



Government of **Western Australia**
Department of **Commerce**

EXPLANATORY MEMORANDUM

Consumer Protection Legislation Amendment Bill 2013

Signed:

Hon Michael Mischin MLC
MINISTER FOR COMMERCE

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OVERVIEW OF THE BILL

The *Consumer Protection Legislation Amendment Bill 2013* amends 14 Acts that sit within the Consumer Protection portfolio.

The amendments contained in the Bill are of a various nature and include amendments to dispense with unnecessary and out-dated requirements so as to ease regulatory burden on small business; amendments which serve to facilitate more effective administration of various statutes; amendments required to address anomalies in the legislation and also, some technical corrections.

Specifically, the Bill amends the following Acts:

- *Commercial Tenancy (Retail Shops) Agreements Act 1985*
- *Employment Agents Act 1976*
- *Fair Trading Act 2010*
- *Land Valuers Licensing Act 1978*
- *Limited Partnerships Act 1909*
- *Motor Vehicle Dealers Act 1973*
- *Motor Vehicle Repairers Act 2003*
- *Petroleum Products Pricing Act 1983*
- *Real Estate and Business Agents Act 1978*
- *Residential Parks (Long-stay Tenants) Act 2006*
- *Residential Tenancies Act 1987*
- *Retail Trading Hours Act 1987**
- *Settlement Agents Act 1981*
- *Travel Agents Act 1985*

The key amendments contained in the Bill are detailed below.

The Bill dispenses with the requirement for licence applicants, or the Commissioner for Consumer Protection, to publish notice of applications in respect of the *Employment Agents Act 1976*, the *Land Valuers Licensing Act 1978*, the *Real Estate and Business Agents Act 1978*, the *Settlement Agents Act 1981* and the *Travel Agents Act 1985*. The Bill also dispenses with provisions for any person to make a formal objection to licence applications in respect of those Acts.

The Bill further dispenses with the requirement under the *Land Valuers Licensing Act 1978*, the *Real Estate and Business Agents Act 1978* and the *Settlement Agents Act 1981* for the Commissioner for Consumer Protection to publish annual lists of licensees in the *Government Gazette*.

The Bill dispenses with all requirements under the *Motor Vehicle Dealers Act 1973* and *Motor Vehicle Repairers Act 2003* relating to the provision of planning and conditional planning certificates when applying for a licence or adding new premises. The Bill does not, however, remove the need to satisfy local government requirements in relation to planning approvals. The Commissioner for Consumer Protection will be able to seek the revocation of an authority for premises if he or she receives written notice from a council that premises do not comply.

The Bill amends the *Motor Vehicle Repairers Act 2003* to dispense with the requirement for repair businesses to be licensed for specific classes of repair work. It is intended to retain only the requirement for individual repairers (certificate holders) to be suitably qualified to carry out work of a particular class. The Bill also amends the *Motor Vehicle Repairers Act 2003* to give the State Administrative Tribunal review jurisdiction over decisions or orders of the Commissioner for Consumer Protection (presently this rests with the Magistrates Court).

The Bill amends the *Petroleum Products Pricing Act 1983* to remove an out-dated requirement for wholesale suppliers to physically post Terminal Gate Prices at their terminal gate and to remove an out-dated requirement for wholesale suppliers to calculate and display a weighted average price for fuel supplied from the terminal during the previous month.

The Bill amends the *Real Estate and Business Agents Act 1978* and *Settlement Agents Act 1981* to provide the chief executive officer of the administering Department (currently the Department of Commerce) with discretion to allow claims against the Fidelity Guarantee Accounts where a claim against an agent arises during a period in which the agent was not the holder of a triennial certificate. This is intended to ensure potential claimants are not disadvantaged if an agent fails to renew or is refused renewal of a triennial certificate. The Bill also amends both of these Acts to empower the Commissioner for Consumer Protection to conduct an investigation or inquiry into any claim made against the Fidelity Guarantee Accounts at the request of the chief executive officer.

The Bill implements a Government election promise to amend the *Retail Trading Hours Act 1987* to increase the number of persons who can work in a retail shop at any one time from 18 to 25 persons, raise the cap on the number of retail shops which can be owned by persons from 3 shops to 4 shops. The Bill further amends this Act to abolish the Retail Shops Advisory Committee.

The remainder of the amendments contained in the Bill are of an administrative or technical nature and are explained in detail below.

PART 1 PRELIMINARY

Clause 1 Short title

Provides for this Act to be known as the *Consumer Protection Legislation Amendment Act 2013*

Clause 2 Commencement

Provides for Part 1 of the Act to commence on the day the Act receives Royal Assent and for the rest of the Act to come into operation on a day fixed by proclamation, allowing different days to be fixed for different provisions.

PART 2 COMMERCIAL TENANCY (RETAIL SHOPS AGREEMENTS) ACT 1985 AMENDED

Clause 3 Act amended

Provides for this Part to amend the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.

Clause 4 Section 9 amended

Amends section 9(2)(c) of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* by deleting the text:

“drawing up of or the obtaining of necessary consents to the lease,”

and inserting:

“negotiation, preparation or execution of, or obtaining the necessary consents to,”

These amendments will correct an inconsistency that exists between section 9 and section 14.

Section 9 of the Act makes void any provision in a retail shop lease that purports to entitle a landlord to key-money from a tenant. Key-money is money or a benefit sought by a landlord to grant or renew a lease or to consent to the assignment of a lease or to the subleasing of premises.

Section 9(2)(c) currently provides that section 9 is not to be construed so as to make void a provision in a retail shop lease for the landlord to receive or recover from the tenant fair and reasonable expenses of the landlord in respect of the drawing up of or obtaining of necessary consents to the lease, an assignment of the lease or a sub-lease of the premises.

Section 14B prevents a landlord under a retail shop lease from claiming the landlord’s legal or other expenses relating to the negotiation, preparation or execution of the lease; or a renewal of the lease; or an extension of the lease; or obtaining the consent of a mortgagee to the lease; or the landlord’s compliance with this Act.

Section 14B(2) provides that section 14B does not prevent the landlord from claiming the reasonable legal or other expenses incurred by the landlord in connection with an assignment of the lease or a sub-lease, including investigating a proposed assignee or sub-lessee and obtaining any necessary consents to the assignment or sub-lease.

Under the current provisions, a clause in a lease to the effect that the tenant is to pay the landlord's expenses in preparing a lease would not be construed as void under section 9, but the landlord cannot make a claim for the expenses under section 14B.

The purpose of this amendment is to make it clear that landlords may not claim for legal expenses relating to the negotiation, preparation or execution of a lease but may claim for legal expenses incurred in connection with the assignment of a lease or the subleasing of premises.

PART 3 *EMPLOYMENT AGENTS ACT 1976 AMENDED*

Clause 5 Act amended

Provides for this Part to amend the *Employment Agents Act 1976*.

Clause 6 Section 18 amended

- (i) Deletes section 18(4) to dispense with the requirement for licence applicants to publish notice of their licence application in the newspaper.
- (ii) Deletes section 18(5) which currently provides for the Commissioner to authorise the publication of a joint advertisement where applications relating to 2 or more persons are made on the same day in respect of a business or related businesses. The removal of the requirement to publish notice of licence applications makes this section redundant.
- (iii) Deletes section 18(7) which currently provides for the Commissioner to grant an interim licence even where notice of the licencing application has not been published. The removal of the requirement to publish notice of licence applications makes this section redundant.

Clause 7 Section 20 amended

- (i) Amends section 20(1) to dispense with the provision for any person, other than the Commissioner of Police or his or her authorised representative to object to the grant or renewal of a licence.

Although there will no longer be an express provision for persons other than the Commissioner of Police, or his or her authorised representative, to make an objection, the Commissioner for Consumer Protection, as the licensing authority, will still be able to receive objections from any person concerning the fitness of an individual to hold a licence and it will remain incumbent upon the Commissioner to take those objections into account in the decision making process.

- (ii) Deletes section 20(2) which currently provides for the Commissioner for Consumer Protection to seek assistance from the Commissioner of Police to investigate objections. This section will be redundant as a consequence of the changes to the provisions relating to objections under section 20(1).

Clause 8 Section 22 amended

- (i) Deletes section 22(3) which currently requires the Commissioner to give written notice to applicants and objectors of his or her decision in relation to licence applications and the reason for that decision. Section 22(3) will be redundant as a consequence of the amendments to section 20(1) at clause 7 which dispense with provisions for objecting to the grant of a licence, and the insertion of new section 22(3).
- (ii) Inserts new section 22(3) which provides for the Commissioner to give applicants' written notice of his or her decision in respect of licence applications, and written notice to the Commissioner of Police if the Commissioner of Police has lodged an objection.
- (iii) Inserts new section 22(4A) to provide for the Commissioner to give written notice to a person who might be aggrieved by the decision setting out the reasons for the decision and informing the aggrieved party of his or her right to apply to the State Administrative Tribunal for a review of the decision.
- (iv) Amends section 22(4) to remove the reference to persons lodging an objection which will be redundant as a consequence of the amendments to section 20(1) at clause 7 which dispense with provisions for objecting to the grant of a licence.

PART 4 FAIR TRADING ACT 2010 AMENDED

Clause 9 Act amended

Provides for this Part to amend the *Fair Trading Act 2010*.

Clause 10 Part 6 Division 1 heading replaced

Deletes the heading "Division 1 – Interpretation" and replaces it with "Division 1 – Preliminary".

Clause 11 Section 64A inserted

Inserts new section 64A into Part 6 Division 1 to preclude an "authorised person" under the *Fair Trading Act 2010* from also being a "public officer" under the *Criminal Investigation Act 2006*. New section 64A is required to make it clear that the *Criminal Investigations Act 2006* does not apply to investigations undertaken under Part 6 of the *Fair Trading Act 2010*, which was the intention when the *Fair Trading Act 2010* was enacted.

Clause 12 Section 83 amended

- (i) Inserts new section 83(4) to deal with applications made to the State Administrative Tribunal consisting of, or including, a claim of legal professional privilege in relation to something seized as the result of executing a search warrant. New section 83(4) requires the State Administrative Tribunal hearing such applications to be constituted by a judicial member and such other members as the President of the State Administrative Tribunal considers appropriate.
- (ii) Inserts new section 83(5) to provide that the terms "judicial member" and "President" have the same meaning as in the *State Administrative Tribunal Act 2004*.

Clause 13 Section 112 amended

- (i) Amends section 112(1) to include a definition for “regulated person” with the same meaning as that in section 88A.

Regulated person is defined in section 88A as a person who carries on a regulated activity. A regulated activity is defined under that section as an occupation or activity that can be lawfully carried on only under an authorisation granted or obtained under a registration Act. Such Acts include the *Land Valuers Licensing Act 1978*; *Motor Vehicle Dealers Act 1973*; *Motor Vehicle Repairers Act 2003*; *Real Estate and Business Agents Act 1978* and *Settlement Agents Act 1981*.

Section 112 deals with confidentiality of information and sets out the circumstances in which personal information concerning the affairs of a person may be disclosed. Among other things, it specifically provides for the Commissioner to make public disclosures about investigations, inquiries or disciplinary action being contemplated or undertaken in relation to regulated persons and the outcome of those actions.

Although “regulated person” was defined in the original drafting of the Fair Trading Act 2010, the definition did not extend to section 112. This was an oversight which the proposed amendment will correct. The amendment will remove a potential impediment upon the Commissioner’s ability to make the public aware of investigations, inquiries or disciplinary action relating to regulated persons.

- (ii) Amends section 112(1) to make a consequential change to punctuation within the section.

PART 5 LAND VALUERS LICENSING ACT 1978 AMENDED

Clause 14 Act amended

Provides for this Part to amend the *Land Valuers Licensing Act 1978*.

Clause 15 Section 16 amended

Amends the definitions of “person aggrieved” and “reviewable decision” in section 16(2) by removing references to the making of objections. The amended definitions are a consequence of the amendment in clause 17 of the Bill that will delete section 18.

Clause 16 Section 17 amended

Deletes section 17(2) to dispense with the requirement for licence applicants to publish notice of their licence application in the newspaper.

Clause 17 Section 18 deleted

Deletes section 18 to dispense with the provision for any person to object to the grant of a licence.

Although there will no longer be an express provision to make an objection, the Commissioner for Consumer Protection, as licensing authority, will still be able to receive objections from any persons concerning the fitness of an individual to hold a licence and it will remain incumbent upon the Commissioner to take those objections into account in the decision making process.

Clause 18 Section 19A amended

Amends section 19A(1) by deleting redundant text as a consequence of the deletion of section 18 at clause 17 which serves to remove the express provision for persons to object to the grant of a licence.

Clause 19 Section 22 amended

Inserts new sub-section 22(4) so that section 19 applies to a renewal of a licence as if it were an application for a new licence under section 17.

The purpose of this amendment is to enable the Commissioner, as licensing authority, to have regard to the same factors (competency and good character) when considering an application for the renewal of a licence, as would be considered if it were an application for the grant of a licence.

Clause 20 Section 23A inserted

Inserts new section 23A at the end of Part III to provide that the Commissioner may, in the event that a licence has been lost or destroyed, issue a duplicate licence upon the payment of a prescribed fee.

Clause 21 Section 23 amended

Deletes the text “an officer of the firm or corporation” and inserts “a person”.

This amendment serves to clarify that a firm or corporation may contract out valuation services to a person, so long as the person providing the valuation is licensed under the Act.

An industry practice exists whereby a firm or corporation that has contracted with a client to provide a valuation, subcontracts the provision of that valuation to a licensed valuer who is not an employee of the firm or corporation. There is a concern that this practice may not strictly comply with section 23(2) of the Act as presently worded. Section 23(1) of the Act requires any person who carries on business as a valuer of land to be licensed. Section 23(2) provides that subsection (1) does not prevent a firm or corporation from providing valuation services, so long as the services are provided by an officer of the firm or corporation who is licensed under the Act.

Clause 22 Section 30 amended

- (i) Deletes section 30(1) to remove the requirement for a list of the names of all persons on the register of licensees to be published annually in the *Government Gazette*.

The Department of Commerce provides a search function on its website that allows public access to current information in respect of all persons holding licences under the *Land Valuers Licensing Act 1978*.

- (ii) Deletes section 30(2) consequent to the deletion of section 30(1). Section 30(2) currently provides that the Commissioner may cause supplementary lists to be published.

PART 6 LIMITED PARTNERSHIPS ACT 1909 AMENDED

Clause 23 Act amended

Provides for this Part to amend the *Limited Partnerships Act 1909*.

Clause 24 Section 15 amended

- (i) Amends section 15(3) to include a reference to section 60 of the *Fair Trading Act 2010* to broaden the application of that Act to the *Limited Partnerships Act 1909* insofar as it applies to the functions of the Registrar (and persons and matters affected by the exercise of those functions by the Registrar).

This amendment restores the Registrar's powers to delegate to any person employed in the Department, his or her powers or duties under the Act. The Registrar's capacity to delegate functions under section 60 of the *Fair Trading Act 2010* was omitted in error during the drafting of the *Acts Amendment (Fair Trading) Act 2010*.

- (ii) Amends section 15(3)(a) as a consequence of the amendment to section 15(3), to reflect the added reference to section 60.

PART 7 MOTOR VEHICLE DEALERS ACT 1973 AMENDED

Clause 25 Act amended

Provides for this Part to amend the *Motor Vehicle Dealers Act 1973*.

Clause 26 Section 5 amended

Deletes the definition of "authorised officer" and inserts a new definition that is aligned to the definition of "authorised person" in section 63 of the *Fair Trading Act 2010*.

Section 5 of the *Motor Vehicle Dealers Act 1973* currently defines "authorised officer" as "a person who is appointed to be an authorised officer under section 6". Section 6 of the Act provides that "The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act". However, section 61 and Part 6 only define "authorised person" and not "authorised officer".

The anomaly potentially impacts on the exercise of authorised officers' functions under the *Motor Vehicle Dealers Act 1973* (such as preventing the issue of infringement notices). The amendment corrects the anomaly by providing that an "authorised officer" under the *Motor Vehicle Dealers Act 1973* is the same thing as an "authorised person" under the FTA 2010.

Clause 27 Section 20 amended

Amends section 20(3) of the Act by deleting the text "no longer" and inserting "do not".

Section 20(3) presently allows the Commissioner to seek (through the State Administrative Tribunal) revocation of an authority to carry on business at

premises if those premises “no longer” comply with all relevant requirements relating to planning.

This amendment is consequential to the amendment to section 20E (clause 28) which dispenses with the requirement for licence applicants to provide a planning certificate in respect of premises at which they propose to carry on business.

Clause 28 Section 20E amended

- (i) Deletes section 20E(1) and (2) and inserts new section 20E(1).

At present, persons applying for a dealer’s licence must provide a planning certificate in respect of any premises from which they propose to carry on business. A planning certificate is a certificate from the relevant local government evidencing compliance with all relevant requirements of written laws relating to planning that apply in respect of the premises

These amendments dispense with the requirement for licence applicants to provide planning certificates, while at the same time, retaining the requirement for applicants to specify premises at which they propose to carry on business.

- (ii) Deletes section 20E(4) as this section is predicated upon the requirement to provide a planning certificate. This section becomes redundant as a consequence of the deletion of current sections 20E(1) and (2).

Clause 29 Section 20FA inserted

Inserts new section 20FA after section 20E to make it clear that despite any authorisation given by the Commissioner to conduct business at the premises nominated in a licence application, all relevant planning laws must still be complied with.

Clause 30 Section 20F replaced

Deletes and replaces section 20F to remove all references to planning certificates and conditional planning certificates as these references will become redundant as a consequence of the deletion of current sections 20E(1) and (2) at clause 28.

Clause 31 Section 21A amended

- (i) Deletes sections 21A(1) and (2) and inserts a new section 21A(1).

At present, persons applying for registration as car market operators must provide planning certificates in respect of any premises from which they propose to carry on business. A planning certificate is a certificate from the relevant local government evidencing compliance of premises with all relevant requirements of written laws relating to planning that apply in respect of the premises

These amendments dispense with the requirement for applicants for registration to provide planning certificates, while at the same time, retaining the requirement for applicants to specify premises at which they propose to carry on business.

- (ii) Deletes section 21A(4) as this section is predicated upon the requirement to provide a planning certificate. This section becomes redundant as a consequence of the deletion of current sections 21A(1) and (2).

Clause 32 Section 21BA inserted

Inserts new section 21BA after section 21A to make it clear that despite any authorisation given by the Commissioner to conduct business at the premises nominated in an application for registration, all relevant planning laws must still be complied with.

Clause 33 Section 21B replaced

Deletes and replaces section 21B to remove all references to planning certificates and conditional planning certificates as these references will become redundant as a consequence of the deletion of current sections 21A(1) and (2) at clause 31.

PART 7 MOTOR VEHICLE REPAIRERS ACT 2003 AMENDED

Clause 34 Act amended

Provides that this Part amends the *Motor Vehicle Repairers Act 2003*.

Clause 35 Section 5 amended

- (i) Deletes section 5(3) which allows regulations to be made that prescribe classes of repair work for repair businesses. This section is no longer required as a consequence of amendments to section 9 at clause 36 which effectively removes the requirement for repair businesses to be licensed for different classes of repair work.
- (ii) Deletes section 5(5) which will be redundant as a consequence of the deletion of section 5(3).

Clause 36 Section 9 amended

Amends section 9(1) by deleting text referencing or relating to classes of repair work.

There are currently 30 classes of repair work prescribed for the purposes of the *Motor Vehicle Repairers Act 2003*. At present, a person operating a repair business must hold a business licence that specifies each type of repair work that may be carried out by the licensee. Currently under the Act, a licensee may only undertake repair work if it falls within a class of work specified on their licence.

The amendments effectively dispense with the requirement for persons or firms to be licensed for specific classes of repair work. There remains a requirement for licensees to ensure that any repair work is carried out by a person who holds a certificate for that class of repair work (or a person who is supervised by a certificate holder).

Clause 37 Section 10 amended

Deletes section 10(2) which permits licenced repairers, in certain circumstances, to accept repair work for a class for which he or she is not licensed.

This section is no longer necessary as a consequence of the amendments to section 9(1) at clause 36 which effectively dispenses with the requirement for persons or firms to be licensed for specific classes of repair work.

Clause 38 Section 11 amended

Amends section 11 by deleting text referencing or relating to classes of repair work as these references will become redundant as a consequence of the amendments to section 9(1) at clause 36.

Section 11 currently provides that persons or firms must not advertise or purport to carry on business that involves carrying out repair work of a class unless they hold a business licence for that class of repair work.

Section 11, as amended, will continue to prohibit persons or firms advertising or purporting to carry on business that involves carrying out repair work unless they hold a business licence.

Clause 39 Section 12 replaced

Deletes and replaces section 12.

Section 12 currently defines *sufficient resources* to mean (a) “any tools and equipment that may be prescribed by the regulations in respect of the class of repair work to which the licence applies” and (b) sufficient material, manpower and financial resources (apart from tools and equipment prescribed) to carry on business doing the class of repair work to which the licence applies.

New section 12 redefines *sufficient resources* and no longer references “class of” repair work as these references will become redundant as a consequence of the amendments to section 9(1) at clause 36.

New section 12 also no longer references “tools and equipment” as these references are predicated upon there being different classes of repair work under a business licence which will be redundant as a consequence of the amendments to section 9(1) at clause 36.

Clause 40 Section 13 amended

Deletes sections 13(2) and 13(3) and inserts new section 13(2).

Section 13 sets out business licence application requirements.

Section 13(2) currently provides for applications to be made for more than one class of repair work.

Section 13(3) requires applications to be in an approved form and accompanied by the prescribed fee for the class or classes of repair work to which the application relates.

References to classes of repair work will become redundant as a consequence of the amendments to section 9(1) at clause 36. Accordingly current section 13(2) will be redundant.

New section 13(2) incorporates content from current section 13(3) while removing the reference to class of repair work.

Clause 41 Section 24 amended

Deletes sections 24(1) and (2) and inserts new section 24(1).

Current section 24(1) provides that a business licence may be for more than one class of repair work.

Current section 24(2) provides that the Commissioner may determine the form of a business licence for a particular class or classes of repair work.

Current sections 24(1) and (2) will be redundant as a consequence of the amendments to section 9(1) at clause 36 which dispenses with the requirement for persons or firms to be licensed for specific classes of repair work.

New section 24(1) provides for a business licence to be in the form determined by the Commissioner.

Clause 42 Section 28 replaced

Deletes and replaces section 28.

Current section 28 provides for regulations to be made prescribing conditions and restrictions for all business licences or business licences for particular classes of repair work. The references to class of repair work will be redundant as a consequence of the amendments to section 9(1) at clause 36 which dispenses with the requirement for persons or firms to be licensed for specific classes of repair work.

New section 28 incorporates content from current section 28 while removing the reference to class of repair work.

Clause 43 Section 35 amended

Amends section 35(4)(a), which relates to changes in the management of corporate members of licenced firms, to remove the reference to class of repair work. References to classes of repair work in the Act become redundant as a consequence of the amendments to section 9(1) at clause 36.

Clause 44 Section 36 amended

Amends section 36(4)(a), which relates to changes in the management of licenced bodies corporate, to remove the reference to class of repair work. References to classes of repair work in the Act become redundant as a consequence of the amendments to section 9(1) at clause 36.

Clause 45 Section 39 amended

Deletes and replaces section 39(1)(b).

Current section 39 provides that any motor vehicle repair work of a prescribed class that is undertaken by a licensed motor vehicle dealer in compliance with the statutory warranty provisions of the *Motor Vehicle Dealers Act 1973* (section 34), must be carried out or supervised by an individual who is certified under the *Motor Vehicle Repairers Act 2003* to carry out that class of repair work (generally referred to as a “certified repairer”).

Section 34 of the *Motor Vehicle Dealers Act 1973* places an obligation, in certain circumstances, upon dealers to repair certain defects in vehicles they sell.

The *Motor Vehicle Dealers Act 1973* does not prevent a consumer from pursuing a claim for statutory warranty repairs where a vehicle is purchased from an unlicensed motor vehicle dealer. New section 39(1)(b) broadens the scope of section 39 so that any repairs carried out in compliance with the statutory warranty provisions of the *Motor Vehicle Dealers Act 1973* must be carried out or supervised by a certified repairer, irrespective of whether the motor vehicle was purchased from a licensed or unlicensed motor vehicle dealer.

Clause 46 Section 52 amended

Amends section 52(1)(a)(ii) by deleting that part of the section that refers to a “business licence” for a particular class of repair work.

Current section 52 provides for the Commissioner to certify certain matters that appear on the register. One of the matters that the Commissioner may certify under section 52(1)(a)(ii) is that a person is the holder of a business licence for a particular class of repair work. This clause removes the reference to “business licence” as references to classes of repair work, insofar as they apply to business licences, will become redundant as a consequence of the amendments to section 9(1) at clause 36 which dispenses with the requirement for persons or firms to be licensed for specific classes of repair work.

Clause 47 Section 58 replaced

Deletes and replaces section 58.

Under current section 58, applicants for a business licence must provide planning certificates in respect of any premises from which they propose to carry on business. A planning certificate is a certificate from the relevant local government evidencing compliance of premises with all relevant requirements of written laws relating to planning that apply in respect of the premises.

New section 58 dispenses with the requirement for applicants to provide planning certificates, while retaining the requirement for applicants to specify premises at which they propose to carry on business.

Clause 48 Section 59 amended

Section 59(1) requires the Commissioner to authorise the holder of a business licence to carry on business at premises specified in an application.

Clause 48 amends section 59(1) by removing a reference to current section 60, which provides for applications for business licences to be accompanied by a conditional planning certificate in place of a planning certificate.

The requirement to provide either a planning certificate or conditional planning certificate with applications will become obsolete as a consequence of the deletion and replacement of section 58 at clause 47. Accordingly, the reference to section 60 will also become obsolete.

Clause 49 Sections 60 to 62 replaced

- (i) Deletes and replaces section 60.

Current section 60 provides for applications for business licences to be accompanied by a conditional planning certificate in place of a planning certificate and allows the Commissioner to grant a conditional application.

The requirement to provide either a planning certificate or conditional planning certificate with applications will become obsolete as a consequence of the deletion and replacement of section 58 at clause 47.

New section 60 provides that despite any authorisation given by the Commissioner to conduct business at the premises nominated in an application for a business licence, all relevant planning laws must still be complied with.

- (ii) Deletes and replaces section 61.

Current section 61 allows the Commissioner to approve applications to change or add to the particulars of authorised premises upon payment of a prescribed fee and the supply of a planning certificate or conditional planning certificate in respect of those premises.

The requirement to provide either a planning certificate or conditional planning certificate with applications will become obsolete as a consequence of the deletion and replacement of section 58 at clause 47.

New section 61 is based on current section 61 without referencing planning certificates or conditional planning certificates.

- (iii) Deletes and replaces section 62.

Current section 62 provides for the Commissioner to make orders revoking authorisation of premises if he or she is no longer satisfied that the premises comply with planning laws. This section also prevents the Commissioner from making such orders unless he or she has conducted an inquiry and given the licensee an opportunity to object to the making of the order.

The provision of planning certificates or conditional planning certificates with a business licence application is the usual way in which the Commissioner is satisfied that premises comply with planning laws. However, the requirement to provide either a planning certificate or conditional planning certificate will become obsolete as a consequence of the deletion and replacement of section 58 at clause 47 and as such the Commissioner will no longer be in a position to ascertain, via the application process, whether business premises comply with planning laws.

New section 62 provides for the Commissioner to make an order revoking an authorisation in respect of premises if:

- the relevant planning authority has provided the Commissioner with written notice that the premises do not comply with specified requirements of relevant planning laws; and
- the Commissioner has given the licensee an opportunity to object to the making of the order.

New section 62 also provides a definition for 'specified' (within the context of specified requirements) to mean specified in the written notice provided by the relevant planning authority.

Clause 50 Section 64 amended

Amends section 64(2) to delete the reference to an order made by the Magistrates Court under section 81 (which relates to the effect of a decision or order pending appeal) and replaces it with a reference to an order made by the State Administrative Tribunal.

This amendment reflects the shift in review jurisdiction from the Magistrate's Court to the State Administrative Tribunal as a consequence of new section 75 at clause 57.

Clause 51 Section 66 inserted

Inserts new section 66 to empower the Commissioner to apply to bring disciplinary action under the *Motor Vehicle Repairers Act 2003* before the State Administrative Tribunal.

While section 68 of the current legislation empowers the State Administrative Tribunal to make disciplinary orders, there is currently no mechanism for alleging misconduct to bring such an action. This amendment provides a mechanism for commencing proceedings and seeking disciplinary orders.

Clause 52 Section 68 amended

- (i) Amends section 68(1) to reference new section 66 which will be the relevant section under which an application for the making of disciplinary orders may be made.

While current section 68 empowers the State Administrative Tribunal to make disciplinary orders, there is no mechanism for alleging misconduct to bring such an action.

Clause 51 of this Bill inserts section 66 to provide a mechanism and empower the Commissioner to make allegations to the State Administrative Tribunal regarding disciplinary orders.

- (ii) Inserts the word “or” after section 68(1)(a) as a co-ordinating conjunction between subsections (1)(a) and (1)(b).

Clause 53 Section 70 amended

Deletes and replaces section 70(a).

Current section 70(a) allows the State Administrative Tribunal to cancel a business licence if it is satisfied that a licensee does not have sufficient resources “for each class of repair work to which the licence applies”.

Clause 39 amends section 12 to remove the references to “class of” repair work from the definition of *sufficient resources* as these references will become redundant as a consequence of the amendments to section 9(1) (per clause 36).

New section 12 redefines *sufficient resources* as meaning “sufficient material, manpower and financial resources to carry on business doing repair work”.

New section 70(a) will allow the State Administrative Tribunal to cancel a business licence if it is satisfied that a licensee does not have *sufficient resources* within the meaning of new section 12.

Clause 54 Section 71 amended

Section 71(3) relates to the return of business licences or certificates where an order is made for their return to the Commissioner by the State Administrative Tribunal.

Clause 54 amends section 71(3) to delete the reference to an order under section 81 (currently made by the Magistrates Court) and replaces it with a reference to an order made by the court on an appeal under the *State Administrative Tribunal Act 2004*.

This amendment reflects the shift in review jurisdiction from the Magistrate’s Court to the State Administrative Tribunal as a consequence of new section 75 at clause 57.

Clause 55 Part 7 heading replaced

Deletes the current heading to Part 7 which reads “Part 7 - Appeals” and replaces it with “Part 7 – Reviews”

Clause 56 Section 73 amended

- (i) Deletes section 73(1)(c) which currently provides for the Commissioner to give written notice of an order made by the State Administrative Tribunal under section 68 to the person affected by that order. This section is redundant as the State Administrative Tribunal is already obliged under section 75 of the *State Administrative Tribunal Act 2004* to provide written notice of its decisions.
- (ii) Inserts the word “or” after each of paragraphs (a) and (b) in section 73(1) as a co-ordinating conjunction between paragraphs.

- (iii) Deletes section 73(3) which currently provides for the Commissioner to give written notice of an order made by the State Administrative Tribunal under section 68 or 70 to the person affected. This section is duplicative (insofar as it applies to section 73(1)(c)) and redundant as the State Administrative Tribunal is already obliged under section 75 of the *State Administrative Tribunal Act 2004* to provide written notice of its decisions.

Clause 57 Section 75 replaced.

Deletes section 75 which currently provides for a person affected by a decision or orders of the Commissioner under section 73 to appeal to the Magistrates Court against that decision or order.

Inserts new section 75 to provide for persons to apply to the State Administrative Tribunal for a review of a decision or order made under section 73.

Inserts new section 76 to provide transitional arrangements for appeals commenced but not completed before the commencement of this clause.

These amendments are consistent with the general jurisdiction of the State Administrative Tribunal and bring motor vehicle repairers into line with motor vehicle dealers and all other industries licensed by the Commissioner.

Clause 58 Sections 77 to 82 deleted

Deletes sections 77 to 82 as a consequence of the deletion and replacement of section 75 which serves to shift review jurisdiction from the Magistrates Court to the State Administrative Tribunal.

Clause 59 Section 109 amended

- (i) Deletes and replaces section 109(1)

Section 109 prohibits motor vehicle repairers and insurers of motor vehicles from entering into agreements for repair work with unlicensed repairers or otherwise performing any act that assists them to carry on business while unlicensed.

Current section 109(1) defines an *unlicensed repairer* as a person or firm that is required to, but does not, hold a business licence for the class of repair work concerned.

The reference to class of repair work will be obsolete as references to classes of repair work in respect of business licences will become redundant as a consequence of the amendments to section 9(1) at clause 36.

New section 109(1) redefines *unlicensed repairer* as a person or firm that is required to, but does not, hold a business licence.

- (ii) Amends section 109(2) to remove two references to “any class of” repair work. These references to class of repair work will be obsolete as references to classes of repair work in respect of business licences will become redundant as a consequence of the amendments to section 9(1) at clause 36.

- (iii) Amends section 109 (3)(c) to remove a reference to “any class of” repair work. This reference to class of repair work will be obsolete as references to classes of repair work in respect of business licences will become redundant as a consequence of the amendments to section 9(1) at clause 36.

Clause 60 Section 115 deleted.

Deletes section 115 which currently provides that Schedule 3 has effect to make transitional provisions. The deletion of this section is consequential to the deletion of Schedule 3 at clause 62.

Clause 61 Schedule 1 amended.

Amends Schedule 1, clause 1(b) to delete the text “business licence or”.

Clause 1(b) of Schedule 1 provides for orders that may be made (by the State Administrative Tribunal) to disqualify a person from holding a business licence or certificate; or a business licence or certificate for any particular class of repair work.

The reference to “business licence” is to be deleted from the Schedule as references to classes of repair work in respect of business licences will become redundant as a consequence of the amendments to section 9(1) at clause 36.

Clause 62 Schedule 3 deleted

Deletes Schedule 3 which sets out transitional provisions as these provisions have expired and are now obsolete.

Part 9 *Petroleum Products Pricing Act 1983* amended

Clause 63 Act amended

Provides for this Part to amend the *Petroleum Products Pricing Act 1983*.

Clause 64 Section 22A amended

- (i) Deletes the definition of *displayed price* which draws on the meaning of *price displayed* under existing section 22B.
- (ii) Inserts in section 22A(1) a definition for *relevant price*. The definition is essentially the same as that of *displayed price*, however, for the sake of clarity, the definition is set out in full in this section.

The change in terminology from *displayed price* to *relevant price* reflects the amendment of section 22B at clause 65 which removes the requirement for suppliers to physically display wholesale fuel prices at their terminal.

Clause 65 Section 22B replaced

- (i) Deletes section 22B which currently requires wholesaler suppliers to display wholesale fuel prices for each type of motor fuel at their terminal and to notify the Commissioner of any price changes. These prices are already displayed on the FuelWatch website and on terminal operators’ websites (as required by the National Oil Code, a prescribed industry code of conduct under the Commonwealth *Competition and Consumer Act 2010*).

- (ii) Inserts new section 22B to retain the requirement contained in current section 22B, which requires suppliers of motor fuel to notify the Commissioner, in accordance with the regulations, whenever the price of wholesale fuel is changed.

The requirements of current section 22B and new section 22B apply only to fuel that is not the subject of any agreement or arrangement affecting price where a reseller takes delivery of the fuel at the terminal from which it was supplied.

Clause 66 Sections 22C and 22D deleted

- (i) Deletes section 22C which requires terminal operators to calculate and display the monthly volume weighted average price for types of fuel sold.
- (ii) Deletes section 22D which provides that if the supply of wholesale motor fuel from a declared terminal is the subject of an order under section 12 (which deals with fixing of maximum prices) the supplier must display the maximum price fixed by the order. The deletion of this section is consistent with the amendment to section 22B at clause 65 which removes the requirement for wholesaler suppliers to display wholesale fuel prices at their terminal.

Clause 67 Section 22E amended

Amends sections 22E(1)(c), (2)(a) and (c) and (4) by deleting each occurrence of “displayed” and replacing it with “relevant”. This amendment is consequential to the amendment of section 22A (per clause 64) which replaces the definition of *displayed price* with a definition of *relevant price*.

Part 10 Real Estate and Business Agents Act 1978 amended

Clause 68 Act Amended

Provides for this Part to amend the *Real Estate and Business Agents Act 1978*.

Clause 69 Section 23 amended

- (i) Amends section 23(1) by deleting the text “of the Commissioner”.

Section 23 provides generally for who may make an application to the State Administrative Tribunal for the review of a decision. This amendment reflects the fact that, in addition to decisions of the Commissioner, decisions of the chief executive officer may also be reviewed by the State Administrative Tribunal.

- (ii) Amends paragraph (a) of the definition of “person aggrieved” in section 23(2) by deleting the text “or objects to”. This text will be redundant as a consequence of the deletion of section 25 at clause 71 which serves to remove the express provision for persons to object to the grant of a licence.
- (iii) Amends paragraph (e) of the definition of “person aggrieved” in section 23(2) by replacing the reference to “Commissioner” with a reference to “chief executive officer”. This amendment is necessary because it is the chief executive officer of the administering Department (currently the Department of Commerce) who is the decision-maker in respect of claims against, or actions in relation to, the Fidelity Guarantee Account and not the Commissioner.

- (iv) Amends paragraph (a) of the definition of “reviewable decision” in section 23(2) by inserting the words “of the Commissioner”. This amendment is necessary because it is the Commissioner who is the decision-maker under Part III of the Act (which relates to licensing of agents).
- (v) Amends paragraph (a) of the definition of “reviewable decision” in section 23(2) by removing the reference to an objection under Part III of the Act (which deals with licensing of agents). This reference will be redundant as a consequence of the deletion of section 25 at clause 71 which serves to remove the express provision for persons to object to the grant of a licence.
- (vi) Amends paragraphs (b) to (d) of the definition of “reviewable decision” in section 23(2) to insert the words “of the Commissioner”. These amendments are necessary because it is the Commissioner who is the decision-maker under Part IV, section 56 and Part VI of the Act.
- (vii) Amends paragraph (e) of the definition of “reviewable decision” in section 23(2) to insert the words “of the chief executive officer”. This amendment is necessary because the chief executive officer is the decision-maker under sections 116 and 117 of the Act (which relate to the Fidelity Guarantee Account).
- (viii) Inserts new section 23(3) to provide for the Commissioner to be the decision maker in respect of claims made under section 116 and 117 that were made prior to 1 July 2011. This new section also provides that any decision in respect of such a claim made after the commencement of section 69 of the *Consumer Protection Legislation Amendment Act 2013*, is a reviewable decision.
- (ix) Inserts new section 23(4) to provide for decisions made under section 116 or 117 by the chief executive officer to be reviewable decisions, and for those decisions to be taken to be made immediately after the commencement of section 69 of the *Consumer Protection Legislation Amendment Act 2013* even if it is made before the commencement of that section.

The purpose of this new section is to make decisions of the chief executive officer that have been made from the period 1 July 2011 to the day that section 69 of the *Consumer Protection Legislation Amendment Act 2013* comes into operation, reviewable. Under current section 23, decisions of the chief executive officer are not reviewable.

- (x) Inserts new section 23(5) to ensure that the amendments made to section 23 by section 69 of the *Consumer Protection Legislation Amendment Act 2013* do not affect the review of decisions already under review by the State Administrative Tribunal.

Clause 70 Section 24 amended

Deletes section 24(2) which currently requires licence applications to be advertised in accordance with the regulations (which require notices of such applications to be published by the Commissioner in the newspaper).

The deletion of section 24(2) will dispense with the requirement for licence applications to be advertised at all.

Clause 71 Section 25 deleted.

Deletes section 25 which currently provides for any person to object to the grant of a licence, how such objections are to be made and the process to be followed by the Commissioner if considering granting a licence despite an objection.

Although there will no longer be an express provision to make an objection, the Commissioner for Consumer Protection, as licensing authority, will still be able to receive objections from any persons concerning the fitness of an individual to hold a licence and it will remain incumbent upon the Commissioner to take those objections into account in the decision making process.

Clause 72 Section 27 amended

- (i) Amends section 27(2) by deleting “the Schedule” and inserting “Schedule 1” to reflect the change of name of the schedule at clause 83.
- (ii) Amends section 27(2) by deleting the text “therein and elsewhere” as this phrase is superfluous.

Clause 73 Section 34A amended

Amends section 34A(a) to remove the reference to an objection in respect of a licence.

This amendment is consequential to the deletion of section 25 at clause 71 which serves to remove the express provision for persons to object to the grant of a licence.

Clause 74 Section 40A inserted

Inserts new section 40A to provide for the Commissioner to issue (upon payment of the prescribed fee) a duplicate licence, certificate of registration or triennial certificate, if a licence or certificate has been lost or destroyed. There is currently no provision for the Commissioner to issue duplicates.

Clause 75 Section 91 amended

Amends section 91 by replacing the reference to “Board” with a reference to the “Commissioner”.

The reference to “Board” is a reference to the former Real Estate and Business Agents Supervisory Board. Current section 91 provides that a duty of confidentiality applies to an auditor nominated by the Board under section 88. Amendments to the Real Estate and Business Agents Act made by the *Acts Amendment (Fair Trading) Act 2010* which took effect on 1 July 2011, shifted the functions of the Real Estate and Business Agents Supervisory Board - in respect of trust accounts - to the Commissioner for Consumer Protection.

Under section 88, it is now the Commissioner, not the Board, who nominates auditors.

Clause 76 Section 116 amended

Inserts new section 116(2A) to extend the meaning of “period” in section 116(1) so that claims against the Fidelity Guarantee Account may also be made in respect of a period during which a licensee did not hold a triennial certificate, if the chief executive officer considers it just and reasonable in the circumstances.

The Real Estate and Business Agents Act provides for the establishment of a Fidelity Guarantee Account for the purpose of reimbursing persons who suffer pecuniary loss or loss of property by reason of defalcation by a licensee who holds a current triennial certificate. The Act provides a process for renewal of triennial certificates including provisions that allow agents to renew their certificates after they have expired. Although the Commissioner is empowered to grant renewal applications with retrospective effect, if an agent deliberately fails to renew their triennial certificate or the Commissioner refuses a renewal application, clients of the agent would have no claim against the Fidelity Guarantee Account if the agent defalcates at any time after the original expiry date of their triennial certificate and the client suffers a loss as a result of that defalcation. This amendment ensures that potential claimants against the fidelity fund are not disadvantaged if an agent fails to renew or is refused renewal of a triennial certificate.

Clause 77 Section 124AA inserted

Inserts new section 124AA to provide for the Commissioner, at the request of the chief executive officer, to make an investigation or inquiry under Part 6 of the *Fair Trading Act 2010*, in relation to a claim against the Fidelity Guarantee Account.

The chief executive officer is empowered to receive and decide claims against the Fidelity Guarantee Account however the chief executive officer does not have any powers of investigation or inquiry in relation to that account.

Part 6 of the Fair Trading Act gives the Commissioner general and specific powers in relation to investigations and inquiries. In effect, new section 124AA provides for the conferral of the Commissioner’s powers under that Part to the investigation of claims against the Fidelity Guarantee Account.

New section 124AA provides that for the purpose of the investigation or inquiry, the administration of the Fidelity Guarantee Account is taken to be a function of the Commissioner.

New section 124AA further provides that the Commissioner must prepare a report on the findings of the investigation or inquiry for the chief executive officer. The purpose of the report is to assist the chief executive officer to determine the claim that is the subject of the report.

Clause 78 Section 124A amended

Replaces the reference to “Commissioner” in section 124A(2) with a reference to “chief executive officer”.

The *Acts Amendment (Fair Trading) Act 2010* abolished the Real Estate and Business Agents Supervisory Board (the Board); vested the licensing authorities of the Board in the Commissioner for Consumer Protection; and vested the employing authority and financial controls of the Board in the chief executive officer of the Department of Commerce.

Prior to the implementation of the Acts Amendment (Fair Trading) Act, the *Real Estate and Business Agents Act 1978* provided for the Education and General Purpose Account to be administered by the Board.

Although it was intended for the reference to “Board” to be replaced with a reference to the “chief executive officer”, section 124A(2) of the Real Estate and Business Agents Act currently refers, incorrectly, to the “Commissioner”. Clause 78 corrects that error.

Clause 79 Section 124C amended

This clause amends section 124C(e) to enable expenditure lawfully incurred by the Commissioner in relation to education and advisory services, to be charged to the Education and General Purpose Account.

Under the *Real Estate and Business Agents Act 1978*, the Commissioner currently has no express education or advisory functions, and hence is not able to charge any expenditure in relation to such functions to the Education and General Purpose Account.

Under section 57A of the *Fair Trading Act 2010* however, the Commissioner has certain functions in relation to various registration acts, including the Real Estate and Business Agents Act. One of these functions is to conduct and promote education and provide advisory services in respect of that Act. These functions, however, are not functions under the Real Estate and Business Agents Act and hence the existence of this section does not authorise the Commissioner to incur expenditure under the Real Estate and Business Agents Act in relation to those functions.

Amended section 124C(e) provides that expenditure lawfully incurred by the Commissioner in the performance of her functions under the Real Estate and Business Agents Act or his or her functions under section 57A of the *Fair Trading Act 2010* that are performed for the purposes of the Real Estate and Business Agents Act may be charged to the Education and General Purpose Account.

Clause 80 Section 134 amended

- (i) Deletes section 134(1) to remove the requirement for a list of the names and descriptions of all persons holding licences and current triennial certificates, and of all persons holding current certificates of registration, to be published annually in the *Government Gazette*.

The Department of Commerce provides a search function on its website that allows public access to current information in respect of all persons holding licences and current triennial certificates, and of all persons holding current certificates of registration.

- (ii) Deletes section 134(2) consequential to the deletion of section 134(1). Section 134(2) provides that the Commissioner may cause supplementary lists to be published.

Clause 81 Part XI Division 1 deleted

Deletes Part XI Division 1. This Part contains savings and transitional provisions which have expired.

Clause 82 Part XI Division 2 heading deleted

Deletes the heading to Part XI Division 2 which currently reads *Division 2 — Savings and transitional (2010)*. This amendment is consequential to the deletion of Part XI Division 1 (per clause 81).

Clause 83 Schedule amended

- (i) Deletes the heading to the Schedule and the reference after it which currently reads *Schedule — Qualifications and saving and transitional provisions* and replaces it with: *Schedule 1 - Qualifications for grant of licence and related matters*, to better reflect the nature of its content, as amended.
- (ii) Deletes the first heading to the Schedule which reads “Division 1”. This is consequential to the deletion of Division 2 of the Schedule (per clause 83(5)).
- (iii) Deletes the text “such a licence” in clause 3 of the schedule and inserts “a licence granted to a person who is qualified under clause 1(c)”. The heading of this clause reads *Licence by reason of qualification under cl. 1(c)*. This amendment reflects the fact that headings are not part of the written law and hence it is necessary to specify the qualification for the licence within the body of the clause, not just the heading.
- (iv) Deletes the text “such a licence” in clause 4 of the schedule and inserts “a licence applied for by a person who is qualified under clause 1(d)”. The heading of this clause reads *Licence by reason of qualification under cl. 1(d)*. This amendment reflects the fact that headings are not part of the written law and hence it is necessary to specify the qualification for the licence within the body of the clause, not just the heading.
- (v) Deletes the Schedule Division 2 which contains savings and transitional provisions that are obsolete.

Part 11 Residential Parks (Long-stay Tenants) Act 2006 amended

Clause 84 Act amended

Provides for this Part to amend the *Residential Parks (Long-stay Tenants) Act 2006*.

Clause 85 Glossary amended

Deletes and replaces the definition of *bond administrator*. At present, *bond administrator* is defined erroneously as meaning the Commissioner, as defined in the *Fair Trading Act 2010*, section 6. Clause 85 corrects the error by defining *bond administrator* as meaning the chief executive officer of the Department in his or her capacity as bond administrator under the *Residential Tenancies Act 1987*.

Part 12 ***Residential Tenancies Act 1987* amended**

Clause 86 **Act amended**

Provides for this Part to amend the *Residential Tenancies Act 1987*.

Clause 87 **Section 3 amended**

Deletes and replaces the definition of *bond administrator*. At present, *bond administrator* is defined erroneously as meaning the Commissioner, as defined in the *Fair Trading Act 2010*, section 6. Clause 87 corrects the error by defining *bond administrator* as meaning the chief executive officer of the Department.

Clause 88 **Section 31 amended**

Amends section 31(1) by inserting a reference to section 31A in addition to the existing reference to section 30.

The purpose of this amendment is to include reference to a rent increase under section 31A of the Act as grounds permitting a security bond to be increased.

Section 31 currently provides for the amount of security bond payable under a residential tenancy agreement to be increased by the lessor by notice in writing to the tenant, where the amount of rent payable has been increased under section 30.

Section 31A inserted by the *Residential Tenancies Amendment Act 2011* provides an alternative means by which rent may be increased.

The Residential Tenancies Amendment Act failed to include a consequential amendment to section 31 to include reference to new section 31A. As a result, following commencement of the Residential Tenancies Amendment Act, if the lessor were to increase the rent in accordance with section 31A, the lessor would not be able to increase the security bond under section 31.

The effect of the amendment is that a lessor may increase the security bond in line with an increase in rent, irrespective of whether the rent is increased in accordance with section 30 or section 31A.

Clause 89 **Section 31B replaced**

Deletes and replaces section 31B.

Section 31B currently provides that where a fixed term residential tenancy agreement is in place and:

- a new agreement is entered into in respect of the same premises; and
- the agreement is to commence upon the expiration of the former agreement;

the tenant cannot be charged rent at a rate greater than under the former agreement during the first 30 days of the new agreement.

As drafted, section 31B could be read as though the 30-day period operates from the point at which the new agreement is entered into, as opposed to 30 days from the date that the fixed term agreement expires. Further, it could be argued that a new agreement could still require the payment of rent at a greater rate than under the former agreement for the first 30 days so long as the tenant does not have to actually pay the additional amount until after 30 days have elapsed. This was not the policy intent.

New section 31B makes it abundantly clear that tenants cannot be charged rent at a rate greater than under their former agreement in respect of the first 30-day period of the new agreement.

Part 13 *Retail Trading Hours Act 1987* amended

Division 1 – Amendments to the *Retail Trading Hours Act 1987*

Clause 90 Act amended

Provides for this Division to amend the *Retail Trading Hours Act 1987*.

Clause 91 Section 3 amended

Deletes from section 3(1) the definitions of “Committee” and “member”.

These amendments are consequential to the amendments at clause 93 which provide for the abolition of the Retail Shops Advisory Committee.

Clause 92 Section 10 amended

- (i) Amends section 10(3)(bc) by replacing the words “18 persons” with “25 persons”.

Under the Retail Trading Hours Act, retail shops are assigned different categories. These categories are: general retail shops; small retail shops; special retail shops; and filling stations. Subject to the Act, any retail shop that is not a small retail shop, a special retail shop or a filling station is regarded as a general retail shop.

Small retail shops are permitted to trade 24 hours per day, seven days per week, including all public holidays. For a shop to be classified as a small retail shop, it must meet certain operational criteria. One such criterion is that a shop may not have more than 18 persons - including owners, but excluding trainees/apprentices, working in the shop at any one time.

This clause amends an operational criterion applying to small retail shops by increasing the number of persons who can work in a retail shop at any one time from 18 to 25 persons.

- (ii) Amends section 10(3a)(a)(ii) by replacing the words “3 retail shops” with “4 retail shops”.

Under the Retail Trading Hours Act, retail shops are assigned different categories. These categories are: general retail shops; small retail shops; special retail shops; and filling stations. Subject to the Act, any retail shop that is not a small retail shop, a special retail shop or a filling station is regarded as a general retail shop.

Small retail shops are permitted to trade 24 hours per day, seven days per week, including all public holidays. For a shop to be classified as a small retail shop, it must meet certain ownership criteria. Under ownership criteria applying to small retail shops, persons - whether individually or as part of a group - cannot own more than three retail shops.

This clause amends the ownership criteria applying to small retail shops by increasing the number of small shops which can be owned by persons from three shops to four shops.

- (iii) Amends section 10(3a)(b)(iii) and (iv) by replacing the words “2 or more” with “3 or more”.

This amendment is consequential to the amendment at 10(3a)(a)(ii) which provides that persons whether individually or as part of a group, cannot own more than four retail shops.

Clause 93 Sections 17 to 21 deleted

Deletes sections 17, 18, 19, 20 and 21.

These sections make provision for the establishment of the Retail Shops Advisory Committee as well as provisions for temporary members; vacation of office of members; sub-committees; and also the functions of the Committee.

The removal of section 17 removes the legislative basis for the Committee and hence, the remaining sections 18 to 21 are redundant.

Clause 94 Section 38 amended

Amends section 38 to remove the references to the Retail Shops Advisory Committee, a sub-committee, or any members of that committee or sub-committee. References to the Committee, sub-committee and members will be redundant as a consequence of the deletion of sections 17 to 21 at clause 93.

Division 2 – Consequential amendment

Clause 95 Act amended

Provides for this Division to amend the *Constitution Acts Amendment Act 1899*.

Clause 96 Schedule V amended

Amends Schedule V Part 3 of the *Constitution Acts Amendment Act 1899*

by deleting the reference to the Retail Shops Advisory Committee which will be redundant as a consequence of the deletion of section 17 at clause 93.

Part 14 – Settlement Agents Act 1981 amended

Clause 97 Act amended

Provides for this Part to amend the *Settlement Agents Act 1981*.

Clause 98 Section 23 amended

- (i) Amends section 23(1) by deleting the text “of the Commissioner”.

Section 23 provides generally for who may make an application to the State Administrative Tribunal for the review of a decision. This amendment is necessary because, in addition to decisions of the Commissioner, decisions of the chief executive officer may also be reviewed by the State Administrative Tribunal

- (ii) Amends paragraph (a) of the definition of “person aggrieved” in section 23(2) by deleting the text “or objects to”. This text will be redundant as a consequence of the deletion of section 25 at clause 100 which serves to remove the express provision for persons to object to the grant of a licence.
- (iii) Amends paragraph (c) of the definition of “person aggrieved” in section 23(2) by replacing the reference to “Commissioner” with a reference to “chief executive officer”. This amendment is necessary because the chief executive officer is the decision-maker in respect of claims against or actions in relation to the Fidelity Guarantee Account and not the Commissioner.
- (iv) Amends paragraph (a) of the definition of “reviewable decision” in section 23(2) by inserting the words “of the Commissioner”. This amendment is necessary because the Commissioner is the decision-maker under Part III of the Act (which relates to licensing of agents).
- (v) Amends paragraph (a)(ii) of the definition of “reviewable decision” in section 23(2) by removing the reference to an objection under Part III of the Act (which deals with licensing of agents). This reference will be redundant as a consequence of the deletion of section 25 at clause 100 which serves to remove the express provision for persons to object to the grant of a licence.
- (vi) Amends paragraph (b) of the definition of “reviewable decision” in section 23(2) to insert the words “of the Commissioner”. This amendment reflects the fact that it is the Commissioner that makes decisions under Part IV, Division 2 of the Act.
- (vii) Amends paragraph (c) of the definition of “reviewable decision” in section 23(2) to insert the words “of the chief executive officer”. This amendment reflects that the chief executive officer makes decisions under sections 93 and 95 of the Act (which relate to the Fidelity Guarantee Account).
- (viii) Inserts new section 23(3) to provide for the Commissioner to be the decision maker in respect of claims made under section 93 and 95 that were made prior to 1 July 2011. This new section also provides that any decision in respect of such a claim made after the commencement of section 98 of the *Consumer Protection Legislation Amendment Act 2013*, is a reviewable decision.
- (ix) Inserts new section 23(4) to provide for decisions made under section 93 or 95 by the chief executive officer to be reviewable decisions, and for the decision to be deemed to have been made immediately after the commencement of section 98 of the *Consumer Protection Legislation Amendment Act 2013* even if it is made before the commencement of that section.

The purpose of this new section is to make decisions of the chief executive officer that have been made between 1 July 2011 to the day that section 98 of the *Consumer Protection Legislation Amendment Act 2013* comes into operation, reviewable. Under current section 23, decisions of the chief executive officer are not reviewable

- (x) Inserts new section 23(5) to ensure that the amendments made to section 23 by section 98 of the *Consumer Protection Legislation Amendment Act 2013* do not affect the review of decisions already under review by the State Administrative Tribunal.

Clause 99 Section 24 amended

Deletes section 24(2) which provides that notice of a business licence application must be advertised in accordance with the regulations.

Clause 100 Section 25 deleted

Deletes section 25 which provides for any person to object to the grant of a licence on the grounds that the applicant doesn't have all or any of the qualifications required under the Act, and further provides how such objections are to be made. This section also provides that if the Commissioner is considering granting a licence despite an objection, the Commissioner must give the objector the opportunity to provide additional information in relation to their objection.

Although there will no longer be an express provision to make an objection, the Commissioner for Consumer Protection, as licensing authority, will still be able to receive objections from any persons concerning the fitness of an individual to hold a licence and it will remain incumbent upon the Commissioner to take those objections into account in the decision making process.

Clause 101 Section 31 amended

Deletes section 31(2a) which provides that the Commissioner may refuse to renew a triennial certificate if the licensee has not met prescribed educational requirements.

Inserts new section 31(2A) to provide that the Commissioner may consider certain factors before approving the renewal of a licensee's triennial certificate. The factors that the Commissioner may consider are those factors that she would ordinarily consider in deciding whether to grant a licence (with the exception of the age threshold for licence applicants, which having been met in the original grant of a licence would not be relevant to the renewal of a triennial certificate).

New section 31(2A) retains the requirement set out in the former section 31(2a) that the Commissioner may refuse to renew a triennial certificate if the licensee has not met prescribed educational requirements.

Clause 102 Section 34A amended

Amends section 34A(a) to remove the reference to an objection in respect of a licence.

This amendment is consequential to the deletion of section 25 at clause 100 which serves to remove the express provision for persons to object to the grant of a licence.

Clause 103 Section 36 amended

- (i) Amends section 36(2) by inserting new section 36(2)(ba) to require the Commissioner to be notified of any change in the partnership of a firm.

Current section 36(2) does not require the Commissioner to be notified of a change in the partners of a firm except in the case of bodies corporate. Not all partners in a firm are necessarily bodies corporate. The amendment will require the Commissioner to be notified of any change in the partnership of a firm that involves either an individual or a body corporate.

- (ii) Amends section 36(2)(b) by inserting the word “where” at the beginning of the paragraph so that it makes grammatical sense in the context of the rest of the section.

Clause 104 Section 41A inserted

Inserts new section 41A to provide for the Commissioner to issue a duplicate licence or duplicate triennial certificate upon payment of a prescribed fee. There is currently no provision for the Commissioner to issue duplicates.

Clause 105 Section 93 amended

Inserts new section 93(2A) to extend the meaning of “period” in section 93 so that claims against the Fidelity Guarantee Account may also be made in respect of a period during which a licensee did not hold a triennial certificate, if the chief executive officer considers it just and reasonable in the circumstances.

The *Settlement Agents Act 1981* provides for the establishment of a Fidelity Guarantee Account for the purpose of reimbursing persons who suffer pecuniary loss or loss of property by reason of defalcation by a licensee who holds a current triennial certificate. The Act provides a process for renewal of triennial certificates including provisions that allow agents to renew their certificates after they have expired. Although the Commissioner is empowered to grant renewal applications with retrospective effect, if an agent deliberately fails to renew their triennial certificate or the Commissioner refuses a renewal application, clients of the agent would have no claim against the Fidelity Guarantee Account if the agent defalcates at any time after the original expiry date of their triennial certificate, and the client suffers a loss as a result of that defalcation. This amendment ensures that potential claimants against the fidelity fund are not disadvantaged if an agent fails to renew or is refused renewal of a triennial certificate.

Clause 106 Section 102AA inserted

Inserts new section 102AA to provide that the Commissioner may, at the request of the chief executive officer, make an investigation or inquiry under Part 6 of the *Fair Trading Act 2010*, in relation to a claim against the Fidelity Guarantee Account.

The chief executive officer is currently empowered to receive and decide claims against the Fidelity Guarantee Account however the chief executive officer does not have any powers of investigation or inquiry in relation to that account.

Part 6 of the Fair Trading Act gives the Commissioner general and specific powers in relation to investigations and inquiries. In effect, new section 102AA provides for the conferral of the Commissioner's powers under that Part to the investigation of claims against the Fidelity Guarantee Account.

New section 102AA also provides that for the purpose of the investigation or inquiry, the administration of the Fidelity Guarantee Account is taken to be a function of the Commissioner.

New section 102AA further provides that the Commissioner must prepare a report on the findings of the investigation or inquiry for the chief executive officer. The purpose of the report is to assist the chief executive officer to determine the claim that is the subject of the report.

Clause 107 Section 102C amended

Deletes and replaces section 102C(e) to enable expenditure lawfully incurred by the Commissioner in relation to education and advisory services to be charged to the Education and General Purpose Account.

Under the *Settlement Agents Act 1981*, the Commissioner currently has no express education or advisory functions, and hence is not able to charge any expenditure in relation to such functions to the Education and General Purpose Account.

Under section 57A of the *Fair Trading Act 2010* however, the Commissioner has certain functions in relation to various registration acts, including the Settlement Agents Act. One of these functions is to conduct and promote education and provide advisory services in respect of that Act. These functions, however, cannot be considered to be functions under the Settlement Agents Act and hence the existence of this section does not authorise the Commissioner to incur expenditure under the Settlement Agents Act in relation to those functions.

New section 102C(e) provides that expenditure lawfully incurred by the Commissioner in the performance of his or her functions under the Settlement Agents Act or her functions under section 57A of the *Fair Trading Act 2010* that are performed for the purposes of the Settlement Agents Act may be charged to the Education and General Purpose Account.

Clause 108 Section 134 amended

- (i) Deletes section 111(1) to remove the requirement for a list of the names and descriptions of all persons holding licences and a current triennial certificate, to be published annually in the *Government Gazette*.

The Department of Commerce provides a search function on its website that allows public access to current information in respect of all persons holding licences and current triennial certificates.

- (ii) Deletes section 111(2) consequential to the deletion of section 111(1). Section 111(2) provides that the Commissioner may cause supplementary lists to be published.

Part 15 – *Travel Agents Act 1985* amended

Clause 109 Act amended

Provides for this Part to amend the *Travel Agents Act 1985*.

Clause 110 Section 3 amended

Inserts in section 3(1) a definition of “former Crimes Act provision” to mean deleted section 50DA or 50DB of the *Crimes Act 1914* (Commonwealth). This amendment is consequential to the amendments at clauses 113(2), 115 and 117.

Clause 111 Section 10 amended

- (i) Deletes section 10(1) to dispense with the requirement for the Commissioner to publish in the newspaper, notice of licence applications.
- (ii) Amends section 10(2) to add introductory text as a consequence of the deletion of section 10(1).

Clause 112 Section 11 deleted

Deletes section 11 which provides for any person to object to the grant of a licence, and further provides how such objections are to be made.

Although there will no longer be an express provision relating to the making of objections, the Commissioner for Consumer Protection, as licensing authority, will still be able to receive objections from any persons concerning the fitness of an individual to hold a licence and it will remain incumbent upon the Commissioner to take those objections into account in the decision making process.

Clause 113 Section 12 amended

- (i) Deletes and replaces section 12(1) to remove all text relating to objections to licence applications. This amendment is consequential to the deletion of section 11 at clause 112 which serves to remove the express provision for persons to object to the grant of a licence.
- (ii) Deletes and replaces section 12(2)(ba) to update references to Commonwealth legislation, namely *The Criminal Code* and the *Criminal Code Act 1994* (Cth) while retaining the reference to the former *Crimes Act 1914*.

This amendment reflects the fact that the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) removed child sexual offences from the *Crimes Act 1914* (Cth) by repealing Part IIIA of that Act (which related to child sex tourism), and transferring the relevant provisions to the *Criminal Code Act 1995* (Cth).

- (iii) Amends section 12(4)(i) to update references to Commonwealth legislation, namely *The Criminal Code* and the *Criminal Code Act 1994* (Cth) while retaining the reference to the former *Crimes Act 1914*. This amendment reflects the fact that the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) removed child sexual offences from the *Crimes Act 1914* (Cth) by repealing Part IIIA of that Act (which related to child sex tourism), and transferring the relevant provisions to the *Criminal Code Act 1995* (Cth).
- (iv) Deletes and replaces section 12(5)(b) to remove the reference to an objection to the granting of an application. This amendment is consequential to the deletion of section 11 at clause 112.
- (v) Amends section 12(6) by deleting the reference to a person who objects to the granting of a licence. This amendment is consequential to the deletion of section 11 at clause 112.
- (vi) Deletes and replaces section 12(7)(a) to remove the reference to an objection to the granting of an application. This amendment is consequential to the deletion of section 11 at clause 112.
- (vii) Amends section 12 by inserting the word “or” as a co-ordinating conjunction after each of subsections (2)(a) to (f) and (4)(a) to (g).

Clause 114 Section 21 amended

- (i) Inserts new section 21(4)(da) to enable the Commissioner to make an investigation or inquiry where there are grounds for believing that a licensee has been found guilty of an offence under the *Criminal Code* section 187, the *Criminal Code Act 1995* (Commonwealth) section 272.18, 272.19 or a provision of the *Crimes Act 1914*.

New section 21(4)(da) is based largely on section 21(4a) (which is deleted under clause 114(2)) but removes obsolete references to “Chairman” and “Tribunal” which relate to the former Commercial Tribunal – the previous licensing authority for travel agents. The Commercial Tribunal was abolished with the repeal of the *Commercial Tribunal Act 1984* on 1 January 2005. The Commissioner for Consumer Protection is now the licensing authority for travel agents.

- (ii) Deletes section 21(4a) as the substantive content of this section is now contained in new section 21(4)(da).
- (iii) Amends section 21(4) by inserting the word “or” as a co-ordinating conjunction after each of paragraphs (a) to (g) inclusive.

Clause 115 Section 22 amended

- (i) This clause amends section 22(1) to make it subject to new section 22(1a). The purpose of this is to continue to require the State Administrative Tribunal to permanently disqualify a licensee from being licensed, where, in dealing with an allegation under section 21(5) in respect of a belief described in section 21(4)(da), the Tribunal satisfies itself that the licensee has been found guilty of a relevant offence under *The Criminal Code*, the *Criminal Code Act 1994* (Cth) or the *Crimes Act 1914* (Cth).

This amendment is necessary to avoid a potential internal inconsistency in section 22 by removing any doubt as to disciplinary options open to the State Administrative Tribunal in respect of an offence articulated in new section 21(4)(da).

- (ii) Amends section 22(1a) to update references to Commonwealth legislation, namely *The Criminal Code* and the *Criminal Code Act 1994* (Cth) while retaining the reference to the former *Crimes Act 1914*. This amendment reflects the fact that the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) removed child sexual offences from the *Crimes Act 1914* (Cth) by repealing Part IIIA of that Act (which related to child sex tourism), and transferring the relevant provisions to the *Criminal Code Act 1995* (Cth). This clause also updates an obsolete reference to “Tribunal”, which is a reference to the former Commercial Tribunal.

Clause 116 Section 23 amended

Amends section 23(2) by removing from the definition of *person aggrieved*, all text relating to objections to licence applications. This amendment is consequential to the deletion of section 11 at clause 112 which serves to remove the express provision for persons to object to the grant of a licence.

Clause 117 Section 30 amended

- (i) Deletes and replaces section 30(1)(da) to update references to Commonwealth legislation, namely *The Criminal Code* and the *Criminal Code Act 1994* (Cth) while retaining the reference to the former *Crimes Act 1914*. This amendment reflects the fact that the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) removed child sexual offences from the *Crimes Act 1914* (Cth) by repealing Part IIIA of that Act (which related to child sex tourism), and transferring the relevant provisions to the *Criminal Code Act 1995* (Cth).
- (ii) Amends section 30(1) by adding the word “or” as a co-ordinating conjunction after each of paragraphs (a) to (d) inclusive.

Unless otherwise stated, all references to the Commissioner in this Explanatory Memorandum are references to the Commissioner for Consumer Protection.