



New South Wales

Better Regulation Legislation Amendment (Miscellaneous) Act 2021 No 23

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Better Regulation Legislation Amendment (Miscellaneous) Act 2021 No 23

Act No 23, 2021

An Act to amend various Acts, and to amend or repeal regulations, administered by the Minister for Better Regulation and Innovation; and for related purposes. [Assented to 1 November 2021]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Better Regulation Legislation Amendment (Miscellaneous) Act 2021*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.6 and 1.13[4] and [5] commence on a day or days to be appointed by proclamation.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

1.1 Associations Incorporation Act 2009 No 7

[1] Section 28 Committee to be established

Omit “Maximum penalty—1 penalty unit.” from section 28(5).

[2] Section 28A

Insert after section 28—

28A Filling of vacancies on committee to constitute quorum

- (1) If the number of members of a committee is less than the number of members required to constitute a quorum of the committee—
 - (a) the committee may appoint sufficient members to constitute a quorum, and
 - (b) for the purpose only of enabling the committee to make the appointment, the number of members required to constitute a quorum is the number of members at that time.
- (2) The term of office of a member appointed by the committee to fill a vacancy under this section ends at the start of the next annual general meeting of the association.

[3] Section 35 Vacation of office of public officer

Omit “Maximum penalty—1 penalty unit.” from section 35(2).

[4] Section 52 Auditor to be qualified and independent

Omit “within the meaning of the *Corporations Act 2001* of the Commonwealth” from section 52(1)(a).

[5] Section 52(1)(a1) and (a2)

Insert after section 52(1)(a)—

- (a1) an authorised audit company, or
- (a2) a member of a professional accounting body who holds a Public Practice Certificate or Certificate of Public Practice issued by the body, or

[6] Section 52(3)

Insert after section 52(2)—

- (3) In this section—

authorised audit company has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

professional accounting body has the same meaning as in the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

registered company auditor has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[7] Section 65

Omit the section. Insert instead—

65 Distribution of surplus property

- (1) In a winding up of an association, the surplus property of the association must be distributed in accordance with the following—
 - (a) if the constitution of the association contains provisions addressing the distribution of surplus property—the constitution of the association,
 - (b) if paragraph (a) does not apply—a special resolution passed by the association,
 - (c) if paragraph (a) does not apply and the association has not or cannot pass a special resolution—a direction of the Secretary.
- (2) Subject to subsection (3), the distribution of surplus property of an association—
 - (a) must not be made to, or for the benefit of—
 - (i) a member or former member of the association, or
 - (ii) a person to be held on trust for a member or former member of the association, and
 - (b) is subject to any trust affecting the property or a part of the property, and
 - (c) must be approved by the Secretary unless the property is distributed in accordance with a direction of the Secretary.
- (3) Surplus property that is property supplied by a government department or public authority, including an unexpended portion of a grant, if any, must be returned—
 - (a) to the department or authority that supplied it, or
 - (b) to a body nominated by the department or authority.
- (4) A person aggrieved by the operation of this section in relation to an association's surplus property may apply to the Supreme Court for an order as to its disposal.
- (5) The Supreme Court may deal with an application by making the orders it thinks fit in relation to the disposal of the association's surplus property.
- (6) In this section—

member or former member does not include a member or former member who is—

 - (a) an entity or organisation, whether incorporated or unincorporated, and
 - (b) at the time of the distribution, prohibited from distributing property to its members.

surplus property means the property of an association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.

[8] Section 75

Omit the section. Insert instead—

75 Distribution of assets

- (1) On the cancellation of an association's registration under this Division, the association's assets must be distributed in accordance with a special resolution passed by the association.
- (2) Subject to subsection (3), the distribution of the assets of the association—
 - (a) must not be made to, or for the benefit of—

- (i) a member or former member of the association, or
 - (ii) a person to be held on trust for a member or former member of the association, and
- (b) is subject to any trust affecting the assets or part of the assets, and
- (c) must be approved by the Secretary.
- (3) An asset that has been supplied by a government department or public authority, including an unexpended portion of a grant, if any, must be returned—
 - (a) to the department or authority that supplied it, or
 - (b) to a person or body nominated by the department or authority.
- (4) A person aggrieved by the operation of this section in relation to an association's assets may apply to the Supreme Court for an order as to their disposal.
- (5) The Supreme Court may deal with an application by making the orders it thinks fit in relation to the disposal of the association's assets.
- (6) In this section—

member or former member does not include a member or former member who is—

 - (a) an entity or organisation, whether incorporated or unincorporated, and
 - (b) at the time of the distribution, prohibited from distributing property to its members.

[9] Section 85 Power to require information and documents

Insert “or a previously registered association” after “association” wherever occurring in section 85(1)(a) and (b).

[10] Section 85(4)

Insert after section 85(3)—

- (4) In this section—

previously registered association means an association—

 - (a) that is not currently registered under this Act, and
 - (b) that has been, or has been taken to be, previously registered under this Act.

Explanatory note

Items [1] and [3] of the proposed amendments remove the penalty for the offence of a former committee member or public officer failing to deliver documents belonging to an association after vacating office.

Item [2] inserts proposed section 28A to enable a committee of an association to appoint sufficient members to constitute a quorum.

Item [5] provides that an audit of an association's financial records may be carried out by an authorised audit company or a qualified member of a professional accounting body. Items [4] and [6] make consequential amendments.

Item [7] substitutes section 65 to provide that, on the winding up of an association or on the involuntary cancellation of its registration, the surplus property of an association must be distributed in accordance with the constitution, if the constitution addresses the distribution, a special resolution passed by the association, or a direction of the Secretary. Item [8] substitutes section 75 to provide that the assets of an association must be distributed in accordance with a special resolution passed by the association on the voluntary cancellation of the registration of an association.

The proposed amendments also make it clear that surplus property and assets must not be distributed to a member or former member of an association unless the member or former member is an entity

or organisation, whether incorporated or unincorporated, that is prohibited from distributing property to its members.

Items [9] and [10] extend the Secretary's power to require the production of information and documents from an association to include the production of information and documents from a previously registered association.

1.2 Biofuels Act 2007 No 23

[1] Section 24 Expert Panel

Omit "Department of Industry" from section 24(1)(a1).

Insert instead "Department of Planning, Industry and Environment".

[2] Section 24(1)(a3)

Omit "the Department of Industry". Insert instead "Regional NSW".

[3] Section 24(1)(c)

Omit "3 persons". Insert instead "4 persons".

Explanatory note

Item [3] of the proposed amendments enables the Minister to appoint to the Expert Panel an additional person who has recent experience or expertise in the petroleum or biofuels industry.

Items [1] and [2] update references to Departments.

1.3 Building and Construction Industry Long Service Payments Act 1986 No 19

[1] Section 58 Power of entry and inspection

Insert at the end of section 58(2A)(b)—

, and

- (c) to take copies of or extracts from, or make notes from, the book, record or other document.

[2] Sections 58AA and 58AB

Insert after section 58—

58AA Power to take possession of records to be used as evidence

- (1) A person (the *record inspector*) to whom a record is produced under section 58 may take possession of the record if the record inspector considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.
- (2) If the record inspector takes possession of the record under this section, the record may be retained by the record inspector until the completion of proceedings, including proceedings on appeal, in which the record may be evidence.
- (3) The person (the *record owner*) from whom the record was taken must be provided, within a reasonable time after the record is taken, with a copy of the record certified by the record inspector as a true copy.
- (4) A copy of a record provided under subsection (3) is, as evidence, of equal validity to the record of which it is certified to be a copy.
- (5) A person does not contravene a provision of this Act if the person is unable to comply with the provision because a record inspector retained possession of a record under this section.

58AB Exchange of information

- (1) The Corporation may enter into an arrangement (an *information sharing arrangement*) with a relevant agency, or the head of a relevant agency, for the purposes of sharing or exchanging information held by the Corporation or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of—
 - (a) the Corporation under this Act or the regulations, or
 - (b) the relevant agency.
- (3) Under an information sharing arrangement, the Corporation and the relevant agency are authorised—
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose the information to the other party.
- (4) In this section—

long service agency means an agency of the State, the Commonwealth, or another State or Territory, that exercises functions under legislation with respect to long service schemes, or employers or employees in relation to long service leave.

relevant agency includes the following—

 - (a) a long service agency,
 - (b) another agency of the State, the Commonwealth, or another State or Territory,
 - (c) a local council,
 - (d) a person or body that exercises functions, in the public interest, to protect the interests of long service schemes, employers or employees,
 - (e) a person or body prescribed by the regulations.

[3] Section 59 Disclosure of information

Omit section 59(1). Insert instead—

- (1) Subject to subsection (2), a person who is, or was at any time, authorised under section 58, 58AA or 58AB must not disclose any information—
 - (a) obtained by the person in the course of administration or execution of this Act or the regulations, and
 - (b) that relates to—
 - (i) manufacturing or commercial secrets, or
 - (ii) working processes.

[4] Section 64A

Insert after section 64—

64A Penalty notices

- (1) An authorised person may issue a penalty notice to a person if it appears to the authorised person that the other person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note— The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section—
authorised person means a person authorised by the Corporation for the purposes of section 58.

Explanatory note

The proposed amendment permits the issuing of penalty notices under the *Building and Construction Industry Long Service Payments Act 1986*.

1.4 Building Products (Safety) Act 2017 No 69

Section 33 Register of undertakings

Omit section 33(3) and (4). Insert instead—

- (3) The register is to be made available, free of charge, on a NSW Government website.

Explanatory note

The proposed amendment provides that the register of building product undertakings is to be made available, free of charge, on a NSW Government website.

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

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

inspector means a person authorised under section 86 to be an inspector for the purposes of Part 8.

[2] Section 46 Employers to keep records

Omit section 46(1). Insert instead—

- (1) An employer for the contract cleaning industry must keep—
- (a) a written record showing the relevant particulars for each employee who performs cleaning work for the employer, and
 - (b) a copy of the employment contract for each employee.
- Maximum penalty—20 penalty units.

[3] Sections 47A and 47B

Insert after section 47—

47A Power to require production of employee records

- (1) An inspector may give a written notice to an employer or other person who the inspector reasonably believes has possession, custody or control of the

employer's records requiring the employer or person to produce the employer's records specified in the notice at the time and place specified in the notice.

- (2) An inspector may—
 - (a) inspect a record produced in response to a notice under this section, and
 - (b) take copies of or extracts from, or make notes from, a record.
- (3) An employer does not contravene a provision of this Act if the employer is unable to comply with the provision because an inspector retained possession of a record or document under this section.

47B Power to take possession of records to be used as evidence

- (1) An inspector to whom a record is produced under this Part may take possession of the record if the inspector considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.
- (2) If an inspector takes possession of a record under this section, the record may be retained by the inspector until the completion of proceedings, including proceedings on appeal, in which the record may be evidence.
- (3) The person from whom the record was taken must be provided, within a reasonable time after the record is taken, with a copy of the record certified by an inspector as a true copy.
- (4) A copy of a record provided under this section is, as evidence, of equal validity to the record of which it is certified to be a copy.

[4] Section 103A

Insert after section 103—

103A Penalty notices

- (1) An inspector may issue a penalty notice to a person if it appears to the inspector that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note— The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

[5] Section 114A

Insert after section 114—

114A Exchange of information

- (1) The Secretary may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Secretary or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of—
 - (a) the Secretary under this Act or the regulations, or
 - (b) the relevant agency.
- (3) Under an information sharing arrangement, the Secretary and the relevant agency are authorised—
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose the information to the other party.
- (4) In this section—

long service agency means an agency of the State, the Commonwealth, or another State or Territory, that exercises functions under legislation with respect to long service schemes, or employers or employees in relation to long service leave.

relevant agency includes the following—

 - (a) a long service agency,
 - (b) another agency of the State, the Commonwealth, or another State or Territory,
 - (c) a local council,
 - (d) a person or body that exercises functions, in the public interest, to protect the interests of long service schemes, employers or employees,
 - (e) a person or body prescribed by the regulations.

Explanatory note

Item [4] of the proposed amendments permits the issuing of penalty notices under the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.

Item [1] makes a consequential amendment to define **inspector** for the purposes of the proposed amendments.

Item [2] requires employers for the contract cleaning industry to keep a copy of the employment contract for each employee.

Item [3] inserts powers for an inspector to require the production of employee records and to take possession of records to be used as evidence.

Item [5] enables the Secretary of the Department of Customer Service to enter into information sharing arrangements with particular agencies.

1.6 Design and Building Practitioners Act 2020 No 7

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

relevant authorisation means any of the following—

- (a) registration as an architect under the *Architects Act 2003*,
- (b) registration as a certifier, or accreditation to carry out regulated work, under the *Building and Development Certifiers Act 2018*,
- (c) a contractor licence, endorsed contractor licence, supervisor certificate, tradesperson certificate or owner-builder permit under the *Home Building Act 1989*,

- (d) for a person registered under this Act in one class of registration—
registration in another class,
- (e) an authorisation or qualification, however described, that—
 - (i) is issued under the laws of another jurisdiction, and
 - (ii) authorises the holder to carry out work that is substantially similar to the work authorised by an authorisation specified in paragraph (a), (b), (c) or (d),
- (f) another authorisation or qualification, however described, prescribed by the regulations.

[2] Section 46 Grounds for opinion that a person is not a suitable person to carry out work

Omit section 46(b) and (c). Insert instead—

- (b) a relevant authorisation of the person has been suspended or cancelled, other than at the person’s request, whether at the time of the person’s application for registration or another time,
- (c) the person is disqualified from holding a relevant authorisation, other than on the grounds that the person—
 - (i) does not reside in the jurisdiction that issues the authorisation, or
 - (ii) is a body corporate,

[3] Section 60 Registered practitioner to notify Secretary of certain events

Omit section 60(a). Insert instead—

- (a) a relevant authorisation held by the practitioner being suspended or cancelled, other than at the practitioner’s request,

[4] Section 60(d)

Omit the paragraph. Insert instead—

- (d) the practitioner (including, if the practitioner is a registered body corporate, a director of the body corporate) being investigated by a government agency or a body that issues a relevant authorisation, whether in New South Wales or another Australian jurisdiction, in relation to—
 - (i) the carrying out of work authorised to be carried out under a relevant authorisation, or
 - (ii) a failure to comply with a relevant authorisation,

[5] Section 64 Grounds for taking disciplinary action

Omit “an equivalent authorisation” wherever occurring in section 64(c)(i) and (iii) and (d).

Insert instead “a relevant authorisation”.

[6] Section 66 Disciplinary action that may be taken by Secretary

Insert after section 66(1)—

- (1A) If a registered practitioner is a body corporate and the Secretary is satisfied that a ground for taking disciplinary action against the practitioner has been established, the Secretary may take one or more of the following actions against a director of the body corporate—
 - (a) determine to take no further action against the director,
 - (b) caution or reprimand the director,

- (c) require the director to undertake specified education or training relating to a particular type of work or business practice within a specified time,
 - (d) disqualify the director, either temporarily or permanently, from being registered or registered in a particular class.
- (1B) The Secretary may suspend the registration of a body corporate during a period when a director of the body corporate is disqualified under subsection (1A)(d).
- (1C) The Secretary may take disciplinary action under subsections (1A) and (1B) in addition to, or instead of, taking disciplinary action under subsection (1).
- (1D) This Part applies to disciplinary action taken under subsection (1A) in the same way as it applies to disciplinary action taken under subsection (1) and references in this Part to registered practitioners extend to the directors of registered body corporates.
- (1E) Sections 65 and 68 apply to disciplinary action taken under subsection (1B).

Explanatory note

Item [1] of the proposed amendments consolidates the concepts of 'equivalent authorisation' and 'relevant authorisation', as used in the *Design and Building Practitioners Act 2020* and *Design and Building Practitioners Regulation 2021*, by inserting a single definition of **relevant authorisation**. Items [2]–[5] make consequential amendments.

Item [6] provides that, if a practitioner is a registered body corporate, the Secretary may take disciplinary action under the Act, Part 6 against a director of the body corporate, including action intended to prevent the director from being a director of other registered body corporates.

1.7 Electricity Supply Act 1995 No 94

Section 196

Omit “metering provider” wherever occurring. Insert instead “metering co-ordinator”.

Explanatory note

The proposed amendment replaces references to 'metering provider' with 'metering co-ordinator' to ensure consistency with how the terms are used in the national electricity laws.

1.8 Fair Trading Act 1987 No 68

Section 86B Register of undertakings

Omit section 86B(3) and (4). Insert instead—

- (3) The register is to be made available, free of charge, on a NSW Government website.

Explanatory note

The proposed amendment provides that the register of enforceable undertakings is to be made available, free of charge, on a NSW Government website.

1.9 Funeral Funds Act 1979 No 106

[1] Section 49D Qualifications as an independent auditor

Omit section 49D(1). Insert instead—

- (1) A person is not qualified to be an auditor of a pre-paid funeral fund unless the person is—
 - (a) a registered company auditor, or
 - (b) an authorised audit company.

[2] Section 49D(4)

Insert after section 49D(3)—

(4) In this section—

authorised audit company has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

registered company auditor has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[3] Section 49I

Omit the section. Insert instead—

49I Access to annual returns

- (1) This section applies to returns lodged with the Secretary under section 49G.
- (2) The Secretary may make a return publicly available on a NSW Government website.
- (3) A person who has an interest in a return that has not been made publicly available may make a request to the Secretary for a copy of the return.
- (4) On payment by the person of the fee prescribed by the regulations, the Secretary must ensure the person is provided with a copy of the return in a manner determined by the Secretary.
- (5) The Secretary may issue guidelines in relation to the publication and provision of returns under this section.

Explanatory note

Item [1] of the proposed amendments provides that a registered company auditor or an authorised audit company may be appointed as an independent auditor of a pre-paid funeral fund. Item [2] makes a consequential amendment.

Item [3] provides for the publication and provision of annual returns of pre-paid funeral funds lodged with the Secretary, and, as a consequence, removes the need for a person to attend a government office to request a copy of a return.

1.10 Funeral Funds Regulation 2016

[1] Schedule 4 Fees

Omit “49I (a) or” and “49G or” from Part 1, item 10.

[2] Schedule 4, Part 1, item 11

Omit “49I (b)”. Insert instead “49I(4)”.

Explanatory note

The proposed amendments make consequential amendments as a result of the amendments by this Act to the *Funeral Funds Act 1979*.

1.11 Home Building Act 1989 No 147

[1] Section 51 Improper conduct: generally

Insert “before the date specified in the order” after “Part 3A” in section 51(2)(b).

[2] Section 54 Improper conduct: members of partnerships or officers of corporations

Omit section 54(4) and (5).

[3] Section 62 Disciplinary action that may be taken by Secretary

Insert at the end of the section—

- (2) If the holder of the authority is a partnership or corporation, the Secretary may take a disciplinary action specified in subsection (1) against the following individuals—
 - (a) a member of the partnership,
 - (b) an officer of a corporation that is a member of the partnership,
 - (c) an officer of the corporation.
- (3) The Secretary may take disciplinary action under subsection (2) in addition to, or instead of, taking disciplinary action under subsection (1).
- (4) This Division applies to disciplinary action taken under subsection (2) in the same way as it applies to disciplinary action taken under subsection (1) and references in this Division to the holder of an authority extend to the individuals referred to in subsection (2).

Explanatory note

Item [1] of the proposed amendments clarifies that the holder of a contractor licence is guilty of improper conduct if the holder does not comply with the requirements of a rectification order under the *Home Building Act 1989*, Part 3A, Division 2 before the date specified in the order.

Item [3] provides that, if the holder of an authority is a partnership or corporation, the Secretary may take disciplinary action against members of the partnership, officers of corporations that are members of the partnership and officers of the corporation. Item [2] makes a consequential amendment.

1.12 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

rectification bond—see section 28.

[2] Section 9 Occupation certificates and strata plan registrations not to occur in certain circumstances

Insert after section 9(1)(c)—

- (c1) a rectification bond required under the terms of an undertaking given by the developer relating to the residential apartment building has not been provided to the Secretary,

[3] Section 28 Undertakings

Omit “either or both” from section 28(2). Insert instead “one or more”.

[4] Section 28(2)(c)

Insert after section 28(2)(b)—

- (c) provide the Secretary with a rectification bond that may be claimed or realised by the Secretary to meet the costs of eliminating, minimising or remediating a serious defect or a potential serious defect in a residential apartment building.

[5] Section 28(2A)

Insert after section 28(2)—

- (2A) If an undertaking requires a developer to provide a rectification bond, the undertaking must include—

- (a) the circumstances in which the rectification bond may be claimed or realised, and
- (b) the procedure for claiming or realising the rectification bond.

[6] Section 28(4)

Insert after section 28(3)—

- (4) In this section—
rectification bond means a bank guarantee, bond or other form of security acceptable to the Secretary.

[7] Section 33 Power to order rectification

Omit section 33(1). Insert instead—

- (1) The Secretary may give an order under this Part to a developer in relation to building work (a *building work rectification order*) if the Secretary has a reasonable belief that—
 - (a) the building work was or is being carried out in a way that could result in a serious defect in a residential apartment building, or
 - (b) a residential apartment building has a serious defect.

[8] Section 45 Notice to be given to other persons and bodies of proposed order

Omit section 45(1)(d).

[9] Section 56A

Insert after section 56—

56A Publicity orders

- (1) If a person is convicted by a court of an offence under this Act or the regulations, the court may order the person to take specified action to publicise—
 - (a) the offence, including the circumstances of the offence, and
 - (b) the consequences of the offence, and
 - (c) a prohibition order, building work rectification order or stop work order made in connection with the person, and
 - (d) a penalty imposed on the person under this Act or the regulations.
- (2) The court may, in the order, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If a person fails to comply with an order, the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise the failure to comply with the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the person.

[10] Section 68 Regulations

Insert after section 68(2)(a)—

- (a1) undertakings given by developers,

Explanatory note

Items [4]–[6] of the proposed amendments provide that the Secretary may accept an undertaking from a developer to provide a bank guarantee, bond or other form of security (a **rectification bond**) to the Secretary that may be applied to the costs of eliminating, minimising or remediating a serious defect or a potential serious defect in a residential apartment building. Items [1] and [3] make consequential amendments. Item [10] inserts a new regulation-making power relating to undertakings.

Item [2] enables the Secretary to make an order prohibiting the issue of an occupation certificate in relation to a residential apartment building if a developer fails to provide the Secretary with a rectification bond required under the terms of an undertaking given by the developer.

Item [7] enables the Secretary to give a building work rectification order to a developer if the Secretary has a reasonable belief that a residential apartment building has a serious defect. Currently, this order is only able to be given to a developer if the Secretary has a reasonable belief that building work was or is being carried out in a way that could result in a serious defect in the residential apartment building.

Item [8] removes the requirement for the Registrar-General to be notified of, and given the opportunity to make written representations about, a proposed building work rectification order.

Item [9] enables a court order to be made requiring a person convicted of an offence under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* or the regulations under that Act to publicise the offence. The person may also be required to publicise other matters, including if a prohibition order, building work rectification order or stop work order has been made in connection with the person.

1.13 Retirement Villages Act 1999 No 81

[1] Section 120B Any surplus to be carried over

Omit section 120B(1)(b). Insert instead—

- (b) the residents of the village consent to a proposal that the operator distribute the whole or any part of the surplus (the ***distributable amount***) to the existing residents of the village as follows—
 - (i) by allocating a per-premises amount to each existing residential premises in the village,
 - (ii) by distributing the per-premises amount allocated to each existing residential premises equally between the existing residents of the premises.

[2] Section 120B(5)

Insert after section 120B(4)—

- (5) In this section—
per-premises amount means an amount equal to the distributable amount divided by the number of existing residential premises in the retirement village.

[3] Section 168 Sale of premises

Insert at the end of section 168(5)—

Maximum penalty—50 penalty units.

[4] Section 182AB Former occupant may apply for payment of exit entitlement

Omit section 182AB(8). Insert instead—

- (8) If the Secretary does not make the exit entitlement order under section 182AC, the former occupant may not make another application for an exit entitlement order for the same residential premises until after the end of the period—
 - (a) starting on the day the immediately proceeding application was made, and
 - (b) ending on—

- (i) the day prescribed by the regulations, or
- (ii) a later day approved by the Secretary under section 182AE.

[5] Section 182AE Secretary may extend period before exit entitlement order may be made

Omit section 182AE(1). Insert instead—

- (1) The Secretary may, on application by an operator of a retirement village, approve—
 - (a) a period longer than the period prescribed by the regulations for the purposes of section 182AB(9), definition of *prescribed period*, paragraph (a), or
 - (b) a later day than the day prescribed by the regulations for the purposes of section 182AB(8)(b)(ii).

[6] Section 182AI Independent valuer to determine value of residential premises if no agreement

Insert at the end of section 182AI(4)(c)—

, and

- (d) include, or be accompanied by, any other information prescribed by the regulations.

Explanatory note

Items [1] and [2] of the proposed amendments provide that a surplus, or part of a surplus, in the annual accounts of a retirement village may, with the agreement of the existing residents of the village, be distributed equally based on the number of existing residential premises in the village rather than the number of existing residents.

Item [3] provides for a maximum penalty of 50 penalty units for the failure of a person appointed by a resident of a retirement village to sell the resident's premises to notify the resident of offers to purchase the premises or give the resident reports on the marketing of, and inquiries relating to, the premises.

Items [4] and [5] clarify that if a former occupant of residential premises in a retirement village applies for an exit entitlement order and the Secretary does not make the order, the former occupant must not make another application for an exit entitlement order until the expiration of a further prescribed period or a longer period approved by the Secretary.

Item [6] enables the regulations to prescribe additional information that a valuer must include in a valuation of a residence in a retirement village.

1.14 Storage Liens Act 1935 No 19

[1] Sections 5(1)(a) and 6(2)(b)

Omit “, including any person who has served upon the storer a prescribed notice of his or her claim to be the owner of the goods or of some interest therein” wherever occurring.

[2] Section 5 Notice of lien—goods deposited by person entrusted with possession

Insert after section 5(4)—

- (5) In this section—
 - owner* of goods includes a person who has served the storer of the goods with a written notice that contains the following—
 - (a) a claim of ownership or interest in the goods and, if applicable, the nature of the interest claimed,
 - (b) information identifying the goods to which the notice relates,
 - (c) the name and address of the person making the claim.

[3] Section 6 Power to sell goods

Insert after section 6(7)—

(8) In this section—

owner of goods includes a person who has served the storer of the goods with a written notice that contains the following—

- (a) a claim of ownership or interest in the goods and, if applicable, the nature of the interest claimed,
- (b) information identifying the goods to which the notice relates,
- (c) the name and address of the person making the claim.

Explanatory note

Items [2] and [3] of the proposed amendments set out the requirements for a notice served on a storer by a person claiming to be the owner of goods or to have an interest in goods.

Item [1] makes a consequential amendment.

1.15 Storage Liens Regulation 2019

Repeal

The *Storage Liens Regulation 2019* is repealed.

Explanatory note

The proposed amendment repeals the *Storage Liens Regulation 2019* as a consequence of the proposed amendments by this Act to the *Storage Liens Act 1935*.

1.16 Thoroughbred Racing Act 1996 No 37

Section 6 Membership

Omit “10” from section 6(4). Insert instead “12”.

1.17 Tow Truck Industry Act 1998 No 111

[1] Section 20 Licence conditions

Omit “to have reasonable access to the motor vehicle, during business hours and at no charge to the owner, to collect items from the motor vehicle,” from section 20(2)(d1).

Insert instead—

, or the owner’s agent, to—

- (i) have reasonable access to the motor vehicle, during business hours and at no charge to the owner, to collect items from the motor vehicle, and
- (ii) remove the motor vehicle from the holding yard after the owner, or the owner’s agent, has paid the fees that have been charged by the licensee in accordance with the regulations for the towing, salvage or storage of the motor vehicle, or for a service that is related to or ancillary to the towing, salvage or storage of the motor vehicle,

[2] Section 20(2)(d2)

Insert after section 20(2)(d1)—

- (d2) the licensee must not remove a vehicle stored at a holding yard used by the licensee in the course of the licensee’s business for the following purposes unless authorised to do so by the owner of the motor vehicle, or the owner’s agent—

- (i) repairing the motor vehicle,
- (ii) obtaining a quotation for repair,

[3] Section 91 Tow Truck Industry Fund

Insert after section 91(3)(b)—

- (c) all amounts required to meet expenditure incurred in a prosecution brought by the State, the Secretary or an authorised officer against a person who commits an offence under the following laws in connection with the carrying on of a business as a tow truck operator—
 - (i) this Act and the regulations,
 - (ii) *Australian Consumer Law (NSW)*,
 - (iii) *Crimes Act 1900*, and

Explanatory note

Items [1] and [2] of the proposed amendments provide additional licence conditions for tow truck operators. These conditions require a licensee to release a vehicle from their holding yard after the vehicle's owner or owner's agent has paid the fees charged by the licensee for the licensee's dealings with the vehicle, and prohibit a licensee from sending a vehicle away from the holding yard for repairs without the vehicle owner's or owner's agent's permission.

Item [3] enables payments to be made from the Tow Truck Industry Fund to fund the prosecution of offences under other legislation that may be committed by tow truck operators in the course of operating their business.

[Second reading speech made in—

Legislative Assembly on 12 May 2021

Legislative Council on 14 October 2021]