

Acts Amendment (Fair Trading) Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

Acts Amendment (Fair Trading) Bill 2010

A Bill for

An Act to —

- **shift the functions of various regulatory and licensing Boards to the Commissioner under the *Fair Trading Act 2010*; and**
 - **establish certain investigatory and enforcement powers in relation to certain regulated persons; and**
 - **enable the establishment of various consumer advisory committees under the *Fair Trading Act 2010*,**
- and to make amendments to various Acts as a consequence of enacting the *Fair Trading Act 2010* and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Acts Amendment (Fair Trading) Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) Part 8 Division 1 — on the day on which the *Fair Trading Act 2010* section 57 comes into operation, but —
 - (i) if sections 34 and 53 of this Act come into operation on that day, Part 8 Division 1 of this Act does not come into operation; or
 - (ii) if sections 34 and 53 of this Act come into operation after that day, section 36 of this Act does not come into operation;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Fair Trading Act 2010* amended**

2 **3. Act amended**

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

4 Note: The *Fair Trading Bill 2010* is currently before Parliament.

5 **4. Section 58A inserted**

6 After section 57 insert:

7

8 **58A. Licensing and regulatory functions of**
9 **Commissioner**

10 The Commissioner has the following functions with
11 respect to the licensing, registration and certification
12 schemes provided for in the Acts specified in
13 Schedule 2 —

- 14 (a) to administer the scheme of licensing,
15 registration and certification established under
16 those Acts;
- 17 (b) to conduct and promote education and provide
18 advisory services for persons who are licensed,
19 registered or certificated under those Acts, or
20 involved in the administration of those Acts,
21 and for members of the public on —
- 22 (i) matters relating to the operation of those
23 Acts;
- 24 (ii) matters relating to the operations of
25 persons who are licensed, registered or
26 certificated under those Acts;
- 27 (c) to advise the Minister as to the general
28 administration of those Acts;
- 29 (d) to make recommendations and submit
30 proposals to the Minister from time to time

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- 1 with respect to regulations to be made under
2 those Acts;
3 (e) to carry out any other functions conferred on
4 the Commissioner under those Acts.
5

6 **5. Section 63 amended**

7 In section 63(1) in the definition of *consumer affairs authority*:

8 (a) after paragraph (a)(i) insert:

9
10 (ia) an advisory committee appointed under
11 Division 3; or
12

13 (b) in paragraph (b)(ii) delete “body or authority referred to
14 in paragraph (a)(ii)” and insert:

15
16 body, an advisory committee or an
17 authority referred to in
18 paragraph (a)(ia) or (a)(ii)
19

20 **6. Part 5 Division 3 inserted**

21 At the end of Part 5 insert:
22

23 **Division 3 — Advisory committees**

24 **Subdivision 1 — Property Industry Advisory Committee**

25 **64A. Property Industry Advisory Committee**

26 A committee called the Property Industry Advisory
27 Committee is established.

1 **64B. Membership**

- 2 (1) The Committee consists of —
- 3 (a) the Commissioner ex officio; and
- 4 (b) 8 other members or such other number of
- 5 persons as may be prescribed, appointed by the
- 6 Minister in accordance with the regulations.
- 7 (2) One of the members appointed under subsection (1)(b)
- 8 is to be appointed as Chairperson.

9 **64C. Functions**

- 10 The functions of the Committee are to advise the
- 11 Minister and the Commissioner on —
- 12 (a) the regulation of the real estate, settlement and
- 13 land valuation industries in Western Australia,
- 14 including the licensing, regulation and training
- 15 of persons or businesses who or which
- 16 undertake the functions of a real estate agent,
- 17 real estate sales representative, business agent,
- 18 business sales representative, settlement agent
- 19 or land valuer; and
- 20 (b) the provision by the Commissioner of
- 21 education, information and advice to consumers
- 22 and to the real estate, settlement and land
- 23 valuation industries in Western Australia; and
- 24 (c) the criteria required for applications under the
- 25 *Real Estate and Business Agents Act 1978*
- 26 section 131O; and
- 27 (d) any matter referred to the Committee by the
- 28 Minister or the Commissioner.

29 **64D. Committee may regulate own procedure**

- 30 (1) The Committee may regulate its own procedure.
- 31 (2) Subsection (1) is subject to the regulations.

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**Subdivision 2 — Motor Vehicle Industry Advisory
Committee**

64E. Motor Vehicle Industry Advisory Committee

A committee called the Motor Vehicle Industry
Advisory Committee is established.

64F. Membership

- (1) The Committee consists of —
 - (a) the Commissioner ex officio; and
 - (b) 8 other members or such other number of persons as may be prescribed, appointed by the Minister in accordance with the regulations.
- (2) One of the members appointed under subsection (1)(b) is to be appointed as Chairperson.

64G. Functions

The functions of the Committee are to advise the
Minister and the Commissioner on —

- (a) the regulation of the motor vehicle dealing and repair industry in Western Australia, including the licensing, certification and training of persons or businesses who or which engage in motor vehicle dealing and repair; and
- (b) the provision by the Commissioner of education, information and advice to consumers and to the motor vehicle dealing and repair industry in Western Australia; and
- (c) any matter referred to the Committee by the Minister or the Commissioner.

64H. Committee may regulate own procedure

- (1) The Committee may regulate its own procedure.

1 (2) Subsection (1) is subject to the regulations.

2 **Subdivision 3 — Consumer Advisory Committee**

3 **64I. Consumer Advisory Committee**

4 A committee called the Consumer Advisory
5 Committee is established.

6 **64J. Membership**

- 7 (1) The Committee consists of —
- 8 (a) the Commissioner ex officio; and
 - 9 (b) 8 other members or such other number of
10 persons as may be prescribed, appointed by the
11 Minister in accordance with the regulations.
- 12 (2) One of the members appointed under subsection (1)(b)
13 is to be appointed as Chairperson.

14 **64K. Functions**

15 The functions of the Committee are to advise the
16 Minister and the Commissioner on —

- 17 (a) the activities and policies of the Department as
18 they affect consumers; and
- 19 (b) current and emerging consumer issues; and
- 20 (c) research and education projects relating to
21 consumers; and
- 22 (d) any matter referred to the Committee by the
23 Minister or the Commissioner.

24 **64L. Committee may regulate own procedure**

- 25 (1) The Committee may regulate its own procedure.
- 26 (2) Subsection (1) is subject to the regulations.

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Subdivision 4 — Regulations prescribing committee procedures, etc.

64M. Regulations

- (1) The regulations may provide for the constitution and operation of the advisory committees established under this Division.
- (2) Without limiting the generality of subsection (1), the regulations may —
 - (a) require that persons appointed as members of a committee —
 - (i) possess particular expertise or qualifications; or
 - (ii) represent particular interest groups, industries or occupations;
 - (b) provide for the number of members, the manner, and terms and conditions of appointment, and the resignation and removal of members of the committees;
 - (c) provide for the appointment of deputies of members;
 - (d) provide for the manner in which members of the committees are to disclose interests;
 - (e) regulate the procedure for meetings of the committees, including the quorum for meetings;
 - (f) provide for the remuneration of members of the committees (other than a member *ex officio*).

7. Section 64 amended

In section 64 in the definition of *authorised person* delete paragraph (c) and insert:

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- (c) an investigator, or a police officer assisting in an investigation under section 89D;

8. Part 6 Division 4A inserted

After Part 6 Division 3 insert:

Division 4A — Specific powers for enforcement of licensing and regulatory provisions

89A. Terms used

In this Division —

authorisation means a licence, registration, approval, permit, exemption, certificate or other form of authority;

registration Act means an Act listed in Schedule 2;

regulated activity means an occupation or activity that can be lawfully carried on only under an authorisation granted or obtained under a registration Act;

regulated person means a person who carries on a regulated activity.

89B. Investigation and inquiry by Commissioner for licensing and regulatory purposes

- (1) For the purposes of performing the Commissioner's functions under section 58A, the Commissioner may, of the Commissioner's own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for any of the following purposes —
 - (a) determining any application or other matter before the Commissioner;

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- 1 (b) determining whether or not a regulated person
2 is or has been complying with —
3 (i) the conditions, if any, of their
4 authorisation; or
5 (ii) the requirements of the registration Act
6 under which he or she holds an
7 authorisation; or
8 (iii) a code of conduct applying to the
9 regulated person under a registration
10 Act;
11 (c) determining whether or not any other cause
12 exists that might be considered by the
13 Commissioner to be grounds for disciplinary
14 action against a regulated person under a
15 registration Act;
16 (d) detecting offences against a registration Act.
- 17 (2) An authorised person may make an investigation or
18 inquiry under this section on behalf of the
19 Commissioner.
- 20 **89C. Authorised persons may exercise investigative**
21 **powers**
- 22 Authorised persons may exercise the powers set out in
23 Division 3 for the purposes of the performance of any
24 function under this Division.
- 25 **89D. Police assistance with investigations and inquiries**
- 26 (1) The Commissioner of Police must, at the request of the
27 Commissioner, arrange for one or more police
28 officers —
29 (a) to make an investigation or inquiry relating to
30 any matter that is the subject of investigation or
31 inquiry under section 89B; and

- 1 (b) to report on the results of their investigation or
2 inquiry.
- 3 (2) The report must be forwarded to the Commissioner.
- 4 (3) Where a police officer makes an investigation or
5 inquiry or report relating to any matter that is the
6 subject of investigation or inquiry under
7 section 89B —
- 8 (a) in addition to any power, authority, and
9 immunity of the police officer apart from this
10 Act, the police officer has the same powers,
11 authorities, and immunities as an investigator
12 appointed under this Act has in respect of the
13 same matter; and
- 14 (b) for the purposes of section 67, it is sufficient if
15 the police officer identifies himself or herself as
16 a police officer to the person, if any, affording
17 entry to the police officer.

18 **89E. Compliance checks at regulated person’s business**
19 **premises**

- 20 (1) An authorised person may, for all or any of the
21 purposes listed in subsection (2) —
- 22 (a) during normal business hours, enter premises
23 where the business of a regulated person is
24 being carried on, without obtaining a warrant
25 under section 75; and
- 26 (b) exercise the powers in sections 70, 80 and 88
27 once entry is made.
- 28 (2) The purposes referred to in subsection (1) are as
29 follows —
- 30 (a) to determine whether or not a regulated person
31 is or has been complying with the conditions, if
32 any, of their authorisation;

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- 1 (b) to determine whether or not a regulated person
2 is or has been complying with the requirements
3 of the registration Act under which he or she
4 holds an authorisation;
- 5 (c) to determine whether or not a regulated person
6 is or has been complying with a code of
7 conduct applying to the registered person under
8 a registration Act.
- 9 (3) An authorised person may invoke the powers in
10 subsection (1) even though an investigation is not
11 under way in relation to any particular regulated
12 person.
13

14 **9. Section 89 amended**

15 In section 89(1) after “Division 3” insert:

16

17 or 4A
18

19 **10. Section 90 amended**

20 (1) After section 90(1) insert:

21

22 (2A) A person must not prevent or attempt to prevent an
23 authorised person from entering business premises in
24 the exercise of the authorised person’s powers under
25 section 89E.

26 Penalty: a fine of \$2 000.
27

28 (2) In section 90(2) delete “70.” and insert:

29

30 70 or 89E.
31

1 (3) After section 90(4) insert:
2

3 (5A) A person must comply with a requirement to furnish
4 reasonable access to business premises, or to give other
5 reasonable assistance to an authorised person, when the
6 authorised person is exercising the authorised person's
7 powers under section 89E.

8 Penalty: a fine of \$2 000.
9

10 **11. Section 113 amended**

11 In section 113(3):

12 (a) delete paragraph (c) and insert:
13

14 (c) for the purposes of performing a function under
15 or in connection with —

16 (i) this Act; or

17 (ii) an Act listed in Schedule 2;

18 or

19 (da) for the purposes of giving information to a
20 body established under a written law if —

21 (i) the information concerns the affairs of a
22 regulated person or former regulated
23 person; and

24 (ii) the information is given in relation to
25 the performance by that body of a
26 function under or in connection with
27 that written law;

28 or
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30 (b) in paragraph (e) delete “offence.” and insert:
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32 offence; or

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15
16

- (c) after paragraph (e) insert:
 - (f) by the Commissioner for the purpose of making the public aware of —
 - (i) investigations or inquiries being conducted into the conduct of a regulated person, former regulated person or purported regulated person, and the results of those inquiries; and
 - (ii) disciplinary action being contemplated or undertaken in relation to a regulated person, former regulated person or purported regulated person, and the outcome of that action.

17
18
19

12. Schedule 2 inserted

After Schedule 1 insert:

20
21
22
23
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25
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27
28
29

Schedule 2 — Registration Acts

[s. 89A]

The following Acts are specified for the purposes of section 89A —

Land Valuers Licensing Act 1978

Motor Vehicle Dealers Act 1973

Motor Vehicle Repairers Act 2003

Real Estate and Business Agents Act 1978

Settlement Agents Act 1981

1 **Part 3 — *Land Valuers Licensing Act 1978* amended**

2 **13. Act amended**

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

4 **14. Section 4 amended**

5 (1) In section 4 delete the definitions of:

6 ***Chairman***

7 ***member*** (each occurrence)

8 ***Registrar***

9 ***the Board***

10 (2) In section 4 insert in alphabetical order:

11 ***Commissioner*** has the meaning given in the *Fair*
12 *Trading Act 2010* section 6;

13 ***department*** means the department of the Public Service
14 principally assisting the Minister in the administration
15 of this Act;

16

17

18 (3) In section 4 in the definition of ***officer*** paragraph (b) delete
19 “corporation;” and insert:

20

21 corporation.

22

23 **15. Part II heading deleted**

24 Delete the heading to Part II.

25 **16. Part II Division 1 deleted**

26 Delete Part II Division 1.

s. 17

1 **17. Part II Division 2 heading deleted**

2 Delete the heading to Part II Division 2.

3 **18. Sections 12 to 14 deleted**

4 Delete sections 12, 13 and 14.

5 **19. Section 15 replaced**

6 Delete section 15 and insert:

7

8 **15. Powers of investigation**

9 The *Fair Trading Act 2010* section 62 and Part 6 of
10 that Act apply to this Act.

11

12 **20. Sections 15A to 15C deleted**

13 Delete sections 15A, 15B and 15C.

14 **21. Section 17 amended**

15 Delete section 17(5) and insert:

16

17 (5) If the Commissioner is considering making an adverse
18 decision in relation to the application, the
19 Commissioner must give the applicant the opportunity
20 to give additional information in relation to that
21 application.

22

23 **22. Section 18 amended**

24 Delete section 18(4) and insert:

25

26 (4) If the Commissioner is considering making an adverse
27 decision in relation to the objection, the Commissioner

1 must give the objector the opportunity to give
2 additional information in relation to that objection.
3

4 **23. Section 19A amended**

5 In section 19A(1) delete “Board, in a meeting at any time and
6 place without notice to the applicant.” and insert:

7

8 Commissioner without notice to the applicant.
9

10 **24. Section 21 amended**

11 In section 21(3) delete “applies,” and insert:

12

13 and the *Fair Trading Act 2010* apply,
14

15 **25. Section 22 amended**

16 In section 22(1) and (2) delete “Board shall” and insert:

17

18 Commissioner may
19

20 **26. Section 31 amended**

21 (1) Delete section 31(1) and insert:
22

22

23 (1) The chief executive officer is to ensure that the matters
24 set out in subsection (1a) are included in the
25 department’s annual report.
26

26

s. 27

1 (2) In section 31(1a) delete “The Board’s” and insert:

2

3 The department’s

4

5 (3) Delete section 31(2).

6 **27. Section 32 deleted**

7 Delete section 32.

8 **28. Section 33 replaced**

9 Delete section 33 and insert:

10

11 **33. Confidentiality of information officially obtained**

12 The *Fair Trading Act 2010* section 113 applies to
13 information obtained for the purposes of this Act.

14

15 **29. Section 36 amended**

16 Delete section 36(2)(a) and (b).

17 **30. Part VI inserted**

18 After Part V insert:

19

20 **Part VI — Miscellaneous transitional matters**

21 **37. Terms used**

22 In this Part —

23 *commencement day* means the day on which the *Acts*
24 *Amendment (Fair Trading) Act 2010* Part 3 comes into
25 operation;

1 **liability** means any liability, duty or obligation whether
2 actual, contingent or prospective, liquidated or
3 unliquidated, or whether owed alone or jointly or
4 jointly and severally with any other person;

5 **right** means any right, power, privilege or immunity
6 whether actual, contingent or prospective;

7 **the former Board** means the Land Valuers Licensing
8 Board established by section 5 of this Act immediately
9 prior to the commencement day;

10 **the former Registrar** means the Registrar of the former
11 Board immediately prior to the commencement day.

12 **38. Former Board abolished**

13 Subject to sections 44 and 45, at the beginning of the
14 commencement day, the former Board is abolished and
15 its members go out of office.

16 **39. References to the former Board**

17 If in a written law or other document or instrument
18 there is a reference to the former Board or the former
19 Registrar, that reference may, where the context so
20 requires, be read as if it had been amended to be a
21 reference to the Commissioner.

22 **40. Immunity continues**

23 Despite the abolition of the former Board, if the former
24 Board had the benefit of any immunity in respect of an
25 act, matter or thing done or omitted before the
26 commencement day, that immunity continues in that
27 respect for the benefit of the Commissioner.

28 **41. Notices of maximum amounts of remuneration**

29 A notice published in the *Gazette* by the Board under
30 section 25 is taken to have been published by the
31 Commissioner.

- 1 **42. Unfinished proceedings by the former Registrar**
- 2 Proceedings taken by the former Registrar under
- 3 section 35 that are not complete at the commencement
- 4 day are to continue under the direction and control of
- 5 the Commissioner.
- 6 **43. Unfinished proceedings by the former Board**
- 7 (1) Proceedings before the former Board under Part II
- 8 Division 2 of the Act as it was prior to the
- 9 commencement day that are not complete by the
- 10 commencement day —
- 11 (a) are taken to have been commenced by the
- 12 Commissioner for the purposes of the Act; and
- 13 (b) are to continue under the direction and control
- 14 of the Commissioner.
- 15 (2) Proceedings before the State Administrative Tribunal
- 16 or another court commenced by allegation against a
- 17 licensed valuer brought by the former Board that are
- 18 not complete by the commencement day —
- 19 (a) are taken to have been commenced by an
- 20 allegation by the Commissioner for the
- 21 purposes of the Act; and
- 22 (b) are to continue under the direction and control
- 23 of the Commissioner.
- 24 **44. Winding-up by the former Board**
- 25 As soon as reasonably practicable after the
- 26 commencement day, the Board is to wind-up its affairs
- 27 and in particular, but without limiting what may be
- 28 done to wind-up its affairs, the Board is to apply its
- 29 assets, together with any moneys in hand, in —
- 30 (a) discharging its liabilities; and
- 31 (b) transferring any assets which remain after the
- 32 discharge of liabilities (*residual assets*) to the

1 State to be administered in the department, or
2 realising residual assets and causing the
3 proceeds, together with any moneys in hand, to
4 be credited to the Consolidated Account.

5 **45. Final report by the former Board**

- 6 (1) As soon as reasonably practical after the Board is
7 satisfied that the winding-up of its affairs is concluded,
8 it is to —
- 9 (a) make and submit to the Minister a report of its
10 proceedings for the period beginning on the day
11 after the commencement day and ending on the
12 day on which the winding-up of its affairs is
13 concluded; and
- 14 (b) deliver to the chief executive officer all records
15 and information in its possession or under its
16 control.
- 17 (2) The chief executive officer is to include the final report
18 submitted under subsection (1) in the department's
19 annual report for that financial year.

20 **46. Powers in relation to transitional matters**

- 21 (1) If there is not sufficient provision in this Part for
22 dealing with a transitional matter, the Governor may
23 make regulations prescribing all matters that are
24 required, necessary or convenient to be prescribed in
25 relation to that matter.
- 26 (2) In subsection (1) —
- 27 *transitional matter* means a matter that needs to be
28 dealt with for the purpose of effecting the transition
29 from this Act as enacted immediately before the
30 commencement day to this Act as amended by the *Acts*
31 *Amendment (Fair Trading) Act 2010*.

s. 30

- 1 (3) Regulations made under subsection (1) may provide
2 that specific provisions of a written law —
3 (a) do not apply; or
4 (b) apply with specific modifications,
5 to or in relation to any matter.
- 6 (4) Regulations made under subsection (1) must be made
7 within 12 months after the commencement day.
- 8 (5) If regulations made under subsection (1) provide that a
9 specified state of affairs is to be taken to have existed,
10 or not to have existed, on and from a day that is earlier
11 than the day on which the regulations are published in
12 the *Gazette* but not earlier than the commencement
13 day, the regulations have effect according to their
14 terms.
- 15 (6) In subsection (5) —
16 *specified* means specified or described in the
17 regulations.
- 18 (7) If regulations contain a provision referred to in
19 subsection (5), the provision does not operate so as —
20 (a) to affect, in a manner prejudicial to any person
21 (other than the State), the right of that person
22 existing before the day of publication of those
23 regulations; or
24 (b) to impose liabilities on any person (other than
25 the State or an authority of the State) in respect
26 of anything done or omitted to be done before
27 the day of publication of those regulations.
28

1 **31. Various references to “Commissioner” inserted**

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

3 **Table**

Provision	Delete	Insert
s. 4 def. of <i>approved</i>	Board	Commissioner
s. 16(1)	Board	Commissioner
s. 17(1) and (4)	Board (each occurrence)	Commissioner
s. 18(2)	Board	Commissioner
s. 19	Board (first occurrence)	Commissioner
s. 19	Board, by such evidence as it	Commissioner, by such evidence as the Commissioner
s. 19(c)	Board	Commissioner
s. 19A(2)	Board	Commissioner
s. 19A(2)	Registrar	Commissioner
s. 20(a)	Board	Commissioner
s. 21(1)	Board	Commissioner
s. 22(1) and (3)	Board (each occurrence)	Commissioner
s. 25(1)	Board	Commissioner

Acts Amendment (Fair Trading) Bill 2010

Part 3

Land Valuers Licensing Act 1978 amended

s. 31

Provision	Delete	Insert
s. 26	Board	Commissioner
s. 27	Board	Commissioner
s. 29(1), (2), (3) and (4)	Registrar	Commissioner
s. 29A(1) and (2)	Registrar	Commissioner
s. 30(1), (2), (3) and (4)	Registrar	Commissioner
s. 31(1a)(a)(i) and (ii) and (d)	Board	Commissioner
s. 31(1a)(e)	Board's	Commissioner's
s. 35(1)	Registrar	Commissioner

1

1 **Part 4 — *Motor Vehicle Dealers Act 1973* amended**

2 **32. Act amended**

3 This Part amends the *Motor Vehicle Dealers Act 1973*.

4 **33. Long title amended**

5 In the long title delete “• to constitute a body with licensing,
6 **registration and other functions in respect of persons**
7 **involved in motor vehicle dealing and motor vehicle repair**
8 **work;”.**

9 **34. Section 5 amended**

10 (1) In section 5(1) delete the definitions of:

11 *Chairperson*

12 *Commissioner*

13 *member*

14 *secretary*

15 *the Board*

16 (2) In section 5(1) insert in alphabetical order:

17
18 *Commissioner* has the meaning given in the *Fair*
19 *Trading Act 2010* section 6;
20

21 **35. Section 5B inserted**

22 After section 5A insert:

23
24 **5B. Person may be taken to be a dealer**

25 (1) A person who —

26 (a) holds himself or herself out as a person
27 carrying on the business of buying or selling
28 vehicles; or

s. 35

- 1 (b) sells or exchanges 4 or more vehicles in any
2 12 month period to or with persons who are not
3 dealers,
4 is taken to be carrying on the business of selling
5 vehicles for the purposes of the definition of *dealer*.
- 6 (2) For the purposes of subsection (1)(a), a person holds
7 himself or herself out as a person carrying on the
8 business of buying or selling vehicles if that person —
- 9 (a) advertises or notifies or states that the person
10 carries on the business of buying or selling
11 vehicles; or
12 (b) in any way represents that the person is ready to
13 carry on, or is carrying on, the business of
14 buying or selling vehicles.
- 15 (3) Despite subsection (1), a person who sells or exchanges
16 4 or more vehicles in any 12 month period to or with
17 persons who are not dealers is not taken to be a dealer
18 if the person can prove that —
- 19 (a) he or she was not carrying on the business of
20 buying or selling vehicles; and
21 (b) the person did not hold himself or herself out as
22 a person carrying on the business of buying or
23 selling vehicles.
- 24 (4) When counting the number of vehicles sold or
25 exchanged for the purposes of this section, a sale or
26 exchange of a type prescribed to be an exempt sale or
27 an exempt exchange for the purposes of this subsection
28 is not to be counted.
- 29 (5) Nothing in subsection (1) prevents a person who sells
30 or exchanges fewer than 4 vehicles in any 12 month
31 period to or with persons who are not dealers from
32 being a dealer carrying on the business of buying or
33 selling vehicles under this Act.
34

1 **36. Section 5AA deleted**

2 Delete section 5AA.

3 **37. Section 6 replaced**

4 Delete section 6 and insert:

5

6 **6. Powers of investigation**

7 The *Fair Trading Act 2010* section 62 and Part 6 of
8 that Act apply to this Act.

9

10 **38. Part II heading amended**

11 In the heading to Part II delete “**Motor Vehicle Industry**
12 **Board**” and insert:

13

14 **Licensing, registration, powers and offences**

15

16 **39. Part II Division 1 deleted**

17 Delete Part II Division 1.

18 **40. Section 16 amended**

19 Delete section 16(2).

20 **41. Section 17 amended**

21 Delete section 17(2).

s. 42

1 **42. Section 18 amended**

2 (1) Delete section 18(1a) and insert:

3

4 (1A) If the Commissioner is considering making an adverse
5 decision in relation to the application, the
6 Commissioner must give the applicant the opportunity
7 to give additional information in relation to that
8 application.

9

10 (2) Delete section 18(2).

11 Note: The heading to amended section 18 is to read:

12 **Matters which may be considered in refusing the grant or renewal**
13 **of an authorisation**

14 **43. Section 22 amended**

15 Delete section 22(3).

16 **44. Section 23 amended**

17 (1) In section 23(3) delete “secretary shall submit those particulars
18 to the Board and the Board” and insert:

19

20 Commissioner

21

22 (2) In section 23(5) delete “Board refuses to approve of the changes
23 submitted to it pursuant to subsection (3) the secretary” and
24 insert:

25

26 Commissioner refuses to approve of the changes
27 submitted pursuant to subsection (3) the Commissioner

28

1 **45. Section 24 amended**

2 (1) In section 24(5) delete “hours of the Board.” and insert:

3

4 hours.

5

6 (2) In section 24(6) delete “secretary a certificate under his
7 hand —” and insert:

8

9 Commissioner a certificate —

10

11 **46. Section 32K amended**

12 In section 32K(1) delete “Board, on an application made by it”
13 and insert:

14

15 Commissioner, on an application made by the
16 Commissioner

17

18 **47. Section 50 replaced**

19 Delete section 50 and insert:

20

21 **50. Confidentiality of information officially obtained**

22 The *Fair Trading Act 2010* section 113 applies to
23 information obtained for the purposes of this Act.

24

1 **48. Section 51 amended**

2 (1) Delete section 51(1) and insert:

3

4 (1) The chief executive officer is to ensure that the matters
5 set out in subsection (1a) are included in the
6 Department's annual report.

7

8 (2) Delete section 51(2).

9 **49. Part V inserted**

10 After section 56 insert:

11

12 **Part V — Miscellaneous transitional matters**

13 **57. Terms used**

14 In this Part —

15 *commencement day* means the day on which the *Acts*
16 *Amendment (Fair Trading) Act 2010* Part 4 comes into
17 operation;

18 *liability* means any liability, duty or obligation whether
19 actual, contingent or prospective, liquidated or
20 unliquidated, or whether owed alone or jointly or
21 jointly and severally with any other person;

22 *right* means any right, power, privilege or immunity
23 whether actual, contingent or prospective;

24 *the former Board* means the Motor Vehicle Industry
25 Board established by section 7 of this Act immediately
26 prior to the commencement day.

- 1 **58. Former Board abolished**
- 2 Subject to sections 63 and 64, at the beginning of the
- 3 commencement day, the former Board is abolished and
- 4 its members go out of office.
- 5 **59. References to the former Board**
- 6 If in a written law or other document or instrument
- 7 there is a reference to the former Board, that reference
- 8 may, where the context so requires, be read as if it had
- 9 been amended to be a reference to the Commissioner.
- 10 **60. Immunity continues**
- 11 Despite the abolition of the former Board, if the former
- 12 Board had the benefit of any immunity in respect of an
- 13 act, matter or thing done or omitted before the
- 14 commencement day, that immunity continues in that
- 15 respect for the benefit of the Commissioner.
- 16 **61. Unfinished investigations by the former Board**
- 17 Investigations being carried out by the former Board
- 18 under the Act as it was prior to the commencement day
- 19 that are not complete by the commencement day —
- 20 (a) are taken to have been commenced by the
- 21 Commissioner for the purposes of the Act; and
- 22 (b) are to continue under the direction and control
- 23 of the Commissioner.
- 24 **62. Unfinished proceedings by the former Board**
- 25 (1) Proceedings before the former Board that are not
- 26 complete by the commencement day —
- 27 (a) are taken to have been commenced by the
- 28 Commissioner for the purposes of the Act; and
- 29 (b) are to continue under the direction and control
- 30 of the Commissioner.

- 1 (2) Proceedings before the State Administrative Tribunal
2 or another court commenced by allegation against a
3 licensed motor vehicle dealer or repairer brought by the
4 former Board that are not complete by the
5 commencement day —
- 6 (a) are taken to have been commenced by an
7 allegation by the Commissioner for the
8 purposes of the Act; and
- 9 (b) are to continue under the direction and control
10 of the Commissioner.

11 **63. Winding-up by the former Board**

12 As soon as reasonably practicable after the
13 commencement day, the Board is to wind-up its affairs
14 and in particular, but without limiting what may be
15 done to wind-up its affairs, the Board is to apply its
16 assets, together with any money in hand, in —

- 17 (a) discharging its liabilities; and
- 18 (b) transferring any assets which remain after the
19 discharge of liabilities (*residual assets*) to the
20 State to be administered in the department, or
21 realising residual assets and causing the
22 proceeds, together with any moneys in hand, to
23 be credited to the Consolidated Account.

24 **64. Final report by the former Board**

- 25 (1) As soon as reasonably practical after the Board is
26 satisfied that the winding-up of its affairs is concluded,
27 it is to —
- 28 (a) make and submit to the Minister a report of its
29 proceedings for the period beginning on the day
30 after the commencement day and ending on the
31 day on which the winding-up of its affairs is
32 concluded; and

- 1 (b) deliver to the chief executive officer all records
2 and information in its possession or under its
3 control.
- 4 (2) The chief executive officer is to include the final report
5 submitted under subsection (1) in the department's
6 annual report for that financial year.
- 7 **65. Powers in relation to transitional matters**
- 8 (1) If there is not sufficient provision in this Part for
9 dealing with a transitional matter, the Governor may
10 make regulations prescribing all matters that are
11 required, necessary or convenient to be prescribed in
12 relation to that matter.
- 13 (2) In subsection (1) —
- 14 *transitional matter* means a matter that needs to be
15 dealt with for the purpose of effecting the transition
16 from this Act as enacted immediately before the
17 commencement day to this Act as amended by the *Acts*
18 *Amendment (Fair Trading) Act 2010*.
- 19 (3) Regulations made under subsection (1) may provide
20 that specific provisions of a written law —
- 21 (a) do not apply; or
22 (b) apply with specific modifications,
- 23 to or in relation to any matter.
- 24 (4) Regulations made under subsection (1) must be made
25 within 12 months after the commencement day.
- 26 (5) If regulations made under subsection (1) provide that a
27 specified state of affairs is to be taken to have existed,
28 or not to have existed, on and from a day that is earlier
29 than the day on which the regulations are published in
30 the *Gazette* but not earlier than the commencement

s. 50

- 1 day, the regulations have effect according to their
 2 terms.
- 3 (6) In subsection (5) —
 4 *specified* means specified or described in the
 5 regulations.
- 6 (7) If regulations contain a provision referred to in
 7 subsection (5), the provision does not operate so as —
- 8 (a) to affect, in a manner prejudicial to any person
 9 (other than the State), the right of that person
 10 existing before the day of publication of those
 11 regulations; or
- 12 (b) to impose liabilities on any person (other than
 13 the State or an authority of the State) in respect
 14 of anything done or omitted to be done before
 15 the day of publication of those regulations.
 16

17 **50. Various references to “Commissioner” inserted**

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

19 **Table**

Provision	Delete	Insert
s. 5(1) def. of <i>approved</i>	Board	Commissioner
s. 15(1), (2), (2a), (2b), (3), (4), (5) and (6)	Board (each occurrence)	Commissioner
s. 16(1)	Board (each occurrence)	Commissioner
s. 17(1)	Board (each occurrence)	Commissioner

Provision	Delete	Insert
s. 17B(1), (2), (3) and (4)	Board (each occurrence)	Commissioner
s. 17C(1)	Board it	Commissioner the Commissioner
s. 17C(2)	Board it	Commissioner the Commissioner
s. 17C(3)	Board	Commissioner
s. 18(1)	Board (each occurrence)	Commissioner
s. 18(1c)	Board	Commissioner
s. 18A(1), (2), (3), (4) and (5)	Board	Commissioner
s. 19(2), (3) and (3b)	Board (each occurrence)	Commissioner
s. 19A(1) and (2)	Board	Commissioner
s. 20(1), (2) and (3)	Board	Commissioner
s. 20D(2)	Board	Commissioner
s. 20E(1)(b)	Board	Commissioner
s. 20E(3)	Board, if it	Commissioner, if the Commissioner

s. 50

Provision	Delete	Insert
s. 20E(4)	Board (each occurrence)	Commissioner
s. 20F(1) and (2)	Board (each occurrence)	Commissioner
s. 20G(1)	Board	Commissioner
s. 20H(2), (3) and (4)	Board (each occurrence)	Commissioner
s. 20H(5)	secretary	Commissioner
s. 21A(1)(b)	Board	Commissioner
s. 21A(3)	Board, if it	Commissioner, if the Commissioner
s. 21A(4)	Board (each occurrence)	Commissioner
s. 21A(4)(b)	it	the Commissioner
s. 21B(1) and (2)	Board (each occurrence)	Commissioner
s. 21C(1)	Board	Commissioner
s. 22(2) def. of <i>reviewable decision</i>	Board	Commissioner
s. 22(2) def. of <i>reviewable decision</i> par. (c)	its	the Commissioner's
s. 22(2) def. of <i>reviewable decision</i> par. (e)	it	the Commissioner

Provision	Delete	Insert
s. 22A(1), (2) and (3)	secretary	Commissioner
s. 23(1) and (2)	secretary	Commissioner
s. 23(3)	it	the Commissioner
s. 24(1), (3) and (4)	secretary	Commissioner
s. 31(1) and (2)	Board (each occurrence)	Commissioner
s. 32E(1)	Board	Commissioner
s. 32J(1)	Board	Commissioner
s. 32J(1)	if it	if the Commissioner
s. 32J(2)	Board (each occurrence)	Commissioner
s. 32L(1), (2) and (3)	Board (each occurrence)	Commissioner
s. 32N(1)	Board	Commissioner
s. 32O(1)	Board, the Board	Commissioner, the Commissioner
s. 32O(2)(b) and (3)(c)	Board	Commissioner
s. 32P(a)(i) and (c)(v)	Board	Commissioner
s. 51(1a)(a) and (d)	Board (each occurrence)	Commissioner

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Part 4 Motor Vehicle Dealers Act 1973 amended

s. 50

Provision	Delete	Insert
s. 51(1a)(e)	Board's	Commissioner's

1
2
3

Note: The heading to amended section 20 is to read:

Allegations by Commissioner to State Administrative Tribunal

1 **Part 5 — Motor Vehicle Repairers Act 2003 amended**

2 **51. Act amended**

3 This Part amends the *Motor Vehicle Repairers Act 2003*.

4 **52. Long title amended**

5 In the long title delete “• **the Motor Vehicle Industry Board**
6 **to be responsible for such licensing and certification and for**
7 **the conciliation of certain disputes relating to motor vehicle**
8 **repair work;”.**

9 **53. Section 3 amended**

10 (1) In section 3(1) delete the definitions of:

11 ***Board***

12 ***Commissioner***

13 ***inquiry***

14 ***secretary***

15 (2) In section 3(1) insert in alphabetical order:

16 ***Commissioner*** has the meaning given in the *Fair*
17 *Trading Act 2010* section 6;
18

19 (3) In the definition of *repairer’s certificate* delete “42;” and insert:

20 42.
21

22 (4) Delete section 3(4).
23
24

s. 54

1 **54. Section 7 replaced**

2 Delete section 7 and insert:

3

4 **7. Powers of investigation**

5 The *Fair Trading Act 2010* section 62 and Part 6 of
6 that Act apply to this Act.

7

8 **55. Section 21 deleted**

9 Delete section 21.

10 **56. Section 32 amended**

11 (1) Delete section 32(2) and insert:

12

13 (2) If the Commissioner is considering refusing to renew a
14 business licence under subsection (1), the
15 Commissioner must give the licensee the opportunity
16 to give additional information in relation to that
17 application for renewal.

18

19 (2) In section 32(3)(b)(ii) delete “Board to hold an inquiry as
20 required by subsection (2),” and insert:

21

22 Commissioner to give proper
23 consideration to that matter,

24

25 (3) In section 32(3) delete “Board’s power” and insert:

26

27 State Administrative Tribunal’s power

28

1 **57. Section 35 amended**

2 In section 35(4) delete “Board may refuse to give its approval
3 under subsection (2) only if it” and insert:
4

5 Commissioner may refuse to give an approval under
6 subsection (2) only if the Commissioner
7

8 **58. Section 36 amended**

9 In section 36(4) delete “Board may refuse to give its approval
10 under subsection (2) only if it” and insert:
11

12 Commissioner may refuse to give an approval under
13 subsection (2) only if the Commissioner
14

15 **59. Section 62 amended**

16 Delete section 62(2).

17 **60. Part 6 heading replaced**

18 Delete the heading to Part 6 and insert:
19

20 **Part 6 — Disciplinary powers**
21

22 **61. Section 65 replaced**

23 Delete section 65 and insert:
24

25 **65. Application of Part**

- 26 (1) This Part applies to a person if that person is —
27 (a) a licensee or one of the licensees; or

s. 62

- 1 (b) a person concerned in the management or
2 conduct of a body corporate that is a licensee or
3 one of the licensees; or
4 (c) the holder of a certificate.
- 5 (2) An order cannot be made under this Part in respect of a
6 person unless —
7 (a) an inquiry has been conducted; and
8 (b) the person has been given an opportunity to
9 show cause why the order should not be made.
10

11 **62. Sections 66 and 67 deleted**

12 Delete sections 66 and 67.

13 **63. Section 68 amended**

14 In section 68(1):

- 15 (a) delete “section 66, the Board” and insert:
16
17 section 65(2), the State Administrative Tribunal
18
- 19 (b) delete “Board —” and insert:
20
21 State Administrative Tribunal —
22
- 23 (c) in paragraph (b) delete “Board” and insert:
24
25 State Administrative Tribunal
26

1 **64. Section 70 amended**

2 In section 70 delete “section 66, the Board” and insert:

3

4 section 65(2), the State Administrative Tribunal

5

6 **65. Section 71 amended**

7 In section 71(1) and (2) delete “Board” (first and second
8 occurrence) and insert:

9

10 State Administrative Tribunal

11

12 **66. Section 73 amended**

13 (1) In section 73(2):

14 (a) in paragraph (c) delete “exercise of —” and insert:

15

16 exercise of the Commissioner’s —

17

18 (b) delete paragraph (c)(i);

19 (c) in paragraph (c)(ii) and (iii) delete “its”.

20 (2) After section 73(2) insert:

21

22 (3) This section applies to a decision or order of the State
23 Administrative Tribunal in exercise of its powers under
24 section 68 or 70.

25

26 **67. Section 74 deleted**

27 Delete section 74.

s. 68

1 **68. Section 76 deleted**

2 Delete section 76.

3 **69. Section 77 amended**

4 In section 77(2) delete “person, the Board and the
5 Commissioner” and insert:

6

7 person and the Commissioner

8

9 **70. Section 78 amended**

10 (1) In section 78(1)(a) delete “Board; and” and insert:

11

12 Commissioner or the State Administrative Tribunal; and

13

14 (2) In section 78(2) delete “Board” (each occurrence) and insert:

15

16 Commissioner or the State Administrative Tribunal

17

18 **71. Section 80 amended**

19 (1) In section 80(1):

20 (a) in paragraph (a) delete “Board;” and insert:

21

22 Commissioner or the State Administrative Tribunal; and

23

24 (b) in paragraphs (b) and (c) delete “Board” and insert:

25

26 Commissioner or the State Administrative Tribunal

27

- 1 (c) after paragraph (b) insert:
2
3 and
4
5 (2) In section 80(2):
6 (a) in paragraph (a) delete “Board; or” and insert:
7
8 Commissioner or the State Administrative Tribunal; or
9
10 (b) in paragraph (b) delete “Board” and insert:
11
12 Commissioner or the State Administrative Tribunal
13
14 (c) delete “Board.” and insert:
15
16 Commissioner or the State Administrative Tribunal.
17

18 **72. Section 85 amended**

- 19 In section 85(3):
20 (a) in paragraph (a) delete “conciliation; and” and insert:
21
22 conciliation.
23
24 (b) delete paragraph (b).

25 Note: The heading to amended section 85 is to read:

26 **Conciliation at request of owner**

s. 73

1 **73. Section 97 amended**

2 In section 97 in the definition of *authorised officer* delete
3 “section 3(1) except that it does not include the secretary if he
4 or she is an authorised officer;” and insert:

5

6 section 3(1);

7

8 **74. Section 111 replaced**

9 Delete section 111 and insert:

10

11 **111. Confidentiality of information officially obtained**

12 The *Fair Trading Act 2010* section 113 applies to
13 information obtained for the purposes of this Act.

14

15 **75. Sections 112 and 113 deleted**

16 Delete sections 112 and 113.

17 **76. Section 116 deleted**

18 Delete section 116.

19 **77. Part 11 replaced**

20 Delete Part 11 and insert:

21

22 **Part 11 — Transitional provisions**

23 **120. Terms used**

24 In this Part —

25 *commencement day* means the day on which the *Acts*
26 *Amendment (Fair Trading) Act 2010* Part 5 comes into
27 operation;

1 ***the former Board*** means the Motor Vehicle Industry
2 Board established by the *Motor Vehicle Dealers*
3 *Act 1973* section 7 prior to the commencement day.

4 **121. Unfinished proceedings by the former Board**

- 5 (1) Proceedings before the former Board that are not
6 complete at the commencement day —
- 7 (a) are taken to have been commenced by the
8 Commissioner for the purposes of the Act; and
- 9 (b) are to continue under the direction and control
10 of the Commissioner.
- 11 (2) Proceedings before the State Administrative Tribunal
12 or another court commenced by allegation against a
13 licensed motor vehicle dealer or repairer brought by the
14 former Board that are not complete at the
15 commencement day —
- 16 (a) are taken to have been commenced by an
17 allegation by the Commissioner for the
18 purposes of the Act; and
- 19 (b) are to continue under the direction and control
20 of the Commissioner.

21 **122. Powers in relation to transitional matters**

- 22 (1) The Governor may make regulations prescribing all
23 matters that are required, necessary or convenient to be
24 prescribed in relation to transitional matters
25 consequential upon the enactment of the *Acts*
26 *Amendment (Fair Trading) Act 2010* Part 5.
- 27 (2) In subsection (1) —
- 28 ***transitional matter*** means a matter that needs to be
29 dealt with for the purpose of effecting the transition
30 from this Act as enacted immediately before the
31 commencement day to this Act as amended by the *Acts*
32 *Amendment (Fair Trading) Act 2010*.

s. 77

- 1 (3) Regulations made under subsection (1) may provide
2 that specific provisions of a written law —
3 (a) do not apply; or
4 (b) apply with specific modifications,
5 to or in relation to any matter.
- 6 (4) Regulations made under subsection (1) must be made
7 within 12 months after the commencement day.
- 8 (5) If regulations made under subsection (1) provide that a
9 specified state of affairs is to be taken to have existed,
10 or not to have existed, on and from a day that is earlier
11 than the day on which the regulations are published in
12 the *Gazette* but not earlier than the commencement
13 day, the regulations have effect according to their
14 terms.
- 15 (6) In subsection (5) —
16 *specified* means specified or described in the
17 regulations.
- 18 (7) If regulations contain a provision referred to in
19 subsection (5), the provision does not operate so as —
20 (a) to affect, in a manner prejudicial to any person
21 (other than the State), the right of that person
22 existing before the day of publication of those
23 regulations; or
24 (b) to impose liabilities on any person (other than
25 the State or an authority of the State) in respect
26 of anything done or omitted to be done before
27 the day of publication of those regulations.
28

1 **78. Schedule 2 amended**

2 (1) In Schedule 2 clause 1(b) delete “Board.” and insert:

3

4 State Administrative Tribunal or a court.

5

6 (2) In Schedule 2 clause 3(1) and (2) delete “Board” (each
7 occurrence) and insert:

8

9 State Administrative Tribunal

10

11 **79. Various references to “Commissioner” inserted**

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

13

Table

Provision	Delete	Insert
s. 3(1) def. of <i>approved</i>	Board	Commissioner
s. 13(4)	Board it	Commissioner the Commissioner
s. 14(2)	Board	Commissioner
s. 15	Board	Commissioner
s. 16(1)	Board	Commissioner
s. 16(2)	Board it	Commissioner the Commissioner
s. 17	Board	Commissioner

Acts Amendment (Fair Trading) Bill 2010**Part 5**

Motor Vehicle Repairers Act 2003 amended

s. 79

Provision	Delete	Insert
s. 18(1)	Board	Commissioner
s. 18(2)	Board it	Commissioner the Commissioner
s. 19	Board	Commissioner
s. 20(1)	Board	Commissioner
s. 20(2)	Board it	Commissioner the Commissioner
s. 22	Board	Commissioner
s. 23(1)	Board	Commissioner
s. 23(2)	Board it	Commissioner the Commissioner
s. 24(2) and (3)	Board	Commissioner
s. 25	Board it	Commissioner the Commissioner
s. 27(1), (2), (3), (4), (5) and (6)	Board (each occurrence)	Commissioner
s. 31(1) and (4)	Board	Commissioner

Provision	Delete	Insert
s. 32(1)	Board (each occurrence)	Commissioner
s. 32(3)	Board (each occurrence)	Commissioner
s. 33(2)	Board	Commissioner
s. 34(2)	Board	Commissioner
s. 34(4)	Board it	Commissioner the Commissioner
s. 34(5)	Board	Commissioner
s. 35(2)	Board	Commissioner
s. 36(2)	Board	Commissioner
s. 37(1), (2), (3) and (4)	Board (each occurrence)	Commissioner
s. 41(1)	Board	Commissioner
s. 42(1)	Board it	Commissioner the Commissioner
s. 42(2)(b)	Board	Commissioner
s. 43(1), (2), (3), (4), (5) and (6)	Board (each occurrence)	Commissioner

Acts Amendment (Fair Trading) Bill 2010**Part 5**

Motor Vehicle Repairers Act 2003 amended

s. 79

Provision	Delete	Insert
s. 44(1) and (2)	Board (each occurrence)	Commissioner
s. 45(1)	Board	Commissioner
s. 47	Board	Commissioner
s. 48(1) and (2)	secretary	Commissioner
s. 50(1)	secretary	Commissioner
s. 50(3)	Board	Commissioner
s. 51	secretary	Commissioner
s. 52(1)	secretary	Commissioner
s. 53(1)	Board it	Commissioner the Commissioner
s. 53(2)	Board (each occurrence)	Commissioner
s. 54(1) and (3)	secretary	Commissioner
s. 58(1)(b)	Board	Commissioner
s. 59(1)	Board, if it	Commissioner, if the Commissioner
s. 60(3)	Board, if it	Commissioner, if the Commissioner
s. 60(3)(a)	Board	Commissioner

Provision	Delete	Insert
s. 60(3)(b)	Board it	Commissioner the Commissioner
s. 61(1)	Board (each occurrence)	Commissioner
s. 61(3)	Board, if it	Commissioner, if the Commissioner
s. 61(3)(a) and (b)	Board (each occurrence)	Commissioner
s. 62(1)	Board (each occurrence)	Commissioner
s. 62(3)	Board it	Commissioner the Commissioner
s. 63(1)	Board	Commissioner
s. 64(1)	Board (each occurrence)	Commissioner
s. 69(2)	Board (each occurrence)	Commissioner
s. 71(1) and (2)	Board (third occurrence)	Commissioner
s. 72(2)	Board	Commissioner
s. 73(1) and (2)	Board	Commissioner

Acts Amendment (Fair Trading) Bill 2010**Part 5**

Motor Vehicle Repairers Act 2003 amended

s. 79

Provision	Delete	Insert
s. 82(1)(a)	Board	Commissioner
s. 85(1)	Board (each occurrence)	Commissioner
s. 85(1)	its	the Commissioner's
s. 85(2), (3) and (4)	Board	Commissioner
s. 86(1)	Board	Commissioner
s. 86(1)(c)	it	the Commissioner
s. 86(2) and (3)	Board	Commissioner
s. 88(1)	Board	Commissioner
s. 90(4)(b) and (5)(b)	Board	Commissioner
s. 92(3)(b) and (4)	Board (each occurrence)	Commissioner
s. 93(2)	Board it may at its	Commissioner the Commissioner may at the Commissioner's
s. 93(3) and (4)	Board (each occurrence)	Commissioner
s. 94(1) and (2)	Board (each occurrence)	Commissioner

Provision	Delete	Insert
s. 102(1)	Board or the secretary	Commissioner
s. 103(1)	Board or the secretary	Commissioner
s. 107(5)	Board	Commissioner

- 1 Notes: The heading to amended section 22 is to read:
- 2 **Business licence not to be granted if applicant or other person**
- 3 **disqualified**
- 4 The heading to amended section 27 is to read:
- 5 **Conditions may be imposed**
- 6 The heading to amended section 33 is to read:
- 7 **Loss of member etc., notice to be given**
- 8 The heading to amended section 52 is to read:
- 9 **Certification of matters in the register**
- 10 The heading to amended section 59 is to read:
- 11 **Authorisation of premises**
- 12 The heading to amended section 69 is to read:
- 13 **Notification of a person's conviction**

1 **Part 6 — Real Estate and Business Agents**
2 **Act 1978 amended**

3 **80. Act amended**

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

5 **81. Section 4 amended**

6 (1) In section 4(1) delete the definitions of:

7 *Advisory Committee*

8 *Board*

9 *Chairman*

10 *inspector*

11 *Registrar*

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

13

14 **Commissioner** has the meaning given in the *Fair*
15 *Trading Act 2010* section 6;

16 **department** means the department of the Public Service
17 principally assisting the Minister in the administration
18 of this Act;

19

20 (3) In section 4(1) in the definition of **Account** delete “Board” and
21 insert:

22

23 Real Estate and Business Agents’

24

25 (4) In section 4(1) in the definition of **member** delete paragraph (a).

26 **82. Section 5 deleted**

27 Delete section 5.

1 **83. Part II heading replaced**

2 Delete the heading to Part II and insert:

3

4 **Part II — Advisory Committee and review**

5

6 **84. Part II amended**

7 In Part II delete Divisions 1, 1A and 2.

8 **85. Part II Division 3 heading deleted**

9 Delete the heading to Part II Division 3.

10 **86. Sections 19, 20 and 21 deleted**

11 Delete sections 19, 20 and 21.

12 **87. Section 22 inserted**

13 Before section 23 insert:

14

15 **22. Powers of investigation**

16 The *Fair Trading Act 2010* section 62 and Part 6 of
17 that Act apply to this Act.

18

19 **88. Section 23 amended**

20 (1) In section 23(2) in the definition of *person aggrieved*:

21 (a) in paragraph (e) delete “Account; or” and insert:

22

23 Account;

24

25 (b) delete paragraph (f).

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1 (2) In section 23(2) in the definition of *reviewable decision*:

2 (a) in paragraph (e) delete “117; or” and insert:

3

4 117.

5

6 (b) delete paragraph (f).

7 **89. Section 23A amended**

8 (1) Delete section 23A(3).

9 (2) In section 23A(7) delete “Board” and insert:

10

11 department

12

13 (3) In section 23A(9) delete “committee, other than a member who
14 is also a member of the Board,” and insert:

15

16 committee

17

18 (4) Delete section 23A(11) and insert:

19

20 (11) If a member of a committee —

21 (a) is, according to the *Interpretation Act 1984*
22 section 13D, a bankrupt or a person whose
23 affairs are under insolvency laws; or

24 (b) becomes permanently incapable of performing
25 his or her duties as a member; or

26 (c) resigns his or her office by signing a written
27 notice of resignation and giving it to the
28 Minister; or

- 1 (d) absents himself or herself, except on leave duly
2 granted by the Minister, from meetings of that
3 committee for a period exceeding 8 weeks; or
4 (e) ceases to hold any qualification required for
5 becoming or being a member,
6 the office of that member becomes vacant.
7

8 Note: The heading to amended section 23A is to read:

9 **Advisory committees**

10 **90. Section 23C amended**

- 11 (1) In section 23C(1) delete “An officer of the Board (other than the
12 Registrar, the Deputy Registrar, an Assistant Registrar or an
13 inspector) or a person engaged under section 12AA(b)” and
14 insert:

15
16 The Commissioner, or a person nominated by the
17 Commissioner,
18

- 19 (2) In section 23C(5)(a) delete “the Board or”.

- 20 (3) In section 23C(6)(b) delete “Board to provide its” and insert:

21
22 department to provide
23

24 **91. Section 24 amended**

25 Delete section 24(5) and insert:

- 26
27 (5) If the Commissioner is considering making an adverse
28 decision in relation to the application, the
29 Commissioner must give the applicant the opportunity

s. 92

1 to give additional information in relation to that
2 application.
3

4 **92. Section 25 amended**

5 Delete section 25(4) and insert:
6

7 (4) If the Commissioner is considering making an adverse
8 decision in relation to the objection, the Commissioner
9 must give the person making the objection the
10 opportunity to give additional information in relation to
11 that objection.
12

13 **93. Section 33 amended**

14 Delete section 33(5) and insert:
15

16 (5) If the Commissioner is considering making an adverse
17 decision in relation to the application, the
18 Commissioner must give the applicant the opportunity
19 to give additional information in relation to that
20 application.
21

22 **94. Section 34A amended**

23 (1) Delete section 34A(1) and insert:
24

25 (1) Subject to this Part, a licence may be granted and a
26 triennial certificate may be granted or renewed (as long
27 as there is no objection in respect of a licence and
28 special conditions are not imposed or changed), by the
29 Commissioner without notice to the applicant.
30

31 (2) Delete section 34A(3).

1 **95. Section 43 amended**

2 Delete section 43(4) and insert:

3

- 4 (4) If the Commissioner is considering making an adverse
5 decision in relation to the application, the
6 Commissioner must give the applicant the opportunity
7 to give additional information in relation to that
8 application.

9

10 **96. Section 49 amended**

11 Delete section 49(7) and insert:

12

- 13 (7) If the Commissioner is considering making an adverse
14 decision in relation to the application, the
15 Commissioner must give the applicant the opportunity
16 to give additional information in relation to that
17 application.

18

19 **97. Section 50A amended**

20 (1) Delete section 50A(1) and insert:

21

- 22 (1) Subject to this Part, a certificate of registration may be
23 granted or renewed (as long as special conditions are
24 not imposed or changed) by the Commissioner without
25 notice to the applicant.

26

27 (2) Delete section 50A(3).

28 **98. Section 62 amended**

29 In section 62(4) delete “under this Act”.

s. 99

1 **99. Section 70 amended**

2 Delete section 70(5) and insert:

3

4 (5) The Commissioner may, in circumstances he or she
5 considers appropriate, extend the time limit for lodging
6 reports.
7

8 **100. Section 83 amended**

9 In section 83(2) delete “Board under this Part shall be available
10 in the hands of the Board” and insert:

11

12 Commissioner under this Part shall be available under
13 the supervision of the Commissioner
14

15 **101. Section 94 amended**

16 In section 94(2) delete “writing and be signed by the Chairman
17 or by 2 members of the Board.” and insert:

18

19 writing.
20

21 **102. Section 100 replaced**

22 Delete section 100 and insert:

23

24 **100. Financial institutions to disclose agent’s account on**
25 **request**

26 Where a person duly authorised under the *Fair Trading*
27 *Act 2010* Part 6 to make an investigation or inquiry for
28 the purposes of that Act, or this Act, has reasonable
29 cause to believe that an agent has deposited any money

1 with a bank or other financial institution, whether in an
2 account in the name of the agent or in some other
3 account, he or she may by notice in writing addressed
4 to the manager or other officer for the time being in
5 charge of the bank or other institution concerned and
6 nominating the accounts to be examined, require that
7 those accounts be disclosed to him or her, and the
8 manager or other officer for the time being in charge of
9 the bank or other institution named in the requisition
10 shall without requiring any warrant other than the
11 production of the credentials under the *Fair Trading*
12 *Act 2010* of that authorised person, whether or not the
13 person in whose name the account is held consents,
14 permit the authorised person to inspect, and make a
15 copy or extract of, the nominated accounts and any
16 book, document or other record that relates to the
17 accounts and is in the possession or control of that
18 bank or other institution.
19

20 **103. Section 109 amended**

21 In section 109(d):

22 (a) delete “Board” and insert:

23

24 State

25

26 (b) delete “Act; and” and insert:

27

28 Act or the *Fair Trading Act 2010*; and

29

30 **104. Section 110 amended**

31 In section 110(c) delete “Board” and insert:

32

33 chief executive officer on behalf of the State

34

s. 105

1 **105. Section 112 amended**

2 In section 112 delete “Board.” and insert:

3

4 chief executive officer.

5

6 **106. Section 113 amended**

7 (1) In section 113(1):

8 (a) delete “Board” (first and second occurrence) and insert:

9

10 chief executive officer

11

12 (b) delete “Board.” and insert:

13

14 chief executive officer.

15

16 (2) In section 113(2):

17 (a) delete “Board” (first and second occurrence) and insert:

18

19 chief executive officer

20

21 (b) delete “Board.” and insert:

22

23 chief executive officer.

24

25 (3) In section 113(3) delete “Board” (each occurrence) and insert:

26

27 chief executive officer

28

1 **107. Section 115 amended**

2 (1) In section 115(1):

3 (a) delete “Board,” and insert:

4

5 chief executive officer,

6

7 (b) delete “Board in” and insert:

8

9 chief executive officer in

10

11 (c) delete “Board may by resolution” and insert:

12

13 chief executive officer may

14

15 (d) delete “it” and insert:

16

17 the chief executive officer

18

19 (2) In section 115(3):

20 (a) delete “Board,” and insert:

21

22 chief executive officer,

23

24 (b) delete “Board” and insert:

25

26 chief executive officer

27

s. 108

1 **108. Section 116 amended**

2 In section 116(2):

3 (a) delete “Board” (first and second occurrence) and insert:

4

5 chief executive officer

6

7 (b) in paragraph (b) delete “Board —” and insert:

8

9 chief executive officer —

10

11 **109. Section 117 amended**

12 (1) In section 117(1):

13 (a) delete “Board” (first and third occurrence) and insert:

14

15 chief executive officer

16

17 (b) delete “Board,” and insert:

18

19 chief executive officer,

20

21 (2) In section 117(4) delete “Board” (each occurrence) and insert:

22

23 chief executive officer

24

25 **110. Section 118 amended**

26 In section 118:

27 (a) delete “Board” and insert:

28

29 State

30

1 (b) delete “Board.” and insert:

2

3

State.

4

5 **111. Section 119 amended**

6 In section 119 delete “Board” and insert:

7

8 State

9

10 **112. Section 120 amended**

11 (1) In section 120(1):

12 (a) delete “Board available” and insert:

13

14 chief executive officer available

15

16 (b) delete “Board in” and insert:

17

18 State in

19

20 (c) delete “Board;” and insert:

21

22 chief executive officer;

23

24 (2) In section 120(2) delete “Board” and insert:

25

26 chief executive officer

27

s. 113

- 1 (3) In section 120(3):
2 (a) delete “Board, the Board” and insert:
3
4 chief executive officer, the chief executive officer
5
6 (b) in paragraph (a) delete “it” and insert:
7
8 the chief executive officer
9
10 (c) in paragraph (c) delete “Board,” and insert:
11
12 chief executive officer,
13

14 **113. Section 121 amended**

- 15 (1) In section 121(1):
16 (a) delete “Board may” and insert:
17
18 chief executive officer may, on behalf of the State,
19
20 (b) delete “Board will” and insert:
21
22 State will
23
24 (2) In section 121(3) delete “Board” and insert:
25
26 chief executive officer
27

1 **114. Section 123 amended**

2 In section 123(1), (2) and (3) delete “Board” (each occurrence)
3 and insert:

4
5 chief executive officer
6

7 **115. Section 124 amended**

8 In section 124:

9 (a) delete “Board may” and insert:

10
11 chief executive officer may
12

13 (b) delete “it” and insert:

14
15 the chief executive officer
16

17 (c) delete “its” and insert:

18
19 the State’s
20

21 **116. Section 124C amended**

22 (1) In section 124C(a) delete “Account;” and insert:

23
24 Account; and
25

26 (2) Delete section 124C(b) and (c) and insert:

27
28 (b) the remuneration and allowances payable to
29 members of advisory committees established
30 under Part II Division 4 of this Act or under the

s. 117

1 *Fair Trading Act 2010* Part 5 Division 2
2 Subdivision 1; and
3 (c) the costs associated with the provision of
4 secretarial, clerical or other administrative
5 support to the advisory committees in the
6 performance of their functions under this Act or
7 under the *Fair Trading Act 2010* Part 5
8 Division 2 Subdivision 1; and
9

10 (3) In section 124C(e) delete “Board in the performance of its” and
11 insert:
12

13 Commissioner in the performance of the Commissioner’s
14

15 **117. Part IX heading amended**

16 In the heading to Part IX delete “**Board**” and insert:
17

18 **Real Estate and Business Agents**
19

20 **118. Section 125 amended**

21 (1) In section 125(1) delete “Board” and insert:
22

23 Real Estate and Business Agents
24

25 (2) In section 125(2) delete “Board.” and insert:
26

27 chief executive officer.
28

29 Note: The heading to amended section 125 is to read:

30 **Real Estate and Business Agents Account established**

1 **119. Section 131D amended**

2 In section 131D(c) delete “Board” and insert:

3

4 chief executive officer

5

6 **120. Section 131E amended**

7 In section 131E(a) delete “Board” and insert:

8

9 chief executive officer

10

11 **121. Section 131G amended**

12 In section 131G delete “Board” and insert:

13

14 chief executive officer

15

16 Note: The heading to amended section 131G is to read:

17

Administration of Assistance Account

18 **122. Sections 131H, 131I, 131J, 131K and 131KA deleted**

19 Delete sections 131H, 131I, 131J, 131K and 131KA.

20 **123. Section 131L amended**

21 In section 131L(1) and (1a) delete “Registrar” (each occurrence)
22 and insert:

23

24 chief executive officer

25

26 **124. Section 131M amended**

27 (1) In section 131M(1):

s. 124

- 1 (a) delete “Registrar shall,” and insert:
2
3 chief executive officer shall,
4
5 (b) delete “in accordance with guidelines issued by the
6 Advisory Committee,”;
7 (c) delete paragraphs (a) and (b) and insert:
8
9 (a) considering the application and if, in the
10 opinion of the chief executive officer, the
11 application contains sufficient information to
12 enable the merits of the application to be
13 properly assessed, the chief executive officer
14 may consider the application; or
15 (b) referring the application to an advisory
16 committee established for that purpose under
17 section 23A, or to the Property Industry
18 Advisory Committee, for consideration.
19
20 (2) Delete section 131M(1a).
21 (3) Delete section 131M(2) and insert:
22
23 (2) The relevant committee shall consider each application
24 referred to it under subsection (1)(b) and, if in its
25 opinion that application contains information sufficient
26 to enable the chief executive officer properly to assess
27 the merits of that application, return that application to
28 the chief executive officer.
29

1 (4) In section 131M(3) delete “On receiving an application and
2 recommendation forwarded to it under subsection (1) or (2), the
3 Board” and insert:
4

5 On considering an application under subsection (1)(a)
6 or receiving an application and recommendation
7 returned under subsection (2), the chief executive
8 officer
9

10 Note: The heading to amended section 131M is to read:

11 **Deciding applications for assistance**

12 **125. Section 131N amended**

13 (1) In section 131N(1) delete “Board shall, after it” and insert:
14

15 chief executive officer shall, after he or she
16

17 (2) In section 131N(3) and (4) delete “Board” (each occurrence)
18 and insert:
19

20 chief executive officer
21

22 **126. Section 131O amended**

23 (1) In section 131O(1):

24 (a) before “Advisory” insert:
25

26 Property Industry
27

28 (b) delete “Board,” and insert:
29

30 chief executive officer,
31

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- 1 (c) delete “Board” and insert:
2
3 chief executive officer
4
- 5 (2) In section 131O(2):
6 (a) delete “The Board” and insert:
7
8 The chief executive officer
9
- 10 (b) delete “forwarded to the Board under section 131M(1)
11 or (2)” and insert:
12
13 received by the chief executive officer under
14 section 131M
15
- 16 Note: The heading to amended section 131O is to read:
17 **Formulating criteria for granting assistance**
- 18 **127. Section 135 amended**
- 19 (1) Delete section 135(1).
20 (2) In section 135(2):
21 (a) delete “Board’s” and insert:
22
23 department’s
24
- 25 (b) in paragraph (a)(i) delete “Board or the Registrar;” and
26 insert:
27
28 Commissioner; and
29

1 (c) in paragraph (d) delete “Board” and insert:

2

3 Commissioner

4

5 (d) in paragraph (e) delete “Board.” and insert:

6

7 Commissioner.

8

9 (e) after paragraphs (a), (b) and (c) insert:

10

11 and

12

13 Note: The heading to amended section 135 is to read:

14 **Annual report**

15 **128. Section 137 replaced**

16 Delete section 137 and insert:

17

18 **137. Protection from liability**

19 A person does not incur any liability in tort for
20 anything that the person does, in good faith, in the
21 performance or purported performance of a function
22 under this Act.

23

24 **129. Section 138 replaced**

25 Delete section 138 and insert:

26

27 **138. Confidentiality of information officially obtained**

28 The *Fair Trading Act 2010* section 113 applies to
29 information obtained for the purposes of this Act.

30

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1 **130. Section 145 amended**

2 Delete section 145(2)(b).

3 **131. Part XI Division 1 heading inserted**

4 Before section 146 insert:

5

6 **Division 1 — Savings and transitional (1978)**

7

8 **132. Part XI Division 2 inserted**

9 After section 147 insert:

10

11 **Division 2 — Savings and transitional (2010)**

12 **148. Terms used**

13 In this Division —

14 ***commencement day*** means the day on which Part 6 of
15 the *Acts Amendment (Fair Trading) Act 2010* comes
16 into operation;

17 ***former Registrar*** means a Registrar appointed under
18 section 12 of the Act prior to the commencement day;

19 ***liability*** means any liability, duty or obligation whether
20 actual, contingent or prospective, liquidated or
21 unliquidated, or whether owed alone or jointly or
22 jointly and severally with any other person;

23 ***right*** means any right, power, privilege or immunity
24 whether actual, contingent or prospective;

25 ***the former Board*** means the Real Estate and Business
26 Agents Supervisory Board established by section 6 of
27 the Act immediately prior to the commencement day.

- 1 **149. Former Board abolished**
- 2 Subject to sections 156 and 157, at the beginning of the
- 3 commencement day, the former Board is abolished and
- 4 its members go out of office.
- 5 **150. References to the former Board**
- 6 If in a written law or other document or instrument
- 7 there is a reference to the former Board, that reference
- 8 may, where the context so requires, be read as if it had
- 9 been amended to be a reference to the Commissioner.
- 10 **151. Immunity continues**
- 11 Despite the abolition of the former Board, if the former
- 12 Board had the benefit of any immunity in respect of an
- 13 act, matter or thing done or omitted before the
- 14 commencement day, that immunity continues in that
- 15 respect for the benefit of the Commissioner.
- 16 **152. Notices by the former Board**
- 17 (1) If the former Board has fixed by notice the maximum
- 18 amount of remuneration of a licensee under section 61
- 19 of the Act immediately prior to commencement day,
- 20 that notice is to be taken to have been given by the
- 21 Commissioner and continues in force until amended or
- 22 revoked by the Commissioner.
- 23 (2) If notice has been given to the former Board under
- 24 section 116(2) of the Act as it was immediately prior to
- 25 commencement day, that notice is taken to be given to
- 26 the Commissioner for the purposes of that subsection.
- 27 **153. References to a former Registrar**
- 28 (1) If in a written law or other document or instrument
- 29 there is a reference to the former Registrar, that
- 30 reference may, where the context so requires, be read

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- 1 as if it had been amended to be a reference to the
2 Commissioner.
- 3 (2) If a certificate has been given by a former Registrar
4 under section 134(3) of the Act as it was immediately
5 prior to commencement day, that certificate is to be
6 treated as if it were given by the Commissioner for the
7 purposes of that subsection.
- 8 **154. Unfinished investigations by the former Board**
- 9 Investigations being carried out by the former Board
10 under the Act as it was prior to the commencement day
11 that are not complete by the commencement day —
- 12 (a) are taken to have been commenced by the
13 Commissioner for the purposes of the Act; and
- 14 (b) are to continue under the direction and control
15 of the Commissioner.
- 16 **155. Unfinished proceedings by the former Board**
- 17 (1) Proceedings before the former Board that are not
18 complete by the commencement day —
- 19 (a) are taken to have been commenced by the
20 Commissioner for the purposes of the Act; and
- 21 (b) are to continue under the direction and control
22 of the Commissioner.
- 23 (2) Proceedings before the State Administrative Tribunal
24 or another court commenced by allegation against a
25 licensed real estate or business agent brought by the
26 former Board that are not complete by the
27 commencement day —
- 28 (a) are taken to have been commenced by an
29 allegation by the Commissioner for the
30 purposes of the Act; and
- 31 (b) are to continue under the direction and control
32 of the Commissioner.

1 **156. Winding-up the former Board**

2 On and after the commencement day —

- 3 (a) the Commissioner is to take control of all
4 registers, documents, books and other records
5 (however compiled, recorded or stored) relating
6 to the former Board and the exercise of its
7 functions, and of any tape, disk or other device
8 or medium relating to such records; and
- 9 (b) all assets of the former Board are to be
10 transferred to the State to be administered in the
11 department, or the residual assets may be
12 realised and the proceeds, together with any
13 moneys in hand, are to be credited to the
14 Consolidated Account; and
- 15 (c) all rights, liabilities and obligations of the
16 former Board that existed immediately before
17 the commencement day devolve on the
18 Commissioner acting on behalf of, and in the
19 name of, the State; and
- 20 (d) all contracts, agreements and undertakings
21 made by and with the former Board and having
22 effect immediately before the commencement
23 day have effect as contracts, agreements and
24 undertakings made with the Commissioner
25 acting on behalf of, and in the name of, the
26 State and may be enforced by or against the
27 State accordingly; and
- 28 (e) any legal or other proceedings or any remedies
29 that might, but for the operation of the *Acts*
30 *Amendment (Fair Trading) Act 2010* Part 6,
31 have been commenced or continued by or
32 against or have been available to the former
33 Board may be commenced or continued by or
34 against or are available to the Commissioner

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- 1 acting on behalf of, and in the name of, the
2 State, as the case requires; and
3 (f) any fees, charges or other moneys payable to
4 the Board under this Act and outstanding at the
5 commencement day become payable to the
6 chief executive officer at the time, and in the
7 manner, in which those moneys would have
8 been payable to the former Board under this
9 Act.

10 **157. Final report by the former Board**

- 11 (1) The provisions of the *Financial Management Act 2006*
12 Part 5 Division 3 apply to the former Board.
13 (2) The chief executive officer is to include the final report
14 submitted under subsection (1) in the department's
15 annual report for that financial year.

16 **158. Board staff**

- 17 (1) The officers of the former Board and the former
18 Registrar who held office immediately before the
19 commencement day continue to be employed, under
20 and subject to the *Public Sector Management Act 1994*
21 Part 3, as officers of the department.
22 (2) A person mentioned in subsection (1) is to be regarded
23 as having been engaged or employed, as is relevant, by
24 the chief executive officer.
25 (3) Except as otherwise agreed by a person mentioned in
26 subsection (1), the remuneration, existing or accrued
27 rights, rights under a superannuation scheme or
28 continuity of service of the person are not affected,
29 prejudiced or interrupted by the operation of
30 subsection (1).

- 1 **159. Powers in relation to transitional matters**
- 2 (1) If there is not sufficient provision in this Part for
- 3 dealing with a transitional matter, the Governor may
- 4 make regulations prescribing all matters that are
- 5 required, necessary or convenient to be prescribed in
- 6 relation to that matter.
- 7 (2) In subsection (1) —
- 8 *transitional matter* means a matter that needs to be
- 9 dealt with for the purpose of effecting the transition
- 10 from this Act as enacted immediately before the
- 11 commencement day to this Act as amended by the *Acts*
- 12 *Amendment (Fair Trading) Act 2010*.
- 13 (3) Regulations made under subsection (1) may provide
- 14 that specific provisions of a written law —
- 15 (a) do not apply; or
- 16 (b) apply with specific modifications,
- 17 to or in relation to any matter.
- 18 (4) Regulations made under subsection (1) must be made
- 19 within 12 months after the commencement day.
- 20 (5) If regulations made under subsection (1) provide that a
- 21 specified state of affairs is to be taken to have existed,
- 22 or not to have existed, on and from a day that is earlier
- 23 than the day on which the regulations are published in
- 24 the *Gazette* but not earlier than the commencement
- 25 day, the regulations have effect according to their
- 26 terms.
- 27 (6) In subsection (5) —
- 28 *specified* means specified or described in the
- 29 regulations.

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- (7) If regulations contain a provision referred to in subsection (5), the provision does not operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

12
13
14
15
16

133. Schedule amended

In the Schedule delete clauses 7, 9, 10, 11, 12 and 15.

134. Various references to “Commissioner” inserted

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

Table

Provision	Delete	Insert
s. 4(1) def. of <i>approved</i>	Board	Commissioner
s. 4(1) def. of <i>supervisor</i>	Board	Commissioner
s. 23(1)	Board	Commissioner
s. 23(2) def. of <i>person aggrieved</i> par. (c)	Board’s	Commissioner’s
s. 23(2) def. of <i>person aggrieved</i> par. (d) and (e)	Board	Commissioner
s. 23A(1)	Board (each occurrence)	Commissioner

Provision	Delete	Insert
s. 23A(1)	Board's (each occurrence)	Commissioner's
s. 23B(1)	Board	Commissioner
s. 24(1) and (4)	Board (each occurrence)	Commissioner
s. 25(2)	Board	Commissioner
s. 27(1)	Board (each occurrence)	Commissioner
s. 28	Board (each occurrence)	Commissioner
s. 29	Board (each occurrence)	Commissioner
s. 30(2a)(b)	Board	Commissioner
s. 31(1), (2) and (3)	Board (each occurrence)	Commissioner
s. 32(2)	Board (each occurrence)	Commissioner
s. 33(1), (2) and (4)	Board (each occurrence)	Commissioner
s. 34(2)	Board it	Commissioner the Commissioner

s. 134

Provision	Delete	Insert
s. 34A(2)	Board or Registrar Registrar	Commissioner Commissioner
s. 35	Registrar	Commissioner
s. 36(3)	Registrar (each occurrence)	Commissioner
s. 37(1)	Registrar	Commissioner
s. 40(1)	Board	Commissioner
s. 40(3)	Registrar	Commissioner
s. 43(1) and (3)	Board (each occurrence)	Commissioner
s. 47(1)	Board (each occurrence)	Commissioner
s. 48(3)	Board	Commissioner
s. 48(4)	Board it	Commissioner the Commissioner
s. 48(5)	Board (each occurrence)	Commissioner
s. 49(2), (3), (4) and (6)	Board (each occurrence)	Commissioner

Provision	Delete	Insert
s. 50(2)	Board it	Commissioner the Commissioner
s. 50A(2)	Board or Registrar Registrar	Commissioner Commissioner
s. 51(1)	Registrar Board	Commissioner Commissioner
s. 51(2)	Registrar	Commissioner
s. 56(1) and (2)	Board (each occurrence)	Commissioner
s. 57(1)	Board Registrar	Commissioner Commissioner
s. 58(1) and (2)	Registrar	Commissioner
s. 61(1), (2) and (3a)	Board	Commissioner
s. 68C(1) and (3)	Board	Commissioner
s. 69(5)	Board (each occurrence)	Commissioner
s. 70(2), (3), (6), (7) and (8)	Board (each occurrence)	Commissioner

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Provision	Delete	Insert
s. 71(1)	Board Board may, in its	Commissioner Commissioner may, in the Commissioner's
s. 71(2), (3) and (5)	Board (each occurrence)	Commissioner
s. 72(2)	Board (each occurrence)	Commissioner
s. 72(3)	Board Board may, if it	Commissioner Commissioner may, if the Commissioner
s. 73(3)	Board	Commissioner
s. 74	Board (each occurrence)	Commissioner
s. 74	it	the Commissioner
s. 75	Board may, if in its it	Commissioner may, if in the Commissioner's the Commissioner
s. 79(e)	Board	Commissioner
s. 81	Board	Commissioner

Provision	Delete	Insert
s. 83(1)	Board (each occurrence)	Commissioner
s. 86	Board	Commissioner
s. 88	Board (each occurrence)	Commissioner
s. 88	it may	the Commissioner may
s. 90(1) and (2)	Board (each occurrence)	Commissioner
s. 92(1)	Board by it	Commissioner by the Commissioner
s. 93(1), (2), (3) and (4)	Board (each occurrence)	Commissioner
s. 94(1)	Board (each occurrence)	Commissioner
s. 98(1)	Board	Commissioner
s. 99(1), (2) and (3)	Board (each occurrence)	Commissioner
s. 100A(1) and (8)	Registrar (each occurrence)	Commissioner
s. 101	Board	Commissioner

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Provision	Delete	Insert
s. 102(1)	Board	Commissioner
s. 103(5)(b)	Registrar	Commissioner
s. 104	Registrar of the Board	Commissioner
s. 105(1)	Registrar of the Board	Commissioner
s. 106(1) and (2)	Board	Commissioner
s. 124A(2)	Board	Commissioner
s. 124B(c)	Board	Commissioner
s. 133(1), (2), (3) and (4)	Registrar	Commissioner
s. 134(1), (2), (3) and (4)	Registrar	Commissioner
s. 136	Board (each occurrence)	Commissioner
s. 136A	Board (each occurrence)	Commissioner
s. 139(2)	Board	Commissioner
s. 143(1)	Registrar or an inspector	Commissioner
s. 144	Board	Commissioner
s. 145(2)(a)	Board	Commissioner

Provision	Delete	Insert
Sch. cl. 4	Board (each occurrence)	Commissioner
Sch. cl. 5(1)	Registrar	Commissioner
Sch. cl. 5(2)	Registrar (each occurrence) his	Commissioner his or her
Sch. cl. 6(1)	Registrar Board	Commissioner Commissioner
Sch. cl. 8(3)	Board (each occurrence)	Commissioner
Sch. cl. 16(1)	Board	Commissioner

- 1 Notes: The heading to amended section 35 is to read:
- 2 **Notification by licensee when commencing or ceasing business**
- 3 The heading to amended section 51 is to read:
- 4 **Notification to be given by registered sales representative**
- 5 The heading to amended section 68C is to read:
- 6 **Trust accounts, certain information to be given to Commissioner**
- 7 The heading to amended section 71 is to read:
- 8 **Audit date may be varied**
- 9 The heading to amended section 75 is to read:
- 10 **Commissioner may vary decisions made under this Part**
- 11 The heading to amended section 88 is to read:
- 12 **Audit of trust account may be ordered**
- 13 The heading to amended section 100A is to read:

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- 1 **Commissioner may obtain information about trust accounts**
- 2 The heading to amended section 101 is to read:
- 3 **Codes of conduct**
- 4 The heading to amended section 112 is to read:
- 5 **Administration of Fidelity Account**
- 6 The heading to amended section 119 is to read:
- 7 **Subrogation of rights**
- 8 The heading to amended section 121 is to read:
- 9 **State may insure against claims**
- 10 The heading to amended section 124 is to read:
- 11 **Documents etc. may be required to support claims**
- 12 The heading to amended section 126 is to read:
- 13 **Account, income**
- 14 The heading to amended section 127 is to read:
- 15 **Account, expenditure**
- 16 The heading to amended section 128 is to read:
- 17 **Account, investment of**
- 18 The heading to amended section 133 is to read:
- 19 **Registers to be kept**
- 20 The heading to amended section 136 is to read:
- 21 **Report on effectiveness of Act**
- 22 The heading to amended section 144 is to read:
- 23 **Forms**

Part 7 — *Settlement Agents Act 1981* amended

135. Act amended

This Part amends the *Settlement Agents Act 1981*.

136. Section 3 amended

(1) In section 3(1) delete the definitions of:

Board

Chairman

inspector

member

Registrar

(2) In section 3(1) insert in alphabetical order:

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6;

department means the department of the Public Service principally assisting the Minister in the administration of this Act;

(3) In section 3(1) in the definition of *Interest Account* delete “Board” and insert:

Settlement Agents

137. Part II amended

(1) Delete the heading to Part II.

(2) Delete Part II Divisions 1, 1A and 2.

(3) Delete the heading to Part II Division 3.

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1 **138. Sections 19, 20 and 21 deleted**

2 Delete sections 19, 20 and 21.

3 **139. Section 22 inserted**

4 Before section 23 insert:

5

6 **22. Powers of investigation**

7 The *Fair Trading Act 2010* section 62 and Part 6 of
8 that Act apply to this Act.

9

10 **140. Section 23 amended**

11 (1) In section 23(2) in the definition of *person aggrieved*:

12 (a) in paragraph (c) delete “Account; or” and insert:

13

14 Account;

15

16 (b) delete paragraph (d).

17 (2) In section 23(2) in the definition of *reviewable decision*:

18 (a) in paragraph (c) delete “95; or” and insert:

19

20 95.

21

22 (b) delete paragraph (d).

23 **141. Section 24 amended**

24 Delete section 24(5) and insert:

25

26 (5) If the Commissioner is considering making an adverse
27 decision in relation to the application, the
28 Commissioner must give the applicant the opportunity

1 to give additional information in relation to that
2 application.
3

4 **142. Section 25 amended**

5 Delete section 25(4) and insert:
6

7 (4) If the Commissioner is considering making an adverse
8 decision in relation to the objection, the Commissioner
9 must give the person making the objection the
10 opportunity to give additional information in relation to
11 that objection.
12

13 **143. Section 33 amended**

14 Delete section 33(5) and insert:
15

16 (5) If the Commissioner is considering making an adverse
17 decision in relation to the application, the
18 Commissioner must give the applicant the opportunity
19 to give additional information in relation to that
20 application.
21

22 **144. Section 34A amended**

23 (1) Delete section 34A(1) and insert:
24

25 (1) Subject to this Part, a licence may be granted and a
26 triennial certificate may be granted or renewed (as long
27 as there is no objection in respect of a licence and
28 special conditions are not imposed or changed) by the
29 Commissioner without notice to the applicant.
30

31 (2) Delete section 34A(3).

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1 **145. Section 43 amended**

2 In section 43(8) in the Penalty delete “Board” and insert:

3

4 convicting court or tribunal

5

6 **146. Section 44 amended**

7 In section 44(10) delete “Board” and insert:

8

9 convicting court or tribunal

10

11 **147. Section 51 amended**

12 Delete section 51(5) and insert:

13

14 (5) The Commissioner may, in circumstances he or she
15 considers appropriate, extend the time limit for lodging
16 reports.

17

18 **148. Section 64 amended**

19 In section 64(2) delete “Board under this Division shall be
20 available in the hands of the Board” and insert:

21

22 Commissioner under this Division shall be available
23 under the supervision of the Commissioner

24

1 **149. Section 75 amended**

2 In section 75(2) delete “writing and be signed by the Chairman
3 or by 2 members of the Board.” and insert:

4
5 writing.
6

7 **150. Section 81 replaced**

8 Delete section 81 and insert:

9
10 **81. Duty of managers of financial institutions**

11 Where a person duly authorised under the *Fair Trading*
12 *Act 2010* to make an investigation or inquiry for the
13 purposes of that Act, or this Act, has reasonable cause
14 to believe that a settlement agent has deposited any
15 money with a bank or other financial institution,
16 whether in an account in the name of the settlement
17 agent or in some other account, he or she may by
18 notice in writing addressed to the manager or other
19 officer for the time being in charge of the bank or other
20 institution concerned and nominating the accounts to
21 be examined, require that those accounts be disclosed
22 to him or her, and the manager or other officer for the
23 time being in charge of the bank or other institution
24 named in the requisition shall without requiring any
25 warrant other than the production of the credentials
26 under the *Fair Trading Act 2010* of that authorised
27 person, whether or not the person in whose name the
28 account is held consents, and notwithstanding any law,
29 or rule of law, or contractual obligation to the contrary,
30 permit the authorised person to inspect, and make and
31 take away with him or her a copy or extract of, the
32 nominated accounts and any book, document, or other

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1 record that relates to the accounts and is in the
2 possession or control of that bank or other institution.
3

4 **151. Section 87 amended**

5 In section 87 delete “Board.” and insert:

6

7 chief executive officer.
8

9 **152. Section 88 amended**

10 In section 88(d):

11 (a) delete “Board.” and insert:

12

13 State.
14

15 (b) delete “Act;” and insert:

16

17 Act or the *Fair Trading Act 2010*;
18

19 **153. Section 90 amended**

20 In section 90(c) delete “Board” and insert:

21

22 chief executive officer, on behalf of the State,
23

24 **154. Section 92 amended**

25 (1) In section 92(1) delete “Board” (first and second occurrence)
26 and insert:

27

28 chief executive officer
29

1 (2) In section 92(1) delete “Board.” and insert:

2

3 chief executive officer.

4

5 (3) In section 92(2) and (3) delete “Board” (each occurrence) and
6 insert:

7

8 chief executive officer

9

10 **155. Section 93 amended**

11 In section 93(2):

12 (a) delete “Board” (first and second occurrence) and insert:

13

14 chief executive officer

15

16 (b) in paragraph (b) delete “Board —” and insert:

17

18 chief executive officer —

19

20 **156. Section 94 amended**

21 (1) In section 94(1):

22 (a) delete “Board” (first and second occurrence) and insert:

23

24 chief executive officer

25

26 (b) delete “Board may by resolution,” and insert:

27

28 chief executive officer may

29

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- 1 (2) In section 94(2):
2 (a) delete “Board,” and insert:
3
4 chief executive officer,
5
6 (b) delete “Board” and insert:
7
8 chief executive officer
9

10 **157. Section 95 amended**

- 11 (1) In section 95(1):
12 (a) delete “Board” (first and third occurrence) and insert:
13
14 chief executive officer
15
16 (b) delete “Board,” and insert:
17
18 chief executive officer,
19
20 (2) In section 95(4):
21 (a) delete “board” and insert:
22
23 chief executive officer
24
25 (b) delete “Board” and insert:
26
27 chief executive officer
28

1 **158. Section 96 amended**

2 In section 96:

3 (a) delete “Board” and insert:

4

5 State

6

7 (b) delete “Board.” and insert:

8

9 State.

10

11 **159. Section 97 amended**

12 In section 97 delete “Board” and insert:

13

14 State

15

16 **160. Section 98 amended**

17 (1) In section 98(1):

18 (a) delete “Board available” and insert:

19

20 chief executive officer available

21

22 (b) delete “Board in” and insert:

23

24 State in

25

26 (c) delete “Board,” and insert:

27

28 chief executive officer,

29

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- 1 (2) In section 98(2) delete “Board” and insert:
2
3 chief executive officer
4
- 5 (3) In section 98(3):
6 (a) delete “Board, the Board” and insert:
7
8 chief executive officer, the chief executive officer
9
- 10 (b) in paragraph (a) delete “it” and insert:
11
12 the chief executive officer
13
- 14 (c) in paragraph (c) delete “Board,” and insert:
15
16 chief executive officer,
17

18 **161. Section 99 amended**

- 19 (1) In section 99(1):
20 (a) delete “Board may” and insert:
21
22 chief executive officer may, on behalf of the State,
23
- 24 (b) delete “Board will” and insert:
25
26 State will
27
- 28 (2) In section 99(3) delete “Board” and insert:
29
30 chief executive officer
31

1 (3) In section 99(4) delete “Board or against a member or servant of
2 the Board” and insert:

3

4 State, the Commissioner, the chief executive officer or
5 an officer of the department

6

7 Note: The heading to amended section 99 is to read:

8

State may insure against claims

9 **162. Section 101 amended**

10 In section 101(1), (2) and (3) delete “Board” (each occurrence)
11 and insert:

12

13 chief executive officer

14

15 **163. Section 102 amended**

16 In section 102:

17 (a) delete “Board may” and insert:

18

19 chief executive officer may

20

21 (b) delete “it” and insert:

22

23 the chief executive officer

24

25 (c) delete “its” and insert:

26

27 the State’s

28

29 Note: The heading to amended section 102 is to read:

30

Documents etc. may be required to support claims

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1 **164. Section 102A amended**

2 In section 102A(2) delete “Board.” and insert:

3

4 chief executive officer.

5

6 **165. Section 102B amended**

7 In section 102B(c) delete “Board;” and insert:

8

9 chief executive officer;

10

11 **166. Section 102C amended**

12 In section 102C:

13 (a) delete paragraph (b);

14 (b) in paragraph (c) delete “Board in the performance of its”
15 and insert:

16

17 Commissioner in the performance of his or her

18

19 (c) in paragraph (e) delete “Board in the performance of its”
20 and insert:

21

22 chief executive officer and the department in
23 the performance of their

24

25 (d) after paragraphs (a) and (c) insert:

26

27 and

28

1 **167. Part VI heading amended**

2 In the heading to Part VI delete “**Board**” and insert:

3

4 **Settlement Agents**

5

6 **168. Section 103 amended**

7 (1) In section 103(1) delete “Board” and insert:

8

9 Settlement Agents

10

11 (2) In section 103(2) delete “Board.” and insert:

12

13 chief executive officer.

14

15 Note: The heading to amended section 103 is to read:

16

Settlement Agents Interest Account established

17 **169. Section 112 amended**

18 (1) Delete section 112(1).

19 (2) In section 112(2):

20

(a) delete “Board’s” and insert:

21

22 department’s

23

24 (b) in paragraph (a)(i) delete “Board or the Registrar; and”
25 and insert:

26

27 Commissioner; and

28

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- 1 (c) in paragraph (d) delete “Board” and insert:
2
3 Commissioner
4
5 (d) in paragraph (e) delete “Board.” and insert:
6
7 Commissioner.
8
9 (e) after paragraphs (a)(ii) and (b) and (c) insert:
10
11 and
12

13 Note: The heading to amended section 112 is to read:

14 **Annual report**

15 **170. Section 114 amended**

16 In section 114 delete “to the Board”.

17 **171. Section 115 replaced**

18 Delete section 115 and insert:
19

20 **115. Protection from liability**

21 A person does not incur any liability in tort for
22 anything that the person does, in good faith, in the
23 performance or purported performance of a function
24 under this Act.
25

1 **172. Section 116 replaced**

2 Delete section 116 and insert:

3

4 **116. Confidentiality of information officially obtained**

5 The *Fair Trading Act 2010* section 113 applies to
6 information obtained for the purposes of this Act.

7

8 **173. Section 123 amended**

9 Delete section 123(2)(b).

10 **174. Part VIII replaced**

11 Delete Part VIII and insert:

12

13 **Part VIII — Savings and transitional**

14 **124. Terms used**

15 In this Part —

16 ***commencement day*** means the day on which the *Acts*
17 *Amendment (Fair Trading) Act 2010* Part 7 comes into
18 operation;

19 ***former Registrar*** means a Registrar appointed under
20 section 12 of this Act prior to the commencement day;

21 ***liability*** means any liability, duty or obligation whether
22 actual, contingent or prospective, liquidated or
23 unliquidated, or whether owed alone or jointly or
24 jointly and severally with any other person;

25 ***right*** means any right, power, privilege or immunity
26 whether actual, contingent or prospective;

27 ***the former Board*** means the Settlement Agents
28 Supervisory Board established by section 5 of this Act
29 immediately prior to the commencement day.

1 **125. Former Board abolished**

2 Subject to sections 132 and 133, at the beginning of the
3 commencement day, the former Board is abolished and
4 its members go out of office.

5 **126. References to the former Board**

6 If in a written law or other document or instrument
7 there is a reference to the former Board, that reference
8 may, where the context so requires, be read as if it had
9 been amended to be a reference to the Commissioner.

10 **127. Immunity continues**

11 Despite the abolition of the former Board, if the former
12 Board had the benefit of any immunity in respect of an
13 act, matter or thing done or omitted before the
14 commencement day, that immunity continues in that
15 respect for the benefit of the Commissioner.

16 **128. Notices and rules made by the former Board**

17 (1) If the former Board has fixed by notice the maximum
18 amount of remuneration of a licensee under section 44
19 of the Act immediately prior to the commencement
20 day, that notice is to be taken to have been given by the
21 Commissioner and continues in force until amended or
22 revoked by the Commissioner.

23 (2) If the former Board has made rules prescribing a code
24 of conduct under section 82 of the Act as it was
25 immediately prior to the commencement day, those
26 rules and that code of conduct are taken to be made by
27 the Commissioner for the purposes of that section and
28 continue in force until amended or revoked by the
29 Commissioner.

- 1 **129. References to a former Registrar**
- 2 (1) If in a written law or other document or instrument
- 3 there is a reference to the former Registrar, that
- 4 reference may, where the context so requires, be read
- 5 as if it had been amended to be a reference to the
- 6 Commissioner.
- 7 (2) If a certificate has been given by a former Registrar
- 8 under section 111(3) of the Act as it was immediately
- 9 prior to the commencement day, that certificate is to be
- 10 treated as if it were given by the Commissioner for the
- 11 purposes of that subsection.
- 12 **130. Unfinished investigations by the former Board**
- 13 Investigations being carried out by the former Board
- 14 under the Act as it was prior to the commencement day
- 15 that are not complete by the commencement day —
- 16 (a) are taken to have been commenced by the
- 17 Commissioner for the purposes of the Act; and
- 18 (b) are to continue under the direction and control
- 19 of the Commissioner.
- 20 **131. Unfinished proceedings by the former Board**
- 21 (1) Proceedings before the former Board that are not
- 22 complete by the commencement day —
- 23 (a) are taken to have been commenced by the
- 24 Commissioner for the purposes of the Act; and
- 25 (b) are to continue under the direction and control
- 26 of the Commissioner.
- 27 (2) Proceedings before the State Administrative Tribunal
- 28 or another court commenced by allegation against a

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- 1 licensed settlement agent brought by the former Board
2 that are not complete by the commencement day —
- 3 (a) are taken to have been commenced by an
4 allegation by the Commissioner for the
5 purposes of the Act; and
- 6 (b) are to continue under the direction and control
7 of the Commissioner.

8 **132. Winding-up the former Board**

- 9 On and after the commencement day —
- 10 (a) the Commissioner is to take control of all
11 registers, documents, books and other records
12 (however compiled, recorded or stored) relating
13 to the former Board and the exercise of its
14 functions, and of any tape, disk or other device
15 or medium relating to such records; and
- 16 (b) all assets of the former Board are to be
17 transferred to the State to be administered in the
18 department, or the residual assets may be
19 realised and the proceeds, together with any
20 moneys in hand, are to be credited to the
21 Consolidated Account; and
- 22 (c) all rights, liabilities and obligations of the
23 former Board that existed immediately before
24 the commencement day devolve on the
25 Commissioner acting on behalf of, and in the
26 name of, the State; and
- 27 (d) all contracts, agreements and undertakings
28 made by and with the former Board and having
29 effect immediately before the commencement
30 day have effect as contracts, agreements and
31 undertakings made with the Commissioner
32 acting on behalf of, and in the name of, the
33 State and may be enforced by or against the
34 State accordingly; and

- 1 (e) any legal or other proceedings or any remedies
2 that might, but for the operation of the *Acts*
3 *Amendment (Fair Trading) Act 2010* Part 7,
4 have been commenced or continued by or
5 against or have been available to the former
6 Board may be commenced or continued by or
7 against or are available to the Commissioner
8 acting on behalf of, and in the name of, the
9 State, as the case requires; and
- 10 (f) any fees, charges or other moneys payable to
11 the Board under this Act and outstanding at the
12 commencement day become payable to the
13 chief executive officer at the time, and in the
14 manner, in which those moneys would have
15 been payable to the former Board under this
16 Act.

17 **133. Final report by the former Board**

- 18 (1) The provisions of the *Financial Management Act 2006*
19 Part 5 Division 3 apply to the former Board.
- 20 (2) The chief executive officer is to include the final report
21 submitted under subsection (1) in the department's
22 annual report for that financial year.

23 **134. Board staff**

- 24 (1) The officers of the former Board and the former
25 Registrar who held office immediately before the
26 commencement day continue to be employed, under
27 and subject to the *Public Sector Management Act 1994*
28 Part 3, as officers of the department.
- 29 (2) A person mentioned in subsection (1) is to be regarded
30 as having been engaged or employed, as is relevant, by
31 the chief executive officer.

- 1 (3) Except as otherwise agreed by a person mentioned in
2 subsection (1), the remuneration, existing or accrued
3 rights, rights under a superannuation scheme or
4 continuity of service of the person are not affected,
5 prejudiced or interrupted by the operation of
6 subsection (1).

7 **135. Powers in relation to transitional matters**

- 8 (1) If there is not sufficient provision in this Part for
9 dealing with a transitional matter, the Governor may
10 make regulations prescribing all matters that are
11 required, necessary or convenient to be prescribed in
12 relation to that matter.
- 13 (2) In subsection (1) —
14 *transitional matter* means a matter that needs to be
15 dealt with for the purpose of effecting the transition
16 from this Act as enacted immediately before the
17 commencement day to this Act as amended by the *Acts*
18 *Amendment (Fair Trading) Act 2010* Part 7.
- 19 (3) Regulations made under subsection (1) may provide
20 that specific provisions of a written law —
21 (a) do not apply; or
22 (b) apply with specific modifications,
23 to or in relation to any matter.
- 24 (4) Regulations made under subsection (1) must be made
25 within 12 months after the commencement day.
- 26 (5) If regulations made under subsection (1) provide that a
27 specified state of affairs is to be taken to have existed,
28 or not to have existed, on and from a day that is earlier
29 than the day on which the regulations are published in
30 the *Gazette* but not earlier than the commencement
31 day, the regulations have effect according to their
32 terms.

- 1 (6) In subsection (5) —
2 *specified* means specified or described in the
3 regulations.
4 (7) If regulations contain a provision referred to in
5 subsection (5), the provision does not operate so as —
6 (a) to affect, in a manner prejudicial to any person
7 (other than the State), the right of that person
8 existing before the day of publication of those
9 regulations; or
10 (b) to impose liabilities on any person (other than
11 the State or an authority of the State) in respect
12 of anything done or omitted to be done before
13 the day of publication of those regulations.
14

15 **175. Schedule 1 amended**

16 In Schedule 1 delete clauses 1(2) and 2(2).

17 **176. Various references to “Commissioner” inserted**

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

19 **Table**

Provision	Delete	Insert
s. 3(1) def. of <i>approved</i>	Board	Commissioner
s. 3(1) def. of <i>supervisor</i>	Board	Commissioner
s. 23(1)	Board	Commissioner
s. 23(2) def. of <i>person aggrieved</i> par. (b) and (c)	Board	Commissioner
s. 24(1) and (4)	Board (each occurrence)	Commissioner

s. 176

Provision	Delete	Insert
s. 24(4)	board	Commissioner
s. 25(2)	Board	Commissioner
s. 26A(2), (4), (5) and (8)	Board (each occurrence)	Commissioner
s. 26B(2), (4), (5) and (8)	Board (each occurrence)	Commissioner
s. 27(1) and (2)	Board (each occurrence)	Commissioner
s. 28(1)	Board (each occurrence)	Commissioner
s. 29(1)	Board (each occurrence)	Commissioner
s. 30(3a)(b)	Board	Commissioner
s. 31(1), (2) and (2a)	Board	Commissioner
s. 32(2)	Board (each occurrence)	Commissioner
s. 33(1), (2) and (4)	Board (each occurrence)	Commissioner
s. 34(2)	Board it	Commissioner the Commissioner

Provision	Delete	Insert
s. 34A(2)	Board or Registrar Registrar	Commissioner Commissioner
s. 35(1)	Board (each occurrence)	Commissioner
s. 35(4)	Board it	Commissioner the Commissioner
s. 35(5) and (6)	Board (each occurrence)	Commissioner
s. 36(1) and (2)	Registrar	Commissioner
s. 37(3)	Registrar (each occurrence)	Commissioner
s. 38(1)	Registrar	Commissioner
s. 41(1)	Board	Commissioner
s. 41(2)	Registrar	Commissioner
s. 44(1) and (2)	Board	Commissioner
s. 44(5)	Board which,	Commissioner who,
s. 49C(1) and (3)	Board	Commissioner
s. 50(5)	Board (each occurrence)	Commissioner

s. 176

Provision	Delete	Insert
s. 51(2), (3), (6), (7) and (8)	Board	Commissioner
s. 51(9)	Board it	Commissioner the Commissioner
s. 52(1), (2), (3) and (5)	Board (each occurrence)	Commissioner
s. 53(2) and (3)	Board	Commissioner
s. 53(3)	it	the Commissioner
s. 54(3)	Board	Commissioner
s. 55	Board (each occurrence)	Commissioner
s. 55	it	the Commissioner
s. 56	Board its it	Commissioner the Commissioner's the Commissioner
s. 60(f)	Board	Commissioner
s. 62	Board	Commissioner
s. 64(1)	Board (each occurrence)	Commissioner

Provision	Delete	Insert
s. 67	Board	Commissioner
s. 69	Board (each occurrence)	Commissioner
s. 69	so, it	so, the Commissioner
s. 70(a)	Board	Commissioner
s. 71(1) and (2)	Board (each occurrence)	Commissioner
s. 72	Board	Commissioner
s. 73(1)	Board by it	Commissioner by the Commissioner
s. 74(1), (2), (3) and (4)	Board (each occurrence)	Commissioner
s. 75(1)	Board (each occurrence)	Commissioner
s. 79(1)	Board	Commissioner
s. 80(1), (2)(b) and (3)(c)	Board (each occurrence)	Commissioner
s. 81A(1) and (8)	Registrar (each occurrence)	Commissioner
s. 82	Board	Commissioner

s. 176

Provision	Delete	Insert
s. 83	Board	Commissioner
s. 84(3)(b)	Registrar	Commissioner
s. 85	Registrar of the Board	Commissioner
s. 86(1) and (2)	Board	Commissioner
s. 110(1), (2), (3) and (4)	Registrar	Commissioner
s. 111(1), (2), (3) and (4)	Registrar	Commissioner
s. 113	Board (each occurrence)	Commissioner
s. 113	board	Commissioner
s. 114	Board may	Commissioner may
s. 121(1)	Registrar or an inspector	Commissioner
s. 122	Board	Commissioner
s. 123(2)(a)	Board	Commissioner
Sch. 1 cl. 1(1)(a)	Board	Commissioner
Sch. 1 cl. 2(1)(a)	Board	Commissioner
Sch. 1 cl. 4	Board (each occurrence)	Commissioner
Sch. 1 cl. 5(1) and (2)	Registrar	Commissioner

Provision	Delete	Insert
Sch. 1 cl. 7	Board	Commissioner
Sch. 1 cl. 8	Board	Commissioner
Sch. 1 cl. 9	Board (each occurrence)	Commissioner
Sch. 1 cl. 10(1)	Registrar	Commissioner
Sch. 1 cl. 10(1)	Board	Commissioner

- 1 Notes: The heading to amended section 36 is to read:
- 2 **Notification by licensee when commencing or ceasing business,**
- 3 **etc.**
- 4 The heading to amended section 49C is to read:
- 5 **Trust accounts, certain information to be given to Commissioner**
- 6 The heading to amended section 69 is to read:
- 7 **Audit of trust account may be ordered**
- 8 The heading to amended section 81A is to read:
- 9 **Commissioner may obtain information about trust accounts**

1 **Part 8 — Miscellaneous amendments to other Acts**

2 **Division 1 — The Commissioner in some registration Acts**

3 **177. Motor Vehicle Dealers Act 1973 amended**

4 (1) This section amends the *Motor Vehicle Dealers Act 1973*.

5 (2) In section 5(1) delete the definition of *Commissioner* and insert:

6

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

9

10 (3) Delete section 5AA.

11 **178. Motor Vehicle Repairers Act 2003 amended**

12 (1) This section amends the *Motor Vehicle Repairers Act 2003*.

13 (2) In section 3(1) delete the definition of *Commissioner* and insert:

14

15 *Commissioner* has the meaning given in the *Fair*
16 *Trading Act 2010* section 6;

17

18 **Division 2 — The Commissioner in other Acts**

19 **179. Builders' Registration Act 1939 amended**

20 (1) This section amends the *Builders' Registration Act 1939*.

21 (2) In section 4A(5) delete “section 4(1) of the *Consumer Affairs*
22 *Act 1971*” and insert:

23

24 the *Fair Trading Act 2010* section 6

25

1 (3) In section 37(3) delete “section 4(1) of the *Consumer Affairs*
2 *Act 1971*” and insert:

3

4 the *Fair Trading Act 2010* section 6

5

6 **180. *Co-operatives Act 2009* amended**

7 (1) This section amends the *Co-operatives Act 2009*.

8 (2) In section 451 delete “*Consumer Affairs Act 1971* section 4(1)”
9 and insert:

10

11 *Fair Trading Act 2010* section 6

12

13 **181. *Debt Collectors Licensing Act 1964* amended**

14 (1) This section amends the *Debt Collectors Licensing Act 1964*.

15 (2) In section 3 delete the definition of ***Commissioner*** and insert:

16

17 ***Commissioner*** has the meaning given in the *Fair*
18 *Trading Act 2010* section 6;

19

20 **182. *Local Government Act 1995* amended**

21 (1) This section amends the *Local Government Act 1995*.

22 (2) In section 9.58(4)(b) delete “section 4(1) of the *Consumer*
23 *Affairs Act 1971*,” and insert:

24

25 the *Fair Trading Act 2010* section 6,

26

27 **183. *State Administrative Tribunal Act 2004* amended**

28 (1) This section amends the *State Administrative Tribunal Act 2004*.

1 (2) In section 37(2) delete “section 15 of the *Consumer Affairs*
2 *Act 1971*” and insert:

3

4 the *Fair Trading Act 2010* section 6

5

6 **184. Machinery of Government (Miscellaneous Amendments)**
7 **Act 2006 amended**

8 (1) This section amends the *Machinery of Government*
9 *(Miscellaneous Amendments) Act 2006*.

10 (2) Delete section 151.

11 **Division 3 — Investigation powers**

12 **185. Business Names Act 1962 amended**

13 (1) This section amends the *Business Names Act 1962*.

14 (2) Delete section 31D and insert:

15

16 **31D. Powers of investigation**

17 The *Fair Trading Act 2010* section 62 and Part 6 of
18 that Act apply to this Act.

19

20 **186. Chattel Securities Act 1987 amended**

21 (1) This section amends the *Chattel Securities Act 1987*.

22 (2) Delete section 30D and insert:

23

24 **30D. Powers of investigation**

25 The *Fair Trading Act 2010* section 62 and Part 6 of
26 that Act apply to this Act.

27

1 **187. *Hire-Purchase Act 1959* amended**

2 (1) This section amends the *Hire-Purchase Act 1959*.

3 (2) Delete section 36C and insert:

4

5 **36C. Powers of investigation**

6 The *Fair Trading Act 2010* section 62 and Part 6 of
7 that Act apply to this Act.

8

9 **188. *Limited Partnerships Act 1909* amended**

10 (1) This section amends the *Limited Partnerships Act 1909*.

11 (2) Delete section 15(3) and insert:

12

13 (3) The *Fair Trading Act 2010* section 62 and Part 6 of
14 that Act apply, with such modifications as are
15 necessary, to and in relation to the functions of the
16 Registrar and persons and matters affected by the
17 exercise of those functions as if —

18 (a) that section and Part were part of this Act; and

19 (b) a reference to the Commissioner in those
20 provisions were a reference to the Registrar.

21

22 **189. *Residential Tenancies Act 1987* amended**

23 (1) This section amends the *Residential Tenancies Act 1987*.

24 (2) Delete section 11B and insert:

25

26 **11B. Powers of investigation**

27 The *Fair Trading Act 2010* section 62 and Part 6 of
28 that Act apply to this Act.

29

Acts Amendment (Fair Trading) Bill 2010

Part 8 Miscellaneous amendments to other Acts

Division 4 Committee amendments

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1 **190. Retirement Villages Act 1992 amended**

2 (1) This section amends the *Retirement Villages Act 1992*.

3 (2) Delete section 11B and insert:

4

5 **11B. Powers of investigation**

6 The *Fair Trading Act 2010* section 62 and Part 6 of
7 that Act apply to this Act.

8

9 **Division 4 — Committee amendments**

10 **191. Constitution Acts Amendment Act 1899 amended**

11 (1) This section amends the *Constitution Acts Amendment Act 1899*.

12 (2) In Schedule V Part 3:

13 (a) delete “The Consumer Affairs Council established under the
14 *Consumer Affairs Act 1971*.”;

15 (b) delete “The Consumer Products Safety Committee
16 established under the *Consumer Affairs Act 1971*.”.

17 (3) In Schedule V Part 3 insert in alphabetical order:

18

19 The Consumer Advisory Committee established under the
20 *Fair Trading Act 2010*.

21 The Motor Vehicle Industry Advisory Committee
22 established under the *Fair Trading Act 2010*.

23 The Property Industry Advisory Committee established
24 under the *Fair Trading Act 2010*.

25

1 **Division 5 — Other *Fair Trading Act 2010* amendments**

2 **192. *Biosecurity and Agriculture Management (Repeal and***
3 ***Consequential Provisions) Act 2007* amended**

4 (1) This section amends the *Biosecurity and Agriculture*
5 *Management (Repeal and Consequential Provisions) Act 2007*.

6 (2) Delete section 23 and insert:
7

8 **23. *Fair Trading Act 2010* amended**

9 (1) This section amends the *Fair Trading Act 2010*.

10 (2) In Schedule 1 delete “*Agricultural Products Act 1929*”.
11

12 (3) Delete section 29 and insert:
13

14 **29. *Fair Trading Act 2010* amended**

15 (1) This section amends the *Fair Trading Act 2010*.

16 (2) In Schedule 1 delete “*Agriculture and Related Resources*
17 *Protection Act 1976*”.
18

19 (4) Delete section 61 and insert:
20

21 **61. *Fair Trading Act 2010* amended**

22 (1) This section amends the *Fair Trading Act 2010*.

23 (2) In Schedule 1 delete “*Fertilizers Act 1977*”.
24

1 (5) Delete section 64 and insert:
2

3 **64. Fair Trading Act 2010 amended**

4 (1) This section amends the *Fair Trading Act 2010*.

5 (2) In Schedule 1 delete “*Plant Diseases Act 1914*”.
6

7 (6) Delete section 75 and insert:
8

9 **75. Fair Trading Act 2010 amended**

10 (1) This section amends the *Fair Trading Act 2010*.

11 (2) In Schedule 1 delete “*Seeds Act 1981*”.
12

13 (7) Delete section 83 and insert:
14

15 **83. Fair Trading Act 2010 amended**

16 (1) This section amends the *Fair Trading Act 2010*.

17 (2) In Schedule 1 delete “*Veterinary Chemical Control and*
18 *Animal Feeding Stuffs Act 1976*”.
19

20 (8) Delete section 86 and insert:
21

22 **86. Fair Trading Act 2010 amended**

23 (1) This section amends the *Fair Trading Act 2010*.

24 (2) In Schedule 1 insert in alphabetical order:
25

26 *Biosecurity and Agriculture Management Act 2007*
27

1 **193. *Civil Liability Act 2002* amended**

2 (1) This section amends the *Civil Liability Act 2002*.

3 (2) In section 5AI in the definition of ***apportionable claim*** delete
4 paragraph (b) and insert:

5

6 (b) a claim for economic loss or damage to
7 property in an action for damages under the
8 *Fair Trading Act 2010* based on misleading or
9 deceptive conduct;

10

11 **194. *Credit (Administration) Act 1984* amended**

12 (1) This section amends the *Credit (Administration) Act 1984*.

13 (2) In section 56(3)(b)(i) delete “*Consumer Affairs Act 1971*,” and
14 insert:

15

16 *Fair Trading Act 2010*,

17

18 **195. *Education Service Providers (Full Fee Overseas Students)***
19 ***Registration Act 1991* amended**

20 (1) This section amends the *Education Service Providers (Full Fee*
21 *Overseas Students) Registration Act 1991*.

22 (2) In section 40(3)(a) delete “*Consumer Affairs Act 1971*,” and
23 insert:

24

25 *Fair Trading Act 2010*;

26

27 **196. *Higher Education Act 2004* amended**

28 (1) This section amends the *Higher Education Act 2004*.

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Part 8 Miscellaneous amendments to other Acts

Division 5 Other Fair Trading Act 2010 amendments

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- 1 (2) In section 26(2):
2 (a) in paragraph (a) delete “*Consumer Affairs Act 1971*;
3 and insert:
4
5 *Fair Trading Act 2010*; or
6
7 (b) in paragraph (b) delete “*Consumer Affairs Act 1971*; or”
8 and insert:
9
10 *Fair Trading Act 2010*; or
11

12 **197. *Legal Aid Commission Act 1976* amended**

- 13 (1) This section amends the *Legal Aid Commission Act 1976*.
14 (2) In section 7(1)(b)(ii) delete “*Consumer Affairs Act 1971*” and
15 insert:
16
17 *Fair Trading Act 2010*
18

19 **198. *Medical Practitioners Act 2008* amended**

- 20 (1) This section amends the *Medical Practitioners Act 2008*.
21 (2) In section 7(2)(d) delete “*Consumer Affairs Act 1971*” and
22 insert:
23
24 *Fair Trading Act 2010*
25

26 **199. *Retirement Villages Act 1992* amended**

- 27 (1) This section amends the *Retirement Villages Act 1992*.

1 (2) In section 3(1) in the definition of *code* delete “*Fair Trading*
2 *Act 1987*” and insert:

3

4 *Fair Trading Act 2010*

5

6 **200. *Trade Measurement Act 2006* amended**

7 (1) This section amends the *Trade Measurement Act 2006*.

8 (2) Delete section 102 and insert:

9

10 **102. Operation of *Fair Trading Act 2010* not affected**

11 Nothing in this Act affects the operation of the *Fair*
12 *Trading Act 2010*.

13

=====

