

## **Licensing Provisions Amendment Bill 2015**

### **Explanatory Memorandum**

#### **Overview of the Bill**

The Licensing Provisions Amendment Bill 2015 amends eight Acts that sit within the Commerce, Mines and Petroleum, and Transport portfolios.

The amendments contained in the Bill are of a various nature and are aimed at removing out-dated requirements to ease regulatory burden for businesses.

Specifically, the Bill amends the following Acts:

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

Amendments are proposed to the *Auction Sales Act 1973*, *Debt Collectors Licensing Act 1964*, *Land Valuers Licensing Act 1978*, *Motor Vehicles Dealers Act 1973*, *Real Estate and Business Agents Act 1978*, and *Settlement Agents Act 1981* that sit within the Commerce portfolio to align licensing periods with other occupational licences and to remove impediments in order to facilitate a transition to online licensing. Amendments to the *Motor Vehicle Dealers Act 1973* also remove unnecessary auditing expenses in respect of trust accounts that have not recorded any transactions during the financial year or part thereof.

Amendments to the *Real Estate and Business Agents Act 1978* remove the prohibition on real estate agents from receiving commission prior to the settlement of a sales transaction in defined circumstances. This will allow real estate agents to negotiate with the developers of off-the-plan strata title projects for the payment of commission to the agent at the time that the agent provides a service to secure a sale, rather than have to wait until the date of settlement which can, for off-the-plan sales, occur many years later. This amendment does not affect the security of a purchaser's deposit, as section 70 of the *Strata Titles Act 1985* requires that any deposit be held in a trust account until settlement.

Amendments to the *Mining Act 1978*, which sits within the Mines and Petroleum portfolio, will correct anomalies, create a single point of contact for mining tenements, and remove the out-dated requirement for seeking authorisation for mining iron ore.

Amendments to the *Transport Co-ordination Act 1966*, which sits within the Transport portfolio, will increase the licensing period for aircraft operators from one year to up to five years, aligning regulatory requirements with business needs and reducing regulatory compliance costs for both the aviation industry and government.

**PART 1                      PRELIMINARY**

**Clause 1                      Short title**

Provides for this Act to be known as the Licensing Provisions Amendment Act 2015.

**Clause 2                      Commencement**

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

**PART 2                      AUCTION SALES ACT 1973 AMENDED**

**Clause 3                      Act amended**

Provides for this Part to amend the *Auctions Sales Act 1973*.

**Clause 4                      Section 9 deleted**

Deletes obsolete section 9 which outlined the transitional provisions from when the *Auction Sales Act 1973* was first implemented.

**Clause 5                      Section 11 amended**

- (1) Amends section 11(2) to delete the requirement to provide two copies of each character testimonial to support the original character testimonial when applying for an auctioneer licence.
- (2) Deletes sections 11(5) and 11(5a) which require licence applicants to cause a notice in the prescribed form to be published in a newspaper.
- (3) Amends section 11(9) to delete the reference to “and advertisement” as the reference is no longer required following the removal.

**Clauses 6                      Section 12 deleted**

Deletes obsolete section 12 which outlined the transitional provisions as to the apportionment of fees when the Act was first implemented. Provisions required for reimbursement of pro rata fees upon the handing in of a licence prior to its expiry will be captured in the regulations.

**Clause 7                      Section 16 amended**

Amends section 16 to reflect the removal of section 12.

**Clause 8                      Section 19 amended**

- (1) Replaces section 19(1) to provide that, upon application or renewal, a magistrate shall fix the period for a general or restricted licence for a period not less than 12 months and not more than a prescribed period. Also allows for different periods of licence renewal to be prescribed for different types or descriptions of licences.

- (2) Amends section 19(3) to require that the prescribed penalty for a late application must be paid before a magistrate may renew a licence that has expired.

**Clause 9**

**Section 37 amended**

Inserts a new section 37(2) to clarify that sections 45(1) and 45(2) of the *Interpretation Act 1984* apply to fees prescribed under the *Auction Sales Act 1973*.

**PART 3**

**DEBT COLLECTORS LICENSING ACT 1964 AMENDED**

**Clause 10**

**Act amended**

Provides for this Part to amend the *Debt Collectors Licensing Act 1964*.

**Clauses 11**

**Section 7 amended**

Amends section 7 to remove the requirement for a licence to be in a prescribed form and instead provide for a licence to be a form approved by the Commissioner.

**Clause 12**

**Section 8 amended**

Amends section 8 to remove the requirement for a licence application to be in a prescribed form and instead provide for an application form to be approved by the Commissioner

**Clause 13**

**Section 10A inserted**

Inserts new sections 10A(1) – (3) to provide for a licence to be issued or renewed for a period prescribed that is not less than 12 months and not more than the prescribed period.

Inserts new section 10A(4) which provides that an application for renewal of a licence may be made within 28 days after the licence has expired, provided that a late application penalty is paid.

Inserts new section 10A(5) which provides that where an application for renewal of a licence is made pursuant to section 10A(4), the commencement date of the renewed licence is the day after the former licence expired.

**Clause 14**

**Section 26 amended**

Amends section 26(1) to allow for a regulation to be made that would require licence holders to provide certain information to the Commissioner to assist in maintaining the accuracy of the register of licenced debt collectors.

Inserts new section 26(2) to clarify that sections 45(1) and 45(2) of the *Interpretation Act 1984* which outline how fees and charges are to be prescribed, apply to fees prescribed under the *Debt Collectors Licensing Act 1964*.

**PART 4 LAND VALUERS LICENSING ACT 1978 AMENDED**

**Clause 15 Act Amended**

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

**Clause 16 Section 17 amended**

Deletes subsection 17(3) which requires the information contained in an application to be verified by a statutory declaration.

**Clause 17 Section 19 amended**

Amends section 19 to insert reference to payment to the Commissioner of the prescribed fee to require that, in addition to satisfying the criteria set out in section 19, an applicant must pay the prescribed fee before a licence can be granted by the Commissioner

**Clause 18 Section 20 replaced**

Deletes existing section 20 and replaces it with new section 20 which defines the actions and omissions that would constitute giving false or misleading information, and creates an offence for a person to give false or misleading information in relation to an application for the grant or renewal of a licence. The penalty for this offence is a fine of \$20,000.

**PART 5 MINING ACT 1978 AMENDED**

**Clause 19 Act amended**

Provides for this Part to amend the *Mining Act 1978*.

**Clause 20 Section 8 amended**

Introduces a definition for a designated tenement contact, who is to be the single point of contact for a mining tenement or an application for a mining tenement.

**Clause 21 Section 17 inserted**

Inserts new section 17 to provide for any information, document, or notice given under prescribed provisions of this Act or the regulations to be taken as given to the designated tenement contact.

**Clause 22 Section 40C amended**

Removes reference to a natural person in section 40C, allowing for the issuance of a miner's right to any person, including a corporation.

**Clause 23****Section 111 amended**

Inserts new section 111(2) to remove the requirement to apply for iron authorisation for licences or leases granted on applications made on or after the commencement of this section 23 of the *Licensing Provisions Amendment Act 2015*.

**Clause 24****Section 162 amended**

Inserts new subsection 162(2)(ec) to allow for regulations to be made for matters in connection with designated tenement contact, including requiring a mining tenement holder or applicant to have a designated tenement contact, the manner in which designated tenement contacts are to be nominated, and maintaining updated particulars of the designated tenement contacts.

**PART 6****MOTOR VEHICLE DEALERS ACT 1973 AMENDED****Clause 25****Act amended**

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

**Clause 26****Section 28A amended**

Amends section 28A to remove the requirement for a person to provide a duly completed notice in the approved form when delivering number plates to the nearest licensing or registering authority.

**Clause 27****Section 32A amended**

Amends section 32A by inserting the definition of a 'registered company auditor'. This definition is not new, rather has been moved from section 32I. This clause also amends section 32A by inserting a definition for 'year' which means a financial year unless an alternative definition is prescribed in the regulations.

**Clause 28****Section 32I replaced**

Replaces the existing section 32I to:

- (1) require that an audit of the trust account occur each financial year or part thereof by a registered company auditor; and
- (2) provide that if the trust account neither held nor received money during that year, the dealer is taken to comply with the trust account audit requirement by making a statutory declaration to that effect and providing this to the Commissioner.

**PART 7****REAL ESTATE AND BUSINESS AGENTS ACT 1978 AMENDED****Clause 29****Act amended**

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

- Clause 30**                    **Section 24 amended**
- Deletes section 24(3) and amends section 24(4) to remove the requirement for information provided to the Commissioner in the process of applying for a licence to be verified by a statutory declaration.
- Clause 31**                    **Section 33 amended**
- Deletes section 33(3) and amends section 33(4) to remove the requirement for information provided to the Commissioner for the renewal of an expired triennial certificate to be verified by a statutory declaration.
- Clause 32**                    **Section 43 amended**
- Deletes section 43(2) and amends section 43(3) to remove the requirement for information provided to the Commissioner in the process of applying for a certificate of registration to be verified by a statutory declaration.
- Clause 33**                    **Section 49 amended**
- Deletes section 49(5) and amends section 49(6) to remove the requirement for information provided to the Commissioner in relation to the late renewal of a certificate of registration to be verified by a statutory declaration.
- Clause 34**                    **Section 61 amended**
- (1) Amends section 61(4) to allow a real estate agent to receive a commission in respect of services provided in a real estate transaction prior to settlement where the transaction is a prescribed transaction.
- (2) Amends section 61(4a) to insert a definition of a prescribed transaction, being a sale of a lot in a proposed scheme described in section 70(1) of the *Strata Titles Act 1985* or other transactions as prescribed in the regulations.
- Clause 35**                    **Section 134A inserted**
- Inserts new section 134A which defines the actions and omissions that would constitute giving false or misleading information, and creates an offence for a person to give false or misleading information in relation to an application for the grant or renewal of a licence, or grant or renewal of a certificate of registration. The penalty for this offence is a fine of \$20,000.
- PART 8**                      **SETTLEMENT AGENTS ACT 1981 AMENDED**
- Clause 36**                    **Act amended**
- Provides for this Part to amend the *Settlement Agents Act 1981*.

- Clause 37**                    **Section 24 amended**
- Deletes section 24(3) and amends section 24(4) to remove the requirement for information provided to the Commissioner in relation to an application for a licence to be verified by a statutory declaration.
- Clause 38**                    **Section 26A amended**
- Deletes section 26A(3) and amends section 26A(4) to remove the requirement for information provided to the Commissioner in respect of an application for exemption from holding a licence to be verified by a statutory declaration.
- Clause 39**                    **Section 26B amended**
- Deletes section 26B(3) and amends section 26B(4) to remove the requirement for information provided to the Commissioner in respect of an application for exemption to be verified by a statutory declaration.
- Clause 40**                    **Section 33 amended**
- Deletes section 33(3) and amends section 33(4) to remove the requirement for information provided to the Commissioner in respect of an application for renewal of an expired triennial certificate to be verified by a statutory declaration.
- Clause 41**                    **Section 111A inserted**
- Inserts new section 111A which defines the actions and omissions that would constitute giving false or misleading information and creates an offence for a person to give false or misleading information in relation to an application for the grant or renewal of a licence, or grant or renewal of a certificate. The penalty for this offence is a fine of \$20,000.
- PART 9**                        **TRANSPORT CO-ORDINATION ACT 1966 AMENDED**
- Clause 42**                    **Act amended**
- Provides for this Part to amend the *Transport Co-ordination Act 1966*.
- Clause 43**                    **Section 43A amended**
- Amends section 43A by deleting the reference to one year and replacing it with 'not more than five years'.