

# Consumer Protection Legislation Amendment and Repeal Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**Consumer Protection Legislation Amendment  
and Repeal Bill 2005**

**A Bill for**

**An Act to —**

- amend the *Builders' Registration Act 1939*;
  - amend the *Consumer Affairs Act 1971*;
  - amend the *Credit (Administration) Act 1984*;
  - amend the *Fair Trading Act 1987*;
  - amend the *Land Valuers Licensing Act 1978*;
  - amend the *Motor Vehicle Dealers Act 1973*;
  - amend the *Real Estate and Business Agents Act 1978*;
  - amend the *Residential Tenancies Act 1987*;
  - amend the *Retirement Villages Act 1992*;
  - amend the *Settlement Agents Act 1981*;
  - amend the *Travel Agents Act 1985*;
  - repeal the *Trading Stamp Act 1981*,
- and for related purposes.

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Consumer Protection Legislation Amendment and Repeal Act 2005*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

## Part 2 — *Builders' Registration Act 1939* amended

### 3. The Act amended

The amendments in this Part are to the *Builders' Registration Act 1939*\*.

5 [\* Reprinted as at 11 January 2002.  
For subsequent amendments see *Western Australian  
Legislation Information Tables for 2004, Table 1, p. 44.*]

### 4. Section 3 amended

10 Section 3(1a) is repealed and the following subsection is  
inserted instead —

“

(1a) Notwithstanding subsection (1) —

- 15 (a) section 4B applies throughout the State; and  
(b) sections 12A and 12B apply throughout the  
State to building work that is home building  
work as defined in the *Home Building  
Contracts Act 1991* section 3(1).

”

**Part 3 — Consumer Affairs Act 1971 amended**

**5. The Act amended**

The amendments in this Part are to the *Consumer Affairs Act 1971*\*.

5 [\* Reprint 4 as at 9 July 2004.  
For subsequent amendments see *Western Australian  
Legislation Information Tables for 2004, Table 1, p. 91.*]

**6. Section 23G amended**

10 Section 23G(1) is amended by deleting “12 months” and  
inserting instead —

“ 3 years ”.

**7. Section 23Q amended**

Section 23Q(6) is amended by inserting after “revoke” —

“ or amend ”.

15 **8. Section 23R amended**

(1) Section 23R(2), (3) and (4) are repealed and the following  
subsections are inserted instead —

“

20 (2) The Commissioner may make an order prohibiting the  
supply of goods of a class or description without  
making a reference to the Committee under  
section 23L(1) if —

- 25 (a) the supply of goods of that class or description  
is prohibited under a law of the Commonwealth  
or another State or a Territory; and
- (b) the Commissioner considers it necessary in the  
interests of the safety of the public to make the  
order.



5 (3) If the supply of goods of a class or description is  
allowed under a law of the Commonwealth or another  
State or a Territory subject to conditions or restrictions  
relating to the goods, the Commissioner, without  
making a reference to the Committee under  
section 23L(1) in respect of goods of that class or  
description, may if he considers it necessary in the  
interests of the safety of the public make an order  
10 allowing the supply of goods of that class or  
description in this State, subject to conditions or  
restrictions specified or referred to in the order being  
conditions or restrictions that are in conformity with  
those specified or referred to under that law that relate  
to the goods.

15 (4) For the avoidance of doubt, an order made under  
subsection (2) or (3) is not affected by the subsequent  
amendment, repeal or expiry of a law referred to in  
those subsections.

20 (2) Section 23R(6) is repealed and the following subsection is  
inserted instead —

“  
25 (6) The Commissioner may by notice published in the  
*Gazette* on his own motion, or on the recommendation  
of the Committee, revoke or amend an order made  
under this section.

9. **Section 23U amended**

30 Section 23U(2)(b) is amended by deleting “Standards Australia”  
and inserting instead —

“  
Standards Australia, as in force at the time of  
adoption or as amended from time to time

**Part 4 — *Credit (Administration) Act 1984* amended**

**10. The Act amended**

The amendment in this Part is to the *Credit (Administration) Act 1984*\*.

5 [\* *Reprint 2 as at 6 August 2004.*  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 103.*]

**11. Part VA inserted**

After section 44 the following Part is inserted —

10 “

**Part VA — Consumer Credit Fund**

**44A. Establishment of Consumer Credit Fund**

- (1) There is hereby established a fund to be called the Consumer Credit Fund.
- 15 (2) The Consumer Credit Fund is —
- (a) to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
  - (b) with the approval of the Treasurer, to be kept at
- 20 a bank.
- (3) If subsection (2)(b) applies, moneys standing to the credit of the Consumer Credit Fund that are not immediately required for the purposes of section 44C may, if approved by the Treasurer, be invested in any
- 25 manner that moneys in the Public Bank Account may be invested under section 38 of the *Financial Administration and Audit Act 1985*.

**44B. Payments to Consumer Credit Fund**

(1) The Consumer Credit Fund is the fund established and operated for the purpose of section 106 of the *Consumer Credit (Western Australia) Code*.

- 5 (2) The Consumer Credit Fund is to be credited with —
- (a) any amount paid to the fund by a credit provider;
  - (b) income derived from the investment, under section 44A, of moneys standing to the credit of the Consumer Credit Fund;
  - 10 (c) any moneys received by, made available to or payable to the Consumer Credit Fund;
  - (d) costs awarded to the Commissioner in a proceeding under this Act; and
  - 15 (e) costs awarded to the Commissioner in a proceeding under the *Credit Act 1984*.

**44C. Payments from Consumer Credit Fund**

The Consumer Credit Fund is to be applied by the Commissioner for —

- 20 (a) the payment of such moneys as are approved by the Minister, on the terms approved by the Minister, for the following purposes —
- (i) providing financial counselling services to consumers;
  - 25 (ii) giving legal advice to consumers about consumer credit;
  - (iii) providing information about consumer credit;
  - (iv) providing research about the use of credit;
  - 30 (b) the administration of this Act;

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- (c) legal fees incurred by the Commissioner, or costs awarded against the Commissioner, in a proceeding under this Act; and
- (d) legal fees incurred by the Commissioner, or costs awarded against the Commissioner, in a proceeding under the *Credit Act 1984*.

5

**44D. Report on operations of Consumer Credit Fund**

For the purposes of section 52 of the *Financial Administration and Audit Act 1985*, the administration of the Consumer Credit Fund is to be taken to be a service of the department principally assisting the Minister in the administration of this Act.

10

”

**Part 5 — Fair Trading Act 1987 amended**

**12. The Act amended**

The amendment in this Part is to the *Fair Trading Act 1987*.\*

[\* Reprint 2 as at 24 June 2005.]

5 **13. Part II Division 4 inserted**

After section 32 the following Division is inserted in Part II —

“

**Division 4 — Third party trading schemes**

**32A. Interpretation**

10 In this Division —

“**approved third party trading scheme**” means a third party trading scheme in relation to which a notice has been given under section 32B;

15 “**prohibited third party trading scheme**” means a third party trading scheme that is the subject of a declaration under section 32C;

20 “**third party trading scheme**” means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition, or one of a number of conditions, compliance with which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession, or advantage in  
25 connection with the acquisition of goods or services.

**32B. Minister may approve third party trading scheme**

- (1) The Minister may, on application, give notice in writing that a specified third party trading scheme is an approved third party trading scheme.
- 5 (2) The Minister is not to approve a third party trading scheme under this section unless satisfied that the scheme is genuine, reasonable, and not contrary to the interests of consumers.
- 10 (3) An approval under this section may be given subject to such conditions as the Minister thinks fit and specifies in the notice to the applicant.
- (4) An application under this section is to be supported by such information as the Minister may require.

**32C. Prohibition of third party trading scheme**

- 15 (1) The Commissioner may recommend to the Minister that a third party trading scheme be declared to be a prohibited third party trading scheme if —
- 20 (a) the scheme is not an approved third party trading scheme and the Commissioner is of the opinion that the scheme is not genuine and reasonable or is contrary to the interests of consumers;
- 25 (b) in the case of an approved third party trading scheme, a condition of the approval has been contravened or not complied with; or
- (c) in the case of an approved third party trading scheme, the scheme is conducted in a manner that is not genuine, reasonable or in the interests of consumers.
- 30 (2) The Minister may, on the recommendation of the Commissioner, by notice published in the *Gazette*,

declare a third party trading scheme to be a prohibited third party trading scheme.

- (3) The Minister may by notice published in the *Gazette* revoke a declaration under this section.

5       **32D.    Offence**

A person who —

- 10       (a) acts as a promoter of a prohibited third party trading scheme;
- (b) as a party to a prohibited third party trading scheme, supplies goods or services; or
- (c) publishes an advertisement relating to a prohibited third party trading scheme or causes such an advertisement to be published,

commits an offence.

15       Penalty: \$5 000.

**32E.    Codes of practice**

20       The Governor may make regulations prescribing codes of practice to be complied with by persons who act as promoters of third party trading schemes or supply goods or services as parties to such schemes.

”.

**Part 6 — Land Valuers Licensing Act 1978 amended**

**14. The Act amended**

The amendments in this Part are to the *Land Valuers Licensing Act 1978*\*

5 [\* Reprinted as at 3 May 2002.  
For subsequent amendments see *Western Australian  
Legislation Information Tables for 2004, Table 1, p. 244.*]

**15. Section 12 amended**

10 Section 12(6) is amended by deleting “\$500.” and inserting  
instead —

“ \$5 000. ”.

**16. Section 13 amended**

Section 13(2) is amended by deleting “\$500.” and inserting  
instead —

15 “ \$5 000. ”.

**17. Section 23 amended**

Section 23(1) is amended by deleting “\$500.” and inserting  
instead —

“ \$50 000. ”.

20 **18. Section 24 amended**

Section 24(1) is amended by deleting “\$500.” and inserting  
instead —

“ \$50 000. ”.



**19. Section 25 amended**

Section 25(3) is amended by deleting “\$500.” and inserting instead —

“ \$5 000. ”.

5 **20. Section 28 amended**

Section 28(1)(b) is amended by deleting “\$500” and inserting instead —

“ \$10 000 ”.

**21. Section 29A amended**

10 Section 29A(1) is amended by deleting “\$250.” and inserting instead —

“ \$2 000. ”.

**22. Section 33 amended**

15 Section 33(2) is amended by deleting “\$500.” and inserting instead —

“ \$5 000. ”.

**23. Section 36 amended**

Section 36(2)(g) is amended by deleting “\$100” and inserting instead —

20 “ \$1 000 ”.

**Part 7 — *Motor Vehicle Dealers Act 1973* amended**

**24. The Act amended**

The amendments in this Part are to the *Motor Vehicle Dealers Act 1973*\*.

5 [\* Reprint 4 as at 17 June 2005.]

**25. Section 32K amended**

Section 32K(4) is amended by deleting “agent” and inserting instead —

“ dealer ”.

**Part 8 — *Real Estate and Business Agents Act 1978* amended**

**26. The Act amended**

5 The amendments in this Part are to the *Real Estate and Business Agents Act 1978*\*.

[\* *Reprint 5 as at 8 April 2005.*

*For subsequent amendments see Acts Nos. 59 and 84 of 2004.]*

**27. Section 4 amended**

10 Section 4(4) is amended as follows:

- (a) after paragraph (b) by deleting “or”;
- (b) after paragraph (c) by deleting the full stop and inserting instead —

“

15

; or

20

- (d) a person, other than a licensee, when performing a prescribed duty as an agent for the owner of premises ordinarily used for holiday accommodation, whether or not for consideration, in respect of the right of a person to occupy those premises for a period of not more than 3 consecutive months.

”.

**Part 9 — Residential Tenancies Act 1987 amended**

**28. The Act amended**

The amendments in this Part are to the *Residential Tenancies Act 1987*\*.

5 [\* Reprint 3 as at 27 May 2005.]

**29. Section 13B inserted**

After section 13A the following section is inserted —

“

**13B. Appeals from decisions of a registrar**

10 A person dissatisfied with a decision of a registrar in respect of a matter on which a registrar has exercised jurisdiction under section 13A(2) may appeal to a magistrate under section 29 of the *Magistrates Court Act 2004*.

15

”.

**30. Section 26 amended**

Section 26(1) is amended by deleting “, or by a registrar acting under section 13A(2),”.

**31. Section 29 amended**

20 Section 29(4)(c) is amended by deleting “in the prescribed form” and inserting instead —

“ in a form approved by the Minister ”.

**32. Schedule 1 amended**

25 (1) Schedule 1 clause 2(1)(a) is amended by inserting after “either directly” —

“ , including by electronic means, ”.

- (2) Schedule 1 clause 5(1)(a) is amended by deleting “in the prescribed form” and inserting instead —  
“ in a form approved by the Minister ”.
- 5 (3) Schedule 1 clause 5(1)(a)(ii) is amended by inserting after “lodged” —  
“ , including lodged by facsimile or electronic means, ”.
- (4) Schedule 1 clause 7(1)(a) is amended by deleting “in the prescribed form” and inserting instead —  
“ in a form approved by the Minister ”.
- 10 (5) Schedule 1 clause 7(3)(a) is amended by deleting “in the prescribed form” and inserting instead —  
“ in a form approved by the Minister ”.

**Part 10 — Retirement Villages Act 1992 amended**

**33. The Act amended**

The amendments in this Part are to the *Retirement Villages Act 1992*\*.

5 [\* Reprint 2 as at 1 April 2005.]

**34. Section 5 amended**

- (1) Section 5 is amended by inserting before “Except as” the subsection designation “(1)”.
- (2) At the end of section 5 the following subsection is inserted —

10 “

- (2) This Act does not apply to a resident or prospective resident of a retirement village or to the administering body of that retirement village if —
- (a) the administering body is an “approved provider” as defined in the *Aged Care Act 1997* Schedule 1 of the Commonwealth in relation to the residential premises used or intended to be used as a place of residence by the resident or prospective resident;
- (b) the administering body provides, or is to provide, the resident or prospective resident with “residential care” as defined in the *Aged Care Act 1997* section 41-3 of the Commonwealth; and
- (c) the resident or prospective resident is receiving, or is entitled to receive, residential care in respect of which the administering body is eligible for a “residential care subsidy” as defined in the *Aged Care Act 1997* Schedule 1 of the Commonwealth.

”

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**Part 11 — *Settlement Agents Act 1981* amended**

**35. The Act amended**

The amendment in this Part is to the *Settlement Agents Act 1981*\*.

5 [\* Reprint 3 as at 8 July 2005.]

**36. Section 49 amended**

After section 49(5) the following subsections are inserted —

“

(5a) If—

- 10 (a) a settlement of a real estate transaction or a  
business transaction is completed;
- 15 (b) the settlement agent who arranged or effected  
the settlement received moneys in respect of the  
real estate transaction or business transaction in  
the course of arranging or effecting the  
settlement; and
- 20 (c) the settlement agent is authorised in writing by  
the vendor to make a payment from those  
moneys to an agent as payment of the whole or  
part of the commission, reward or remuneration  
to which the agent is entitled for arranging the  
real estate transaction or business transaction to  
which the settlement relates,

25 the settlement agent may, despite subsections (4) and  
(5), pay to the agent from those moneys such sum as  
the settlement agent is so authorised to pay.

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(5b) In subsection (5a) —

“**agent**” means an agent as defined in section 4(1) of  
the *Real Estate and Business Agents Act 1978* who  
is entitled to a commission, reward or  
remuneration for arranging the real estate  
transaction or business transaction to which a  
settlement relates;

“**vendor**” means the person or persons lawfully  
entitled to receive the purchase price in respect of  
a real estate transaction or business transaction.

”



**Part 12 — *Trading Stamp Act 1981* repealed**

**37. *Trading Stamp Act 1981* repealed**

The *Trading Stamp Act 1981* is repealed.

**Part 13 — *Travel Agents Act 1985* amended**

**38.        The Act amended**

(1)        The amendments in this Part are to the *Travel Agents Act 1985*\*.

          [\* *Reprint 2 as at 6 June 2003.*

5            *For subsequent amendments see Western Australian  
          Legislation Information Tables for 2004, Table 1, p. 465-6.]*

(2)        Section 5(2) is amended as follows:

          (a)     in paragraph (b) by deleting “or any statutory  
                  corporation representing the Crown”;

10          (b)     in paragraph (c) by inserting after “prescribed” —  
                  “     statutory corporation or     ”.

=====