

Licensing Provisions Amendment Bill 2015

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Western Australia

LEGISLATIVE ASSEMBLY

Licensing Provisions Amendment Bill 2015

A Bill for

An Act to amend the following —

- **the *Auction Sales Act 1973*;**
- **the *Debt Collectors Licensing Act 1964*;**
- **the *Land Valuers Licensing Act 1978*;**
- **the *Mining Act 1978*;**
- **the *Motor Vehicle Dealers Act 1973*;**
- **the *Real Estate and Business Agents Act 1978*;**
- **the *Settlement Agents Act 1981*;**
- **the *Transport Co-ordination Act 1966*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Licensing Provisions Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

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

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

2 **3. Act amended**

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

4 **4. Section 9 deleted**

5 Delete section 9.

6 **5. Section 11 amended**

7 (1) In section 11(2) delete “original character testimonials, together
8 with 2 copies of each testimonial” and insert:

9

10 character testimonials

11

12 (2) Delete section 11(5) and (5a).

13 (3) In section 11(9) delete “and advertisement”.

14 **6. Section 12 deleted**

15 Delete section 12.

16 **7. Section 16 amended**

17 In section 16(9) delete “Subject to section 12, the” and insert:

18

19 The

20

21 **8. Section 19 amended**

22 (1) Delete section 19(1) and insert:

23

24 (1) On granting a general or restricted licence, the
25 magistrate shall fix the period, during which, subject to
26 this Act, the licence is to have effect.

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- 1 (2A) The period fixed under subsection (1) shall be a period
2 that is —
3 (a) not less than 12 months; and
4 (b) not more than the prescribed period.
- 5 (2B) A general licence or a restricted licence may be
6 renewed from time to time for the prescribed period.
- 7 (2C) A period prescribed for the purposes of
8 subsection (2A)(b) or (2B) cannot be less than
9 12 months.
- 10 (2D) Different periods may be prescribed for the purposes of
11 subsection (2B) in relation to the renewal of licences of
12 different prescribed types or descriptions.
13
- 14 (2) In section 19(3) after “make it undesirable,” insert:
15
16 and any amount prescribed by way of penalty for a late
17 application is paid,
18
- 19 **9. Section 37 amended**
- 20 (1) In section 37 delete “The” and insert:
21
22 (1) The
23
- 24 (2) At the end of section 37 insert:
25
26 (2) The *Interpretation Act 1984* section 45(1) and (2)
27 applies in respect of fees prescribed under this Act
28 despite sections 3(3) and 45(3) of that Act.
29

1 **Part 3 — *Debt Collectors Licensing Act 1964* amended**

2 **10. Act amended**

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

4 **11. Section 7 amended**

5 (1) In section 7(1) delete “prescribed.” and insert:

6

7 approved in writing by the Commissioner.

8

9 (2) Delete section 7(4) and (5).

10 **12. Section 8 amended**

11 In section 8(1) delete “prescribed.” and insert:

12

13 approved in writing by the Commissioner.

14

15 **13. Section 10A inserted**

16 After section 9 insert:

17

18 **10A. Duration of licences**

19 (1) A licence is to be issued or renewed for a period
20 prescribed.

21 (2) A period prescribed for the purposes of subsection (1)
22 cannot be less than 12 months.

23 (3) Different periods may be prescribed for the purposes of
24 subsection (1) in relation to the renewal of licences of
25 different prescribed descriptions.

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- 1 (4) A licence may be renewed even if an application for its
2 renewal has not been made under section 8 before the
3 licence expired if —
4 (a) such an application is made within 28 days
5 after the licence has expired; and
6 (b) any amount prescribed by way of penalty for a
7 late application is paid.
- 8 (5) A licence renewed as described in subsection (4) is to
9 be taken for all purposes to have taken effect on the
10 day immediately succeeding the day on which the
11 previous licence expired.
12

13 **14. Section 26 amended**

- 14 (1) In section 26:
15 (a) delete “The” and insert:
16
- 17 (1) The
18
- 19 (b) after paragraph (c) insert:
20
- 21 (da) maintaining the accuracy of the register,
22 including the provision of information to the
23 Commissioner to assist in maintaining the
24 accuracy of the register; and
25
- 26 (2) At the end of section 26 insert:
27
- 28 (2) The *Interpretation Act 1984* section 45(1) and (2)
29 applies in respect of fees prescribed under this Act
30 despite sections 3(3) and 45(3) of that Act.
31

1 **Part 4 — *Land Valuers Licensing Act 1978* amended**

2 **15. Act amended**

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

4 **16. Section 17 amended**

5 Delete section 17(3).

6 **17. Section 19 amended**

7 In section 19 after “person who” insert:

8

9 pays to the Commissioner the prescribed fee and

10

11 **18. Section 20 replaced**

12 Delete section 20 and insert:

13

14 **20. Offence to give false or misleading information**

15 (1) A person who gives false or misleading information in
16 relation to an application under this Part for the grant
17 or renewal of a licence commits an offence.

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

19 (2) For the purposes of subsection (1), a person gives false
20 or misleading information in relation to an application
21 under this Part for the grant or renewal of a licence if
22 the person does one or more of the following —

23 (a) states anything in relation to an application that
24 the person knows is false or misleading in a
25 material particular;

26 (b) omits anything from a statement made in
27 relation to an application without which the

s. 18

- 1 statement is, to the person's knowledge,
2 misleading in a material particular;
- 3 (c) gives or produces any information in relation to
4 an application that —
- 5 (i) the person knows is false or misleading
6 in a material particular; or
- 7 (ii) omits anything without which the
8 information is, to the person's
9 knowledge, misleading in a material
10 particular.
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Part 5 — Mining Act 1978 amended

19. Act amended

This Part amends the *Mining Act 1978*.

20. Section 8 amended

In section 8(1) insert in alphabetical order:

designated tenement contact (DTC), in respect of a mining tenement, or an application for a mining tenement, means the person who is, or the persons who are, in accordance with the regulations, the designated tenement contact for the mining tenement or application;

21. Section 17 inserted

After section 16 insert:

17. Designated tenement contact

(1) In this section —

give includes serve, notify, send or any similar expression;

prescribed provision means a provision of this Act, or the regulations made for the purposes of this Act —

- (a) under which the Minister, a warden or any official of the Department is required or permitted to give information, a document or notice to a person who holds, or has applied for, a mining tenement; and
- (b) that is prescribed for the purpose of this section.

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- 1 (2) Despite anything else in this Act, a prescribed
2 provision is to be taken to have been complied with
3 if —
4 (a) under the prescribed provision, information, a
5 document or notice is required or permitted to
6 be given to a person who holds, or has applied
7 for, a mining tenement; and
8 (b) the information, document or notice referred to
9 in the provision is given to the designated
10 tenement contact for that mining tenement or
11 application.
12

13 **22. Section 40C amended**

14 In section 40C delete “a natural” and insert:

15
16 any
17

18 **23. Section 111 amended**

19 (1) In section 111 delete “Notwithstanding” and insert:

20
21 (1) Notwithstanding
22

23 (2) At the end of section 111 insert:
24

25 (2) A reference to a licence or lease in subsection (1) does
26 not include a reference to a licence or lease granted on
27 an application made on or after the commencement of
28 the *Licensing Provisions Amendment Act 2015*
29 section 23.
30

31 Note: The heading to amended section 111 is to read:

32 **Iron authorisations**

1 **24. Section 162 amended**

2 After section 162(2)(eb) insert:

3

4 (ec) regulate matters in connection with designated
5 tenement contacts for mining tenements and
6 applications for mining tenements, including
7 without limitation —

8 (i) to require a person who holds, or has
9 applied for, a mining tenement to have a
10 designated tenement contact for the
11 mining tenement or application;

12 (ii) to provide the manner in which
13 designated tenement contacts are to be
14 nominated for mining tenements, or
15 applications for mining tenements, by
16 persons who hold, or have applied for,
17 mining tenements;

18 (iii) to provide for matters relating to the
19 provision, updating and accurate
20 recording of particulars relating to
21 designated tenement contacts;

22

1 **Part 6 — *Motor Vehicle Dealers Act 1973* amended**

2 **25. Act amended**

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

4 **26. Section 28A amended**

5 In section 28A(1) delete the passage that begins with “to the
6 nearest” and continues to the end of the section and insert:

7

8 the number plates to the nearest licensing or registering
9 authority.

10

11 **27. Section 32A amended**

12 (1) In section 32A insert in alphabetical order:

13

14 *registered company auditor* has the meaning given in
15 the *Corporations Act 2001* (Commonwealth) section 9;

16 *year*, unless otherwise prescribed, means a financial
17 year.

18

19 (2) In section 32A in the definition of *trust account* delete
20 “section 32C.” and insert:

21

22 section 32C;

23

24 **28. Section 32I replaced**

25 Delete section 32I and insert:

26

27 **32I. Audit of trust accounts**

28 (1) A person who carries on the business of a dealer for the
29 whole or part of a year must ensure that each trust

1 account that is held by the dealer for that year, or part
2 of a year, as the case may be, is audited by a registered
3 company auditor.

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

5 (2) A dealer is to be taken to have complied with
6 subsection (1) in relation to a year if the dealer —

- 7 (a) has neither received nor held money in a trust
8 account during that year; and
- 9 (b) makes a statutory declaration to that effect; and
- 10 (c) gives the statutory declaration to the
11 Commissioner within the period prescribed by
12 the regulations.
13

s. 29

1 **Part 7 — *Real Estate and Business Agents***
2 ***Act 1978* amended**

3 **29. Act amended**

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

5 **30. Section 24 amended**

6 (1) Delete section 24(3).

7 (2) In section 24(4) delete “determines, verified if the
8 Commissioner so requires by statutory declaration.” and insert:

9

10 determines.

11

12 **31. Section 33 amended**

13 (1) Delete section 33(3).

14 (2) In section 33(4) delete “determines, verified if the
15 Commissioner so requires by statutory declaration.” and insert:

16

17 determines.

18

19 **32. Section 43 amended**

20 (1) Delete section 43(2).

21 (2) In section 43(3) delete “determines, verified if the
22 Commissioner so requires by statutory declaration.” and insert:

23

24 determines.

25

1 **33. Section 49 amended**

2 (1) Delete section 49(5).

3 (2) In section 49(6) delete “determines, verified if the
4 Commissioner so determines by statutory declaration.” and
5 insert:

6

7 determines.

8

9 **34. Section 61 amended**

10 (1) In section 61(4) delete “unless there is a failure to settle the
11 transaction and that failure is due to the fault of the agent’s
12 principal.” and insert:

13

14 unless —

15 (a) there is a failure to settle the transaction and
16 that failure is due to the fault of the agent’s
17 principal; or

18 (b) it is a prescribed transaction.

19

20 (2) In section 61(4a) insert in alphabetical order —

21

22 ***prescribed transaction*** means any of the following
23 transactions —

24 (a) the sale of a lot in a proposed scheme described
25 in the *Strata Titles Act 1985* section 70(1);

26 (b) any other transaction prescribed, or that belongs
27 to a class of transactions prescribed, for the
28 purposes of this definition;

29

1 **35. Section 134A inserted**

2 After section 133 insert:

3

4 **134A. Offence to give false or misleading information**

5 (1) A person who gives false or misleading information in
6 relation to an application under section 24, 33, 43, 48
7 or 49 commits an offence.

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

9 (2) For the purposes of subsection (1), a person gives false
10 or misleading information in relation to an application
11 referred to in subsection (1) if the person does one or
12 more of the following —

13 (a) states anything in relation to an application that
14 the person knows is false or misleading in a
15 material particular;

16 (b) omits anything from a statement made in
17 relation to an application without which the
18 statement is, to the person's knowledge,
19 misleading in a material particular;

20 (c) gives or produces any information in relation to
21 an application that —

22 (i) the person knows is false or misleading
23 in a material particular; or

24 (ii) omits anything without which the
25 information is, to the person's
26 knowledge, misleading in a material
27 particular.
28

1 **Part 8 — *Settlement Agents Act 1981* amended**

2 **36. Act amended**

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

4 **37. Section 24 amended**

5 (1) Delete section 24(3).

6 (2) In section 24(4) delete “determines, verified if the
7 Commissioner so requires by statutory declaration.” and insert:

8

9 determines.

10

11 **38. Section 26A amended**

12 (1) Delete section 26A(3).

13 (2) In section 26A(4) delete “determines, verified if the
14 Commissioner so requires by statutory declaration.” and insert:

15

16 determines.

17

18 **39. Section 26B amended**

19 (1) Delete section 26B(3).

20 (2) In section 26B(4) delete “determines, verified if the
21 Commissioner so requires by statutory declaration.” and insert:

22

23 determines.

24

25 **40. Section 33 amended**

26 (1) Delete section 33(3).

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- 1 (2) In section 33(4) delete “determines, verified if the
2 Commissioner so requires by statutory declaration.” and insert:
3
4 determines.
5

6 **41. Section 111A inserted**

7 After section 110 insert:
8

9 **111A. Offence to give false or misleading information**

- 10 (1) A person who gives false or misleading information in
11 relation to an application under section 24, 26A, 26B,
12 31 or 33 commits an offence.
13 Penalty for this subsection: a fine of \$20 000.
- 14 (2) For the purposes of subsection (1), a person gives false
15 or misleading information in relation to an application
16 referred to in subsection (1) if the person does one or
17 more of the following —
- 18 (a) states anything in relation to an application that
19 the person knows is false or misleading in a
20 material particular;
- 21 (b) omits anything from a statement made in
22 relation to an application without which the
23 statement is, to the person’s knowledge,
24 misleading in a material particular;
- 25 (c) gives or produces any information in relation to
26 an application that —
- 27 (i) the person knows is false or misleading
28 in a material particular; or
- 29 (ii) omits anything without which the
30 information is, to the person’s
31 knowledge, misleading in a material
32 particular.
33

1 **Part 9 — *Transport Co-ordination Act 1966* amended**

2 **42. Act amended**

3 This Part amends the *Transport Co-ordination Act 1966*.

4 **43. Section 43A amended**

5 In section 43A delete “of one year” and insert:

6

7 of not more than 5 years

8

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9