1] Section 8A Disqualified persons**

Insert “, unless the Secretary has determined under subsection (5) that this factor should be ignored” after “appointed” in section 8A (2) (d).

#### **[2] Section 8A (3) (b)**

Insert “, unless the Secretary has determined under subsection (5) that this factor should be ignored” after “appointed”.

#### **[3] Section 8A (5)**

Omit “subsection (2) provides”. Insert instead “subsections (2) and (3) (b) provide”.

#### **[4] Section 8A (5)**

Omit “and evidence”.

#### **Explanatory note**

Items [1]-[3] of the proposed amendments provide that the Commissioner may, when determining whether to disqualify a person from being eligible to hold a licence under the *Pawnbrokers and Second-hand Dealers Act 1996*, ignore the fact that the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or is an executive officer of such a corporation, if the Commissioner considers it appropriate to do so. Item [4] makes a consequential amendment.

### **3.4 Property, Stock and Business Agents Act 2002 No 66**

#### **Section 16 Disqualified persons**

Omit section 16 (2A). Insert instead—

(2A) The Secretary may determine that the factors listed in subsection (1) (h) or (k) should be ignored for the purposes of this section if, on the basis of information provided to the Secretary, the Secretary considers it is appropriate to do so.

#### **Explanatory note**

The proposed amendment allows the Commissioner, when determining whether a person ought to be disqualified from being eligible to hold a licence, permit or other authority under the *Property, Stock and Business Agents Act 2002*, to ignore the fact that the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, if the Commissioner considers it appropriate to do so.

## **3.5 Retirement Villages Act 1999 No 81**

### **Section 57 Certain persons not to be operators**

Insert after section 57 (3)—

- (3A) The Secretary may, on the application of a person who is a director of an externally-administered body corporate, exempt the person from the operation of this section if, on the basis of information provided to the Secretary by the person, the Secretary considers it appropriate to do so.

#### **Explanatory note**

The proposed amendment authorises the Commissioner to exempt a director of an externally-administered body corporate from the prohibition against operating or otherwise managing or controlling a retirement village.

## **Schedule 4 Miscellaneous amendments relating to licensing and service agreements**

### **4.1 Home Building Act 1989 No 147**

#### **[1] Section 41**

Insert after section 40—

#### **41 Authority for special trade categories**

- (1) This section applies to an authority for a special trade category.
- (2) An authority to which this section applies continues in force until it is surrendered, suspended or cancelled.
- (3) It is a condition of an authority to which this section applies that the holder of the authority provides the Secretary with the following information in the approved form (if any) before the relevant day—
  - (a) changes to the particulars of the authority and any other particulars required to be kept in the register maintained by the Secretary under section 120,
  - (b) a statement that the holder is not disqualified from holding the authority under section 33A,
  - (c) a statement that the holder meets the relevant requirements for holding the authority,
  - (d) any other information prescribed by the regulations.

#### **Note—**

Sections 20, 33B, 33C and 33D specify requirements for the issue of, or obtaining, certain authorities.

- (4) The information provided to the Secretary under this section must be accompanied by the fee prescribed by the regulations.
- (5) The Secretary may cancel an authority to which this section applies if the holder of the authority does not provide the information specified in subsection (3) by the relevant day.
- (6) A person must not make a statement in relation to the information provided to the Secretary under this section that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (7) To avoid doubt, section 42 does not apply to an authority to which this section applies.
- (8) In this section, **relevant day**, in relation to an authority, means—
  - (a) the day occurring every 5 years after the day on which the authority was issued, or
  - (b) such earlier day as is specified in the regulations.

## [2] Schedule 1 Definitions and other interpretative provisions

Insert in alphabetical order in clause 1 (1)—

**special trade category** means the following work done in connection with residential building work—

- (a) decorating,
- (b) dry plastering,
- (c) ducting or mechanical venting installation,
- (d) fencing,
- (e) glazing,
- (f) benchtop installation,
- (g) minor maintenance and cleaning,
- (h) paving,
- (i) painting,

- (j) shade sails and shade system installation,
- (k) shower screen installation,
- (l) splashback installation,
- (m) wet plastering,
- (n) any other work prescribed by the regulations.

**[3] Schedule 1, clause 1 (1), definition of “specialist work”**

Insert after paragraph (d)—

- (e) work relating to electrical appliances, connections or wiring in a caravan or recreational vehicle or in another type of dwelling prescribed by the regulations, but not including work of a kind described in the regulations,
- (f) work relating to liquefied petroleum gas pipes, fittings or appliances in a caravan or recreational vehicle or in another type of dwelling prescribed by the regulations, but not including work of a kind described in the regulations.

**Explanatory note**

Item [1] of the proposed amendments provides that an authority for a special trade category continues in force until it is surrendered, suspended or cancelled and that it is a condition of the authority that the holder of the authority provides the Commissioner with certain information every 5 years. Item [2] defines a **special trade category**.

Item [3] of the proposed amendments defines **specialist work** to also include work relating to electrical appliances, connections or wiring and work relating to liquefied petroleum gas pipes, fittings or appliances in a caravan or recreational vehicle in order to regulate those types of work under the [Home Building Act 1989](#).

## **4.2 Home Building Regulation 2014**

**[1] Clause 14 Categories of specialist work**

Insert after clause 14 (m)—

- (n) work relating to electrical appliances, connections or wiring in a caravan or recreational vehicle,
- (o) work relating to liquefied petroleum gas pipes, fittings or appliances in a caravan or recreational vehicle.

**[2] Schedule 6 Application fees**

Insert at the end of the Table to Part 1—



**Continuation of authority—special trade category**

63	Continuation	5 years	Nil	0.5	0.5
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**Explanatory note**

Item [1] of the proposed amendments prescribes work relating to electrical appliances, connections or wiring and work relating to liquefied petroleum gas pipes, fittings or appliances in a caravan or recreational vehicle as specialist work categories for the purpose of authorising that type of work under a licence or an authority.

Item [2] of the proposed amendments specifies the fee (currently \$51) that must accompany an application for the continuation of an authority for a special trade category.

### **4.3 Motor Dealers and Repairers Act 2013 No 107**

**[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1)—

***business day*** means any day that is not a Saturday, Sunday or public holiday.

***notified premises*** means premises notified to the Secretary under section 20B as premises at which the holder of a licence proposes to carry on a business authorised by the licence.

***trade show*** means an event held at a place where a number of motor dealers, motor vehicle manufacturers or other industry participants display motor vehicles.

**[2] Section 19 Production of licences and certificates**

Omit “at the place of business specified in the licence,” from section 19 (1).

**[3] Sections 20A and 20B**

Insert after section 20—

**20A Specialised authority**

- (1) The Secretary may grant a specialised authority to authorise the holder of the authority to carry out work of a class prescribed by the regulations.
- (2) The regulations may exclude work of a kind described in the regulations from the class of work that may be carried out by the holder of a specialised authority.
- (3) For the purposes of this Act, a specialised authority is a type of tradesperson’s certificate.

## **20B Application for licence to carry on business at premises**

- (1) This section applies to the following—
  - (a) motor dealers' licences,
  - (b) motor vehicle repairers' licences,
  - (c) motor vehicle recyclers' licences.
- (2) An application for a licence to which this section applies must include the following—
  - (a) the address of premises the applicant intends to use for the purpose of carrying on the business to be authorised by the licence,
  - (b) in the case of an application for a motor vehicle repairer's licence where the applicant intends to carry on the business only from a vehicle—
    - (i) the address of the premises at which the vehicle is to be kept, and
    - (ii) the registration details of that vehicle,
  - (c) if a planning approval is required to use the premises for that purpose—information demonstrating, to the satisfaction of the Secretary, that the required planning approval is in force.
- (3) The holder of a licence to which this section applies must notify the Secretary in the approved form, at least 20 business days before using the relevant premises or vehicle, of any changes to the details provided in accordance with subsection (2).
- (4) The holder of a licence must notify the Secretary in the approved form, within 20 business days after the relevant event, if—
  - (a) the holder ceases to carry on a business authorised by the licence at notified premises, or
  - (b) the holder does not intend to carry on a business authorised by the licence at notified premises.

Maximum penalty—20 penalty units.
- (5) Nothing in this section requires the holder of a licence to notify the Secretary of an intention to carry on a business authorised by the licence at a trade show.

### **[4] Sections 28-30 and 37**

Omit the sections.

**[5] Section 32 Conditions of licences**

Insert after section 32 (1)—

(1A) Without limiting subsection (1), the Secretary may impose a condition that the holder of a licence carry on a business authorised by the licence only at premises specified by the Secretary in writing to the licence holder.

**[6] Section 34 Amendment of licences**

Omit section 34 (1). Insert instead—

(1) An application to amend a licence may seek to add or remove a class of repair work from a tradesperson's certificate.

**[7] Section 39 Additional grounds for disciplinary action—motor dealers' licences, motor vehicle repairers' licences and motor vehicle recyclers' licences**

Omit "a place of business to which the licence relates" from section 39 (c).

Insert instead "notified premises".

**[8] Section 48 Motor vehicles must be sold at notified premises**

Omit "a place of business specified in the licence" from section 48 (1).

Insert instead "notified premises".

**[9] Section 48 (2)**

Omit "the place of business specified in a motor dealer's licence does not include a road or footpath in the immediate vicinity of the place of business".

Insert instead "notified premises do not include a road or footpath in the immediate vicinity of the premises".

**[10] Section 48 (3)**

Omit the subsection. Insert instead—

(3) **Exception—trade shows** A person is not guilty of an offence against this section if a motor vehicle is offered or displayed for sale at a trade show.

**[11] Section 48 (5)**

Omit the definition of *trade show*.

**Explanatory note**

Item [3] of the proposed amendments inserts proposed sections 20A and 20B. Proposed section 20A enables the Commissioner to grant a specialised authority to a person to carry out work of a class prescribed by the regulations made under the *Motor Dealers and Repairers Act 2013*. A **specialised authority** is a type of tradesperson's certificate. Proposed section 20B specifies that an application for a motor dealer's, motor vehicle repairer's or motor vehicle recycler's licence (a **relevant licence**) must include the address of premises that the applicant intends to use for the relevant business or if the business will be carried out from a vehicle, the address of the premises at which the vehicle will be kept. The applicant must also satisfy the Commissioner that any required planning approvals are in force. The holder of a relevant licence must notify the Commissioner of any changes to those details at least 20 business days before using the new premises or vehicle, or if the holder ceases to carry on the business or no longer intends to carry on the business at the address provided. Item [1] defines **notified premises** as premises notified to the Commissioner under proposed section 20B. Items [2], [4] and [6]–[9] make consequential amendments.

Item [5] of the proposed amendments enables the Commissioner to impose a licence condition to restrict the holder of the licence to carry on a business at specified premises.

Item [10] of the proposed amendments creates a general exception from the offence of offering or displaying a motor vehicle for sale at a place other than a place of business specified in the licence. The proposed amendment permits the holder of a motor dealer's licence to offer or display a motor vehicle for sale at a trade show without further limitations. Item [1] moves the definition of **trade show** to the definitions provision. Item [11] makes a consequential amendment.

## 4.4 Motor Dealers and Repairers Regulation 2014

### [1] Clause 3 Definitions

Omit the definition of **place of business** from clause 3 (1).

### [2] Clause 5A Temporary exemptions for approved trade shows

Omit “or other place of business” and “or place” from clause 5A (2) (c).

### [3] Clause 5A (3) (a)

Omit “specified event, held at a place where a number of motor dealers, motor vehicle manufacturers or other industry participants display motor vehicles,”.

Insert instead “trade show”.

### [4] Clauses 7 (a), 11 (3), 16 (3), 18 (a) (i), 24 (a) and 54 (b) and Schedule 1

Omit “place of business” wherever occurring. Insert instead “notified premises”.

### [5], [6] (Repealed)

### [7] Clauses 11 (4), 16 (2) and 37 (1)

Omit “a place of business”. Insert instead “notified premises”.

### [8] Schedule 1 Fees

Omit the matter relating to items 7, 14 and 21 from Part 1.

#### Explanatory note

The proposed amendments (other than item [6]) are consequential on the amendments made to the *Motor Dealers and Repairers Act 2013* by Schedule 4.3.

Item [6] removes the requirement to include the licence holder's name and the licence number in advertising relating to motor

dealing, motor vehicle repairs or motor vehicle recycling.

## 4.5

(Repealed)

## 4.6 **Tow Truck Industry Act 1998 No 111**

### [1] **Section 6 Application of Act**

Omit “any person or” from section 6 (3). Insert instead “a”.

### [2] **Section 33A**

Insert after section 33—

#### **33A Application for exemption from requirement to hold licence or drivers certificate**

- (1) A person may apply to the Secretary for an exemption from the requirement to hold a licence or a drivers certificate.
- (2) An application for an exemption must—
  - (a) be in the approved form, and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) contain such other particulars as may be prescribed by the regulations or as are required by the approved form.
- (3) An exemption may, by notice in writing to the applicant, be granted—
  - (a) in the circumstances prescribed by the regulations, and
  - (b) subject to such conditions as may be determined by the Secretary and specified in the notice.
- (4) In addition to the conditions specified in the notice, an exemption is subject to the condition that evidence of the exemption must be—
  - (a) carried at all times in each tow truck used in the business of the person who holds the exemption, and
  - (b) produced to an authorised officer or police officer on demand whenever any such tow truck is being used.
- (5) The Secretary may, by notice in writing to the holder of an exemption, vary or revoke any of the conditions of the exemption if the Secretary is of the opinion that there are reasonable grounds for the variation or revocation.

(6) The Secretary may, by notice in writing to the holder of an exemption, revoke the exemption if the Secretary—

(a) is satisfied that the exemption is contrary to the public interest, or

(b) is of the opinion that there are reasonable grounds for revoking the exemption.

(7) A person who holds an exemption is guilty of an offence if a condition of the exemption is contravened.

Maximum penalty—25 penalty units.

**[3] Section 39 Register of licences, drivers certificates and exemptions**

Omit “and drivers certificates” from section 39 (1).

Insert instead “, drivers certificates and exemptions”.

**[4] Section 39 (2)**

Omit “or drivers certificate” wherever occurring.

Insert instead “, drivers certificate or exemption”.

**[5] Section 95 Supply of information between Secretary and Commissioner of Police**

Omit section 95 (1). Insert instead—

(1) The Secretary may, for the purposes of the administration of this Act, enter into arrangements with the Commissioner of Police—

(a) for the supply to the Secretary of information contained in the records of the NSW Police Force, and

(b) for the supply to the Commissioner of Police of information contained in the register kept under section 39 of this Act.

(1A) A disclosure of information made in good faith under the arrangements does not constitute a contravention of any provision as to confidentiality in this Act and does not constitute a contravention of the *Privacy and Personal Information Protection Act 1998*.

**Explanatory note**

Item [2] of the proposed amendments enables a person to apply to the Commissioner for an exemption from the requirement to hold a tow truck operators licence or drivers certificate under the *Tow Truck Industry Act 1998*. If granted, evidence of the exemption must be carried at all times in each tow truck used by the operator and produced to an officer on demand when any such tow truck is being used. It is an offence (with a maximum penalty of \$2,750) if an exempted person contravenes any condition of the exemption.

Consequentially, item [1] of the proposed amendments removes the regulation-making power to exempt any person from the operation of any provision or requirement of the *Tow Truck Industry Act 1998*. The regulations may still exempt a class of persons from a provision or requirement of that Act.

Items [3] and [4] of the proposed amendments require the Commissioner to keep certain information in respect of an exemption on a register, including particulars of the amendment, suspension, revocation or voluntary surrender of the exemption.

Item [5] of the proposed amendments enables the Commissioner to enter into arrangements with the Commissioner of Police for the supply to the Commissioner of information contained in that register.

## Schedules 5-7 (Repealed)

## Schedule 8 Amendments relating to approval of forms

### Explanatory note

The proposed amendments in this Schedule provide for forms that are authorised or required under certain Acts to be given in the form approved by the Secretary instead of prescribed by regulations under those Acts.

### 8.1 Building and Construction Industry Security of Payment Act 1999 No 46

#### Section 13 Payment claims

Omit “prescribed by the regulations” from the definition of **supporting statement** in section 13 (9).

Insert instead “approved by the Secretary”.

### 8.2 Building and Construction Industry Security of Payment Regulation 2008

#### [1] Clause 16 Annual report on trust account

Omit “form set out in Schedule 2” from clause 16 (1) (b).

Insert instead “form approved by the Secretary”.

#### [2] Clause 19 Supporting statements

Omit clause 19 (1).

#### [3] Clause 19 (5)

Omit “prescribed form”. Insert instead “supporting statement”.

#### [4] Schedules 1 and 2

Omit the Schedules.

### **8.3 Conveyancers Licensing Regulation 2015**

**[1] Clause 3 Definitions**

Omit clause 3 (2).

**[2] Clause 19 Statements of account**

Omit “Form 1” from clause 19 (5) (a). Insert instead “the form approved by the Secretary”.

**[3] Schedule 1 Forms**

Omit the Schedule.

### **8.4 Home Building Act 1989 No 147**

**[1] Sections 7BB (4) and 16DBB (4)**

Omit “a form prescribed by the regulations, if any form is prescribed”.

Insert instead “the form approved by the Secretary, if any”.

**[2] Sections 92 (1) (b) and (2) (b), 96 (2) and (3B) (b), 96A (1) and (3A) (b) and 104B (2)**

Omit “prescribed by the regulations” wherever occurring.

Insert instead “approved by the Secretary”.

### **8.5 Home Building Regulation 2014**

**[1] Clause 8 Requirements for contracts to do residential building work**

Omit the clause. Insert instead—

**8 Requirements for contracts to do residential building work**

A contract to do residential building work to which section 7 of the Act applies must include a checklist in the form approved by the Secretary.

**[2] Clause 50 Evidence of cover by means of insurance contract or alternative indemnity product**

Omit the clause.

**[3] Clause 62ZZD Contracts of insurance must be securely held by licence holders**

Omit “referred to in clause 50” from clause 62ZZD (1) (c).

**[4] Schedules 1, 2, 5, 5A and 5B**

Omit the Schedules.



## **8.6 Motor Dealers and Repairers Act 2013 No 107**

### **[1] Section 57 Sale at auction with number-plates**

Omit “form prescribed by the regulations” from section 57 (2) (a).

Insert instead “approved form”.

### **[2] Section 59 Sales of motor vehicles without number-plates attached**

Omit “form (if any) prescribed by the regulations” from section 59 (b).

Insert instead “approved form (if any)”.

### **[3] Section 62 Dealers’ notices—disclosure and other requirements**

Omit “prescribed by the regulations” from section 62 (1) (a).

Insert instead “approved”.

### **[4] Section 62 (1) (c)**

Insert at the end of section 62 (1) (b)—

, and

(c) comply with any other requirements of the regulations.

### **[5] Section 63 Sale notices for second-hand motor vehicles**

Omit “prescribed form” from section 63 (4) (a).

Insert instead “approved form complying with the requirements of the regulations (if any) and”.

## **8.7 Motor Dealers and Repairers Regulation 2014**

### **[1] Clause 24 Dealer’s notices produced by means of data processing equipment**

Omit “prescribed” from clause 24 (b). Insert instead “approved”.

### **[2] Clause 25 Form of dealer’s notices**

Omit clause 25 (1) (a). Insert instead—

(a) be clearly legible, and

### **[3] Clause 25 (2)**

Omit the subclause. Insert instead—

(2) A dealer's notice must not contain alterations or erasures or be torn, defaced or otherwise mutilated.

**[4] Clause 25 (3)**

Omit the subclause.

**[5] Clause 26 Motor vehicles not for sale**

Omit "is in the prescribed form if".

Insert instead "must comply with the following requirements".

**[6] Clause 26 (a)**

Omit "it is". Insert instead "the notice must be".

**[7] Clause 26 (a)**

Omit "and".

**[8] Clause 26 (b)**

Omit "it contains". Insert instead "the notice must contain".

**[9] Clause 50 Auction notice**

Omit clause 50 (1).

**[10] Schedule 2 Forms**

Omit Forms 5-11.

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

**[1] Section 28 Pawnbroker's record of pledges**

Omit "form prescribed by the regulations setting out rights and obligations of the person who pawned the goods" from section 28 (5A) (a).

Insert instead "form approved by the Secretary setting out rights and obligations of the person who pawned the goods, and complying with the requirements of the regulations (if any)".

**[2] Section 28 (5A) (c)**

Omit "and".

**[3] Section 28 (5A) (d)**

Omit the paragraph.

## **8.9 Pawnbrokers and Second-hand Dealers Regulation 2015**

**[1] Clause 19 Evidence of identity and title of supplier of goods**

Omit clause 19 (4). Insert instead—

- (4) For the purposes of section 15 (3) of the Act, the licensee must obtain from the customer a legible written statement, in the form approved by the Secretary, concerning the ownership of goods.

**[2] Clause 27**

Omit the clause. Insert instead—

### **27 Notice of rights and obligations of person pawning goods**

For the purposes of section 28 (5A) (a) of the Act, a notice incorporating or accompanying a pawn ticket must—

- (a) be legible and printed on both sides of A4 size paper, and
- (b) not include any wording other than that required by the form approved for the notice.

**[3] Schedule 1 Forms**

Omit Forms 1 and 2.

## **8.10 Strata Schemes Management Act 2015 No 50**

**[1] Sections 94 and 184 (6)**

Omit “prescribed by the regulations” wherever occurring.

Insert instead “approved by the Secretary”.

**[2] Schedule 1 Meeting procedures of owners corporation**

Omit “prescribed by the regulations” and “prescribed form” wherever occurring in clause 26 (1) and (2).

Insert instead “approved by the Secretary” and “approved form”, respectively.

## **8.11 Strata Schemes Management Regulation 2016**

### **[1] Clause 3 Definitions**

Omit “(other than in a form set out in Schedule 1)” from clause 3 (2).

### **[2] Clauses 13, 20 and 43 and Schedule 1**

Omit the provisions.

### **Schedules 9-12 (Repealed)**