



Western Australia

Licensing Provisions Amendment Act 2016

As at 01 Dec 2016

No. 44 of 2016

Extract from www.slp.wa.gov.au, see that website for further information

Licensing Provisions Amendment Act 2016

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Auction Sales Act 1973</i> amended		
3.	Act amended	3
4.	Section 9 deleted	3
5.	Section 11 amended	3
6.	Section 12 deleted	3
7.	Section 16 amended	3
8.	Section 19 amended	3
9.	Section 37 amended	4
Part 3 — <i>Debt Collectors Licensing Act 1964</i> amended		
10.	Act amended	6
11.	Section 7 amended	6
12.	Section 8 amended	6
13.	Section 10A inserted	6
	10A. Duration of licences	6
14.	Section 26 amended	7
Part 4 — <i>Land Valuers Licensing Act 1978</i> amended		
15.	Act amended	8
16.	Section 17 amended	8

Contents

17.	Section 19 amended	8
18.	Section 20 replaced	8
20.	Offence to give false or misleading information	8
Part 5 — Mining Act 1978 amended		
19.	Act amended	10
20.	Section 8 amended	10
21.	Section 17 inserted	10
17.	Designated tenement contact	10
22.	Section 40C amended	11
23.	Section 111 amended	11
24.	Section 162 amended	12
Part 6 — Motor Vehicle Dealers Act 1973 amended		
25.	Act amended	13
26.	Section 28A amended	13
27.	Section 32A amended	13
28.	Section 32I replaced	13
32I.	Audit of trust accounts	14
Part 7 — Real Estate and Business Agents Act 1978 amended		
29.	Act amended	15
30.	Section 24 amended	15
31.	Section 33 amended	15
32.	Section 43 amended	15
33.	Section 49 amended	16
34.	Section 61 amended	16
35.	Section 134A inserted	17
134A.	Offence to give false or misleading information	17
Part 8 — Settlement Agents Act 1981 amended		
36.	Act amended	18
37.	Section 24 amended	18
38.	Section 26A amended	18
39.	Section 26B amended	18

40.	Section 33 amended	18
41.	Section 111A inserted	19
	111A. Offence to give false or misleading information	19

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

42.	Act amended	21
43.	Section 43A amended	21



Western Australia

Licensing Provisions Amendment Act 2016

No. 44 of 2016

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*.**

[Assented to 1 December 2016]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Licensing Provisions Amendment Act 2016*.

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.

Part 2 — *Auction Sales Act 1973* amended

3. Act amended

This Part amends the *Auction Sales Act 1973*.

4. Section 9 deleted

Delete section 9.

5. Section 11 amended

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

character testimonials

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

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

6. Section 12 deleted

Delete section 12.

7. Section 16 amended

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

The

8. Section 19 amended

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

- (1) On granting a general or restricted licence, the magistrate shall fix the period, during which, subject to this Act, the licence is to have effect.
 - (2A) The period fixed under subsection (1) shall be a period that is —
 - (a) not less than 12 months; and
 - (b) not more than the prescribed period.
 - (2B) A general licence or a restricted licence may be renewed from time to time for the prescribed period.
 - (2C) A period prescribed for the purposes of subsection (2A)(b) or (2B) cannot be less than 12 months.
 - (2D) Different periods may be prescribed for the purposes of subsection (2B) in relation to the renewal of licences of different prescribed types or descriptions.
- (2) In section 19(3) after “make it undesirable,” insert:
- and any amount prescribed by way of penalty for a late application is paid,

9. Section 37 amended

- (1) In section 37 delete “The” and insert:
 - (1) The
- (2) At the end of section 37 insert:

- (2) The *Interpretation Act 1984* section 45(1) and (2) applies in respect of fees prescribed under this Act despite sections 3(3) and 45(3) of that Act.

Part 3 — *Debt Collectors Licensing Act 1964* amended

10. Act amended

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

11. Section 7 amended

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

approved in writing by the Commissioner.

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

12. Section 8 amended

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

approved in writing by the Commissioner.

13. Section 10A inserted

After section 9 insert:

10A. Duration of licences

- (1) A licence is to be issued or renewed for a period prescribed.
- (2) A period prescribed for the purposes of subsection (1) cannot be less than 12 months.
- (3) Different periods may be prescribed for the purposes of subsection (1) in relation to the renewal of licences of different prescribed descriptions.

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

14. Section 26 amended

- (1) In section 26:
 - (a) delete “The” and insert:
 - (1) The
 - (b) after paragraph (c) insert:
 - (da) maintaining the accuracy of the register, including the provision of information to the Commissioner to assist in maintaining the accuracy of the register; and
- (2) At the end of section 26 insert:
 - (2) The *Interpretation Act 1984* section 45(1) and (2) applies in respect of fees prescribed under this Act despite sections 3(3) and 45(3) of that Act.

Part 4 — *Land Valuers Licensing Act 1978* amended

15. Act amended

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

16. Section 17 amended

Delete section 17(3).

17. Section 19 amended

In section 19 after “person who” insert:

pays to the Commissioner the prescribed fee and

18. Section 20 replaced

Delete section 20 and insert:

20. Offence to give false or misleading information

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

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

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

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

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

- statement is, to the person's knowledge, misleading in a material particular;
- (c) gives or produces any information in relation to an application that —
- (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information is, to the person's knowledge, misleading in a material particular.

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.

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

22. Section 40C amended

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

any

23. Section 111 amended

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

- (1) Notwithstanding

- (2) At the end of section 111 insert:

- (2) A reference to a licence or lease in subsection (1) does not include a reference to a licence or lease granted on an application made on or after the commencement of the *Licensing Provisions Amendment Act 2016* section 23.

s. 24

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

Iron authorisations

24. Section 162 amended

After section 162(2)(eb) insert:

- (ec) regulate matters in connection with designated tenement contacts for mining tenements and applications for mining tenements, including without limitation —
 - (i) to require a person who holds, or has applied for, a mining tenement to have a designated tenement contact for the mining tenement or application;
 - (ii) to provide the manner in which designated tenement contacts are to be nominated for mining tenements, or applications for mining tenements, by persons who hold, or have applied for, mining tenements;
 - (iii) to provide for matters relating to the provision, updating and accurate recording of particulars relating to designated tenement contacts;

Part 6 — *Motor Vehicle Dealers Act 1973* amended

25. Act amended

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

26. Section 28A amended

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

the number plates to the nearest licensing or registering authority.

27. Section 32A amended

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

registered company auditor has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9; *year*, unless otherwise prescribed, means a financial year.

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

section 32C;

28. Section 32I replaced

Delete section 32I and insert:

32I. Audit of trust accounts

- (1) A person who carries on the business of a dealer for the whole or part of a year must ensure that each trust account that is held by the dealer for that year, or part of a year, as the case may be, is audited by a registered company auditor.

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

- (2) A dealer is to be taken to have complied with subsection (1) in relation to a year if the dealer —
- (a) has neither received nor held money in a trust account during that year; and
 - (b) makes a statutory declaration to that effect; and
 - (c) gives the statutory declaration to the Commissioner within the period prescribed by the regulations.

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

29. Act amended

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

30. Section 24 amended

- (1) Delete section 24(3).
- (2) In section 24(4) delete “determines, verified if the Commissioner so requires by statutory declaration.” and insert:

determines.

31. Section 33 amended

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

determines.

32. Section 43 amended

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

determines.

s. 33

33. Section 49 amended

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

determines.

34. Section 61 amended

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

unless —

- (a) there is a failure to settle the transaction and that failure is due to the fault of the agent’s principal; or
- (b) it is a prescribed transaction.

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

prescribed transaction means any of the following transactions —

- (a) the sale of a lot in a proposed scheme described in the *Strata Titles Act 1985* section 70(1);
- (b) any other transaction prescribed, or that belongs to a class of transactions prescribed, for the purposes of this definition;

35. Section 134A inserted

After section 133 insert:

134A. Offence to give false or misleading information

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

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

- (2) For the purposes of subsection (1), a person gives false or misleading information in relation to an application referred to in subsection (1) if the person does one or more of the following —
- (a) states anything in relation to an application that the person knows is false or misleading in a material particular;
 - (b) omits anything from a statement made in relation to an application without which the statement is, to the person's knowledge, misleading in a material particular;
 - (c) gives or produces any information in relation to an application that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information is, to the person's knowledge, misleading in a material particular.

Part 8 — Settlement Agents Act 1981 amended

36. Act amended

This Part amends the *Settlement Agents Act 1981*.

37. Section 24 amended

- (1) Delete section 24(3).
- (2) In section 24(4) delete “determines, verified if the Commissioner so requires by statutory declaration.” and insert:

determines.

38. Section 26A amended

- (1) Delete section 26A(3).
- (2) In section 26A(4) delete “determines, verified if the Commissioner so requires by statutory declaration.” and insert:

determines.

39. Section 26B amended

- (1) Delete section 26B(3).
- (2) In section 26B(4) delete “determines, verified if the Commissioner so requires by statutory declaration.” and insert:

determines.

40. Section 33 amended

- (1) Delete section 33(3).

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

41. Section 111A inserted

After section 110 insert:

111A. Offence to give false or misleading information

- (1) A person who gives false or misleading information in relation to an application under section 24, 26A, 26B, 31 or 33 commits an offence.
- Penalty for this subsection: a fine of \$20 000.
- (2) For the purposes of subsection (1), a person gives false or misleading information in relation to an application referred to in subsection (1) if the person does one or more of the following —
- (a) states anything in relation to an application that the person knows is false or misleading in a material particular;
 - (b) omits anything from a statement made in relation to an application without which the statement is, to the person’s knowledge, misleading in a material particular;
 - (c) gives or produces any information in relation to an application that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information is, to the person’s knowledge, misleading in a material particular.

Licensing Provisions Amendment Act 2016

Part 8 Settlement Agents Act 1981 amended

s. 41

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

42. Act amended

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

43. Section 43A amended

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

of not more than 5 years

