

Consumer Protection Legislation Amendment Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Consumer Protection Legislation Amendment
Bill 2018**

A Bill for

An Act to amend —

- **the *Auction Sales Act 1973*; and**
- **the *Charitable Collections Act 1946*; and**
- **the *Debt Collectors Licensing Act 1964*; and**
- **the *Fair Trading Act 2010*; and**
- **the *Home Building Contracts Act 1991*; and**
- **the *Land Valuers Licensing Act 1978*; and**
- **the *Real Estate and Business Agents Act 1978*; and**
- **the *Residential Tenancies Act 1987*; and**
- **the *Settlement Agents Act 1981*; and**
- **the *Street Collections (Regulation) Act 1940*.**

The Parliament of Western Australia enacts as follows:

1
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7
8
9
10

Part 1 — Preliminary

1. Short title

This is the *Consumer Protection Legislation Amendment Act 2018*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Auction Sales Act 1973 amended**

2 **3. Act amended**

3 This Part amends the *Auction Sales Act 1973*.

4 **4. Section 28 amended**

5 (1) At the end of section 28(5) insert:

6

7 Penalty for this subsection: a fine of \$25 000.

8

9 (2) Delete section 28(9).

10 **5. Section 35 amended**

11 Delete section 35(1) and (2).

12 **6. Various provisions amended**

13 At the end of the provisions listed in the Table insert:

14

15 Penalty for this subsection: a fine of \$25 000.

16

17

Table

s. 22(3)	s. 23(1)
s. 24(1)	s. 26(1) and (2)
s. 27(1)	s. 29(2)
s. 31(1), (2), (3), (4), (6) and (7)	

s. 7

1 **7. Various penalties amended**

2 Amend the provisions listed in the Table as set out in the Table.

3 **Table**

Provision	Delete	Insert
s. 6(6)	Penalty: \$500.	Penalty for this subsection: a fine of \$50 000.
s. 25(1)	Penalty: \$1 000 or imprisonment for 12 months.	Penalty for this subsection: a fine of \$50 000 or imprisonment for 12 months.
s. 30(2)	Penalty: \$500.	Penalty for this subsection: a fine of \$10 000.
s. 30(5)	Penalty: A fine of not more than \$1 000, or imprisonment for a term of not more than one year, or both such fine and imprisonment.	Penalty for this subsection: a fine of \$50 000 or imprisonment for 12 months, or both.

1 **Part 3 — Charitable Collections Act 1946 amended**

2 **8. Act amended**

3 This Part amends the *Charitable Collections Act 1946*.

4 **9. Section 5 amended**

5 In section 5 insert in alphabetical order:

6

7 *Commissioner* has the meaning given in the *Fair*
8 *Trading Act 2010* section 6.

9

10 **10. Section 6 amended**

11 (1) At the end of section 6(1) insert:

12

13 Penalty for this subsection: a fine of \$20 000.

14

15 (2) Delete section 6(2).

16 **11. Section 8 amended**

17 In section 8:

18 (a) delete “Minister” (1st occurrence) and insert:

19

20 Commissioner

21

22 (b) delete “Minister.” and insert:

23

24 Commissioner.

25

s. 12

1 **12. Section 9 amended**

2 (1) In section 9(2) delete “offence and liable to a penalty not
3 exceeding \$100.” and insert:

4
5 offence.

6
7 (2) At the end of section 9(2) insert:

8
9 Penalty for this subsection: a fine of \$5 000.
10

11 **13. Section 11 amended**

12 (1) In section 11(1) delete “shall be made to the Minister, who
13 shall” and insert:

14
15 must be made to the Commissioner, who must
16

17 (2) In section 11(2) delete “shall” and insert:

18
19 must
20

21 (3) In section 11(3) delete “Minister may, in his” and insert:

22
23 Commissioner may, in the Commissioner’s
24

25 **14. Section 12 amended**

26 (1) In section 12(1) delete “Minister” and insert:

27
28 Commissioner
29

1 (2) In section 12(2) delete “fixed by the Minister.” and insert:

2

3 imposed by the Commissioner.

4

5 (3) In section 12(3) delete “Minister” and insert:

6

7 Commissioner

8

9 (4) In section 12(4):

10 (a) delete “Minister —” and insert:

11

12 Commissioner —

13

14 (b) in paragraph (b) delete “Minister or a person authorised
15 by him” and insert:

16

17 Commissioner or a person authorised by the
18 Commissioner

19

20 **15. Section 13 amended**

21 In section 13(1) delete “Minister,” and insert:

22

23 Commissioner,

24

25 **16. Section 15 amended**

26 (1) Delete section 15(1) to (3) and insert:

27

28 (1) In this section —

29 *collection records* means —

30 (a) accounts setting out the money and goods

s. 16

- 1 collected or received by the collector for a
2 charitable purpose; and
- 3 (b) statements setting out the way the money and
4 goods collected or received by the collector
5 have been dealt with;
- 6 **collector** means a person, society, body, or association
7 that collects or receives money or goods for a
8 charitable purpose.
- 9 (2) A collector must keep collection records and retain
10 them for 7 years after the end of the financial year to
11 which they relate.
12 Penalty for this subsection: a fine of \$5 000.
- 13 (3) The Commissioner may require in writing that a
14 collector, within a specified time —
- 15 (a) give the Commissioner a copy of, or access to,
16 the collection records of the collector; or
- 17 (b) have the collection records of the collector
18 audited by an auditor approved by the
19 Commissioner and give the Commissioner a
20 copy of, or access to, the audited collection
21 records.
- 22 (3A) A collector must comply with a requirement under
23 subsection (3).
24 Penalty for this subsection: a fine of \$5 000.
- 25 (3B) Without limiting section 12(2), the Commissioner may
26 impose conditions relating to giving the Commissioner
27 collection records.
28
- 29 (2) In section 15(4) delete “any such penalty” and insert:
30
31 a penalty under subsection (2) or (3A),
32

1 **17. Section 18 deleted**

2 Delete section 18.

3 **18. Section 19 amended**

4 (1) In section 19(1):

5 (a) delete “shall be instituted” and insert:

6

7 is to be commenced

8

9 (b) delete “Minister.” and insert:

10

11 Commissioner.

12

13 (2) In section 19(2):

14 (a) delete “Minister” (1st and 2nd occurrence) and insert:

15

16 Commissioner

17

18 (b) delete “Minister,” and insert:

19

20 Commissioner,

21

22 **19. Section 20A inserted**

23 After section 20 insert:

24

25 **20A. Powers of investigation**

26 The *Fair Trading Act 2010* section 61 and Part 6 of
27 that Act, other than section 88E, apply for the purposes
28 of this Act.

29

1 **20. Section 22 inserted**

2 After section 21 insert:

3

4 **22. Transitional provision for *Consumer Protection***
5 ***Legislation Amendment Act 2018***

6 (1) In this section —

7 ***authority*** means the authority referred to in
8 section 6(1)(g);

9 ***commencement day*** means the day on which the
10 *Consumer Protection Legislation Amendment Act 2018*
11 section 11 comes into operation.

12 (2) The Minister's approval of a means of giving an
13 authority under section 8 of this Act, as in force
14 immediately before commencement day, is taken, on
15 and from commencement day, to be a means approved
16 by the Commissioner under section 8 of this Act.
17

1 **Part 4 — *Debt Collectors Licensing Act 1964* amended**

2 **21. Act amended**

3 This Part amends the *Debt Collectors Licensing Act 1964*.

4 **22. Section 14 amended**

5 (1) At the end of section 14(1) insert:

6

7 Penalty for this subsection: a fine of \$20 000.

8

9 (2) In section 14(2) delete the Penalty and insert:

10

11 Penalty for this subsection: a fine of \$20 000.

12

13 **23. Section 17 amended**

14 (1) At the end of section 17(1) insert:

15

16 Penalty for this subsection: a fine of \$25 000.

17

18 (2) Delete section 17(3).

19 **24. Section 22 deleted**

20 Delete section 22.

21 **25. Various provisions amended**

22 At the end of the provisions listed in the Table insert:

23

24 Penalty for this subsection: a fine of \$25 000.

25

s. 26

1

Table

s. 6(2)	s. 16(1)
s. 18(4)	

2

26. Various penalties amended

3

Amend the provisions listed in the Table as set out in the Table.

4

Table

Provision	Delete	Insert
s. 5(2)	Penalty: For an individual, \$200. For a body corporate, \$400.	Penalty for this subsection: a fine of \$50 000.
s. 15(5)	Penalty: \$200.	Penalty for this subsection: a fine of \$25 000.
s. 26(1)(h)	\$200	\$5 000

1 **Part 5 — *Fair Trading Act 2010* amended**

2 **27. Act amended**

3 This Part amends the *Fair Trading Act 2010*.

4 **28. Section 88E amended**

5 Before section 88E(1) insert:

6

7 (1A) This section does not apply to the extent that the
8 purpose of exercising a power under subsection (1) is
9 in relation to a regulated activity carried on by a
10 regulated person under the *Charitable Collections*
11 *Act 1946*.

12

13 **29. Schedule 2 amended**

14 In Schedule 2 insert in alphabetical order:

15

16 *Charitable Collections Act 1946*

17

1 **Part 6 — *Home Building Contracts Act 1991* amended**

2 **30. Act amended**

3 This Part amends the *Home Building Contracts Act 1991*.

4 **31. Section 25B amended**

5 After section 25B(4) insert:

6

7 (4A) This Division does not apply to residential building
8 work if —

- 9 (a) a building permit under the *Building Act 2011*
10 is not required for the work; or
11 (b) if a building permit is required for the work —
12 the work is not, or is not part of, a prescribed
13 building service under the *Building Services*
14 (*Registration*) *Act 2011* section 3.
15

16 **32. Section 25D amended**

17 (1) Before section 25D(1) insert:

18

19 (1A) In this section —

20 ***relevant circumstance***, in relation to a builder,
21 means —

- 22 (a) if the builder is an individual — the builder —
23 (i) has died; or
24 (ii) after due search and enquiry, cannot be
25 found in Australia;

26 or

27 (b) if the builder is not an individual — the builder
28 ceased to exist; or

29 (c) the builder is insolvent; or

1 (d) if the builder is a building service contractor
2 under the *Building Services (Registration)*
3 *Act 2011* — the builder’s registration as a
4 building service contractor was cancelled or not
5 renewed because the builder did not satisfy the
6 financial requirements (if any) prescribed by
7 the regulations under section 18(1)(b) of that
8 Act.

9
10 (2) In section 25D(1):

11 (a) delete paragraph (a) and insert:

12
13 (a) in the case of residential building work to be
14 performed by a builder on behalf of another
15 person, other than a developer, under a
16 residential building work contract, it insures
17 that person and that person’s successors in title
18 against the following losses occurring because
19 a relevant circumstance exists in relation to the
20 builder —

21 (i) loss of an amount paid by way of
22 deposit under the residential building
23 work contract, up to a limit of \$20 000
24 or another prescribed limit;

25 (ii) loss, other than indirect, incidental or
26 consequential loss, resulting from
27 non-completion of the residential
28 building work;

29 and

30

s. 32

- 1 (b) in paragraph (b) delete “by reason of the insolvency or
2 death of the builder or by reason of the fact that, after
3 due search and enquiry, the builder cannot be found;
4 and” and insert:
5
6 because a relevant circumstance exists in relation to the
7 builder; and
8

1 **Part 7 — *Land Valuers Licensing Act 1978* amended**

2 **33. Act amended**

3 This Part amends the *Land Valuers Licensing Act 1978*.

4 **34. Section 20 deleted**

5 Delete section 20.

6 **35. Section 22 amended**

7 Delete section 22(2)(a) and insert:

8

- 9 (a) an application is made during the period that
10 begins on the day on which the licence expired
11 and ends on the day that is 28 days after the day
12 on which the licence expired; and

13

14 **36. Section 33A inserted**

15 After section 33 insert:

16

17 **33A. Offence of giving false or misleading information**

- 18 (1) A person who gives false or misleading information to
19 the Commissioner when required to give information to
20 the Commissioner under this Act commits an offence.

21 Penalty for this subsection: a fine of \$20 000.

- 22 (2) For the purposes of subsection (1), a person gives false
23 or misleading information if the person does 1 or more
24 of the following —

- 25 (a) states anything that the person knows is false or
26 misleading in a material particular;

s. 37

- 1 (b) omits anything from a statement without which
- 2 the statement is, to the person's knowledge,
- 3 misleading in a material particular;
- 4 (c) gives or produces any information that —
- 5 (i) the person knows is false or misleading
- 6 in a material particular; or
- 7 (ii) omits anything without which the
- 8 information is, to the person's
- 9 knowledge, misleading in a material
- 10 particular.
- 11

12 **37. Various penalties amended**

13 Amend the provisions listed in the Table as set out in the Table.

14 **Table**

Provision	Delete	Insert
s. 23(1)	Penalty: \$50 000.	Penalty for this subsection: a fine of \$100 000.
s. 24(1)	Penalty: \$50 000.	Penalty for this subsection: a fine of \$100 000.
s. 25(3)	Penalty: \$5 000.	Penalty for this subsection: a fine of \$5 000.
s. 29A(1)	Penalty: \$2 000.	Penalty for this subsection: a fine of \$2 000.

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

3 **38. Act amended**

4 This Part amends the *Real Estate and Business Agents Act 1978*.

5 **39. Section 4 amended**

6 (1) In section 4(1) delete the definition of *agents code of conduct*.

7 (2) In section 4(1) insert in alphabetical order:

8

9 *code of conduct for agents* means the code of conduct
10 for agents prescribed and published under
11 section 101(a);

12

13 (3) In section 4(1) in the definition of *code of conduct for sales*
14 *representatives* delete “101;” and insert:

15

16 101(b);

17

18 **40. Section 26 amended**

19 (1) In section 26 delete “On” and insert:

20

21 (1) On

22

s. 41

1 (2) At the end of section 26 insert:

2

3 (2) For subsection (1), a person is taken not to be licensed
4 or holding a current triennial certificate in respect of
5 the licence if the person is required to surrender a
6 licence and triennial certificate under section 34D(2)
7 or (3).

8

9 **41. Section 27 amended**

10 In section 27(1):

11 (a) delete “a person, not being a body corporate,” and
12 insert:

13

14 an individual

15

16 (b) delete “that — ” and insert:

17

18 that the individual —

19

20 (c) in paragraphs (a) to (c) delete “he”.

21 (d) in paragraph (c) delete “to him to enable him” and
22 insert:

23

24 to enable them

25

26 (e) in paragraph (d) delete “he”.

27 Note: The heading to amended section 27 is to read:

28

Licensing of individuals

29 **42. Section 29 amended**

30 In section 29(b) delete “that”.

1 **43. Section 30 amended**

2 Delete section 30(3) and (4).

3 **44. Section 31 amended**

4 (1) In section 31(2)(a) delete “a person other than a body corporate;
5 or” and insert:

6

7 an individual; or

8

9 (2) Delete section 31(3) and insert:

10

11 (3) The Commissioner must not renew a licensee’s
12 triennial certificate unless the Commissioner is
13 satisfied of the matters in —

14 (a) for an individual — section 27(1)(b), (c) and
15 (d); or

16 (b) for a firm — section 28(a), (b), (c) and (d); or

17 (c) for a body corporate — section 29(a), (b), (c)
18 and (d).

19 Note: The heading to amended section 31 is to read:

20 **Licensee’s triennial certificate: grant and renewal**

21 **45. Section 32 amended**

22 (1) In section 32(1):

23 (a) delete “Where a” and insert:

24

25 If a licensee’s

26

s. 46

- 1 (b) delete “expired, the renewal shall be deemed to take
2 effect for the period of 3 years” and insert:
3
4 expired or was surrendered, the renewal takes effect
5
6 (c) delete “expired.” and insert:
7
8 expired or was surrendered.
9
10 (2) Delete section 32(2) and insert:
11
12 (2) If a licensee’s triennial certificate is renewed more than
13 1 month but not more than 12 months after the day on
14 which the triennial certificate expired or was
15 surrendered, the renewal takes effect —
16 (a) if the Commissioner is satisfied that there is
17 reasonable cause for the renewal to take effect
18 on and from the day after the day on which the
19 triennial certificate expired or was
20 surrendered — on that day; or
21 (b) otherwise — on the day the renewal is granted.
22

23 Note: The heading to amended section 32 is to read:

24 **Licensee’s triennial certificate: late renewal**

25 **46. Section 33 amended**

- 26 (1) Delete section 33(1) and insert:
27
28 (1) This section applies if —
29 (a) a licensee’s triennial certificate expires or was
30 surrendered; and

- 1 (b) the licensee applies to renew the certificate
2 more than 12 months after the day on which the
3 triennial certificate expired or was surrendered.
4
- 5 (2) In section 33(2) delete “The application shall” and insert:
6
- 7 The application for renewal must
8
- 9 (3) In section 33(4) delete “applicant shall” and insert:
10
- 11 licensee must
12
- 13 (4) In section 33(5) delete “applicant” and insert:
14
- 15 licensee
16
- 17 (5) After section 33(5) insert:
18
- 19 (6) If the triennial certificate is renewed, the renewal takes
20 effect on the day the renewal is granted.
21

22 Note: The heading to amended section 33 is to read:
23 **Licensee’s triennial certificate: late renewal after 12 months**

s. 47

1 **47. Section 34 replaced**

2 Delete section 34 and insert:

3

4 **34. Conditions on licences and triennial certificates**

5 (1) It is a condition of every licence that the licensee must
6 comply with the provisions of this Act and the code of
7 conduct for agents.

8 (2) It is a condition of every licence that the licensee must
9 comply with any special condition to which the
10 licensee's licence or triennial certificate is subject
11 under section 34AA.

12 **34AA. Imposing special conditions on licences or triennial**
13 **certificates**

14 (1) In this section —

15 *licensee* includes an applicant for a licence.

16 (2) The Commissioner may, at any time, impose a special
17 condition on a licence or triennial certificate.

18 (3) Before imposing a special condition on a licence or
19 triennial certificate, the Commissioner must —

20 (a) give a licensee notice in writing setting out —

21 (i) that the Commissioner proposes to
22 impose the special condition; and

23 (ii) the reasons for the proposed decision;
24 and

25 (iii) that the licensee may make submissions
26 to the Commissioner in relation to the
27 proposed decision within the time
28 specified in the notice;

29 and

- 1 (b) consider any submissions received under
2 paragraph (a)(iii).
- 3 (4) After making a decision under subsection (2), the
4 Commissioner must —
- 5 (a) notify the licensee of the Commissioner's
6 decision; and
- 7 (b) if the decision is to impose a special condition
8 on the licence or triennial certificate, give the
9 licensee notice in writing setting out —
- 10 (i) the reasons for the decision; and
11 (ii) that a person aggrieved by the
12 Commissioner's decision may apply to
13 the State Administrative Tribunal for a
14 review of the decision under section 23.
- 15 **34AB. Removing special conditions on licences or triennial**
16 **certificates**
- 17 (1) The Commissioner may remove a special condition
18 imposed on a licensee's licence or triennial
19 certificate —
- 20 (a) at any time; or
21 (b) on application by the licensee.
- 22 (2) If a licensee makes an application under
23 subsection (1)(b), the Commissioner must, before
24 deciding not to remove the special condition on the
25 licensee's licence or triennial certificate —
- 26 (a) give the licensee notice in writing setting out —
- 27 (i) that the Commissioner proposes to
28 make a decision not to remove the
29 special condition; and
30 (ii) the reasons for the proposed decision;
31 and

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- 1 (iii) that the licensee may make submissions
2 to the Commissioner in relation to the
3 proposed decision within the time
4 specified in the notice;
- 5 and
- 6 (b) consider any submissions received under
7 paragraph (a)(iii).
- 8 (3) After making a decision on an application by a
9 licensee, the Commissioner must —
- 10 (a) notify the licensee of the Commissioner’s
11 decision; and
- 12 (b) if the decision is to not remove the special
13 condition, give the licensee notice in writing
14 setting out —
- 15 (i) the reasons for the decision; and
- 16 (ii) that a person aggrieved by the
17 Commissioner’s decision may apply to
18 the State Administrative Tribunal for a
19 review of the decision under section 23.
20

21 **48. Sections 34C and 34D inserted**

22 After section 34B insert:
23

24 **34C. Licensee may surrender licence and triennial**
25 **certificate**

26 A licensee may surrender the licensee’s triennial
27 certificate, or licence and triennial certificate held in
28 respect of the licence, at any time.

- 1 **34D. Firm or body corporate must surrender licence and**
2 **triennial certificate in certain circumstances**
- 3 (1) This section applies to a licensee that is a firm or body
4 corporate if paragraph (c) or (d) of section 28 or 29 (as
5 is relevant) ceases to apply in relation to the licensee.
- 6 (2) The licensee must, within 5 days after the day on which
7 the paragraph ceased to apply to the licensee, surrender
8 the licensee's licence and triennial certificate held in
9 respect of the licence, unless the licensee is carrying on
10 business under Schedule 1 clause 6.
- 11 (3) If a licensee carries on business under Schedule 1
12 clause 6 then, at the end of the period referred to in that
13 clause, the licensee must immediately surrender the
14 licensee's licence and triennial certificate unless the
15 licensee satisfies section 28(c) and (d) or section 29(c)
16 and (d) (as is relevant).
17

18 **49. Section 40B inserted**

19 After section 40A insert:
20

21 **40B. Licensee to comply with prescribed educational**
22 **requirements**

23 A licensee must comply with the educational
24 requirements prescribed by the regulations.

25 Penalty: a fine of \$5 000.
26

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1 **50. Section 48 amended**

2 Delete section 48(4) and (5) and insert:

3

- 4 (4) The Commissioner must not renew a sales
5 representative's certificate of registration unless the
6 Commissioner is satisfied —
- 7 (a) of the matters in section 47(1)(b) and (c); and
8 (b) that the sales representative was employed by a
9 licensee at the time of making the application
10 or will be employed by a licensee upon the
11 renewal of the certificate.

12

13 **51. Section 50 replaced**

14 Delete section 50 and insert:

15

16 **50. Conditions on certificates of registration**

- 17 (1) It is a condition of every certificate of registration that
18 the registered sales representative must comply with
19 the provisions of this Act and the code of conduct for
20 sales representatives.
- 21 (2) It is a condition of every certificate of registration that
22 the registered sales representative must comply with
23 any special condition to which the sales
24 representative's certificate of registration is subject
25 under section 50AA.

26 **50AA. Imposing special conditions on certificates of**
27 **registration**

- 28 (1) In this section —
29 *registered sales representative* includes an applicant
30 for a certificate of registration.

- 1 (2) The Commissioner may, at any time, impose a special
2 condition on a certificate of registration.
- 3 (3) Before imposing a special condition on a certificate of
4 registration, the Commissioner must —
- 5 (a) give a registered sales representative notice in
6 writing setting out —
- 7 (i) that the Commissioner proposes to
8 impose the special condition; and
- 9 (ii) the reasons for the proposed decision;
10 and
- 11 (iii) that the registered sales representative
12 may make submissions to the
13 Commissioner in relation to the
14 proposed decision within the time
15 specified in the notice;
- 16 and
- 17 (b) consider any submissions received under
18 paragraph (a)(iii).
- 19 (4) Subsection (3) does not apply if the special condition to
20 be imposed on the certificate of registration restricts
21 the type of work that may be performed under the
22 certificate because the sales representative does not
23 have a particular qualification that the sales
24 representative is required to have under section 47(2)
25 to perform the work.
- 26 (5) After making a decision under subsection (2), the
27 Commissioner must —
- 28 (a) notify the registered sales representative of the
29 Commissioner's decision; and

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- 1 (b) if the decision is to impose a special condition
2 on the certificate of registration, give the
3 registered sales representative notice in writing
4 setting out —
- 5 (i) the reasons for the decision; and
6 (ii) that a person aggrieved by the
7 Commissioner’s decision may apply to
8 the State Administrative Tribunal for a
9 review of the decision under section 23.
- 10 **50AB. Removing special conditions on certificates of**
11 **registration**
- 12 (1) The Commissioner may remove a special condition
13 imposed on a registered sales representative’s
14 certificate of registration —
- 15 (a) at any time; or
16 (b) on application by the registered sales
17 representative.
- 18 (2) If a registered sales representative makes an application
19 under subsection (1)(b), the Commissioner must,
20 before deciding not to remove the special condition on
21 the registered sales representative’s certificate of
22 registration —
- 23 (a) give the registered sales representative notice in
24 writing setting out —
- 25 (i) that the Commissioner proposes to
26 make a decision not to remove the
27 special condition; and
28 (ii) the reasons for the proposed decision;
29 and
30 (iii) that the registered sales representative
31 may make submissions to the
32 Commissioner in relation to the

- 1 proposed decision within the time
2 specified in the notice;
- 3 and
- 4 (b) consider any submissions received under
5 paragraph (a)(iii).
- 6 (3) After making a decision on an application by a
7 registered sales representative, the Commissioner
8 must —
- 9 (a) notify the registered sales representative of the
10 Commissioner’s decision; and
- 11 (b) if the decision is to not remove the special
12 condition, give the registered sales
13 representative notice in writing setting out —
- 14 (i) the reasons for the decision; and
- 15 (ii) that a person aggrieved by the
16 Commissioner’s decision may apply to
17 the State Administrative Tribunal for a
18 review of the decision under section 23.
19

20 **52. Section 50C inserted**

21 After section 50B insert:
22

23 **50C. Sales representative to comply with prescribed**
24 **educational requirements**

25 A sales representative must comply with the
26 educational requirements prescribed by the regulations.

27 Penalty: a fine of \$5 000.
28

s. 53

1 **53. Section 84 amended**

2 In section 84(1) delete the Penalty and insert:

3

4 Penalty for this subsection:

- 5 (a) in the case of an offence against
6 section 68(4) or (5), a fine of \$25 000, or
7 2 years' imprisonment;
- 8 (b) in the case of an offence against
9 section 68B(1), a fine of \$50 000;
- 10 (c) in any other case, a fine of \$25 000.
- 11

12 **54. Section 100A amended**

13 (1) Delete section 100A(4).

14 (2) In section 100A(7) delete “subsection (4).” and insert:

15

16 section 134A.

17

18 **55. Section 102 amended**

19 After section 102(6) insert:

20

21 (7) Despite the surrender by a person of a licence or
22 triennial certificate or a licensee ceasing to be licensed
23 or to hold a triennial certificate —

- 24 (a) an allegation under subsection (1)(a) in respect
25 of an agent may be made to the State
26 Administrative Tribunal not later than
27 12 months after the day on which the licence or
28 certificate was surrendered or the licensee
29 ceased to be licensed or ceased holding the
30 certificate; and

- 1 (b) the State Administrative Tribunal may exercise
2 the powers conferred by section 103, other than
3 the power to suspend or cancel the agent's
4 licence or certificate.
5

6 **56. Section 103 amended**

7 Delete section 103(2)(c)(iii) and insert:

- 8
9 (iii) the code of conduct for agents;
10

11 **57. Section 116 amended**

12 Delete section 116(1) and (2A) and insert:

- 13
14 (1) The Fidelity Account is to be held and applied to
15 reimburse a person for the person's pecuniary or
16 property loss to the extent of the defalcation of —
17 (a) a licensee during any period when the licensee
18 was the holder of a current triennial certificate;
19 or
20 (b) a person who ceased to be licensed or to hold a
21 triennial certificate, if —
22 (i) the defalcation occurred during the
23 period of 6 months immediately
24 following the day on which the person
25 ceased to be licensed or the holder of
26 the triennial certificate; and
27 (ii) the chief executive officer considers that
28 it is just and reasonable in the
29 circumstances of the claim.
30

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1 **58. Section 131L amended**

2 (1) Before section 131L(1) insert:

3

4 (1AA) In this section —

5 *settlement* has the meaning given in the *Settlement*
6 *Agents Act 1981* section 3(1).

7

8 (2) In section 131L(1):

9 (a) after “date of” insert:

10

11 settlement of

12

13 (b) delete “prescribed form” and insert:

14

15 approved form

16

17 **59. Section 134A amended**

18 (1) In section 134A(1) delete “in relation to an application under
19 section 24, 33, 43, 48 or 49” and insert:

20

21 to the Commissioner or the chief executive officer under this
22 Act

23

24 (2) In section 134A(2):

25 (a) delete “in relation to an application referred to in
26 subsection (1)” and insert:

27

28 to the Commissioner or the chief executive officer

29

30 (b) in paragraph (a) delete “in relation to an application”;

- 1 (c) in paragraph (b) delete “made in relation to an
2 application”;
3 (d) in paragraph (c) delete “in relation to an application”.

4
5 **60. Section 136A amended**

6 In section 136A delete “licence or triennial certificate” and
7 insert:

8
9 licence, triennial certificate or certificate of registration
10

11 **61. Schedule 1 clause 1 amended**

12 (1) In Schedule 1 delete clause 1(b) and insert:

- 13
14 (b) who has, within the period of 5 years immediately
15 preceding the application —
16 (i) held a licence, other than a licence held
17 because the person was qualified only under
18 paragraph (c) or (d), under this Act for at
19 least 2 years; and
20 (ii) acted in the State as, and carried out the
21 functions of, an agent for a period of at least
22 2 years, whether on the person’s own behalf
23 or on behalf of a firm or body corporate;

24 or

- 25 (ba) who has, within the period of 5 years immediately
26 preceding the application —
27 (i) held for a period of at least 2 years a licence
28 or similar authority under an approved
29 corresponding enactment of a State or
30 Territory to act as an agent or the approved
31 equivalent, other than under a licence or
32 authority held under that enactment only
33 because the person was qualified under an

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1 equivalent provision in the enactment to
2 paragraph (c) or (d); and
3 (ii) acted as, and carried out the functions of, an
4 agent or the approved equivalent for a
5 period of at least 2 years in the State or
6 Territory in which the licence or authority
7 was held, whether on the person's own
8 behalf or on behalf of a firm or body
9 corporate;
10 or
11

12 **62. Various penalties amended**

13 Amend the provisions listed in the Table as set out in the Table.

14 **Table**

Provision	Delete	Insert
s. 26(1)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.
s. 39(3)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.
s. 44(1), (2) and (3)	Penalty: \$3 000.	Penalty for this subsection: a fine of \$25 000.
s. 45(1), (2) and (3)	Penalty: \$3 000.	Penalty for this subsection: a fine of \$25 000.
s. 46	\$2 000.	a fine of \$20 000.

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

2 **63. Act amended**

3 This Part amends the *Residential Tenancies Act 1987*.

4 **64. Section 3 amended**

5 In section 3 insert in alphabetical order:

6
7 *common area* —

8 (a) means an area accessible to, or provided for the
9 common use of, tenants; and

10 (b) includes common property (as defined in the
11 *Strata Titles Act 1985* section 3) of a strata
12 scheme or survey strata scheme;

13
14 **65. Section 22 amended**

15 (1) Delete section 22(2) and insert:

16
17 (2) A party to any proceedings may be represented or
18 assisted by an agent in the presentation of the party's
19 case if —

20 (a) the agent is authorised by the party to do so and
21 is —

22 (i) the property manager of the premises
23 the subject of the proceedings; or

24 (ii) employed or engaged by a non-profit
25 association or similar body to act as an
26 advocate for tenants or lessors in
27 proceedings;

28 or

29 (b) the court makes an order under subsection (3C).

30

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- 1 (2) In section 22(3A) after “authorisation” insert:
2
3 mentioned in subsection (2)(a)
4
- 5 (3) After section 22(3A) insert:
6
- 7 (3B) Without limiting how an agent representing or assisting
8 a party under subsection (2)(a) may represent or assist
9 the party, the agent may initiate proceedings on behalf
10 of the party.
- 11 (3C) The court may order that a party to proceedings may be
12 represented or assisted by an agent in the presentation
13 of the party’s case if the court hearing the proceeding is
14 satisfied that —
- 15 (a) the party is unable to appear personally or
16 conduct the proceedings on the party’s own
17 behalf; and
- 18 (b) another party to the proceedings will not be
19 disadvantaged by the party being represented
20 by, or assisted by, the agent.
21

22 **66. Section 38 amended**

- 23 In section 38(1)(c) delete “premises.” and insert:
24
25 premises or, where relevant, a common area or chattels in the
26 common area.
27

1 **67. Section 47 amended**

2 (1) Before section 47(1) insert:

3

4 (1A) In this section —

5 *disability* means a disability —

6 (a) which is attributable to an intellectual,
7 psychiatric, cognitive, neurological, sensory, or
8 physical impairment or a combination of those
9 impairments; and

10 (b) which is permanent or likely to be permanent;
11 and

12 (c) which may or may not be of a chronic or
13 episodic nature; and

14 (d) which results in a substantially reduced
15 capacity of the person for communication,
16 social interaction, learning or mobility.
17

18 (2) In section 47(1) delete “subsection (4),” and insert:

19

20 subsections (2A) and (4),

21

22 (3) After section 47(2) insert:

23

24 (2A) It is a term of every residential tenancy agreement
25 that —

26 (a) a tenant may affix either or both of the
27 following items to a wall of premises the
28 subject of the agreement for the purpose of
29 ensuring the safety of a child or a person with a
30 disability, but only with the lessor’s consent —

31 (i) furniture;

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- 1 (ii) a thing to affix the furniture to the wall;
2 and
3 (b) the lessor may only refuse consent —
4 (i) if affixing the item to the wall would
5 disturb material containing asbestos; or
6 (ii) if the premises are entered in the
7 Register of Heritage Places compiled
8 under the *Heritage of Western Australia*
9 *Act 1990* section 46; or
10 (iii) if the premises is a lot in a scheme
11 under the *Strata Titles Act 1985*, the
12 by-laws for the scheme prohibit affixing
13 the item to the wall of the premises; or
14 (iv) for a prescribed reason;
15 and
16 (c) unless the lessor agrees otherwise in writing,
17 the tenant must remove the item from the wall
18 when the tenant vacates the premises and
19 either —
20 (i) restore the wall to its original condition;
21 or
22 (ii) compensate the lessor for any
23 reasonable expenses incurred by the
24 lessor in doing that restoration;
25 and
26 (d) the cost of affixing the item to the wall,
27 removing it and restoring the wall to its original
28 condition must be borne by the tenant; and

- 1 (e) if the tenant causes damage to the premises
2 when affixing or removing the item or restoring
3 the wall to its original condition —
- 4 (i) the tenant must notify the lessor in
5 writing that damage has been caused to
6 the premises; and
- 7 (ii) the lessor may require the tenant to
8 repair the damage and restore the
9 premises to their original condition or
10 compensate the lessor for the reasonable
11 expenses incurred in doing the repair
12 and restoration.
- 13 (2B) The lessor is taken to have consented to affixing the
14 furniture or thing to the wall of the premises under
15 subsection (2A)(a) if, and only if —
- 16 (a) the tenant has given the lessor a request, in a
17 form approved by the Commissioner, seeking
18 the lessor's consent to affix the item to the wall;
19 and
- 20 (b) the lessor has not refused consent under
21 subsection (2A)(b) within 14 days after the day
22 on which the lessor receives the request.
23

24 **68. Section 49A amended**

- 25 (1) In section 49A(1) insert in alphabetical order:
26
- 27 *consumption*, in relation to a public utility service,
28 means consumption of the utility that is calculated by
29 metered unit;
- 30 *strata company* has the meaning given in the *Strata*
31 *Titles Act 1985* section 3(1).
32

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- 1 (2) In section 49A(1) in the definition of *public utility services*
2 delete “3(1).” and insert:
3
- 4 3(1);
5
- 6 (3) Delete section 49A(2) and insert:
7
- 8 (2) It is a term of every residential tenancy agreement that
9 subsections (3) to (5) are terms of the agreement if —
10 (a) a public utility service is provided in relation to
11 the premises the subject of the agreement; and
12 (b) the public utility service is provided under a
13 contract between the provider of the public
14 utility service and the lessor or a strata
15 company.
- 16 (3) The tenant must pay a charge for the provision of the
17 service only if —
18 (a) the charge is for the tenant’s consumption of
19 the utility at the premises; and
20 (b) either —
21 (i) the tenant’s consumption of the utility is
22 separately metered; or
23 (ii) although consumption at the premises is
24 not separately metered, the charge is
25 calculated in accordance with a method
26 previously agreed to in writing by the
27 lessor and the tenant;
28 and
29 (c) the lessor gives the tenant a written notice
30 under subsection (4) within 30 days after the
31 lessor receives an invoice for the public utility
32 service.

- 1 (4) The notice must be in writing and set out the full
2 details of the account for the charge, including —
3 (a) the total charge for the tenant’s consumption of
4 the utility; and
5 (b) if consumption at the premises is metered —
6 (i) the meter readings; and
7 (ii) the charge per metered unit;
8 and
9 (c) if consumption at the premises is not
10 metered — the charge calculated by the method
11 agreed to under subsection (3)(b)(ii); and
12 (d) the amount of GST payable in respect of the
13 provision of the service to the premises.
- 14 (5) However, despite subsection (3)(c), if the tenancy ends
15 within 30 days after the lessor receives an invoice for
16 the public utility service, or the lessor receives the
17 invoice after the tenancy has ended, the lessor —
18 (a) is not required to give the written notice under
19 subsection (4) within 30 days after the lessor
20 receives the invoice; and
21 (b) may give the notice to the tenant (or former
22 tenant) as soon as practicable after the lessor
23 receives the notice and locates the tenant.
24

1 **69. Section 73 amended**

2 In section 73(1) delete “permit, serious damage to the premises
3 or injury to the lessor or the property manager of the premises
4 or any person in occupation of or permitted on adjacent
5 premises.” and insert:

6

7 permit —

- 8 (a) serious damage to the premises or, where
9 relevant, a common area or chattels in the
10 common area; or
11 (b) injury to —
12 (i) the lessor; or
13 (ii) the property manager of the premises; or
14 (iii) any person in occupation of or permitted
15 on adjacent premises.
16

17 **70. Section 82B amended**

18 (1) In section 82B delete “This” and insert:

19

20 (1) This

21

22 (2) After section 82B(1) insert:

23

24 (2) This Part applies to a database operator, regardless of
25 whether the database operator is inside or outside of the
26 State, if the database operator operates a residential
27 tenancy database containing personal information —

- 28 (a) about a person who resides in the State; or
29 (b) relating to, or arising from, the occupation of
30 residential premises under a residential tenancy
31 agreement within the State.
32

1 **71. Part 8 inserted**

2 After section 97 insert:

3

4 **Part 8 — Transitional provision relating to the**
5 ***Consumer Protection Legislation Amendment***
6 ***Act 2018***

7 **98. Application of s. 49A to residential tenancy**
8 **agreements and utility charges**

9 (1) In this section —

10 *commencement day* means the day on which the
11 *Consumer Protection Legislation Amendment Act 2018*
12 section 68 comes into operation;

13 *public utility services* has the meaning given in the
14 *Land Administration Act 1997* section 3(1).

15 (2) Subject to subsections (3) and (4), section 49A, as in
16 force on and after commencement day, applies to a
17 residential tenancy agreement (to the extent relevant)
18 even though it was entered into before commencement
19 day.

20 (3) If a tenant is provided with full details of an account
21 for a charge for a public utility service and the charge
22 was not paid in full before commencement day,
23 section 49A, as in force immediately before
24 commencement day continues to apply to the payment
25 of the charge.

26 (4) If, before commencement day, a lessor or strata
27 company received a notice of account in relation to a
28 public utility service and the lessor or strata company
29 has not given the tenant full details of the account for
30 the charge, the 30 day requirement in section 49A(3)(c)
31 does not apply.
32

1 **Part 10 — Settlement Agents Act 1981 amended**

2 **72. Act amended**

3 This Part amends the *Settlement Agents Act 1981*.

4 **73. Section 4 amended**

5 In section 4(2) delete “section 34(2)(a) and (b),” and insert:

6

7 section 34AA(3),

8

9 **74. Section 26 amended**

10 After section 26(2) insert:

11

12 (3) For subsection (1), a person is taken not to be licensed
13 or holding a current triennial certificate in respect of
14 the licence if the person is required to surrender a
15 licence and triennial certificate under section 34D(2)
16 and (3).

17

18 **75. Section 27 amended**

19 In section 27(1):

20 (a) delete “a person, not being a body corporate,” and
21 insert:

22

23 an individual

24

25 (b) delete “that — ” and insert:

26

27 that the individual —

28

29 (c) in paragraphs (a) to (c) delete “he”.

1 (d) in paragraph (c) delete “to him to enable him” and
2 insert:

3

4 to enable them

5

6 (e) in paragraphs (d) and (e) delete “he”.

7

8 Note: The heading to amended section 27 is to read:

9

Licensing of individuals

10 **76. Section 30 amended**

11 Delete section 30(4) and (5).

12 **77. Section 31 amended**

13 (1) In section 31(2)(a) delete “a person other than a body corporate;
14 or” and insert:

15

16 an individual; or

17

18 (2) Delete section 31(2A) and insert:

19

20 (2A) The Commissioner must not renew a licensee’s
21 triennial certificate unless the Commissioner is
22 satisfied of the matters in —

23 (a) for an individual — section 27(1)(b), (c), (d)
24 and (e); or

25 (b) for a firm — section 28(1)(a), (b), (c) and (d);
26 or

27 (c) for a body corporate — section 29(1)(a), (b),
28 (c) and (d).

29

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1 (3) Delete section 31(3)(a) and insert:

2

3 (a) if the licensee is an individual, the individual;
4 or

5

6 Note: The heading to amended section 31 is to read:

7

Licensee's triennial certificate: grant and renewal

8 **78. Section 32 amended**

9 (1) In section 32(1):

10 (a) delete "Where a" and insert:

11

12 If a licensee's

13

14 (b) delete "expired, the renewal shall be deemed to take
15 effect for the period of 3 years" and insert:

16

17 expired or was surrendered, the renewal takes effect

18

19 (c) delete "expired." and insert:

20

21 expired or was surrendered.

22

23 (2) Delete section 32(2) and insert:

24

25 (2) If a licensee's triennial certificate is renewed more than
26 1 month but not more than 12 months after the day on
27 which the triennial certificate expired or was
28 surrendered, the renewal takes effect —

29 (a) if the Commissioner is satisfied that there is
30 reasonable cause for the renewal to take effect
31 on and from the day after the day on which the

- 1 triennial certificate expired or was
2 surrendered — on that day; or
3 (b) otherwise — on the day the renewal is granted.
4

5 Note: The heading to amended section 32 is to read:

6 **Licensee’s triennial certificate: late renewal**

7 **79. Section 33 amended**

8 (1) Delete section 33(1) and insert:

9

10 (1) This section applies if —

11 (a) a licensee’s triennial certificate expires or was
12 surrendered; and

13 (b) the licensee applies to renew the certificate
14 more than 12 months after the day on which the
15 triennial certificate expired or was surrendered.
16

17 (2) In section 33(2) delete “The application shall” and insert:

18

19 The application for renewal must
20

21 (3) In section 33(4) delete “applicant shall” and insert:

22

23 licensee must
24

25 (4) In section 33(5) delete “applicant” and insert:

26

27 licensee
28

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1 (5) After section 33(5) insert:

2

3 (6) If the triennial certificate is renewed, the renewal takes
4 effect on the day the renewal is granted.

5

6 Note: The heading to amended section 33 is to read:

7 **Licensee's triennial certificate: late renewal after 12 months**

8 **80. Section 34 replaced**

9 Delete section 34 and insert:

10

11 **34. Conditions on licences and triennial certificates**

12 (1) It is a condition of every licence that the licensee must
13 comply with the provisions of this Act and the
14 settlement agents' code of conduct.

15 (2) It is a condition of every licence that the licensee must
16 comply with any special condition to which the
17 licensee's licence or triennial certificate is subject
18 under section 34AA.

19 **34AA. Imposing special conditions on licences or triennial**
20 **certificates**

21 (1) In this section —

22 *licensee* includes an applicant for a licence.

23 (2) The Commissioner may, at any time, impose a special
24 condition on a licence or triennial certificate.

25 (3) Without limiting subsection (2), the Commissioner
26 may impose a condition that relates to —

27 (a) the holding of a policy of indemnity insurance
28 or fidelity insurance in a specified amount; or

- 1 (b) the payment of fees under this Act or to
2 contributions to the Account and may vary such
3 prescribed fees or contributions.
- 4 (4) Before imposing a special condition on a licence or
5 triennial certificate, the Commissioner must —
- 6 (a) give a licensee notice in writing setting out —
- 7 (i) that the Commissioner proposes to
8 impose the special condition; and
- 9 (ii) the reasons for the proposed decision;
10 and
- 11 (iii) that the licensee may make submissions
12 to the Commissioner in relation to the
13 proposed decision within the time
14 specified in the notice;
- 15 and
- 16 (b) consider any submissions received under
17 paragraph (a)(iii).
- 18 (5) After making a decision under subsection (2), the
19 Commissioner must —
- 20 (a) notify the licensee of the Commissioner's
21 decision; and
- 22 (b) if the decision is to impose the special
23 condition, give the licensee notice in writing
24 setting out —
- 25 (i) the reasons for the decision; and
- 26 (ii) that a person aggrieved by the
27 Commissioner's decision may apply to
28 the State Administrative Tribunal for a
29 review of the decision under section 23.

- 1 **34AB. Removing special conditions on licences or triennial**
2 **certificates**
- 3 (1) The Commissioner may remove a special condition
4 imposed on a licensee's licence or triennial
5 certificate —
- 6 (a) at any time; or
7 (b) on application by the licensee.
- 8 (2) If the licensee applies under subsection (1)(b), the
9 Commissioner must, before deciding not to remove the
10 special condition on the licensee's licence or triennial
11 certificate —
- 12 (a) give the licensee notice in writing setting out —
- 13 (i) that the Commissioner proposes to
14 make a decision not to remove the
15 special condition; and
16 (ii) the reasons for the proposed decision;
17 and
18 (iii) that the licensee may make submissions
19 to the Commissioner in relation to the
20 proposed decision within the time
21 specified in the notice;
- 22 and
- 23 (b) consider any submissions received under
24 paragraph (a)(iii).
- 25 (3) After making a decision on an application by a
26 licensee, the Commissioner must —
- 27 (a) notify the licensee of the Commissioner's
28 decision; and
29 (b) if the decision is to not remove the special
30 condition, give the licensee notice in writing
31 setting out —
- 32 (i) the reasons for the decision; and

- 1 (ii) that a person aggrieved by the
2 Commissioner's decision may apply to
3 the State Administrative Tribunal for a
4 review of the decision under section 23.
5

6 **81. Sections 34C and 34D inserted**

7 After section 34B insert:
8

9 **34C. Licensee may surrender licence and triennial**
10 **certificate**

11 A licensee may surrender the licensee's triennial
12 certificate, or licence and triennial certificate held in
13 respect of the licence, at any time.

14 **34D. Firm or body corporate must surrender licence and**
15 **triennial certificate in certain circumstances**

- 16 (1) This section applies to a licensee that is a firm or body
17 corporate if paragraph (c) or (d) of section 28(1) or
18 29(1) (as is relevant) ceases to apply in relation to the
19 licensee.
- 20 (2) The licensee must, within 5 days after the day on which
21 the paragraph ceased to apply to the licensee, surrender
22 the licensee's licence and triennial certificate held in
23 respect of the licence, unless the licensee is carrying on
24 business under Schedule 1 clause 10.
- 25 (3) If a licensee carries on business under Schedule 1
26 clause 10 then, at the end of the period referred to in
27 that clause, the licensee must immediately surrender
28 the licensee's licence and triennial certificate unless the
29 licensee satisfies section 28(1)(c) and (d) or
30 section 29(1)(c) and (d) (as is relevant).
31

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1 **82. Section 41B inserted**

2 After section 41A insert:

3

4 **41B. Licensee to comply with prescribed educational**
5 **requirements**

6 A licensee must comply with the educational
7 requirements prescribed by the regulations.

8 Penalty: a fine of \$5 000.

9

10 **83. Section 65 amended**

11 In section 65(1) delete the Penalty and insert:

12

13 Penalty for this subsection:

14 (a) in the case of an offence against
15 section 49(4) or (5), a fine of \$25 000, or
16 2 years' imprisonment;

17 (b) in the case of an offence against
18 section 49B(1), a fine of \$50 000;

19 (c) in any other case, a fine of \$25 000.

20

21 **84. Section 81A amended**

22 (1) Delete section 81A(4).

23 (2) In section 81A(7) delete "subsection (4)." and insert:

24

25 section 111A.

26

1 **85. Section 83 amended**

2 (1) In section 83 delete “The” and insert:

3

4 (1) The

5

6 (2) At the end of section 83 insert:

7

8 (2) Despite the surrender by a person of a licence or
9 triennial certificate or a licensee ceasing to be licensed
10 or to hold a triennial certificate —

11 (a) an allegation under subsection (1) in respect of
12 a person may be made to the State
13 Administrative Tribunal not later than
14 12 months after the day on which the licence or
15 certificate was surrendered or the licensee
16 ceased to be licensed or ceased holding the
17 certificate; and

18 (b) the State Administrative Tribunal may exercise
19 the powers conferred by section 84, other than
20 the power to suspend or cancel the person’s
21 licence or certificate.
22

23 **86. Section 93 amended**

24 Delete section 93(1) and (2A) and insert:

25

26 (1) The Account is to be held and applied to reimburse a
27 person for the person’s pecuniary or property loss to
28 the extent of the defalcation of —

29 (a) a licensee during any period when the licensee
30 was the holder of a current triennial certificate;
31 or

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- 1 (b) a person who ceased to be the holder of a
2 licence or triennial certificate, if —
3 (i) the defalcation occurred during the
4 period of 6 months immediately
5 following the day on which the person
6 ceased to be licensed or the holder of
7 the triennial certificate; and
8 (ii) the chief executive officer considers that
9 it is just and reasonable in the
10 circumstances of the claim.
11

12 **87. Section 111A amended**

- 13 (1) In section 111A(1) delete “in relation to an application under
14 section 24, 26A, 26B, 31 or 33” and insert:

15
16 to the Commissioner or the chief executive officer under this
17 Act
18

- 19 (2) In section 111A(2):

- 20 (a) delete “in relation to an application referred to in
21 subsection (1)” and insert:

22
23 to the Commissioner or the chief executive officer
24

- 25 (b) in paragraph (a) delete “in relation to an application”;

- 26 (c) in paragraph (b) delete “made in relation to an
27 application”;

- 28 (d) in paragraph (c) delete “in relation to an application”.

1 **88. Various penalties amended**

2 Amend the provisions listed in the Table as set out in the Table.

3 **Table**

Provision	Delete	Insert
s. 26(1)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.
s. 40(3)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.

1 **Part 11 — *Street Collections (Regulation) Act 1940***
2 **amended**

3 **89. Act amended**

4 This Part amends the *Street Collections (Regulation) Act 1940*.

5 **90. Section 2 amended**

6 (1) In section 2 delete the definition of *Metropolitan area*.

7 (2) In section 2 insert in alphabetical order:

8

9 *metropolitan region* has the meaning given by the
10 *Planning and Development Act 2005* section 4(1);
11

12 (3) In section 2 in the definition of *Collection* delete
13 “contributions.” and insert:

14

15 contributions;

16

17 **91. Section 3 amended**

18 (1) In section 3(1) delete “area” and insert:

19

20 region

21

22 (2) At the end of section 3(1) insert:

23

24 Penalty for this subsection: a fine of \$5 000.

25

26 Note: The heading to amended section 3 is to read:

27

28

**No collection in metropolitan region except by permission of
Minister**

1 **92. Section 6 amended**

2 At the end of section 6 insert:

3

4 Penalty: a fine of \$5 000.

5

6 **93. Section 7 amended**

7 In section 7(2) delete “\$40” and insert:

8

9 a fine of \$2 000

10

11 **94. Section 8 deleted**

12 Delete section 8.

13

