



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

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

Acts Amendment (Fair Trading) Bill 2010

Overview of Bill

Licensing and regulation of the real estate, settlement, motor vehicles, and land valuation industries in Western Australia are regulated by the Government under a boards' structure established by four separate pieces of legislation:

the *Land Valuers Licensing Act 1978* establishes the Land Valuers Licensing Board;

the *Motor Vehicle Dealers Act 1973* establishes the Motor Vehicle Industry Board, which includes licensing and supervision under the associated *Motor Vehicle Repairers Act 2003*;

the *Real Estate and Business Agents Act 1978* establishes the Real Estate and Business Agents Supervisory Board; and

the *Settlement Agents Act 1981* establishes the Settlement Agents Supervisory Board.

The Bill is part of a series of connected reforms and has three objectives:

- to amend the four separate Acts to reduce the number of independent licensing and advisory boards in the Consumer Protection portfolio and facilitate the transition of licensing and regulation of the real estate, settlement, motor vehicle, and land valuation industries in Western Australia from a boards' structure to a departmental one;
- to support the Western Australian Government Council of Australian Government's (COAG) commitment to occupational licensing law reforms in its move towards a seamless national economy; and
- to make consequential amendments to various Acts required when enacting the *Fair Trading Bill 2010*, which is part of the Western Australian Government agreement, through COAG, to adopt an Australian Consumer Law.

The changes vest responsibility for occupational licensing and supervision in the Consumer Protection portfolio in one authority; the Commissioner for Consumer Protection, enable various consumer advisory committees to be established under the *Fair Trading Act 2010*, and provide for winding-up of the boards. The changes also position the Department of Commerce to achieve economies in licence processing and facilitate transition to the COAG national licensing model.

The amendments made under the *Acts Amendment (Fair Trading) Act 2010* are scheduled to come into operation on 1 July 2011.

Part 2 of the Bill amends the *Fair Trading Act 2010*, the enabling legislation for the Australian Consumer Law. The amendments vest the property and motor vehicle industry boards' licensing and regulatory functions in the Commissioner for Consumer Protection. They also enable the establishment of various consumer advisory committees under the *Fair Trading Act 2010*.

Part 3 of the Bill amends the *Land Valuers Licensing Act 1978*. The amendments abolish the Land Valuers Licensing Board and provide for winding up of the Board and other miscellaneous transitional arrangements for vesting its functions in the Commissioner for Consumer Protection. This Part also makes additional minor amendments to the *Land Valuers Licensing Act 1978* to give the Commissioner a discretion on licence renewals so as to be in line with community expectations.

Part 4 of the Bill amends the *Motor Vehicle Dealers Act 1973*. The amendments abolish the Motor Vehicle Industry Board and provide for winding-up of the Board and other miscellaneous transitional arrangements for vesting its functions in the Commissioner for Consumer Protection. Provision is made in this Part for a rebuttable statutory presumption that a person who sells or exchanges four or more vehicles in a 12-month period is carrying on a business trading in motor vehicles and, therefore, needs to be licensed as a motor vehicle dealer.

Part 5 of the Bill amends the *Motor Vehicle Repairers Act 2003*. The amendments vest the Motor Vehicle Industry Board responsibilities for licensing and certification and conciliation of certain disputes relating to motor vehicle repair work in the Commissioner for Consumer Protection.

This Part also transfers the disciplinary powers of the Motor Vehicle Industry Board under the *Motor Vehicle Repairers Act 2003* to the State Administrative Tribunal. This corrects an error in the original State Administrative Tribunal legislation.

Part 6 of the Bill amends the *Real Estate and Business Agents Act 1978*. The amendments abolish the Real Estate and Business Agents Supervisory Board and provide for winding-up of the Board and other miscellaneous transitional arrangements. The amendments vest the boards' licensing and regulatory functions in the Commissioner for Consumer Protection. They also vest the board's employing authority and financial responsibilities, including administration of the fidelity and home buyers assistance funds, in the Chief Executive Officer of the Department of Commerce.

Part 7 of the Bill amends the *Settlement Agents Act 1981*. The amendments abolish the Settlement Agents Supervisory Board and provide for winding-up of the Board and other miscellaneous transitional arrangements. The amendments vest the boards' licensing and regulatory functions in the Commissioner for Consumer Protection. They also vest the board's employing authority and financial responsibilities, including administration of the fidelity funds, in the Chief Executive Officer of the Department of Commerce.

Part 8 of the Bill makes miscellaneous amendments to various other Acts. These amend references from the *Fair Trading Act 1987* and the *Consumer Affairs Act 1981* to the *Fair Trading Act 2010*. Importantly, the *Fair Trading Bill 2010* makes provision for standardised investigation powers and Part 8 of this *Acts Amendment (Fair Trading) Bill 2010* applies those powers to numerous other related Acts.

Part 1 – Preliminary

- Clause 1 Provides that the short title will be the *Acts Amendment (Fair Trading) Act 2010*.
- Clause 2 Provides for commencement:
- (a) sections 1 and 2 of the Act on the day the Act receives Royal Assent;
 - (b) Part 8 Division 1 is subject to when certain provisions of the *Fair Trading Act 2010* come into effect (on the same day or later); and
 - (c) the rest of the Act on a day or days to be fixed by proclamation.

Part 2 – *Fair Trading Act 2010* amended

- Clause 3 Provides that this Part amends the *Fair Trading Act 2010*, which is currently before Parliament as the *Fair Trading Bill 2010*.
- Clause 4 Inserts a new section 58A, which details the licensing and regulatory functions of the Commissioner with respect to the licensing, registration and certification schemes provided for in the Acts specified in Schedule 2.
- Clause 5 Amends the definition of *consumer affairs authority* in section 63(1) to include an advisory committee appointed under Division 3.

Clause 6 Inserts Part 5 Division 3 to establish three new advisory committees: the Property Industry Advisory Committee, the Motor Vehicle Industry Advisory Committee, and the Consumer Advisory Committee.

Clause 6 provides for the Committees' membership, functions, and for procedures. This clause allows regulations to be made to prescribe committee procedures and the like.

Functions of the industry committees include advising the Minister and the Commissioner on a wide-range of matters relating to regulation of the industries, education, information and advice services provided by the Commissioner to the industries and consumers.

Regulation of the relevant industry is meant in its widest form; for example it includes current and emerging issues on licensing, regulation and training. The Minister or the Commissioner may also refer any matter to the Committee for advice.

The Consumer Advisory Committee functions are to advise the Minister and Commissioner on the various activities, policies, and research and education projects of the department as they affect consumers, and include current and emerging consumer issues. The Minister or the Commissioner may also refer any matter to the Committee for advice.

Clause 7 Amends the definition of *authorised person* in section 64(c) of the Act to include an investigator or police officer assisting an investigation under section 89D.

Clause 8 Inserts Part 6 Division 4A, which provides the broad framework enabling the Commissioner to investigate or inquire into regulated activities previously dealt with by the boards. This Part provides for specific powers for enforcement of licensing and regulatory provisions by inserting sections 89A-89E.

Section 89A inserts new definitions for terms used in the Division.

Section 89B makes consequential amendments giving the Commissioner power to investigate or inquire into matters previously dealt with by the boards.

Section 89C provides an authorised person with powers to investigate.

Section 89D transfers, from the boards to the Commissioner, the power to request the Commissioner of Police to conduct an investigation.

Section 89E reaffirms the ability of the Commissioner to undertake the proactive compliance programmes undertaken by the boards. In particular, it restates the existing provision in the *Finance Brokers Control Act 1975*.

The section provides that, for the purpose of making a routine compliance inspection, an authorised person may enter a regulated person's business premises during normal business hours without a warrant.

- Clause 9 Makes a consequential amendment to section 89(1).
Under section 89(1) it is an offence for a person, without reasonable excuse, to fail to cooperate and give any information, answer any question or produce any document or thing when asked under Division 3. Clause 9 amends the section to include new Division 4A.
- Clause 10 Amends section 90 to include offences relating to obstructing an authorised person in carrying out their functions under section 89E (compliance checks at business premises).
- Clause 11 Amends section 113 of the Act to take into account the Commissioner taking over the functions of the boards and enables certain use and disclosure of information gathered.
- Clause 12 Inserts Schedule 2, listing the Acts specified as a *registration Act* for the purposes of section 89A – the *Land Valuers Licensing Act 1978*, *Motor Vehicle Dealers Act 1973*, *Motor Vehicle Repairers Act 2003*, *Real Estate and Business Agents Act 1978*, and *Settlement Agents Act 1981*.

Part 3 – *Land Valuers Licensing Act 1978* amended

- Clause 13 Provides that this Part amends the *Land Valuers Licensing Act 1978*.
- Clause 14 Amends section 4 definitions deleting those no longer relevant once the board is abolished.
Clause 14 also provides definitions for the terms required in relation to the new responsibilities. Definitions are inserted for *Commissioner* and *department*.
- Clause 15 Deletes the heading to Part II (Land Valuers Licensing Board).
- Clause 16 Deletes Part II Division 1 (Land Valuers Licensing Board). The deleted Division related to establishment of the Board, its composition, remuneration etc so that the Board is abolished, its members go out of office, and Board officer positions no longer exist.
- Clause 17 Deletes the heading of Part 2 Division 2 (General).
- Clause 18 Deletes sections 12, 13 and 14 relating to proceedings before the Board, powers of the Board, and orders for costs. These sections are no longer relevant as they relate to the former Board.

- Clause 19 Deletes section 15 and replaces it with a new provision relating to powers of investigations. Clause 19 provides that the powers of investigation in section 62 and Part 6 of the *Fair Trading Act 2010* apply to the *Land Valuers Licensing Act 1978*.
- Clause 20 Deletes sections 15A, 15B and 15C relating to incriminating information, questions and documents, failure to comply with investigation, and obstruction of an investigator under the Board structure. These sections are no longer relevant as they relate to the former Board.
- Clause 21 Amends section 17 by deleting the provision that an applicant for a licence is a party to proceedings before the Board. The provision is no longer relevant as it relates to the former Board.
- Clause 21 replaces that provision with one relevant to the new structure. It is expressed in accordance with natural justice or procedural fairness rules: if the Commissioner is considering making an adverse decision in relation to the application, the Commissioner must give the applicant the opportunity to give additional information in relation to that application.
- Clause 22 Amends section 18 in relation to objectors to a licence application. There are no longer any proceedings to which an objector may be a party.
- Clause 22 express the procedural fairness rule that an administrative decision maker must give a person against whom a decision adverse to the individual's right, interest or other legitimate expectation is contemplated, the opportunity to give additional information before the adverse decision is made.
- Clause 23 Amends section 19A by replacing the Board with the Commissioner.
- Clause 24 Amends section 21, transferring the function to the Commissioner, so that the *Fair Trading Act 2010* applies to enable a person who surrenders their licence to be investigated or otherwise dealt with for a matter arising before the surrender.

- Clause 25 Amends section 22 by replacing the *Board shall* with the *Commissioner may* so as to provide discretion as to whether to renew a land valuer's licence.
- Clause 25 overcomes the current problem that a licence must be renewed where a person applies and pays the prescribed fee even where the holder may be considered unsuitable to hold a licence. Renewals will no longer have to be granted and then formal disciplinary proceedings undertaken with a view to cancelling the licence (while the person remained licensed and continues to work in the industry).
- Instead, a renewal application can be refused such that the decision is a reviewable decision.
- Clause 26 Amends section 31 deleting the requirement that the Board submit an annual report to the Minister. Clause 26 replaces the Board with the chief executive officer of the relevant department (the Department of Commerce). The chief executive officer is to ensure relevant matters are included in the Department's annual report.
- Clause 27 Repeals section 32 relating to immunity of Board members and officers, which is no longer relevant.
- Clause 28 Replaces section 33 to take into account the transfer of functions from the Board. Clause 28 provides that the confidentiality of information provision in the *Fair Trading Act 2010* applies for the purposes of the *Land Valuers Licensing Act 1978*.
- Clause 29 Amends section 36 by deleting provisions relating to procedures of the Board and enforcement of cost orders made by the Board.

Clause 30 Inserts Part VI – Miscellaneous transitional matters.

The new provisions in Part VI provide as follows.

Section 37 defines the terms used in the Part.

Section 38 abolishes the Board.

Section 39 provides that references to the Board are to be read as referring to the Commissioner.

Section 40 provides that the Board's immunity continues for the benefit of the Commissioner.

Section 41 provides that notices of maximum amounts of remuneration published by the Board are to be taken to have been published by the Commissioner.

Section 42 provides that unfinished proceedings by the former Registrar are to continue under the direction and control of the Commissioner.

Section 43 provides that unfinished proceedings before the former Board or the State Administrative Tribunal are to be taken to have been commenced by, and to continue under the direction and control of, the Commissioner.

Section 44 provides that winding-up of the Board is to be commenced as soon as practicable after the commencement day – to discharge its liabilities and transfer any assets remaining to the State to be administered in the department.

Section 45 provides that a final report of the Board is to be submitted to the Minister as soon as reasonably practicable after the winding up of its affairs is concluded and is to be included in the department's annual report for that financial year.

Section 46 provides that the Governor may make transitional regulations prescribing matters if required, necessary or convenient.

Clause 31 Deletes various references to the *Board* and *Registrar* throughout the Act and replaces them with *Commissioner*.

Part 4 – Motor Vehicle Dealers Act 1973 amended

Clause 32 Provides that this Part amends the *Motor Vehicle Dealers Act 1973*.

Clause 33 Amends the long title deleting reference to the Board functions.

Clause 34 Makes amendments to the definitions, deleting definitions no longer relevant once the Board is abolished.

Clause 34 also provides for using the new definition for *Commissioner* under the *Fair Trading Act 2010*.

Clause 35 Inserts a new provision, section 5B - a new rebuttable statutory presumption for a person who may be taken to be dealing in motor vehicles.

Under the new provision a person will be taken to be carrying on the business of selling vehicles for the purpose of the definition of who is a dealer, unless they can prove otherwise, if they:

- (a) either hold themselves out as a person carrying on such a business, or
- (b) sell or exchange 4 or more vehicles in any 12 month period to or with a person who is not a dealer.

Under subsection 5B(1), a person will be taken to be holding themselves out as carrying on a relevant business if:

- (a) they advertise, notify or state that they carry on the business of buying or selling vehicles; or
- (b) in any way represent that they are ready to or do carry on they business of buying or selling vehicles.

Clause 35 is based on section 7A of the Victorian *Motor Car Traders Act 1986*. Similar provisions also exist in NSW, SA and the NT. Tasmania and the ACT also have deeming provisions.

The provision allows a person who does sell or exchange more than 4 motor vehicles in a 12 month period to rebut the presumption that they are carrying on business.

In addition, the provision enables the prosecution of people who sell or exchange less than 4 vehicles in a 12 month period if they are, nonetheless, actually carrying on the business of selling motor vehicles. A range of exemptions can be prescribed by regulations to avoid capturing unintended people such as legitimate collectors.

Clause 36 Deletes section 5AA to update the reference regarding the Commissioner.

Clause 37 Replaces section 6 to update the reference to the *Fair Trading Act 2010*.

Clause 38 Amends the heading to Part II by deleting reference to the Motor Vehicle Industry Board.

Clause 39 Deletes Division 1 of Part II, removing the provisions relating to the constitution and functions of the Board.

Clause 40 Amends section 16 by deleting subsection 16(2) that provides the former secretary having power to authorise an applicant to act as a yard manager.

Clause 41 Amends section 17 by deleting subsection 17(2) that provides the Board secretary with power to authorise an applicant to act as a salesperson as if they held a salesperson's licence.

- Clause 42 Deletes reference to the Board from the heading.
- Amends section 18 by replacing subsection 18(1A). This repeals the requirement that, before an applicant is refused renewal of an authorisation, the Board must give them the opportunity to show cause why they should not be refused. This was usually done by way of an oral hearing, however, with the abolition of the Board the capacity no longer exists.
- Under clause 42 the replacement provision has the same effect. It expresses the procedural fairness rule that an administrative decision maker must give a person against whom they are contemplating making a decision adverse to the individual's right, interest or other legitimate expectation opportunity to give additional information before the adverse decision is made.
- Clause 43 Amends section 22 by repealing the requirement in subsection 22(3) for the Board to supply a copy of a decision or order to the Commissioner.
- Clause 44 Amends section 23 in relation to two matters. In subsection 23(3), transfers to the Commissioner, rather than the Board secretary, the ability to approve changes of particulars on a licence or registration. In subsection 23(5), transfers to the Commissioner, rather than the Board, the ability to notify the dealer or registered person of a refusal to approve changes to particulars.
- Clause 45 Amends section 24 by deleting reference to the Board and replacing the reference to the Board secretary with the Commissioner.
- Clause 46 Amends section 32K by deleting reference to the Board and replacing it with the Commissioner.
- Clause 47 Replaces section 50 to take into account the transfer of functions. Clause 47 provides that the confidentiality of information provision in the *Fair Trading Act 2010* applies for the purposes of the *Motor Vehicle Dealers Act 1987*.
- Clause 48 Amends section 51 by deleting the requirement that the Board submit an annual report to the Minister and table the report in Parliament. Clause 48 replaces the Board with the chief executive officer of the relevant department (the Department of Commerce). The chief executive officer is to ensure relevant matters are included in the department's annual report.

Clause 49 Inserts Part V – Miscellaneous transitional matters.

The new provisions in Part V provide as follows.

Section 57 defines the terms used in the Part.

Section 58 abolishes the Board.

Section 59 provides that references to the Board are to be read as referring to the Commissioner.

Section 60 provides that the Board's immunity continues for the benefit of the Commissioner.

Section 61 provides that any unfinished investigations by the former Board are to be taken to have been commenced by, and to continue under direction and control of, the Commissioner.

Section 62 provides that any unfinished proceedings before the former Board or the State Administrative Tribunal are to be taken to have been commenced by, and to continue under the direction and control of, the Commissioner.

Section 63 provides that the winding up of the Board is to be commenced as soon as practicable after the commencement day – to discharge its liabilities and transfer any assets remaining to the State to be administered by the department.

Section 64 provides that the final report of the Board is to be submitted to the Minister as soon as reasonably practicable after the winding up of its affairs is concluded and is to be included in the department's annual report for that financial year.

Section 65 provides that the Governor may make transitional regulations prescribing matters if required, necessary or convenient.

Clause 50 Amends the Act by deleting references to the *Board* or *secretary* throughout and replacing them with *Commissioner*. Clause 50 also amends the heading to section 20 to refer to the Commissioner.

Part 5 –*Motor Vehicle Repairers Act 2003* amended

- Clause 51 Provides that this Part amends the *Motor Vehicle Repairers Act 2003*.
- Clause 52 Amends the long title, deleting reference to the previous Board functions.
- Clause 53 Makes amendments to the definitions, deleting definitions no longer relevant once the Board is abolished.
Clause 53 also provides for using the new definition for *Commissioner* under the *Fair Trading Act 2010*.
Repeals section 3(4) which had not come into operation.
- Clause 54 Replaces section 7 - repeals superseded provisions applying to the Board and provides that the powers of investigation under the *Fair Trading Act 2010* apply to this Act.
- Clause 55 Repeals section 21, requiring the Board to give notice to the Commissioner of certain applications.
- Clause 56 Amends section 32 by repealing the requirement of the Board to conduct an inquiry and a show cause hearing before it can refuse to renew a business licence.
Inserts a new subsection (2). The replacement provision expresses the procedural fairness rule that an administrative decision maker must give a person against whom a decision adverse to the individual's right, interest or other legitimate expectation the opportunity to give additional information before the adverse decision is made.
Further amends section 32 to replace references to the Board with the Commissioner or State Administrative Tribunal.
- Clause 57 Amends section 35, transferring responsibility from the Board to the Commissioner regarding an application for a new corporate member of the firm.
- Clause 58 Amends section 36, transferring responsibility from the Board to the Commissioner regarding an application for a new person to be concerned in the management or conduct of the body corporate.
- Clause 59 Amends 62 to repeal the power of the Board to make an order revoking authority to use premises.
- Clause 60 Amends the heading to Part 6, in relation to disciplinary powers, by deleting reference to the Board.
- Clause 61 Inserts a new section 65 regarding who this Part applies to.

- Clause 62 – 71 Amend sections 68-80 to correct an earlier oversight in the *State Administrative Tribunal Act 2004* so as to transfer the disciplinary functions in relation to motor vehicle repairers from the Board to the State Administrative Tribunal.
- Clause 72 Amends section 85 to transfer conciliation functions to the Commissioner.
- Clause 73 Amends section 97 to delete reference to the Board's secretary from the meaning of authorised officer.
- Clause 74 Deletes section 111, relating to authorised officers obtaining information. This provision relates to the earlier application of the *Fair Trading Act 2010* regarding investigation powers.
Clause 74 also inserts a provision applying the confidentiality provision of the *Fair Trading Act 2010*.
- Clause 75 Deletes sections 112 and 113 to repeal powers of entry of the Board authorised officers and offences relating to those entry provisions.
- Clause 76 Deletes section 116 repealing review of the Act by the Board.
- Clause 77 Deletes Part 11 and inserts a new Part 11 – Transitional provisions.
Section 120 – provides definitions of terms used in the Part.
Section 121 – provides that unfinished proceedings before the former Board, or the State Administrative Tribunal, are to be taken to have been commenced by the Commissioner and to continue under the direction and control of the Commissioner.
Section 122 – provides the Governor with power to make regulations prescribing all matters required, necessary or convenient in relation to transitional matters.
- Clause 78 Amends Schedule 2 to delete references to the *Board* and replace them with the *State Administrative Tribunal*.
- Clause 79 Amends the Act by deleting references to the *Board* or *secretary* throughout and replacing them with *Commissioner*.
Clause 79 also amends various headings throughout the Act to delete references to the Board.

Part 6 – *Real Estate and Business Agents Act 1978* amended

- Clause 80 Provides that this Part amends the *Real Estate and Business Agents Act 1978*.
- Clause 81 Amends section 4 deleting definitions relating to the Board.
Clause 81 also provides for using the new definition for *Commissioner* under the *Fair Trading Act 2010* and *department*.
- Clause 82 Deletes section 5.
- Clause 83 Deletes the heading to Part II – Real Estate and Business Agents Supervisory Board.
Inserts a new heading Part II Advisory Committee and review.
- Clause 84 Amends Part II by deleting Divisions 1, 1A and 2 so as to repeal provisions relating to the Board's establishment, membership and functions, the Registrar and other officers, and powers of investigation and inquiry.
- Clause 85 Deletes the heading for Part II Division 3 – Proceedings of, and review of decisions of, the Board.
- Clause 86 Deletes sections 19, 20 and 21, repealing the Board's powers in relation to proceedings before it, which are no longer necessary.
- Clause 87 Inserts section 22 so that, in accordance with the transfer of functions and responsibilities to the Commissioner, the investigation powers under the *Fair Trading Act 2010* apply to this Act.
- Clause 88 Amends section 23 to remove references to the Board.
- Clause 89 Amends section 23A regarding advisory committees in various ways to remove reference to the Board or board members.
Clause 89 also inserts a new subsection 23A(11) to provide circumstances for when the office of a committee member becomes vacant.
- Clause 90 Amends section 23C to remove references to the Board and its officers. Clause 90 also transfers conciliation functions under the Act from the Board to the Commissioner.

- Clause 91 Amends section 24 by deleting the provision that an applicant for a licence (such as a real estate or business agent) is a party to proceedings before the Board and inserts a new subsection (2).
- The replacement provision expresses the procedural fairness rule that an administrative decision maker must give a person against whom a decision adverse to the individual's right, interest or other legitimate expectation the opportunity to give additional information before the adverse decision is made by the Commissioner.
- Clause 92 Amends section 25, objections to grant of a licence, to replace subsection (4) so as to express the procedural fairness rule, as for clause 91, to give an objector to a licence application the opportunity to provide additional information to the Commissioner before an adverse decision is made.
- Clause 93 Amends section 33 regarding renewals of triennial certificates to express the same procedural fairness rule referred to for clauses 91 and 92.
- Clause 94 Amends section 34A to transfer the ability to grant renewals of triennial certificates in relation to unopposed applications from the Board to the Commissioner.
- Clause 95 Amends section 43 to delete reference to an applicant for registration (such as a sales representative) being a party to proceedings before the Board.
- Clause 95 inserts a provision expressing the procedural fairness rule regarding being given the opportunity to provide additional information before an adverse decision is made by the Commissioner.
- Clause 96 Amends section 49 in relation to applications for late renewal of certificates of registration.
- Clause 96 repeals the provision for an applicant to be a party to proceedings before the Board and inserts the procedural fairness rule of being given the opportunity to give additional information before an adverse decision is made by the Commissioner.
- Clause 97 Amends section 50A to transfer to the Commissioner, where an application is unopposed, the ability of the Board and its Registrar to grant renewal of a certificate of registration.
- Clause 98 Amends section 62 by deleting reference to "under this Act" to take into account that the Commissioner for Consumer Protection is the responsible authority and proceedings may also be commenced under the *Fair Trading Act 2010*.

- Clause 99 Amends section 70 in relation to extending time for a licensee to lodge their annual audit report. The clause deletes references to the Board and its officers and transfers the ability to grant an extension to the Commissioner.
- Clause 100 Amends section 83 to transfer to the Commissioner responsibility regarding inspections, by a different auditor appointed to audit the accounts of an agent for the next succeeding year, of reports or statutory declarations etc of an agent's audit information held by the department.
- Clause 101 Amends section 94 to transfer responsibility, from the Board to the Commissioner, regarding appointment and remuneration of supervisors following orders of the State Administrative Tribunal being made under section 93.
- Clause 102 Replaces section 100, dealing with financial institutions being required to disclose an agent's account on request.
In accordance with the transfer of functions, clause 102 transfers the power to require a financial institution to disclose an agent's account to an authorised person with investigation powers under the *Fair Trading Act 2010*.
- Clause 103 Amends section 109 by transferring to the State the responsibility for crediting money, which has been recovered for the benefit of the Fidelity Account, to that Account.
- Clause 104 Amends section 110 to transfer responsibility for premiums payable in respect of insurance entered into to the chief executive officer of the relevant department (the Department of Commerce) on behalf of the State.
- Clause 105 Amends section 112 to transfer responsibility for administering the Fidelity Account from the Board to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 106 Amends section 113 to transfer responsibility regarding contributions by agents to the Fidelity Account to the chief executive officer of the relevant department (the Department of Commerce). All amounts paid continue to be credited to the Fidelity Account.
- Clause 107 Amends section 115 to transfer responsibility to the chief executive officer of the relevant department (the Department of Commerce) regarding levies for the Fidelity Account if it is not sufficient to satisfy liabilities.

- Clause 108 Amends section 116, regarding the purpose of the Fidelity Account, to transfer responsibility to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 109 Amends section 117, to transfer functions regarding receiving and settling claims against the Fidelity Account to the department. Clause 109 deletes reference to the Board and inserts reference to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 110 & Clause 111 Amend section 118 and 119, to transfer defences to claims against the Fidelity Account and subrogation rights previously available to the Board to the State.
- Clause 112 Amends section 120, to transfer matters in relation to payment of judgments and claims against the Fidelity Account to the department. Clause 112 deletes reference to the Board and inserts reference to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 113 - Clause 115 Amend sections 121, 123 and 124 to transfer power, in relation to various matters dealing with fidelity insurance and claims, to the chief executive officer of the relevant department (the Department of Commerce) on behalf of the State.
- Clause 116 Amends section 124C to specify expenditure from the General Purpose Account in relation to the transfer of functions to the Commissioner.
- Clause 117 Amends the heading to Part IX by deleting reference to the Board in relation to the Interest Account and inserting Real Estate and Business Agents.
- Clause 118 Amends section 125 to transfer administration of the Interest Account to the chief executive officer.
- Clause 119 - Clause 121 Amend sections 131D, 131E and 131G to transfer administration of the Home Buyers Assistance Account from the Board to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 122 Deletes sections 131H, 131I, 131J, 131K and 131KA to abolish the Home Buyers Assistance Advisory Committee.
The assistance provided by the former Home Buyers Assistance Advisory Committee will be given by a committee established under section 23A or the Property Industry Advisory Committee on an as needs basis.

- Clause 123 - Amend sections 131L, 131M and 131N to transfer the functions in relation to applications for assistance from the Home Buyers Assistance Account to the Commissioner.
- Clause 125
- Clause 124 also transfers issuing guidelines on how grants are to be paid to the chief executive officer of the relevant department (the Department of Commerce) with the assistance of either a committee set up under section 23A or the Property Industry Advisory Committee.
- Clause 126
- Amends section 131O to transfer the function of formulating criteria for granting applications for assistance to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 126 also provides that the Property Industry Advisory Committee replaces the Home Buyers Assistance Advisory Committee for making recommendations on formulating criteria.
- Clause 127
- Amends section 135 to repeal the requirement that the Board submit an annual report to the Minister.
- Clause 127 transfers responsibility for reporting to the chief executive officer of the relevant department (the Department of Commerce). The chief executive officer is to ensure relevant matters are included in the department's annual report.
- Clause 128
- Repeals section 137 relating to immunity of the Board and its officers, which is no longer relevant.
- Clause 128 inserts a new section 137 to make protection from liability applicable to functions being transferred to the Commissioner.
- Clause 129
- In accordance with the transfer of functions to the Commissioner, clause 129 replaces section 138 so as to apply the confidentiality of information provision under the *Fair Trading Act 2010* to the *Real Estate and Business Agents Act 1978*.
- Clause 130
- Amends section 145 to repeal the Board's power to enforce costs orders.
- Clause 131
- Inserts a new heading – Division 1 Savings and transitional (1978)

- Clause 132 Inserts a new Division 2 – Savings and transitional (2010)
The new provisions in Division 2 provide as follows.
- Section 148 defines the terms used in the Part.
- Section 149 abolishes the Board.
- Section 150 provides that references to the Board are to be read as referring to the Commissioner.
- Section 151 provides that the Board’s immunity continues for the benefit of the Commissioner.
- Section 152 provides that notices by the Board in relation to remuneration of a licensee are to be taken as having been given by the Commissioner and to continue in force.
- Section 153 provides that references to the Registrar are to be read as if referring to the Commissioner.
- Section 154 provides that any unfinished investigations by the Board are to be taken to have been commenced by, and to continue under direction and control of, the Commissioner.
- Section 155 provides that any unfinished proceedings before the former Board or the State Administrative Tribunal to be taken to have been commenced by, and to continue under the direction and control of the Commissioner.
- Section 156 provides that the winding-up of the Board is to be commenced as soon as practicable after the commencement day – to discharge its liabilities and transfer any assets remaining to the State to be administered in the department.
- Section 157 provides that the final report of the Board is to be submitted to the Minister as soon as reasonably practicable after the winding up of its affairs is concluded and to be included in the department’s annual report for that financial year.
- Section 158 provides that officers of the Board and the Registrar who held office immediately before the commencement day continue to be employed as officers of the department.
- Section 159 provides that the Governor may make transitional regulations prescribing matters if required, necessary or convenient.
- Clause 133 Amends the Schedule to delete clauses 7, 9, 10, 11, 12 and 15. These clauses are outdated transitional provisions and are no longer required.
- Clause 134 Amends the Act by deleting references to the *Board* or *registrar* throughout and replacing them with *Commissioner*.
Amends various headings throughout the Act to delete reference to the Board.

Part 7 – Settlement Agents Act 1981 amended

- Clause 135 Provides that this Part amends the *Settlement Agents Act 1981*.
- Clause 136 Amends section 3 deleting definitions relating to the Board.
Clause 136 also provides for using the new definition for *Commissioner* under the *Fair Trading Act 2010* and *department*.
- Clause 137 Amends Part II by deleting the heading for this Part, Divisions 1, 1A and 2, and the heading to Division 3.
These amendments repeal provisions relating to the Board's establishment, membership and functions, the Registrar and other officers, and powers of investigation and inquiry.
- Clause 138 Deletes sections 19, 20 and 21 repealing provisions relating to proceedings before the Board, its powers and ability to make orders for fines or costs.
- Clause 139 Inserts section 22 to take into account the transfer of functions from the Board to the Commissioner. Clause 139 incorporates the powers of investigation in the *Fair Trading Act 2010* so that they apply to the *Settlement Agents Act 1978*.
- Clause 140 Amends section 23 by repealing provisions in relation to cost orders made by the Board, which are no longer relevant.
- Clause 141 Amends section 24 deleting the provision that an applicant for a licence is a party to proceedings before the Board and inserting a new subsection (5).
The replacement provision expresses the procedural fairness rule that an administrative decision maker must give a person, against whom a decision adverse to the individual's right, interest or other legitimate expectation may be made, the opportunity to give additional information before an adverse decision is made.
- Clause 142 Amends section 25 by repealing the provision that a person who makes an objection to the grant of a licence is a party to the proceedings as there are no longer 'proceedings'.
Clause 142 inserts a new subsection (4), which expresses the procedural fairness rule as above for clause 141.
- Clause 143 Amends section 33 in relation to applications for renewal of a triennial certificate, repealing the provision making the applicant a party to proceedings. There are no longer 'proceedings' and the replacement provision expresses the procedural fairness rule regarding additional information as in clauses 141 and 142.

- Clause 144 Amends section 34A to transfer the ability to grant renewal of a triennial certificate in relation to unopposed applications from the Board to the Commissioner.
- Clause 145 Amends section 43(8) to transfer to a court or tribunal convicting a settlement agent, for repeated offences against the section, the power to call upon the agent to show cause why their licence should not be cancelled or suspended.
- Clause 146 Amends section 44(10) to transfer to a court or tribunal convicting a settlement agent, for repeated offences against the section, the power to call upon the agent to show cause why their licence should not be cancelled or suspended.
- Clause 147 Amends section 51 in relation to extending time to lodge annual audit reports. The clause deletes reference to the Board and its officers and transfers the ability to grant extensions to the Commissioner.
- Clause 148 Amends section 64 to transfer responsibility to the Commissioner regarding inspection by another auditor appointed to audit the accounts of the same agent for the next succeeding year.
- Clause 149 Amends section 75 to transfer responsibility to the Commissioner regarding appointment and remuneration of supervisors following orders of the State Administrative Tribunal being made under section 74.
- Clause 150 Replaces section 81, dealing with financial institutions being required to disclose an agent's account on request.
- In accordance with the transfer of functions, clause 150 transfers the power to an authorised person with investigation powers under the *Fair Trading Act 2010*.
- Clause 151 Amends section 87 to transfer responsibility for administering the Settlement Agents Fidelity Guarantee Account to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 152 Amends section 88 by transferring to the State responsibility for crediting money, which has been recovered for the benefit of the Fidelity Guarantee Account, to that account.
- Clause 153 Amends section 90 to transfer responsibility for premiums payable in respect of insurance entered into to the chief executive officer of the relevant department (the Department of Commerce) on behalf of the State.
- Clause 154 Amends section 92 to transfer responsibility regarding contributions by agents to the Fidelity Guarantee Account to the chief executive officer of the relevant department (the Department of Commerce). All amounts paid continue to be credited to the Fidelity Guarantee Account.

- Clause 155 Amends section 93 to transfer responsibility for applying the Account in accordance with the Act to the department. Clause 155 does this by deleting reference to the Board and inserting reference to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 156 Amends section 94 to transfer responsibility to the chief executive officer of the relevant department (the Department of Commerce) regarding levies for the Fidelity Guarantee Account if it is not sufficient to satisfy liabilities.
- Clause 157 Amends section 95 to transfer functions regarding receiving and settling claims against the Fidelity Guarantee Account to the department. Clause 157 deletes reference to the Board and inserts reference to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 158 & Clause 159 Amend sections 96 and 97 to transfer defences to claims against the Fidelity Guarantee Account and subrogation rights previously available the Board to the State.
- Clause 160 Amends section 98 to transfer matters in relation to payment of judgments and claims against the Fidelity Guarantee Account to the department. Clause 160 does this by deleting reference to the Board and inserting reference to the chief executive officer of the relevant department (the Department of Commerce) and the State.
- Clause 161 - Clause 163 Amend sections 99, 101 and 102, to transfer power of the Board, in relation to various matters dealing with fidelity insurance and claims, to the chief executive officer of the relevant department (the Department of Commerce) on behalf of the State.
- Clause 164 - Clause 166 Amend sections 102A, 102B and 102C to transfer responsibility for administering the Education and General Purpose Account from the Board to the department. Clause 164 does this by deleting references to the Board and inserting reference to the chief executive officer of the relevant department (the Department of Commerce).
- Clause 167 Amends the heading of Part VI by deleting Board and inserting Settlement Agents in its place.
- Clause 168 Amends section 103 to change the name of the agency special purpose account from the Board Interest Account to the Settlement Agents Interest Account.
- Clause 168 also transfers responsibility for administering the Interest Account to the department by inserting reference to the chief executive officer of the relevant department (the Department of Commerce) into the provision.

- Clause 169 Amends section 112 in relation to the annual report so as to transfer requirements from the Board to the department and Commissioner.
- Clause 170 Amends section 114 to transfer, from the Board to the Commissioner, the ability in special circumstances to refund fees paid for a licence or triennial certificate or any sum paid by way of contribution or levy to the Account.
- Clause 171 Repeals section 115 relating to immunity of the Board and its officers, which is no longer relevant.
Clause 171 inserts a new section 115 to make protection from liability applicable to functions being transferred to the Commissioner.
- Clause 172 In accordance with the transfer of functions to the Commissioner, clause 172 replaces section 116 so as to apply the confidentiality of information provision under the *Fair Trading Act 2010* to the *Settlement Agents Act 1981*.
- Clause 173 Amends section 123 to repeal the Board's power to enforce costs orders.

- Clause 174 Replaces Part VIII (previously omitted under the *Reprints Act 1984*) with new Part VIII – Savings and transitional.
- Section 124 defines the terms used in the Part.
- Section 125 abolishes the Board.
- Section 126 provides that references to the Board are to be read as referring to the Commissioner.
- Section 127 provides that the Board’s immunity continues for the benefit of the Commissioner.
- Section 128 provides that notices issued by the Board in relation to remuneration of a licensee are to be taken as having been given by the Commissioner and to continue in force.
- Section 129 provides that references to the Registrar are to be read as if it the Commissioner.
- Section 130 provides that any unfinished investigations by the Board are to be taken to have been commenced by, and to continue under direction and control of, the Commissioner.
- Section 131 provides that any unfinished proceedings before the Board or the State Administrative Tribunal are to be taken to have been commenced by, and to continue under the direction and control of, the Commissioner.
- Section 132 provides that the winding-up of the Board is to be commenced as soon as practicable after the commencement day – to discharge its liabilities and transfer any assets remaining to the State to be administered by the department.
- Section 133 provides that the final report by the Board is to be submitted to the Minister as soon as reasonably practicable after the winding up of its affairs is concluded and to be included in the department’s annual report for that financial year.
- Section 134 provides that officers of the Board and the Registrar who held office immediately before the commencement day continue to be employed as officers of the department.
- Section 135 provides that the Governor may make transitional regulations prescribing matters if required, necessary or convenient.
- Clause 175 Amends schedule 1 by deleting clauses 1(2) and 2(2), which relate to outdated transitional provisions for licences which are no longer required.
- Clause 176 Amends the Act by deleting reference to the *Board* or *registrar* throughout and replacing them with *Commissioner*.
- Amends various headings throughout the Act to delete references to the Board.

Part 8 – Miscellaneous amendments to other Act

Clause 177 & Clause 178 Amends the *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003* by inserting the definition of *Commissioner* from the *Fair Trading Act 2010* section 6.

Clause 179 - Clause 183 Amend the following Acts to amend the definition of *Commissioner* to be that in section 6 of the *Fair Trading Act 2010*:

Builders' Registration Act 1939
Co-operatives Act 2009
Debt Collectors Licensing Act 1964
Local Government Act 1995
State Administrative Tribunal Act 2004

Clause 184 Deletes section 151 of the *Machinery of Government (Miscellaneous Amendments) Act 2006*

Clause 185 - Clause 190 Amend the following Acts to apply the investigation powers under the *Fair Trading Act 2010* to them:

Business Names Act 1962
Chattel Securities Act 1987
Hire-Purchase Act 1959
Limited Partnerships Act 1909
Residential Tenancies Act 1987
Retirement Villages Act 1992

Clause 191 Amends the committees in Schedule V Part 3 of the *Constitution Acts Amendment Act 1899* to insert

The Consumer Advisory Committee established under the *Fair Trading Act 2010*.
The Motor Vehicle Industry Advisory Committee established under the *Fair Trading Act 2010*.
The Property Industry Advisory Committee established under the *Fair Trading Act 2010*.

Clause 192 Amends the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* to insert *Fair Trading Act 2010* amended in relevant sections:

Clause 193 Amends the *Civil Liability Act 2002* in relation to section 5A1 in the definition of apportionable claim so as to refer to the *Fair Trading Act 2010*.

Clause 194 - Amend various Acts to delete reference to the *Consumer Affairs Act 1971* or *Fair Trading Act 1987* so as to refer to the *Fair Trading Act 2010*:
Clause 200

Credit (Administration) Act 1984
Education Service Providers (Full Fee Overseas Students) Registration Act 1991
Higher Education Act 2004
Legal Aid Commission Act 1976
Medical Practitioners Act 2008
Retirement Villages Act 1992
Trade Measurement Act 2006