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Ind (JS)--Independent (Jacqui Scruby)

LEGISLATIVE ASSEMBLY

Property and Stock Agents Amendment (Underquoting and Other Agent Conduct) Bill 2026

First print

Proposed amendments

No. 1 **Commencement**

Page 2, clause 2, line 7. Omit "[13]–[19],". Insert instead "[13]–[19A],".

No. 2 **Investigations relating to complaints about anti-competitive behaviour**

Page 10, Schedule 1. Insert after line 13—

[19A] Section 76B

Insert after section 76A—

76B Investigations relating to anti-competitive complaints

(1) Before investigating a complaint made in relation to the conduct of a person (the ***respondent***) under this division, the Secretary must take reasonable steps to determine whether—

(a) the person making the complaint (the ***complainant***)—

(i) is a licensee or certificate holder, or a person related to a licensee or certificate holder, and

(ii) competes with the respondent in the same market, and

(b) the complaint may have been made for an anti-competitive purpose.

(2) If the Secretary determines the complaint may have been made for an anti-competitive purpose, the Secretary must—

(a) record that determination in writing, and

(b) give elevated weight to that determination when deciding whether to take action under this Act against the respondent in response to the complaint.

(3) If the Secretary identifies a pattern of complaints by the same person against competing licensees or agencies, the Secretary must refer the matter to the Australian Competition and Consumer Commission for consideration under the *Competition and Consumer Act 2010* of the Commonwealth.

(4) In this section—

person related to a licensee or certificate holder includes a person who is an employee, officer, director, contractor or associate of the licensee or certificate holder.

No. 3 **Disciplinary action**

Page 11, Schedule 1[24], proposed section 192A, lines 15–21. Omit all words on the lines. Insert instead—

192A Factors to consider in taking disciplinary action

(1) In determining appropriate disciplinary action under section 192, the Secretary must consider the following—

(a) the nature and seriousness of the contravention, including whether the contravention was intentional, reckless or inadvertent,

(b) the number of contraventions of this Act and the regulations previously committed by the person,

(c) the extent to which the contravention caused harm to a consumer or the public interest,

(d) whether the person took steps to remedy the contravention and cooperated with the Secretary, the Department and NSW Fair Trading,

(e) the remuneration or financial circumstances of the person, including, for a proposed monetary penalty under section 192(1)(d)—

(i) whether the person is employed or engaged primarily on a commission-only basis, and

(ii) whether imposition of the penalty would reduce the person's net income below the applicable minimum wage for the relevant period,

(f) whether the contravention constitutes a minor administrative or procedural error as distinct from substantive misconduct that resulted in consumer detriment,

(g) any other matter the Secretary considers relevant.

(2) Nothing in this section limits the Secretary's power to take disciplinary action against a person under section 192.

No. 4 **Show cause notice and disciplinary action**

Page 11, Schedule 1. Insert after line 21—

[24A] Section 195 Show cause notice

Omit section 195(2) and (3). Insert instead—

(2) A show cause notice is a notice requiring the person on whom it is served (the ***respondent***) to show cause why the disciplinary action specified in the notice (the ***proposed disciplinary action***) should not be taken against the person under this Act.

(3) A show cause notice must—

(a) be in writing, and

(b) specify the grounds for taking the proposed disciplinary action and the evidence relied on to establish the grounds, and

(c) specify a period of not less than 21 days after service of the notice as the period that the respondent has to show cause why the proposed disciplinary action should not be taken against the person.

[24B] Section 198 Taking of disciplinary action

Insert after section 198(1)—

(1A) In deciding whether to take disciplinary action against the person, the Secretary must consider any submissions made by the person under section 195(4).

No. 5 **Scope and notice of investigations**

Page 11, Schedule 1. Insert before line 22—

[24C] Sections 208A and 208B

Insert after section 208—

208A Scope of investigations

(1) The scope of an investigation conducted by an authorised officer under this Act must be limited to—

(a) the contravention or suspected contravention that gave rise to the investigation, and

(b) a contravention or suspected contravention identified during the investigation that is directly related to or arises from the conduct being investigated.

(2) An authorised officer must not expand the scope of an investigation beyond subsection (1) unless—

(a) the officer has reasonable grounds to believe a further contravention has occurred, and

(b) the officer has made a written record of the grounds for the officer's belief.

(3) Compliance audits conducted by an authorised officer that are not initiated by a complaint or identified contravention—

(a) must not be conducted more than once in any 12-month period in relation to the same licensee or agency, and

(b) must be risk-based and prioritised in accordance with criteria approved and published by the Secretary.

208B Notice of investigations

(1) Within 30 days after commencing an investigation under this Act, the Secretary must give the person the subject of the investigation written notice of—

(a) the nature of the alleged contravention being investigated, and

(b) the legislative basis for the investigation.

(2) An investigation under this Act must be completed, and a decision made as to whether to take action in relation to the person the subject of the investigation, within 12 months after starting the investigation unless—

(a) the Secretary has, in writing, granted an extension of the investigation period of not more than 6 months, and

(b) the person the subject of the investigation has been given written notice of the extension and the reasons for the extension.

(3) An authorised officer exercising a function under this part must, at the time of exercising the function, give the person in relation to whom the function is being exercised—

(a) written evidence of the officer's authorisation, and

(b) a written statement of the purpose for which the function is being exercised.