Western Australian Auditor General’s Report

Regulation of Real Estate and Settlement Agents

Report 1: February 2015
Regulation of Real Estate and Settlement Agents
REGULATION OF REAL ESTATE AND SETTLEMENT AGENTS

This report has been prepared for submission to Parliament under the provisions of section 25 of the Auditor General Act 2006.

Performance audits are an integral part of the overall audit program. They seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed whether the Department of Commerce (Commerce) ensures only suitably qualified and reputable people are licensed and registered to work as real estate and settlement agents or sales representatives and if it adequately monitors and enforces compliance with legislation, regulations and codes of conduct.

My report finds that generally Commerce was performing these functions well, although it makes two recommendations for further improvement.

I wish to acknowledge the staff at the Commerce for their cooperation with this audit and for the valuable role they play in licensing and regulating the real estate and settlement industry.

COLIN MURPHY
AUDITOR GENERAL
18 February 2015
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Auditor General’s Overview

Real estate and settlement agents are often in positions of trust when we buy, sell or rent property. Western Australian consumers need to be confident that the agents we deal with are professional, trustworthy and knowledgeable. An appropriate regulatory environment helps provide this confidence.

Since June 2011, the Department of Commerce (Commerce) has been responsible for licencing and regulating these agents. In its licencing role, it assesses licence applications and confirms that an applicant has met the licence requirements. Licences must be renewed every three years.

Commerce also has a monitoring and enforcement role which includes investigating complaints against licensed agents.

I was pleased to note that Commerce has steadily improved the delivery of its licensing function and regulation of agents over the past three years. However, the audit identified two areas for improvement that Commerce will seek to address.

Two high profile cases of property fraud in 2010 and 2011 highlighted the need for measures to detect potential fraud before title documents are lodged. New measures are now in place but the vigilance of agents is still critical to preventing property fraud.
Executive Summary

Overview

The purchase of a home is often the most expensive investment people will make. Many use real estate and settlement agents (agents) to help them buy or sell a property or business.

Real estate agents generally lease, manage, buy or sell residential, commercial and industrial property on behalf of their clients. Settlement agents are responsible for transferring a property from one owner to another. They ensure that all contract conditions for the sale of a property are fulfilled. Sales representatives work under the supervision of a licensed real estate agent and usually arrange the sale of property or assist in property management.

Agents and sales representatives are often in positions of trust and are required by legislation to be licensed. Lawyers are also able to settle property and business sales but do not require a settlement agent’s licence to do so.

The Department of Commerce (Commerce) is responsible for regulating the real estate and settlement industry through:

- licensing of agents and sales representatives
- monitoring and enforcing compliance with legislation
- investigating complaints against a licensee.

Commerce also administers a Fidelity Account which can be used to compensate consumers who have suffered financial or property loss caused by licensed agents. The account is funded from licence fees and interest earned from moneys held in agents’ trust accounts.

Commerce took over this role from the Real Estate and Business Agents Supervisory and Settlement Agents Supervisory Boards which were abolished in 2011. In August 2014, some 4,589 real estate and business agents and 807 settlement and business settlement agents held a licence in Western Australia. Over 9,300 sales representatives also held a valid registration.

The audit assessed whether Commerce ensures only suitably qualified and reputable people are licensed and registered to work as agents or sales representatives and if it adequately monitors and enforces compliance with legislation, regulations and codes of conduct.

Audit Conclusion

Commerce has suitable arrangements in place to ensure that only appropriately qualified and reputable people are licensed to work as agents or sales representatives. Checks are conducted when agents first apply for a licence and on renewal.

However, legal and practical limitations on the monitoring of agents after they are licensed means that Commerce cannot be certain that agents continue to be of good character during the three years their licence is valid. The risk of direct financial loss to consumers remains low and claims on the Fidelity Account have decreased since 2009.

Measures to protect consumers from property fraud are also in place. However the effectiveness of these depend on the care and diligence exercised by agents when selling property.
Key Findings

- Commerce conducts adequate checks of organisations and individuals seeking to work and remain in the real estate and settlement industry. At August 2014, around 5,396 agents and businesses and 9,320 sales representatives had been licensed or registered. Between July 2011 and September 2014, some 30 applications for a new or a renewed licence or registration certificate were refused. Two appeals were successfully settled at State Administrative Tribunal (SAT) mediation. The checks conducted by Commerce included ensuring that:
  
  o entry education and experience requirements are met
  o agents are meeting their obligation for ongoing professional development so that their knowledge and skills remain current
  o agents and their businesses have a satisfactory credit history
  o persons applying for an agent’s licence are of good character.

- The time taken to process applications for an agent’s licence has steadily fallen. In 2013-14, Commerce processed 88 per cent of applications within its target timeline of 14 days, up from 38 per cent in 2011-12. These timeframes exclude the time to address incomplete applications from agents. An incomplete application is the main cause of processing delays.

- Commerce has a range of monitoring and enforcement activities in place to minimise the risk to the public of malpractice and loss. These include investigations of complaints made against agents and sales representatives. Since July 2011, Commerce has investigated 3,624 potential breaches of the *Real Estate and Business Agent Act 1978* or *Settlement Agents Act 1981* with the most common types of concern being trust account related matters, not acting in the best interest of the principal and misleading and deceptive conduct. No breach was found in 1,629 cases. Actions including corrective advice, administrative warnings and prosecution were taken on the rest.

- Nearly 80 per cent of complaints from the public, industry and Commerce's own monitoring activities about agents’ conduct were resolved within its target timeline of six months. However, of the investigations that took longer than six months to complete 90 per cent were categorised as not complex and a breach was not found. Delays can cause unnecessary stress to agents and their business.

- Agents who wish to renew their three year licence are required to undergo a police check as part of Commerce’s assessment of whether the person is of ‘good character’. But in between these three yearly checks, Commerce is unable to revoke the licence if an agent is facing charges or has been convicted of a crime that is of a type which raises doubt about their good character. Suspending a licence within the three years requires Commerce to apply to the SAT to do so. Another potential gap to ensuring ‘good character’ arises from the *Mutual Recognition Act 1992*. Under this legislation and supporting arrangements, agents from inter-state who seek to work in Western Australia are not required to provide a police clearance certificate on application for a Western Australian licence.

- Claims on the Fidelity Account administered by Commerce have decreased from 101 in 2008-09 to three in 2013-14. Some $3.7 million has been paid out to consumers since 2011-12 for financial loss caused by licensed agents. We were unable to establish from Court records whether the decline in claims on the Fidelity Account was due to more people choosing to pursue their claims through other avenues such as the Courts rather than
through Commerce. Commerce has advised that fidelity claims have always had significant peaks and troughs in the number of claims lodged with the regulator.

- In response to high profile cases in 2010 and 2011, which saw two properties fraudulently sold without the consent of the owners, government agencies introduced new measures to mitigate the risk of property fraud. Subsequently, four further frauds were thwarted. While the new measures for preventing fraud are important, the care and diligence of agents in verifying the identity of those selling property remains critical.

**Recommendations**

The Department of Commerce should:

- improve the timeliness of processing complaints
- investigate the feasibility of an agreement with Western Australia Police to assist in routine monitoring and early identification of licensed agents charged or convicted of certain types of offences.
Response from the Department of Commerce

The Consumer Protection Division of the Department of Commerce (the Department) welcomed the performance audit of regulation of the real estate and settlement industries. In July 2011 amendments to the Real Estate and Business Agents Act 1978 and the Settlement Agents Act 1981 came into operation abolishing the former regulatory Boards and establishing the Commissioner for Consumer Protection as the licensing authority. Since that time the Commissioner, and Department staff supporting her in that role, have put considerable effort into reviewing and revising licensing, compliance and enforcement policies and procedures. The results of the independent audit confirm that the regulatory regime for these industries is applied appropriately.

Two recommendations have been made in relation to the regulatory regime: one is regarding timeliness of processing complaints and the second about ongoing monitoring of the fitness of licensees.

The Department acknowledges the need to improve the timeliness of processing complaints about the real estate and settlement industries in certain instances. The consideration of some matters will take extended periods of time due to their complexity or the requirement for enforcement action through court or tribunal processes. The report highlights two investigations that took more than 700 days to complete, which illustrate the nature of the complexities encountered. One investigation was a highly complex collaborative effort involving the Commissioner’s staff, the WA Fraud Squad and the Australian Federal Police. Investigative actions were stopped on a number of occasions at the request of the WA Fraud Squad so as not to jeopardise the police case. The second, seemingly routine investigation unearthed evidence of irregularities in the licence status of the agency which led to an application to the State Administrative Tribunal to appoint a supervisor. When the broader licensing issue was appropriately addressed, the other routine matters were not pursued further.

All investigation files are regularly reviewed by supervisors. A number of refinements to procedures have been put in place including more formalised file reviews, and streamlined investigative procedures for high volume matters such as late bond lodgements.

The Department agrees that, for most licensees, National Police Certificates are obtained only at the time of the initial application and thereafter at renewal of the certificate every three years. However, if the background of an applicant suggests a risk of re-offending, a licence is granted with a condition that the licensee must submit a National Police Certificate every 12 months. In addition, monitoring of media, complaint data, information from the Contact Centre, proactive compliance activities, the audit program and industry liaison all provide intelligence about licensees which is followed up.

As recommended the Department will investigate the feasibility of an agreement with the WA Police to assist in routine monitoring and early identification of licensed agents charged with or convicted of certain types of offences. Procedures underpinning such an agreement would need to be efficient and cost-effective for both agencies.
Audit focus and scope

We assessed whether the Department of Commerce (Commerce) ensures only suitably qualified and reputable people are licensed and registered to work as real estate and settlement agents or sales representatives. We focused on the following lines of inquiry:

- Does Commerce have sound licensing and registration arrangements in place?
- Does Commerce monitor and enforce compliance with relevant legislation, regulations and codes of conduct?

Our scope covered Commerce’s licensing and compliance activities from July 2011 to September 2014.

In conducting the audit we:

- reviewed Commerce’s policies and procedures for the regulation of sales representatives, real estate and settlement agents
- interviewed staff responsible for licensing agents, monitoring and enforcing compliance
- tested a sample of licensing and complaint files
- met with representatives from Landgate, Real Estate Institute of Western Australia and Australian Institute of Conveyancers Western Australian Division
- observed a proactive visit conducted by a Commerce compliance officer.

The audit was conducted in accordance with Australian Auditing and Assurance Standards.
Background

In Western Australia, the licensing of real estate and settlement agents (agents) and registration and supervision of all sales representatives is authorised under two Acts:

- *Real Estate and Business Agents Act 1978* (RE Act)

These Acts require that all agents be licensed before conducting any property transactions. Agents must renew their licence every three years subject to meeting suitability and character requirements. The RE Act also requires that individuals working as sales representatives are registered every three years and work under the supervision of a licensee. Additional safeguards are provided in the legislation to protect Western Australian consumers, including:

- the establishment of a Fidelity Account by Commerce to reimburse people who suffer financial loss or loss of property caused by a licensed agent
- imposing significant accountability on agents to establish and maintain trust accounts to hold consumers’ funds
- a requirement for agents and sales representatives to undertake compulsory training as a condition for licence and registration renewal. This ensures that agents’ knowledge and skills remain current and relevant.

Both Acts are supported by regulations, professional codes of conduct and Commerce’s administrative policies and procedures (Figure 1).

Figure 1: Legislative framework for governing the real estate and property settlement industries in Western Australia
The Commissioner for Consumer Protection administers the legislation

Since July 2011 the Commissioner for Consumer Protection, within Commerce, has been responsible for administering the RE and SA Acts and regulating the industry. This includes ensuring that only suitably qualified people and those of good character operate in the real estate and settlement industry.

These regulatory functions are delivered through the Consumer Protection division of the Department of Commerce. The division aims to ensure that only suitably qualified people are allowed to operate in the real estate industry through:

- licensing and monitoring of real estate and settlement agents and sales representatives
- helping consumers resolve disputes with licensed agents
- investigating complaints against licensees
- monitoring and enforcing compliance with the requirements of the legislation.

Commerce's regulatory services are funded by licence fees and interest from agents’ trust accounts

Commerce’s real estate and settlement industry regulatory services are funded from funds raised through licence fees and interest from money held in agents’ trust accounts. Under the legislation the funds can only be used to:

- contribute to a Fidelity Account to reimburse individuals who have suffered financial or property loss through criminal or fraudulent actions of a licenced agent
- cover the cost of providing compulsory professional development programs for licensees and registrants under the Acts
- provide financial assistance to first home buyers from the Home Buyers Assistance Account
- meet the cost of administering the Acts and expenditure incurred by the Commissioner in performing the functions under the Acts.

From July 2011 to June 2014, Commerce raised just over $72 million in revenue from regulatory services (Appendix 1). Some $12.5 million remains unspent. Changes in interest rates and income forecasts means that revenue and expenditure in any year will differ. These funds are held in a restricted cash account which limits expenditure to those functions listed above.
Commerce has sound licensing arrangements but could do more to ensure agents’ ongoing suitability

Procedures for licensing and registering applicants are in place, and Commerce conducts entry and renewal checks

Commerce has sound licensing procedures in place. At August 2014, around 5,396 agents and businesses and 9,320 sales representatives were licensed or registered. We reviewed 165 randomly selected licensing files across the three groups and found that checks were conducted on all individuals and organisations seeking to work or remain in the real estate and settlement industry.

Procedural checklists are also used by staff to assist in assessing applications, including confirming that:

- educational requirements are met
- individuals responsible for managing real estate agent businesses are licensed
- at renewal there are no active complaints registered against applicants
- individuals and businesses have a good credit history
- settlement agent businesses are insured
- national police checks have not identified convictions of criminal activity or improper behaviour
- businesses and directors are registered under the Australian Securities and Investments Commission.

However the procedural manuals for checking compulsory professional development and trust accounts are still in draft. Commerce had commenced work during the audit period to finalise these. Without approved procedures, there is a risk that consistent assessments will not be made.

Decisions to refuse a licence or registration in complex cases are made by the Commissioner. Routine refusals, based on matters such as lack of qualifications, are delegated to the licensing and registration director. We found that people with the correct delegated authority approved all applications.

Commerce identifies people operating without a licence through industry or customer complaints and other intelligence gathered through its licensing and compliance activities.

Incomplete applications cause most licensing delays

Of the 165 licensing applications we tested, Commerce processed 52 per cent within its target of 14 days. Our testing also found that incomplete applications from agents and sales representatives was a delaying cause for 73 per cent of the applications not processed by the target date. The other delays were due to the time taken by Commerce to process the application.

Commerce’s own analysis has shown that application processing time has steadily fallen since 2011-12. It calculated that 88 per cent of applications were processed within its target of 14 days in 2013-14, up from 38 per cent in 2011-12 (Figure 2). The calculation excludes the time applicants take to provide outstanding information.
Commerce advised that its timeliness target was set to recognise the circumstances that can prevent the completion of licensing applications within 14 days. Apart from incomplete applications, reasons can include unanticipated peaks in workload, staff turnover and complex applications requiring legal advice.

Until recently, consumers could not make a claim through the Fidelity Account if an agent’s licence was not renewed by the due date. However the Act was amended in October 2014 to address this.

![Figure 2: Timeframes for processing applications against a target of 14 days](image)

**If an agent is refused a licence they can appeal the Commissioner’s decision**

Assessment of an applicant’s suitability and character can be complex and require considerable judgement. Applicants can apply to the State Administrative Tribunal (SAT) for a review if refused a licence on the grounds of poor character. SAT may overturn the Commissioner’s decision.

From July 2011 to September 2014, the Commissioner refused 30 applications from agents and sales representatives on the grounds they failed to meet character and suitability requirements. Of these, three applicants appealed to SAT for a review. SAT ordered mediation in two cases and ruled in the applicant’s favour in the remaining case. The Commissioner appealed this decision to the Court of Appeal. The Court reinstated the initial decision to refuse
the application. We did not identify any issues that required administrative change by Commerce.

**Commerce cannot guarantee that agents are of suitable character in the three years their licence is valid**

Our review of 165 files showed that police clearances accompanied all applications for a new or renewed licence. Thereafter however, there was no continued assessment of agents and sales representatives’ character in the three years following the granting of their licence. Commerce advised that it has limited capacity to revoke or suspend a valid licence or certificate. In some cases it has legal or practical restrictions and its only means of suspending or cancelling a licence is to apply to the SAT.

The RE and SA Acts require the Commissioner to be satisfied that people entering and remaining in the real estate and settlement industry are of fit and good character. Commerce uses national police clearances and self-disclosure by agents at the time of application or renewal to meet this requirement.

Commerce does not seek police clearances in the three years that the licence remains valid to check if an applicant has been convicted or has significant charges pending. Agents with serious convictions or charges can therefore continue to operate until their licence is due for renewal.

Commerce advised that the incidence of serious charges and convictions against licensees after meeting initial checks is low. As the licensing authority, they have limited power to suspend or cancel a licence or three-year certificate. The Commissioner can only refuse to issue a three-year certificate at the renewal date if the applicant no longer meets the legislated criteria to hold a licence. An example of a specific situation is provided below.

**Example of a restriction on suspending or revoking a licence**

An agent was convicted in February 2011 of five counts of misleading representation on a 2005 residential property development. Action to refuse or suspend the agent’s licence for the conviction was taken by Commerce at renewal in February 2012. The Commissioner’s only recourse prior to February 2012 was to apply to the SAT to suspend or cancel the agent’s licence. However the Commissioner did not pursue this option as the applicant had appealed the Court’s decision.

Under the Commonwealth *Mutual Recognition Act 1992*, agents licensed in other jurisdictions who seek to work in WA are not required to provide a police clearance certificate. Commerce advised that under section 19 of the legislation it cannot lawfully require national police certificates when processing requests from individuals licensed in other jurisdictions. It relies solely on the relevant regulatory agencies to provide information on the suitability of the applicants. This is in contrast to one jurisdiction which, in addition to speaking to relevant agencies, conducts police checks on all mutual recognition applicants.
Compliance is enforced and measures are in place to protect consumers from financial or property loss

Commerce undertakes comprehensive monitoring and has a range of enforcement options available

Between July 2011 and September 2014, Commerce resolved approximately 3,600 potential breaches of the RE or SA Acts. Ninety-two per cent of these were against real estate agents. Our review of 33 of these files found that the action taken by Commerce was appropriately documented and evidenced. None of these actions appeared unreasonable.

Commerce monitors the industry to identify malpractice and possible loss to consumers. Potential noncompliance includes misleading or deceptive conduct, property management issues and agents operating without a licence. This is identified through:

- verbal or written grievances from dissatisfied consumers, the property industry or other government agencies
- consumer enquiries to Commerce’s contact centre
- proactive inspections of agents’ businesses
- market surveillance and intelligence gathered through other sources such as media and ongoing investigations
- monitoring of any irregularities in agents’ trust accounts such as those that may arise from qualified audit reports.

Commerce has a range of enforcement options available when an agent is found to have breached the legislation. Approximately 45 per cent (1,629) of Commerce’s investigations from July 2011 to September 2014 resulted in no breach being found. Commerce took enforcement action in the remaining 1,995 cases (Table 1).

<table>
<thead>
<tr>
<th>Enforcement actions taken</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advise corrective action</td>
<td>854</td>
</tr>
<tr>
<td>Conciliation/mediation facilitated by Commerce</td>
<td>477</td>
</tr>
<tr>
<td>Administrative warning</td>
<td>301</td>
</tr>
<tr>
<td>Referred to other agency</td>
<td>99</td>
</tr>
<tr>
<td>Fidelity claim related</td>
<td>85</td>
</tr>
<tr>
<td>Withdrawn by complainant</td>
<td>81</td>
</tr>
<tr>
<td>Prosecution</td>
<td>40</td>
</tr>
<tr>
<td>Advised to seek civil resolution</td>
<td>31</td>
</tr>
<tr>
<td>Referred to State Administrative Tribunal</td>
<td>21</td>
</tr>
<tr>
<td>Infringement notice</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,995</strong></td>
</tr>
</tbody>
</table>

Source: Commerce and OAG

Table 1: Enforcement actions undertaken by Commerce (July 2011 to September 2014)
There are delays in resolving some complaints

Commerce resolved the majority of complaints quickly. Between July 2011 and September 2014, Commerce resolved and closed 78 per cent (2,816) of all investigations within six months. Commerce aims to complete 80 per cent of its investigations within six months. However, some investigations took much longer than the target timeframes to complete. Such delays can cause unnecessary stress to agents and their business especially where no breach has occurred.

Some investigations are complex and can result in prosecutions or referral to the SAT. These justifiably can take a long time to complete. However, complex investigations only accounted for eight per cent of the total investigations that exceeded targets. Most investigations that exceeded the targets did not result in a finding that the agent breached the legislation. Many of these were categorised by Commerce as normal or simple investigations (Table 2).

<table>
<thead>
<tr>
<th>Type of investigation</th>
<th>Completed under 6 months</th>
<th>Completed in 6 to 12 months</th>
<th>Completed in 12 months or more</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total completed</td>
<td>No breach found*</td>
<td>Total completed</td>
</tr>
<tr>
<td>Total (number)</td>
<td>2,816</td>
<td>577</td>
<td>344</td>
</tr>
<tr>
<td>Simple</td>
<td>96</td>
<td>3</td>
<td>68</td>
</tr>
<tr>
<td>Normal</td>
<td>73</td>
<td>20</td>
<td>59</td>
</tr>
<tr>
<td>Complex</td>
<td>38</td>
<td>20</td>
<td>59</td>
</tr>
<tr>
<td>Percentage (%)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2: Investigation timeframes (July 2011 to September 2014)

* This column is a subset of the ‘Total completed’ column for the same time period.

Our review of 33 closed complaint investigation files found that eight took more than one year to complete. Two of the eight took more than 700 days with one dropped 770 days into the investigation as it was deemed to be no longer in the public interest to pursue the matter further.

Commerce’s own review of 19 complaint investigation files also showed that at least three investigations took over 12 months to complete. One of the three files that was categorised as a normal investigation took 458 days to complete. The review noted that although the final decision was based on evidence, it took too long to complete.

For investigations that exceeded six months, Commerce’s procedures require that reasons for the delay are identified and any agreed course of action to complete the investigation is documented. However we found no evidence of these on the tested files.
Fidelity Account claims have decreased but it is unclear if consumers are seeking redress through other avenues

Claims lodged on the Fidelity Account since July 2009 have decreased significantly (Table 3). However it is unclear if this is a result of compliance and enforcement actions alone or claimants choosing to pursue cases independently through other avenues. Commerce has advised that fidelity claims have always had significant peaks and troughs in the number of claims lodged with the regulator.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>New claims lodged</td>
<td>101</td>
<td>22</td>
<td>27</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>Value of claims reimbursed (excluding legal costs)</td>
<td>NA*</td>
<td>NA*</td>
<td>NA*</td>
<td>$81 000</td>
<td>$1.8 million</td>
</tr>
<tr>
<td>Claims outstanding at 30 June</td>
<td>NA*</td>
<td>NA*</td>
<td>NA*</td>
<td>65</td>
<td>43</td>
</tr>
<tr>
<td>Claims outstanding (excluding legal costs)</td>
<td>NA*</td>
<td>NA*</td>
<td>NA*</td>
<td>$4.3 million</td>
<td>$8.8 million</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Claims finalised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims allowed or partially allowed</td>
</tr>
<tr>
<td>Disallowed</td>
</tr>
<tr>
<td>Withdrawn</td>
</tr>
<tr>
<td>Total claims finalised</td>
</tr>
</tbody>
</table>

*Since taking over the administration of this account Commerce has provided a greater level of detail on the outcomes of claims made.

Individuals can seek damages independently against a licensee in Courts or other avenues without claiming on the Fidelity Account. Claims settled between an agent and another party are usually confidential between these two parties. We checked to see if data on the number of real estate related claims pursued through the Courts was readily available. Unfortunately Court databases record the names of those involved, rather than the legislation under which a breach may have occurred. Therefore it is not possible to readily identify cases where Court redress has been sought.

Table 3: Fidelity Account claims 2008-09 to 2013-14
New measures reduce the risk of fraudulent property sales but effectiveness depends on agents’ actions

New measures are in place to mitigate the risk of fraudulent property sales. However, the effectiveness of these depends on continued diligence by real estate and settlement agents when selling properties. Change in property ownership is registered after financial settlement. So the best opportunity to prevent fraud is before payments are made at settlement and before documents to change land ownership are lodged for registration at Landgate.

Between 2008 and 2010 there were two cases of attempted property fraud in Western Australia by criminals pretending to be home owners. Then in 2010 and 2011 two properties were fraudulently sold by fraudsters unknown to the registered land owners and without their consent. As the State guarantees each title, the State paid compensation to the two property owners for their loss. The property owners were required to submit compensation claims, supported by evidence, to the Commissioner of Titles at Landgate. No other cases of local property fraud were brought to our attention during the audit.

After November 2011, measures were implemented to mitigate this risk including:

- amending the codes of conduct to require real estate and settlement agents to verify a client’s identity before processing a sale
- the production of current, original identity documents and a requirement for face-to-face identification of people signing certain documents lodged at Landgate and confirmation of their authority to deal with that interest in land
- any verification of identity performed outside of Australia must be undertaken by an Australian Consular Officer
- advising all lenders to carefully scrutinise documents before releasing mortgages.

Commerce requires agents to conduct at least a 100 point identity check and exercise care and diligence when verifying the identity of clients. It conducts regular proactive compliance inspections to ensure that agents comply with this requirement. Our review of licensing files showed that proactive visits were conducted for all licence holders in the businesses category at least once in the three years their certificate was valid.

Agents have a key role in preventing fraudulent property sales. Four attempts to fraudulently sell property in October 2012 and February 2013 have been thwarted. Commerce has attributed this to the new measures and increased vigilance by the agents.
Appendix 1

Commerce’s revenue and expenditure for regulation of the real estate and settlement industries

<table>
<thead>
<tr>
<th>Revenue Source</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing fees</td>
<td>$1,410,931</td>
<td>$1,631,996</td>
<td>$1,555,713</td>
<td>$4,598,640</td>
</tr>
<tr>
<td>Interest from Trust account</td>
<td>$20,198,024</td>
<td>$16,346,054</td>
<td>$14,894,136</td>
<td>$51,438,214</td>
</tr>
<tr>
<td>Fines and Infringements</td>
<td>$906</td>
<td>$2,450</td>
<td>$1,441</td>
<td>$4,797</td>
</tr>
<tr>
<td>Bank and investment interest</td>
<td>$6,797,176</td>
<td>$5,116,621</td>
<td>$4,238,162</td>
<td>$16,151,959</td>
</tr>
<tr>
<td>Other revenue</td>
<td>$19,487</td>
<td>$13,055</td>
<td>$47,051</td>
<td>$79,593</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$28,426,524</strong></td>
<td><strong>$23,110,176</strong></td>
<td><strong>$20,736,503</strong></td>
<td><strong>$72,273,203</strong></td>
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<table>
<thead>
<tr>
<th>Expenses</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>Total</th>
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<tbody>
<tr>
<td>Grants - Home Buyers Assistance</td>
<td>$5,161,659</td>
<td>$6,162,226</td>
<td>$4,494,274</td>
<td>$15,818,159</td>
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<tr>
<td>Grants - Real Estate and Settlement Industry Fidelity Claims</td>
<td>$82,080</td>
<td>$2,735,833</td>
<td>$1,466,971</td>
<td>$4,284,884</td>
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<td>Grants - Real Estate and Settlement Industry CPD</td>
<td>$969,326</td>
<td>$1,610,548</td>
<td>$1,302,792</td>
<td>$3,882,666</td>
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<tr>
<td>Divisional and corporate overheads</td>
<td>$11,207,563</td>
<td>$11,485,457</td>
<td>$9,637,707</td>
<td>$32,330,727</td>
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<tr>
<td>Professional services (e.g. forensic accounting investigations)</td>
<td>N/A</td>
<td>$861,538</td>
<td>$666,475</td>
<td>$1,528,013</td>
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<td>Minor equipment - office</td>
<td>$10,875</td>
<td>N/A</td>
<td>N/A</td>
<td>$10,875</td>
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<td>Other</td>
<td>$1,438</td>
<td>$10,907</td>
<td>$14,449</td>
<td>$26,794</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$17,432,941</strong></td>
<td><strong>$22,866,509</strong></td>
<td><strong>$17,582,668</strong></td>
<td><strong>$57,882,118</strong></td>
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<td>Date Tabled</td>
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<tr>
<td>22</td>
<td>Opinion on Ministerial Notification</td>
<td>18 December 2014</td>
<td></td>
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<tr>
<td>21</td>
<td>Training and Support for Justices of the Peace</td>
<td>26 November 2014</td>
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<td>20</td>
<td>Ensuring Compliance with Conditions on Mining – Follow-up</td>
<td>19 November 2014</td>
<td></td>
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<tr>
<td>19</td>
<td>Purchasing Through Common Use Agreements - AGBA</td>
<td>12 November 2014</td>
<td></td>
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<tr>
<td>17</td>
<td>Opinions on Ministerial Notifications</td>
<td>25 September 2014</td>
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<td>16</td>
<td>Our Heritage and Our Future: Health of the Swan Canning River System</td>
<td>13 August 2014</td>
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<td>15</td>
<td>Working with Children Checks</td>
<td>30 June 2014</td>
<td></td>
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<td>14</td>
<td>Information Systems Audit Report</td>
<td>30 June 2014</td>
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<td>13</td>
<td>Royalties for Regions – are benefits being realised?</td>
<td>25 June 2014</td>
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<td>12</td>
<td>Government Funded Advertising</td>
<td>25 June 2014</td>
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<td>11</td>
<td>Licensing and Regulation of Psychiatric Hostels</td>
<td>25 June 2014</td>
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<td>10</td>
<td>Universal Child Health Checks Follow-Up</td>
<td>18 June 2014</td>
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<td>9</td>
<td>Governance of Public Sector Boards</td>
<td>18 June 2014</td>
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<tr>
<td>8</td>
<td>Moving On: The Transition of Year 7 to Secondary School</td>
<td>14 May 2014</td>
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<td>7</td>
<td>The Implementation and Initial Outcomes of the Suicide Prevention Strategy</td>
<td>7 May 2014</td>
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<td>6</td>
<td>Audit Results Report – Annual 2013 Assurance Audits (Universities and state training providers – Other audits completed since 1 November 2013)</td>
<td>7 May 2014</td>
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<td>5</td>
<td>Across Government Benchmarking Audits – Controls Over Purchasing Cards – Debtor Management – Timely Payment of Invoices</td>
<td>1 April 2014</td>
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<td>4</td>
<td>Behaviour Management in Schools</td>
<td>19 March 2014</td>
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<td>3</td>
<td>Opinion on ministerial decision not to provide information to Parliament about funding for some tourism events</td>
<td>18 March 2014</td>
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<td>2</td>
<td>Charging Card Administration Fees</td>
<td>12 March 2014</td>
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<td>1</td>
<td>Water Corporation: Management of Water Pipes</td>
<td>19 February 2014</td>
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