



Western Australia

Consumer Protection Legislation Amendment Act 2019

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Consumer Protection Legislation Amendment Act 2019

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Western Australia

Consumer Protection Legislation Amendment Act 2019

No. 25 of 2019

An Act to amend —

- **the *Auction Sales Act 1973*; and**
- **the *Charitable Collections Act 1946*; and**
- **the *Debt Collectors Licensing Act 1964*; and**
- **the *Fair Trading Act 2010*; and**
- **the *Home Building Contracts Act 1991*; and**
- **the *Land Valuers Licensing Act 1978*; and**
- **the *Real Estate and Business Agents Act 1978*; and**
- **the *Residential Tenancies Act 1987*; and**
- **the *Settlement Agents Act 1981*; and**
- **the *Street Collections (Regulation) Act 1940*.**

[Assented to 24 October 2019]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Consumer Protection Legislation Amendment Act 2019*.

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 28 amended

- (1) At the end of section 28(5) insert:

Penalty for this subsection: a fine of \$25 000.

- (2) Delete section 28(9).

5. Section 35 amended

Delete section 35(1) and (2).

6. Various provisions amended

At the end of the provisions listed in the Table insert:

Penalty for this subsection: a fine of \$25 000.

Table

s. 22(3)	s. 23(1)
s. 24(1)	s. 26(1) and (2)
s. 27(1)	s. 29(2)
s. 31(1), (2), (3), (4), (6) and (7)	

s. 7

7. Various penalties amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 6(6)	Penalty: \$500.	Penalty for this subsection: a fine of \$50 000.
s. 25(1)	Penalty: \$1 000 or imprisonment for 12 months.	Penalty for this subsection: a fine of \$50 000 or imprisonment for 12 months.
s. 30(2)	Penalty: \$500.	Penalty for this subsection: a fine of \$10 000.
s. 30(5)	Penalty: A fine of not more than \$1 000, or imprisonment for a term of not more than one year, or both such fine and imprisonment.	Penalty for this subsection: a fine of \$50 000 or imprisonment for 12 months, or both.

Part 3 — Charitable Collections Act 1946 amended

8. Act amended

This Part amends the *Charitable Collections Act 1946*.

9. Section 5 amended

In section 5 insert in alphabetical order:

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6.

10. Section 6 amended

(1) At the end of section 6(1) insert:

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

(2) Delete section 6(2).

11. Section 8 amended

In section 8:

(a) delete “Minister” (1st occurrence) and insert:

Commissioner

(b) delete “Minister.” and insert:

Commissioner.

s. 12

12. Section 9 amended

- (1) In section 9(2) delete “offence and liable to a penalty not exceeding \$100.” and insert:

offence.

- (2) At the end of section 9(2) insert:

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

13. Section 11 amended

- (1) In section 11(1) delete “shall be made to the Minister, who shall” and insert:

must be made to the Commissioner, who must

- (2) In section 11(2) delete “shall” and insert:

must

- (3) In section 11(3) delete “Minister may, in his” and insert:

Commissioner may, in the Commissioner’s

14. Section 12 amended

- (1) In section 12(1) delete “Minister” and insert:

Commissioner

- (2) In section 12(2) delete “fixed by the Minister.” and insert:

imposed by the Commissioner.

- (3) In section 12(3) delete “Minister” and insert:

Commissioner

- (4) In section 12(4):

- (a) delete “Minister —” and insert:

Commissioner —

- (b) in paragraph (b) delete “Minister or a person authorised by him” and insert:

Commissioner or a person authorised by the
Commissioner

15. Section 13 amended

In section 13(1) delete “Minister,” and insert:

Commissioner,

16. Section 15 amended

- (1) Delete section 15(1) to (3) and insert:

- (1) In this section —

collection records means —

- (a) accounts setting out the money and goods collected or received by the collector for a charitable purpose; and
- (b) statements setting out the way the money and goods collected or received by the collector have been dealt with;

collector means a person, society, body, or association that collects or receives money or goods for a charitable purpose.

- (2) A collector must keep collection records and retain them for 7 years after the end of the financial year to which they relate.

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

- (3) The Commissioner may require in writing that a collector, within a specified time —
 - (a) give the Commissioner a copy of, or access to, the collection records of the collector; or
 - (b) have the collection records of the collector audited by an auditor approved by the Commissioner and give the Commissioner a copy of, or access to, the audited collection records.

- (3A) A collector must comply with a requirement under subsection (3).

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

- (3B) Without limiting section 12(2), the Commissioner may impose conditions relating to giving the Commissioner collection records.

- (2) In section 15(4) delete “any such penalty” and insert:

a penalty under subsection (2) or (3A),

17. Section 18 deleted

Delete section 18.

18. Section 19 amended

- (1) In section 19(1):

- (a) delete “shall be instituted” and insert:

is to be commenced

- (b) delete “Minister.” and insert:

Commissioner.

- (2) In section 19(2):

- (a) delete “Minister” (1st and 2nd occurrence) and insert:

Commissioner

- (b) delete “Minister,” and insert:

Commissioner,

19. Section 20A inserted

After section 20 insert:

20A. Powers of investigation

The *Fair Trading Act 2010* section 61 and Part 6 of that Act, other than section 88E, apply for the purposes of this Act.

20. Section 22 inserted

After section 21 insert:

22. Transitional provision for *Consumer Protection Legislation Amendment Act 2019*

(1) In this section —

authority means the authority referred to in section 6(1)(g);

commencement day means the day on which the *Consumer Protection Legislation Amendment Act 2019* section 11 comes into operation.

(2) The Minister's approval of a means of giving an authority under section 8 of this Act, as in force immediately before commencement day, is taken, on and from commencement day, to be a means approved by the Commissioner under section 8 of this Act.

Part 4 — *Debt Collectors Licensing Act 1964* amended

21. Act amended

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

22. Section 14 amended

- (1) At the end of section 14(1) insert:

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

- (2) In section 14(2) delete the Penalty and insert:

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

23. Section 17 amended

- (1) At the end of section 17(1) insert:

Penalty for this subsection: a fine of \$25 000.

- (2) Delete section 17(3).

24. Section 22 deleted

Delete section 22.

25. Various provisions amended

At the end of the provisions listed in the Table insert:

Penalty for this subsection: a fine of \$25 000.

s. 26

Table

s. 6(2)	s. 16(1)
s. 18(4)	

26. Various penalties amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 5(2)	Penalty: For an individual, \$200. For a body corporate, \$400.	Penalty for this subsection: a fine of \$50 000.
s. 15(5)	Penalty: \$200.	Penalty for this subsection: a fine of \$25 000.
s. 26(1)(h)	\$200	\$5 000

Part 5 — *Fair Trading Act 2010* amended

27. Act amended

This Part amends the *Fair Trading Act 2010*.

28. Section 88E amended

Before section 88E(1) insert:

- (1A) This section does not apply to the extent that the purpose of exercising a power under subsection (1) is in relation to a regulated activity carried on by a regulated person under the *Charitable Collections Act 1946*.

29. Schedule 2 amended

In Schedule 2 insert in alphabetical order:

Charitable Collections Act 1946

Part 6 — *Home Building Contracts Act 1991* amended

30. Act amended

This Part amends the *Home Building Contracts Act 1991*.

31. Section 25B amended

After section 25B(4) insert:

- (4A) This Division does not apply to residential building work if —
- (a) a building permit under the *Building Act 2011* is not required for the work; or
 - (b) if a building permit is required for the work — the work is not, or is not part of, a prescribed building service under the *Building Services (Registration) Act 2011* section 3.

32. Section 25D amended

- (1) Before section 25D(1) insert:

- (1A) In this section —
- relevant circumstance***, in relation to a builder, means —
- (a) if the builder is an individual — the builder —
 - (i) has died; or
 - (ii) after due search and enquiry, cannot be found in Australia;
- or
- (b) if the builder is not an individual — the builder ceased to exist; or

- (c) the builder is insolvent; or
- (d) if the builder is a building service contractor under the *Building Services (Registration) Act 2011* — the builder’s registration as a building service contractor was cancelled or not renewed because the builder did not satisfy the financial requirements (if any) prescribed by the regulations under section 18(1)(b) of that Act.

(2) In section 25D(1):

(a) delete paragraph (a) and insert:

- (a) in the case of residential building work to be performed by a builder on behalf of another person, other than a developer, under a residential building work contract, it insures that person and that person’s successors in title against the following losses occurring because a relevant circumstance exists in relation to the builder —
 - (i) loss of an amount paid by way of deposit under the residential building work contract, up to a limit of \$20 000 or another prescribed limit;
 - (ii) loss, other than indirect, incidental or consequential loss, resulting from non-completion of the residential building work;

and

(b) in paragraph (b) delete “by reason of the insolvency or death of the builder or by reason of the fact that, after

s. 32

due search and enquiry, the builder cannot be found;
and” and insert:

because a relevant circumstance exists in relation to the
builder; and

Part 7 — *Land Valuers Licensing Act 1978* amended

33. Act amended

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

34. Section 20 deleted

Delete section 20.

35. Section 22 amended

Delete section 22(2)(a) and insert:

- (a) an application is made during the period that begins on the day on which the licence expired and ends on the day that is 28 days after the day on which the licence expired; and

36. Section 33A inserted

After section 33 insert:

33A. Offence of giving false or misleading information

- (1) A person who gives false or misleading information to the Commissioner when required to give information to the Commissioner under this Act 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 if the person does 1 or more of the following —
 - (a) states anything that the person knows is false or misleading in a material particular;

s. 37

- (b) omits anything from a statement without which the statement is, to the person's knowledge, misleading in a material particular;
- (c) gives or produces any information 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.

37. Various penalties amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 23(1)	Penalty: \$50 000.	Penalty for this subsection: a fine of \$100 000.
s. 24(1)	Penalty: \$50 000.	Penalty for this subsection: a fine of \$100 000.
s. 25(3)	Penalty: \$5 000.	Penalty for this subsection: a fine of \$5 000.
s. 29A(1)	Penalty: \$2 000.	Penalty for this subsection: a fine of \$2 000.

Part 8 — *Real Estate and Business Agents Act 1978* amended

38. Act amended

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

39. Section 4 amended

- (1) In section 4(1) delete the definition of *agents code of conduct*.
- (2) In section 4(1) insert in alphabetical order:

code of conduct for agents means the code of conduct for agents prescribed and published under section 101(a);

- (3) In section 4(1) in the definition of *code of conduct for sales representatives* delete “101;” and insert:

101(b);

40. Section 26 amended

- (1) In section 26 delete “On” and insert:

(1) On

- (2) At the end of section 26 insert:

(2) For subsection (1), a person is taken not to be licensed or holding a current triennial certificate in respect of the licence if the person is required to surrender a licence and triennial certificate under section 34D(2)

or (3).

41. Section 27 amended

In section 27(1):

- (a) delete “a person, not being a body corporate,” and insert:

an individual

- (b) delete “that — ” and insert:

that the individual —

- (c) in paragraphs (a) to (c) delete “he”.

- (d) in paragraph (c) delete “to him to enable him” and insert:

to enable them

- (e) in paragraph (d) delete “he”.

Note: The heading to amended section 27 is to read:

Licensing of individuals

42. Section 29 amended

In section 29(b) delete “that”.

43. Section 30 amended

Delete section 30(3) and (4).

44. Section 31 amended

- (1) In section 31(2)(a) delete “a person other than a body corporate; or” and insert:

an individual; or

- (2) Delete section 31(3) and insert:

- (3) The Commissioner must not renew a licensee’s triennial certificate unless the Commissioner is satisfied of the matters in —

- (a) for an individual — section 27(1)(b), (c) and (d); or
- (b) for a firm — section 28(a), (b), (c) and (d); or
- (c) for a body corporate — section 29(a), (b), (c) and (d).

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

Licensee’s triennial certificate: grant and renewal

45. Section 32 amended

- (1) In section 32(1):

- (a) delete “Where a” and insert:

If a licensee’s

- (b) delete “expired, the renewal shall be deemed to take effect for the period of 3 years” and insert:

expired or was surrendered, the renewal takes effect

- (c) delete “expired.” and insert:

expired or was surrendered.

- (2) Delete section 32(2) and insert:

- (2) If a licensee’s triennial certificate is renewed more than 1 month but not more than 12 months after the day on which the triennial certificate expired or was surrendered, the renewal takes effect —

(a) if the Commissioner is satisfied that there is reasonable cause for the renewal to take effect on and from the day after the day on which the triennial certificate expired or was surrendered — on that day; or

(b) otherwise — on the day the renewal is granted.

Note: The heading to amended section 32 is to read:

Licensee’s triennial certificate: late renewal

46. Section 33 amended

- (1) Delete section 33(1) and insert:

(1) This section applies if —

(a) a licensee’s triennial certificate expires or was surrendered; and

- (b) the licensee applies to renew the certificate more than 12 months after the day on which the triennial certificate expired or was surrendered.

- (2) In section 33(2) delete “The application shall” and insert:

The application for renewal must

- (3) In section 33(4) delete “applicant shall” and insert:

licensee must

- (4) In section 33(5) delete “applicant” and insert:

licensee

- (5) After section 33(5) insert:

- (6) If the triennial certificate is renewed, the renewal takes effect on the day the renewal is granted.

Note: The heading to amended section 33 is to read:

Licensee’s triennial certificate: late renewal after 12 months

47. Section 34 replaced

Delete section 34 and insert:

34. Conditions on licences and triennial certificates

- (1) It is a condition of every licence that the licensee must comply with the provisions of this Act and the code of conduct for agents.
- (2) It is a condition of every licence that the licensee must comply with any special condition to which the licensee's licence or triennial certificate is subject under section 34AA.

34AA. Imposing special conditions on licences or triennial certificates

- (1) In this section —
licensee includes an applicant for a licence.
- (2) The Commissioner may, at any time, impose a special condition on a licence or triennial certificate.
- (3) Before imposing a special condition on a licence or triennial certificate, the Commissioner must —
 - (a) give a licensee notice in writing setting out —
 - (i) that the Commissioner proposes to impose the special condition; and
 - (ii) the reasons for the proposed decision; and
 - (iii) that the licensee may make submissions to the Commissioner in relation to the proposed decision within the time specified in the notice;and

- (b) consider any submissions received under paragraph (a)(iii).
- (4) After making a decision under subsection (2), the Commissioner must —
 - (a) notify the licensee of the Commissioner's decision; and
 - (b) if the decision is to impose a special condition on the licence or triennial certificate, give the licensee notice in writing setting out —
 - (i) the reasons for the decision; and
 - (ii) that a person aggrieved by the Commissioner's decision may apply to the State Administrative Tribunal for a review of the decision under section 23.

34AB. Removing special conditions on licences or triennial certificates

- (1) The Commissioner may remove a special condition imposed on a licensee's licence or triennial certificate —
 - (a) at any time; or
 - (b) on application by the licensee.
- (2) If a licensee makes an application under subsection (1)(b), the Commissioner must, before deciding not to remove the special condition on the licensee's licence or triennial certificate —
 - (a) give the licensee notice in writing setting out —
 - (i) that the Commissioner proposes to make a decision not to remove the special condition; and
 - (ii) the reasons for the proposed decision; and

s. 48

- (iii) that the licensee may make submissions to the Commissioner in relation to the proposed decision within the time specified in the notice;
 - and
 - (b) consider any submissions received under paragraph (a)(iii).
- (3) After making a decision on an application by a licensee, the Commissioner must —
- (a) notify the licensee of the Commissioner's decision; and
 - (b) if the decision is to not remove the special condition, give the licensee notice in writing setting out —
 - (i) the reasons for the decision; and
 - (ii) that a person aggrieved by the Commissioner's decision may apply to the State Administrative Tribunal for a review of the decision under section 23.

48. Sections 34C and 34D inserted

After section 34B insert:

34C. Licensee may surrender licence and triennial certificate

A licensee may surrender the licensee's triennial certificate, or licence and triennial certificate held in respect of the licence, at any time.

34D. Firm or body corporate must surrender licence and triennial certificate in certain circumstances

- (1) This section applies to a licensee that is a firm or body corporate if paragraph (c) or (d) of section 28 or 29 (as is relevant) ceases to apply in relation to the licensee.
- (2) The licensee must, within 5 days after the day on which the paragraph ceased to apply to the licensee, surrender the licensee's licence and triennial certificate held in respect of the licence, unless the licensee is carrying on business under Schedule 1 clause 6.
- (3) If a licensee carries on business under Schedule 1 clause 6 then, at the end of the period referred to in that clause, the licensee must immediately surrender the licensee's licence and triennial certificate unless the licensee satisfies section 28(c) and (d) or section 29(c) and (d) (as is relevant).

49. Section 40B inserted

After section 40A insert:

40B. Licensee to comply with prescribed educational requirements

A licensee must comply with the educational requirements prescribed by the regulations.

Penalty: a fine of \$5 000.

50. Section 48 amended

Delete section 48(4) and (5) and insert:

- (4) The Commissioner must not renew a sales representative's certificate of registration unless the Commissioner is satisfied —
 - (a) of the matters in section 47(1)(b) and (c); and
 - (b) that the sales representative was employed by a licensee at the time of making the application or will be employed by a licensee upon the renewal of the certificate.

51. Section 50 replaced

Delete section 50 and insert:

50. Conditions on certificates of registration

- (1) It is a condition of every certificate of registration that the registered sales representative must comply with the provisions of this Act and the code of conduct for sales representatives.
- (2) It is a condition of every certificate of registration that the registered sales representative must comply with any special condition to which the sales representative's certificate of registration is subject under section 50AA.

50AA. Imposing special conditions on certificates of registration

- (1) In this section —
registered sales representative includes an applicant for a certificate of registration.

- (2) The Commissioner may, at any time, impose a special condition on a certificate of registration.
- (3) Before imposing a special condition on a certificate of registration, the Commissioner must —
 - (a) give a registered sales representative notice in writing setting out —
 - (i) that the Commissioner proposes to impose the special condition; and
 - (ii) the reasons for the proposed decision; and
 - (iii) that the registered sales representative may make submissions to the Commissioner in relation to the proposed decision within the time specified in the notice;and
 - (b) consider any submissions received under paragraph (a)(iii).
- (4) Subsection (3) does not apply if the special condition to be imposed on the certificate of registration restricts the type of work that may be performed under the certificate because the sales representative does not have a particular qualification that the sales representative is required to have under section 47(2) to perform the work.
- (5) After making a decision under subsection (2), the Commissioner must —
 - (a) notify the registered sales representative of the Commissioner's decision; and

- (b) if the decision is to impose a special condition on the certificate of registration, give the registered sales representative notice in writing setting out —
 - (i) the reasons for the decision; and
 - (ii) that a person aggrieved by the Commissioner's decision may apply to the State Administrative Tribunal for a review of the decision under section 23.

50AB. Removing special conditions on certificates of registration

- (1) The Commissioner may remove a special condition imposed on a registered sales representative's certificate of registration —
 - (a) at any time; or
 - (b) on application by the registered sales representative.
- (2) If a registered sales representative makes an application under subsection (1)(b), the Commissioner must, before deciding not to remove the special condition on the registered sales representative's certificate of registration —
 - (a) give the registered sales representative notice in writing setting out —
 - (i) that the Commissioner proposes to make a decision not to remove the special condition; and
 - (ii) the reasons for the proposed decision; and
 - (iii) that the registered sales representative may make submissions to the Commissioner in relation to the

- proposed decision within the time
specified in the notice;
- and
- (b) consider any submissions received under
paragraph (a)(iii).
- (3) After making a decision on an application by a
registered sales representative, the Commissioner
must —
- (a) notify the registered sales representative of the
Commissioner’s decision; and
- (b) if the decision is to not remove the special
condition, give the registered sales
representative notice in writing setting out —
- (i) the reasons for the decision; and
- (ii) that a person aggrieved by the
Commissioner’s decision may apply to
the State Administrative Tribunal for a
review of the decision under section 23.

52. Section 50C inserted

After section 50B insert:

**50C. Sales representative to comply with prescribed
educational requirements**

A sales representative must comply with the
educational requirements prescribed by the regulations.

Penalty: a fine of \$5 000.

53. Section 84 amended

In section 84(1) delete the Penalty and insert:

Penalty for this subsection:

- (a) in the case of an offence against section 68(4) or (5), a fine of \$25 000, or 2 years' imprisonment;
- (b) in the case of an offence against section 68B(1), a fine of \$50 000;
- (c) in any other case, a fine of \$25 000.

54. Section 100A amended

- (1) Delete section 100A(4).
- (2) In section 100A(7) delete "subsection (4)." and insert:

section 134A.

55. Section 102 amended

After section 102(6) insert:

- (7) Despite the surrender by a person of a licence or triennial certificate or a licensee ceasing to be licensed or to hold a triennial certificate —
 - (a) an allegation under subsection (1)(a) in respect of an agent may be made to the State Administrative Tribunal not later than 12 months after the day on which the licence or certificate was surrendered or the licensee ceased to be licensed or ceased holding the certificate; and

- (b) the State Administrative Tribunal may exercise the powers conferred by section 103, other than the power to suspend or cancel the agent's licence or certificate.

56. Section 103 amended

Delete section 103(2)(c)(iii) and insert:

- (iii) the code of conduct for agents;

57. Section 116 amended

Delete section 116(1) and (2A) and insert:

- (1) The Fidelity Account is to be held and applied to reimburse a person for the person's pecuniary or property loss to the extent of the defalcation of —
 - (a) a licensee during any period when the licensee was the holder of a current triennial certificate; or
 - (b) a person who ceased to be licensed or to hold a triennial certificate, if —
 - (i) the defalcation occurred during the period of 6 months immediately following the day on which the person ceased to be licensed or the holder of the triennial certificate; and
 - (ii) the chief executive officer considers that it is just and reasonable in the circumstances of the claim.

58. Section 131L amended

(1) Before section 131L(1) insert:

(1AA) In this section —

settlement has the meaning given in the *Settlement Agents Act 1981* section 3(1).

(2) In section 131L(1):

(a) after “date of” insert:

settlement of

(b) delete “prescribed form” and insert:

approved form

59. Section 134A amended

(1) In section 134A(1) delete “in relation to an application under section 24, 33, 43, 48 or 49” and insert:

to the Commissioner or the chief executive officer under this Act

(2) In section 134A(2):

(a) delete “in relation to an application referred to in subsection (1)” and insert:

to the Commissioner or the chief executive officer

(b) in paragraph (a) delete “in relation to an application”;

- (c) in paragraph (b) delete “made in relation to an application”;
- (d) in paragraph (c) delete “in relation to an application”.

60. Section 136A amended

In section 136A delete “licence or triennial certificate” and insert:

licence, triennial certificate or certificate of registration

61. Schedule 1 clause 1 amended

(1) In Schedule 1 delete clause 1(b) and insert:

- (b) who has, within the period of 5 years immediately preceding the application —
 - (i) held a licence, other than a licence held because the person was qualified only under paragraph (c) or (d), under this Act for at least 2 years; and
 - (ii) acted in the State as, and carried out the functions of, an agent for a period of at least 2 years, whether on the person’s own behalf or on behalf of a firm or body corporate;

or

- (ba) who has, within the period of 5 years immediately preceding the application —
 - (i) held for a period of at least 2 years a licence or similar authority under an approved corresponding enactment of a State or Territory to act as an agent or the approved equivalent, other than under a licence or authority held under that enactment only because the person was qualified under an

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equivalent provision in the enactment to paragraph (c) or (d); and

- (ii) acted as, and carried out the functions of, an agent or the approved equivalent for a period of at least 2 years in the State or Territory in which the licence or authority was held, whether on the person's own behalf or on behalf of a firm or body corporate;

or

62. Various penalties amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 26(1)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.
s. 39(3)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.
s. 44(1), (2) and (3)	Penalty: \$3 000.	Penalty for this subsection: a fine of \$25 000.
s. 45(1), (2) and (3)	Penalty: \$3 000.	Penalty for this subsection: a fine of \$25 000.
s. 46	\$2 000.	a fine of \$20 000.

Part 9 — *Residential Tenancies Act 1987* amended

63. Act amended

This Part amends the *Residential Tenancies Act 1987*.

64. Section 3 amended

In section 3 insert in alphabetical order:

common area —

- (a) means an area accessible to, or provided for the common use of, tenants; and
- (b) includes common property (as defined in the *Strata Titles Act 1985* section 3) of a strata scheme or survey strata scheme;

65. Section 22 amended

(1) Delete section 22(2) and insert:

- (2) A party to any proceedings may be represented or assisted by an agent in the presentation of the party's case if —
 - (a) the agent is authorised by the party to do so and is —
 - (i) the property manager of the premises the subject of the proceedings; or
 - (ii) employed or engaged by a non-profit association or similar body to act as an advocate for tenants or lessors in proceedings;
 - or
 - (b) the court makes an order under subsection (3C).

(2) In section 22(3A) after “authorisation” insert:

mentioned in subsection (2)(a)

(3) After section 22(3A) insert:

(3B) Without limiting how an agent representing or assisting a party under subsection (2)(a) may represent or assist the party, the agent may initiate proceedings on behalf of the party.

(3C) The court may order that a party to proceedings may be represented or assisted by an agent in the presentation of the party’s case if the court hearing the proceeding is satisfied that —

- (a) the party is unable to appear personally or conduct the proceedings on the party’s own behalf; and
- (b) another party to the proceedings will not be disadvantaged by the party being represented by, or assisted by, the agent.

66. Section 38 amended

In section 38(1)(c) delete “premises.” and insert:

premises or, where relevant, a common area or chattels in the common area.

67. Section 47 amended

- (1) Before section 47(1) insert:
- (1A) In this section —
disability means a disability —
- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments; and
 - (b) which is permanent or likely to be permanent; and
 - (c) which may or may not be of a chronic or episodic nature; and
 - (d) which results in a substantially reduced capacity of the person for communication, social interaction, learning or mobility.
- (2) In section 47(1) delete “subsection (4),” and insert:
subsections (2A) and (4),
- (3) After section 47(2) insert:
- (2A) It is a term of every residential tenancy agreement that —
- (a) a tenant may affix either or both of the following items to a wall of premises the subject of the agreement for the purpose of ensuring the safety of a child or a person with a disability, but only with the lessor’s consent —
 - (i) furniture;

- (ii) a thing to affix the furniture to the wall;
and
- (b) the lessor may only refuse consent —
 - (i) if affixing the item to the wall would disturb material containing asbestos; or
 - (ii) if the premises are entered in the Register of Heritage Places compiled under the *Heritage of Western Australia Act 1990* section 46; or
 - (iii) if the premises is a lot in a scheme under the *Strata Titles Act 1985*, the by-laws for the scheme prohibit affixing the item to the wall of the premises; or
 - (iv) for a prescribed reason;and
- (c) unless the lessor agrees otherwise in writing, the tenant must remove the item from the wall when the tenant vacates the premises and either —
 - (i) restore the wall to its original condition;
or
 - (ii) compensate the lessor for any reasonable expenses incurred by the lessor in doing that restoration;and
- (d) the cost of affixing the item to the wall, removing it and restoring the wall to its original condition must be borne by the tenant; and

- (e) if the tenant causes damage to the premises when affixing or removing the item or restoring the wall to its original condition —
 - (i) the tenant must notify the lessor in writing that damage has been caused to the premises; and
 - (ii) the lessor may require the tenant to repair the damage and restore the premises to their original condition or compensate the lessor for the reasonable expenses incurred in doing the repair and restoration.
- (2B) The lessor is taken to have consented to affixing the furniture or thing to the wall of the premises under subsection (2A)(a) if, and only if —
 - (a) the tenant has given the lessor a request, in a form approved by the Commissioner, seeking the lessor's consent to affix the item to the wall; and
 - (b) the lessor has not refused consent under subsection (2A)(b) within 14 days after the day on which the lessor receives the request.

68. Section 49A amended

- (1) In section 49A(1) insert in alphabetical order:

consumption, in relation to a public utility service, means consumption of the utility that is calculated by metered unit;

strata company has the meaning given in the *Strata Titles Act 1985* section 3(1).

- (2) In section 49A(1) in the definition of *public utility services* delete “3(1).” and insert:

3(1);

- (3) Delete section 49A(2) and insert:

- (2) It is a term of every residential tenancy agreement that subsections (3) to (5) are terms of the agreement if —
- (a) a public utility service is provided in relation to the premises the subject of the agreement; and
 - (b) the public utility service is provided under a contract between the provider of the public utility service and the lessor or a strata company.
- (3) The tenant must pay a charge for the provision of the service only if —
- (a) the charge is for the tenant’s consumption of the utility at the premises; and
 - (b) either —
 - (i) the tenant’s consumption of the utility is separately metered; or
 - (ii) although consumption at the premises is not separately metered, the charge is calculated in accordance with a method previously agreed to in writing by the lessor and the tenant;
- and
- (c) the lessor gives the tenant a written notice under subsection (4) within 30 days after the lessor receives an invoice for the public utility service.

- (4) The notice must be in writing and set out the full details of the account for the charge, including —
- (a) the total charge for the tenant's consumption of the utility; and
 - (b) if consumption at the premises is metered —
 - (i) the meter readings; and
 - (ii) the charge per metered unit;and
 - (c) if consumption at the premises is not metered — the charge calculated by the method agreed to under subsection (3)(b)(ii); and
 - (d) the amount of GST payable in respect of the provision of the service to the premises.
- (5) However, despite subsection (3)(c), if the tenancy ends within 30 days after the lessor receives an invoice for the public utility service, or the lessor receives the invoice after the tenancy has ended, the lessor —
- (a) is not required to give the written notice under subsection (4) within 30 days after the lessor receives the invoice; and
 - (b) may give the notice to the tenant (or former tenant) as soon as practicable after the lessor receives the notice and locates the tenant.

69. Section 73 amended

In section 73(1) delete “permit, serious damage to the premises or injury to the lessor or the property manager of the premises or any person in occupation of or permitted on adjacent premises.” and insert:

permit —

- (a) serious damage to the premises or, where relevant, a common area or chattels in the common area; or
- (b) injury to —
 - (i) the lessor; or
 - (ii) the property manager of the premises; or
 - (iii) any person in occupation of or permitted on adjacent premises.

70. Section 82B amended

(1) In section 82B delete “This” and insert:

(1) This

(2) After section 82B(1) insert:

- (2) This Part applies to a database operator, regardless of whether the database operator is inside or outside of the State, if the database operator operates a residential tenancy database containing personal information —
- (a) about a person who resides in the State; or
 - (b) relating to, or arising from, the occupation of residential premises under a residential tenancy agreement within the State.

71. Part 8 inserted

After section 97 insert:

**Part 8 — Transitional provision relating to the
Consumer Protection Legislation Amendment
Act 2019**

**98. Application of s. 49A to residential tenancy
agreements and utility charges**

(1) In this section —

commencement day means the day on which the
Consumer Protection Legislation Amendment Act 2019
section 68 comes into operation;

public utility services has the meaning given in the
Land Administration Act 1997 section 3(1).

(2) Subject to subsections (3) and (4), section 49A, as in
force on and after commencement day, applies to a
residential tenancy agreement (to the extent relevant)
even though it was entered into before commencement
day.

(3) If a tenant is provided with full details of an account
for a charge for a public utility service and the charge
was not paid in full before commencement day,
section 49A, as in force immediately before
commencement day continues to apply to the payment
of the charge.

(4) If, before commencement day, a lessor or strata
company received a notice of account in relation to a
public utility service and the lessor or strata company
has not given the tenant full details of the account for
the charge, the 30 day requirement in section 49A(3)(c)
does not apply.

Part 10 — Settlement Agents Act 1981 amended

72. Act amended

This Part amends the *Settlement Agents Act 1981*.

73. Section 4 amended

In section 4(2) delete “section 34(2)(a) and (b),” and insert:

section 34AA(3),

74. Section 26 amended

After section 26(2) insert:

- (3) For subsection (1), a person is taken not to be licensed or holding a current triennial certificate in respect of the licence if the person is required to surrender a licence and triennial certificate under section 34D(2) and (3).

75. Section 27 amended

In section 27(1):

- (a) delete “a person, not being a body corporate,” and insert:

an individual

- (b) delete “that — ” and insert:

that the individual —

- (c) in paragraphs (a) to (c) delete “he”.
- (d) in paragraph (c) delete “to him to enable him” and insert:

to enable them

- (e) in paragraphs (d) and (e) delete “he”.

Note: The heading to amended section 27 is to read:

Licensing of individuals

76. Section 30 amended

Delete section 30(4) and (5).

77. Section 31 amended

- (1) In section 31(2)(a) delete “a person other than a body corporate; or” and insert:

an individual; or

- (2) Delete section 31(2A) and insert:

(2A) The Commissioner must not renew a licensee’s triennial certificate unless the Commissioner is satisfied of the matters in —

- (a) for an individual — section 27(1)(b), (c), (d) and (e); or
- (b) for a firm — section 28(1)(a), (b), (c) and (d); or
- (c) for a body corporate — section 29(1)(a), (b), (c) and (d).

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(3) Delete section 31(3)(a) and insert:

- (a) if the licensee is an individual, the individual;
or

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

Licensee's triennial certificate: grant and renewal

78. Section 32 amended

(1) In section 32(1):

- (a) delete "Where a" and insert:

If a licensee's

- (b) delete "expired, the renewal shall be deemed to take effect for the period of 3 years" and insert:

expired or was surrendered, the renewal takes effect

- (c) delete "expired." and insert:

expired or was surrendered.

(2) Delete section 32(2) and insert:

- (2) If a licensee's triennial certificate is renewed more than 1 month but not more than 12 months after the day on which the triennial certificate expired or was surrendered, the renewal takes effect —

- (a) if the Commissioner is satisfied that there is reasonable cause for the renewal to take effect on and from the day after the day on which the

- triennial certificate expired or was
surrendered — on that day; or
- (b) otherwise — on the day the renewal is granted.

Note: The heading to amended section 32 is to read:

Licensee's triennial certificate: late renewal

79. Section 33 amended

- (1) Delete section 33(1) and insert:

- (1) This section applies if —
- (a) a licensee's triennial certificate expires or was
surrendered; and
- (b) the licensee applies to renew the certificate
more than 12 months after the day on which the
triennial certificate expired or was surrendered.

- (2) In section 33(2) delete "The application shall" and insert:

The application for renewal must

- (3) In section 33(4) delete "applicant shall" and insert:

licensee must

- (4) In section 33(5) delete "applicant" and insert:

licensee

(5) After section 33(5) insert:

(6) If the triennial certificate is renewed, the renewal takes effect on the day the renewal is granted.

Note: The heading to amended section 33 is to read:

Licensee's triennial certificate: late renewal after 12 months

80. Section 34 replaced

Delete section 34 and insert:

34. Conditions on licences and triennial certificates

- (1) It is a condition of every licence that the licensee must comply with the provisions of this Act and the settlement agents' code of conduct.
- (2) It is a condition of every licence that the licensee must comply with any special condition to which the licensee's licence or triennial certificate is subject under section 34AA.

34AA. Imposing special conditions on licences or triennial certificates

- (1) In this section —
licensee includes an applicant for a licence.
- (2) The Commissioner may, at any time, impose a special condition on a licence or triennial certificate.
- (3) Without limiting subsection (2), the Commissioner may impose a condition that relates to —
 - (a) the holding of a policy of indemnity insurance or fidelity insurance in a specified amount; or

- (b) the payment of fees under this Act or to contributions to the Account and may vary such prescribed fees or contributions.
- (4) Before imposing a special condition on a licence or triennial certificate, the Commissioner must —
- (a) give a licensee notice in writing setting out —
 - (i) that the Commissioner proposes to impose the special condition; and
 - (ii) the reasons for the proposed decision; and
 - (iii) that the licensee may make submissions to the Commissioner in relation to the proposed decision within the time specified in the notice;and
 - (b) consider any submissions received under paragraph (a)(iii).
- (5) After making a decision under subsection (2), the Commissioner must —
- (a) notify the licensee of the Commissioner's decision; and
 - (b) if the decision is to impose the special condition, give the licensee notice in writing setting out —
 - (i) the reasons for the decision; and
 - (ii) that a person aggrieved by the Commissioner's decision may apply to the State Administrative Tribunal for a review of the decision under section 23.

34AB. Removing special conditions on licences or triennial certificates

- (1) The Commissioner may remove a special condition imposed on a licensee's licence or triennial certificate —
 - (a) at any time; or
 - (b) on application by the licensee.
- (2) If the licensee applies under subsection (1)(b), the Commissioner must, before deciding not to remove the special condition on the licensee's licence or triennial certificate —
 - (a) give the licensee notice in writing setting out —
 - (i) that the Commissioner proposes to make a decision not to remove the special condition; and
 - (ii) the reasons for the proposed decision; and
 - (iii) that the licensee may make submissions to the Commissioner in relation to the proposed decision within the time specified in the notice;and
 - (b) consider any submissions received under paragraph (a)(iii).
- (3) After making a decision on an application by a licensee, the Commissioner must —
 - (a) notify the licensee of the Commissioner's decision; and
 - (b) if the decision is to not remove the special condition, give the licensee notice in writing setting out —
 - (i) the reasons for the decision; and

- (ii) that a person aggrieved by the Commissioner's decision may apply to the State Administrative Tribunal for a review of the decision under section 23.

81. Sections 34C and 34D inserted

After section 34B insert:

34C. Licensee may surrender licence and triennial certificate

A licensee may surrender the licensee's triennial certificate, or licence and triennial certificate held in respect of the licence, at any time.

34D. Firm or body corporate must surrender licence and triennial certificate in certain circumstances

- (1) This section applies to a licensee that is a firm or body corporate if paragraph (c) or (d) of section 28(1) or 29(1) (as is relevant) ceases to apply in relation to the licensee.
- (2) The licensee must, within 5 days after the day on which the paragraph ceased to apply to the licensee, surrender the licensee's licence and triennial certificate held in respect of the licence, unless the licensee is carrying on business under Schedule 1 clause 10.
- (3) If a licensee carries on business under Schedule 1 clause 10 then, at the end of the period referred to in that clause, the licensee must immediately surrender the licensee's licence and triennial certificate unless the licensee satisfies section 28(1)(c) and (d) or section 29(1)(c) and (d) (as is relevant).

82. Section 41B inserted

After section 41A insert:

41B. Licensee to comply with prescribed educational requirements

A licensee must comply with the educational requirements prescribed by the regulations.

Penalty: a fine of \$5 000.

83. Section 65 amended

In section 65(1) delete the Penalty and insert:

Penalty for this subsection:

- (a) in the case of an offence against section 49(4) or (5), a fine of \$25 000, or 2 years' imprisonment;
- (b) in the case of an offence against section 49B(1), a fine of \$50 000;
- (c) in any other case, a fine of \$25 000.

84. Section 81A amended

- (1) Delete section 81A(4).
- (2) In section 81A(7) delete "subsection (4)." and insert:

section 111A.

85. Section 83 amended

- (1) In section 83 delete “The” and insert:
 - (1) The
- (2) At the end of section 83 insert:
 - (2) Despite the surrender by a person of a licence or triennial certificate or a licensee ceasing to be licensed or to hold a triennial certificate —
 - (a) an allegation under subsection (1) in respect of a person may be made to the State Administrative Tribunal not later than 12 months after the day on which the licence or certificate was surrendered or the licensee ceased to be licensed or ceased holding the certificate; and
 - (b) the State Administrative Tribunal may exercise the powers conferred by section 84, other than the power to suspend or cancel the person’s licence or certificate.

86. Section 93 amended

Delete section 93(1) and (2A) and insert:

- (1) The Account is to be held and applied to reimburse a person for the person’s pecuniary or property loss to the extent of the defalcation of —
 - (a) a licensee during any period when the licensee was the holder of a current triennial certificate;
or

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- (b) a person who ceased to be the holder of a licence or triennial certificate, if —
 - (i) the defalcation occurred during the period of 6 months immediately following the day on which the person ceased to be licensed or the holder of the triennial certificate; and
 - (ii) the chief executive officer considers that it is just and reasonable in the circumstances of the claim.

87. Section 111A amended

- (1) In section 111A(1) delete “in relation to an application under section 24, 26A, 26B, 31 or 33” and insert:

to the Commissioner or the chief executive officer under this Act

- (2) In section 111A(2):

- (a) delete “in relation to an application referred to in subsection (1)” and insert:

to the Commissioner or the chief executive officer

- (b) in paragraph (a) delete “in relation to an application”;
- (c) in paragraph (b) delete “made in relation to an application”;
- (d) in paragraph (c) delete “in relation to an application”.

88. Various penalties amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 26(1)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.
s. 40(3)	Penalty: \$20 000.	Penalty for this subsection: a fine of \$100 000.

**Part 11 — *Street Collections (Regulation) Act 1940*
amended**

89. Act amended

This Part amends the *Street Collections (Regulation) Act 1940*.

90. Section 2 amended

- (1) In section 2 delete the definition of *Metropolitan area*.
- (2) In section 2 insert in alphabetical order:

metropolitan region has the meaning given by the
Planning and Development Act 2005 section 4(1);

- (3) In section 2 in the definition of *Collection* delete
“contributions.” and insert:

contributions;

91. Section 3 amended

- (1) In section 3(1) delete “area” and insert:

region

- (2) At the end of section 3(1) insert:

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

Note: The heading to amended section 3 is to read:

**No collection in metropolitan region except by permission of
Minister**

92. Section 6 amended

At the end of section 6 insert:

Penalty: a fine of \$5 000.

93. Section 7 amended

In section 7(2) delete “\$40” and insert:

a fine of \$2 000

94. Section 8 deleted

Delete section 8.

