

***CONSUMER PROTECTION LEGISLATION  
AMENDMENT AND REPEAL BILL 2005***

***EXPLANATORY MEMORANDUM***

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

### **Overview of the Bill**

The proposed *Consumer Protection Legislation Amendment and Repeal Bill 2005* makes amendments to a number of Acts within the portfolio of Consumer Protection. The amendments correct anomalies, improve consumer protection, streamline administrative practices and remove unnecessary legislation. The Bill repeals one Act and amends 11 Acts. In particular, the Bill:

- amends the *Builders' Registration Act 1939* to correct a drafting oversight so that the building licence levy will apply throughout the State as intended by the *Building Legislation Amendment Act 2000*;
- amends the *Consumer Affairs Act 1971* to extend the term of membership of members of the Consumer Product Safety Committee from one to three years and to enable the Commissioner for Fair Trading to make product safety orders in the interests of public safety, that have been promulgated under product safety laws in other States and Territories, or by the Commonwealth;
- amends the *Credit (Administration) Act 1984* to establish a Consumer Credit Fund in order for civil penalty amounts awarded against credit providers who have breached the Consumer Credit Code to be able to be distributed for purposes of advancing consumer credit issues such as providing financial counselling services, providing legal advice and providing information and research about the use of consumer credit;
- amends the *Land Valuers Licensing Act 1978* to increase all penalties under the Act in line with the recommendations of the Temby Royal Commission;
- amends the *Motor Vehicle Dealers Act 1973* to correct a drafting oversight resulting from the *Motor Vehicle Dealers Amendment Act 2002* where the term "agent" was used instead of "dealer" in a trust account provision;
- amends the *Residential Tenancies Act 1987* to overcome inconsistencies by enabling decisions regarding tenancy disputes made by Registrars in the Magistrates Court to be able to be appealed and amends Schedule 1 of the Act to provide for the electronic lodging of bond monies;

- amends the *Real Estate and Business Agent Act 1978* to exempt holiday accommodation managers from the licensing provisions of the Act;
- amends the *Retirement Villages Act 1992* to exempt residential aged care facilities that achieve and maintain Commonwealth certification or accreditation under the provisions of the *Commonwealth Aged Care Act 1997* from the provisions of the *Retirement Villages Act 1992*;
- amends the *Settlement Agents Act 1981* to provide certainty for the vendor's settlement agent being able to withdraw trust monies after settlement to pay the commission, or balance of the commission, of the real estate agent in accordance with the authorisation of the vendor;
- repeals the *Trading Stamps Act 1981* to overcome outmoded concepts which prohibit businesses offering coupons, that can be redeemed from a third party, in connection with the sale of their goods or services, and as a result of the repeal, amends the *Fair Trading Act 1987* to provide for the Minister to approve benign third party trading schemes and prohibit others that are contrary to fair trading principles; and
- amends the *Travel Agents Act 1985* to implement a National Competition Policy review recommendation to remove the Crown's exemption from compliance with the Act.

**Part 1 - Preliminary**

- Clause 1: The Act may be cited as the *Consumer Protection Legislation Amendment and Repeal Bill 2004*.
- Clause 2: Provides for the commencement of the proposed Act on a day fixed by Proclamation. Different days may be fixed for different provisions to commence.

**Part 2 – Builders’ Registration Act 1939 amended**

- Clause 3: Identifies that the amendments in this part are to the *Builders’ Registration Act 1939*.
- Clause 4: This clause repeals existing section 3(1a) and inserts a new subsection 3(1a) that includes provision so that the building licence levy payable under section 4B of the Act will apply throughout the State. The provision regarding the application of sections 12A and 12B has been retained. This enables consumers throughout the State to access the Building Disputes Tribunal.

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

- Clause 5: Identifies that the amendments in this part are to the *Consumer Affairs Act 1971*.
- Clause 6: Amends section 23G(1) to extend the terms of appointment for members of the Consumer Products Safety Committee from 12 months to 3 years.
- Clause 7: Amends section 23Q(6) to include provision for the Commissioner for Fair Trading or the Consumer Products Safety Committee to be able to amend interim product safety orders.
- Clause 8: Repeals section 23R(2) and inserts a new section 23R(2) to enable the Commissioner for Consumer Affairs to make an order prohibiting the supply of goods of a class or description, in the interests of public safety, without reference to the Consumer Products Safety Committee if the supply of goods of that class or description is prohibited under a law of the Commonwealth or another State or Territory.

Clause 8 (cont'd): Repeals section 23R(3) and inserts a new section 23R(3) to provide that if the supply of goods of a class or description is allowed under a law of the Commonwealth or another State or Territory and is subject to conditions or restrictions, the Commissioner for Consumer Affairs is able to make an order that allows the supply of goods of a class or description, in the interests of public safety, without reference to the Consumer Products Safety Committee subject to conditions or restrictions that conform with those specified under that law that relates to the goods.

To avoid doubt provision has also been made in proposed section 23R(4) to provide that an order made under proposed sections 23R(2) and 23R(3) is not affected by the subsequent amendment, repeal or expiry of a law referred to in these sections.

Section 23R(6) is repealed and inserted as a single clause that provides for orders made under section 23R that have been revoked or amended by the Commissioner for Consumer Affairs on his own motion, or on the recommendation of the Consumer Products Safety Committee, to be published in the *Government Gazette*.

Clause 9: Amends section 23U(2)(b) to clarify that regulations which are made for safety requirements, adopt Australian Standards or Standards Australia rules, codes or specifications that are in force at the time of the adoption or as amended from time to time.

#### **Part 4 – Credit (Administration) Act 1984 amended**

Clause 10: Identifies that the amendments in this part are to the *Credit (Administration) Act 1984*.

Clause 11: Inserts Part VA after section 44 in the *Credit (Administration) Act 1984* to establish the Consumer Credit Fund.

Proposed section 44A establishes and names the Fund and outlines the financial management requirements for the Fund.

Proposed section 44B identifies that the Fund is established and operated for the purpose of section 106 of the *Consumer Credit (Western Australia) Code* which provides for the payment of civil penalty amounts awarded by the Court against a credit provider.

Clause 11 (cont'd): The Fund may be credited with money from various means, such as:

- any amount paid to the Fund by a credit provider;
- income derived from investment of monies standing to the credit of the Fund;
- any moneys received by, made available to or payable to the Fund;
- costs awarded to the Commissioner for Fair Trading in a proceeding under the *Credit (Administration) Act 1984*;
- costs awarded to the Commissioner for Fair Trading in a proceeding under the *Credit Act 1984*.

Proposed section 44C identifies that the Fund is to be applied by the Commissioner for Fair Trading for the payment of such moneys as are approved by the Minister, on the terms approved by the Minister, for the following purposes:

- providing financial counselling services to consumers;
- giving legal advice to consumers about consumer credit;
- providing information about consumer credit;
- providing research about the use of credit.

The Commissioner is also able to apply the Fund for the administration of the *Credit (Administration) Act 1984* or for legal fees incurred by the Commissioner, or costs awarded against the Commissioner, in a proceeding under the *Credit (Administration) Act 1984* or the *Credit Act 1984*.

Proposed section 44D stipulates the reporting requirements on the operation of the Consumer Credit Fund. For the purposes of section 52 of the *Financial Administration and Audit Act 1985*, the administration of the Fund is to be taken to be a service of the department principally assisting the Minister in the administration of *Credit (Administration) Act 1984*.

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

Clause 12: Identifies that the amendments in this part are to the *Fair Trading Act 1987*.

Clause 13: Inserts Division 4 – Third Party Trading Schemes after section 32 in Part II of the *Fair Trading Act 1987*.

For the purposes of the Division 4, proposed section 32A defines an “approved third party trading scheme,” a “prohibited third party trading scheme” and a “third party trading scheme.”

Proposed section 32B provides that the Minister may, on application, give written notice that a specified third party trading scheme is an approved third party trading scheme. In order to approve a scheme, the Minister is required to be satisfied that the scheme is genuine, reasonable and not contrary to the interests of consumers. The Minister may require applications under this section to be supported with such information as required and schemes may be approved subject to such conditions as the Minister thinks fit and specifies in the notice.

Proposed section 32C provides for the Commissioner for Fair Trading to be able to recommend to the Minister, that a third party trading scheme be declared to be a prohibited third party trading scheme if it is not an approved scheme and the Commissioner is of the opinion that the scheme is not genuine and reasonable or is contrary to the interests of consumers. In the case of an approved scheme the Commissioner can recommend to declare the scheme prohibited if a condition of the approval has been contravened or not complied with or the scheme is conducted in a manner that is not genuine, reasonable or in the interests of consumers. The Minister may publish in the *Government Gazette*, notice of a prohibited scheme or a notice revoking such a declaration.

Proposed section 32D provides for an offence punishable by a \$5,000 maximum penalty if a person is convicted of:

- acting as a promoter of a prohibited third party scheme;
- as a party to a prohibited scheme, supplying goods or services; or
- publishing an advertisement relating to a prohibited scheme or causes such an advertisement to be published.

Clause 13 (cont'd): Proposed section 32E provides for the Governor to make regulations prescribing codes of practice that must be complied with by persons who promote third party schemes or supply goods or services as parties to such schemes.

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

Clause 14: Identifies that the amendments in this part are to the *Land Valuers Licensing Act 1978*.

Clause 15: Amends section 12(6) to increase the maximum penalty to \$5,000 if a person is convicted of demanding or receiving a fee or reward for representing a party to proceedings before the Board, unless that person is a legal practitioner.

Clause 16: Amends section 13(2) to increase the maximum penalty to \$5,000 if a person is convicted:

- for failing to attend before the Board (without a reasonable excuse) after being served with a summons;
- for failing to produce any books, papers or documents (without a reasonable excuse) as required by a summons;
- for misbehaving before the Board, willfully insulting the Board or interrupting Board proceedings; or
- for refusing to be sworn in or affirmed, or to answer any relevant question when required to do so by the Board.

Clause 17: Amends section 23(1) to increase the maximum penalty to \$50,000 if a person is convicted of being an unlicensed land valuer.

Clause 18: Amends section 24(1) to increase the maximum penalty to \$50,000 if a person is convicted of implying that they are a licensed land valuer.

Clause 19: Amends section 25(3) to increase the maximum penalty to \$5,000 if a licensed land valuer is convicted of demanding or receiving, in respect of any service rendered, any remuneration exceeding a *Gazetted* amount.

- Clause 20: Amends section 28(1)(b) to increase the maximum fine to \$10,000 that the Board may impose on a land valuer as a disciplinary action following an Inquiry.
- Clause 21: Amends section 29A(1) to increase the maximum penalty to \$2,000 if a land valuer is convicted of not giving notice in writing to the Board as soon as practicable of a change in their particulars.
- Clause 22: Amends section 33(2) to increase the maximum penalty to \$5,000 if a person who is, or has been, an officer of the Board is convicted of breaching the secrecy provisions the Act.
- Clause 23: Amends section 36(2)(g) to increase the maximum penalty to \$1,000 if a person is convicted of breaching the regulations of the Act.

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

- Clause 24: Identifies that the amendment in this part is to the *Motor Vehicle Dealers Act 1973*.
- Clause 25: Amends section 32K(4) to correct a drafting anomaly that referred to “agent” instead of “dealer” for the purposes of the section.

**Part 8 – Real Estate and Business Agents Act 1978**

- Clause 26: Identifies that the amendments in this part are to the *Real Estate and Business Agents Act 1978*.
- Clause 27: Amends section 4(4) to include a provision that exempts a person from the licensing requirements of the Act where that person (provided they are not a licensee under the Act) performs a prescribed duty as an agent for the owner of premises, whether or not for consideration, in respect of the right of a person to occupy the premises for a holiday.

A new subsection 5 is inserted to clarify that for the above purpose that unless proof to the contrary can be provided, holiday accommodation occurs when, the right to occupy premises for a holiday is for a fixed term of less than 3 months.

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

Clause 28: Identifies that the amendments in this part are to the *Residential Tenancies Act 1987*.

Clause 29: Inserts section 13B to enable a person who is dissatisfied with the decision of a Registrar in respect of matter in which the Registrar has exercised jurisdiction under section 13A(2) to appeal the decision to a Magistrate.

Clause 30: Amends section 26(1) by deleting the words “or by a registrar acting under section 13A(2)” that would be inconsistent with new section 13B which creates the right of appeal in relation to matters dealt with by a Registrar.

Clause 31: Amends section 29(4)(c) to enable the Minister to approve the form in which a person shall keep, or cause to be kept, a security bond paid in relation to a residential tenancy.

Clause 32: Amends various clauses in Schedule 1 of the Act. These being:

- clause 2(1)(a) to enable security bonds to also be lodged by electronic means;
- clause 5(1)(a) to enable applications for the disposal of a security bond to the bond administrator to be in a form approved by the Minister;
- clause 5(1)(a)(ii) to enable applications for the disposal of a security bond to the bond administrator to be lodged by facsimile or electronic means;
- clause 7(1)(a) to enable applications for the disposal of a security bond to a real estate agent to be in a form approved by the Minister; and
- clause 7(3)(a) to enable applications for the disposal of a security bond to an authorised financial institution to be in a form approved by the Minister.

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

Clause 33: Identifies that the amendments in this part are to the *Retirement Villages Act 1992*.

Clause 34 The amendment to section 5 will exempt a resident, or prospective resident, of a retirement village or the administering body of a village if:

- the administering body is an “approved provider” as defined in the Commonwealth *Aged Care Act 1997* in relation to the residential premises used or intended to be used as a place of residence by a resident or prospective resident;
- the administering body provides, or is to provide, a resident or prospective resident with “residential care” as defined in the Commonwealth *Aged Care Act 1997*; and
- a resident or prospective resident is receiving or entitled to receive residential care for which the administering body is eligible for a “residential care subsidy” as defined in the Commonwealth *Aged Care Act 1997*

from the provisions of the *Retirement Villages Act 1992*.

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

Clause 35: Identifies that the amendments in this part are to the *Settlement Agents Act 1981*.

Clause 36: Inserts a new subsections (5a) and (5b) after section 49(5).

Subsection (5a) provides that a settlement agent who has completed a settlement of a real estate or business transaction and received moneys in the course of effecting the settlement is able to withdraw trust moneys after settlement to pay the commission, or balance of the commission, of the real estate agent in accordance with the written authorisation of the vendor.

Subsection (5b) defines “agent” and “vendor” for the purposes of subsection (5a).

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

Clause 37: Repeals the *Trading Stamp Act 1981*.

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

Clause 38: Identifies that the amendments in this part are to the *Travel Agents Act 1985*.

Amends section 5(2) to remove the Crown's exemption from compliance with the Act.