

Fair Trading Legislation Amendment (Reform) Act 2018 No 65

[2018-65]



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

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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 Schedules 2.13, 4.1 and 4.2[2]) commence on 1 July 2020 or on an earlier day or days to be appointed by proclamation.
- (3) Schedules 2.13, 4.1 and 4.2[2] commence on a 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

(Repealed)

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] (Repealed)

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] (Repealed)

[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] (Repealed)

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] (Repealed)

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] (Repealed)

[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

(Repealed)

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 renew 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] (Repealed)

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] (Repealed)

Schedule 3 (Repealed)

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.

4.3-4.5

(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 5-12 (Repealed)