



NSW Legislative Council Hansard

Commercial Agents and Private Inquiry Agents Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 21 September 2004.

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [5.40 p.m.]: I move:

That this bill be now read a second time.

I would initially like to add to the Minister's second reading speech in the other place to clarify some minor issues identified since then. In relation to who is required to obtain a licence under the bill, I make it clear that the intent of the bill was to ensure that the exemptions under the Commercial Agents and Private Inquiry Agents Act remain in place, with the exception of one that relates to hire purchase arrangements. Those exempt include police and other public servants of New South Wales and the Commonwealth, lawyers, company auditors, people who are employed by insurance companies and insurance loss adjusters and their agents and banking employees.

As it currently stands, schedule 1 to the bill provides exemptions for any insurance company registered under the Insurance Act 1973 of the Commonwealth, any person carrying on the business of an insurance loss adjuster on behalf of an insurance company so registered and any employee of any such insurance company or of any person carrying on any such business, and any officer or employee of an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.

To give effect to the intent of the bill to preserve the existing exemptions, I assure the House that the reference to "registered" in schedule 1 refers to the authorisation of insurers under the Insurance Act 1973 of the Commonwealth and the reference to "any person carrying on the business of an insurance loss adjuster on behalf of an insurance company ... any employee of any such insurance company or of any person carrying on any such business" and "any officer or employee of an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth" includes a reference to agents.

I return now to the speech given by my colleague the Minister for Police in another place. The Government is pleased to introduce the Commercial Agents and Private Inquiry Agents Bill. This bill is based on the national competition policy review final report into the Commercial Agents and Private Inquiry Agents Act 1963, which was released in November 2003. The report made significant recommendations, many of which have been included in this bill. Members are well aware that the national competition policy reform program aims to promote and maintain competition in order to increase economic efficiency and community welfare while continuing to provide for consumer protection. The review considered these principles in examining the objective of government regulation of commercial agents and private inquiry agents, as well as whether regulatory intervention is still justified; the impact of the current legislation on competition within the industry and the costs and benefits of the legislation; and whether the Government's objectives can be met by any less restrictive mechanisms.

The Commercial Agents and Private Inquiry Agents Act 1963 commenced operation on 1 July 1963. The Act establishes the regulatory framework for commercial agents and private inquiry agents. Prior to 1963 only private inquiry agents were subject to a licensing regime. In 1985 the Commercial Agents and Private Inquiry Agents Act 1963 was amended to remove security agents from the definition of "private inquiry agent" and place them under separate legislation. This legislation has remained substantially unchanged since 1985. Licences for commercial and private inquiry agents have previously been issued

by Local Courts after consulting with police. This will no longer be the case. Police will now administer the licensing of commercial and private inquiry agents. In New South Wales approximately 3,000 licences are issued to agents and subagents. The objectives of the bill are to protect the public in relation to private agent activities such as process servers, debt collectors and those engaged in repossession of goods, surveillance of persons and investigation of persons.

The bill will also provide for the licensing of persons carrying out, and persons carrying on, business in relation to commercial and private inquiry agent activities; establish standards to be observed by licensees in relation to their activities, as well as ensure that licensees are accountable for their acts and omissions; and repeal the Commercial Agents and Private Inquiry Agents Act 1963. Licences will now be issued by NSW Police for business owners, master licences and employees of such operative licences who undertake commercial agent or private inquiry agent activities. These are defined in clause 4 as activities that involve acting as an agent for another person or company by providing services of debt collection, process serving, repossession of goods, investigation of persons, or surveillance of persons, unless specifically exempt. Exemptions from the requirement to be licensed are essentially the same as in the 1963 Act to include police and other public servants of New South Wales and the Commonwealth, lawyers, company auditors, persons who are employed by insurance companies and insurance loss adjusters, and bank employees.

This legislation is not intended to cover all persons who undertake such activities, only agents who do so on behalf of others for a fee. The licensing system also specifically provides for a probationary licence for newly licensed operators. The bill sets out the classes of persons who are ineligible for a licence, including persons convicted of specified offences, non-citizens who are prohibited from engaging in employment in Australia, and persons who do not have appropriate experience or are unqualified or untrained. Specific provisions for debt collectors are also included in order to regulate record keeping and the collection and distribution of moneys collected by these agents. The provisions contained in schedule 2 to the bill that deal with trust accounts, record keeping and receivership in relation to debt collection are based on similar provisions in the Property, Stock and Business Agents Act 2002.

The bill also provides that discretionary licensing determinations are reviewable by the Administrative Decisions Tribunal and that a register of licence holders is to be kept by the Commissioner of Police and accessible by the public. The bill also makes it an offence to employ unlicensed and non-eligible persons, harass persons in the collection of debts from them, fail to produce a licence on request by an authorised officer or a person with whom the licensee is dealing, and obstruct authorised officers in the carrying out of their duties. The bill provides powers for authorised officers to obtain documents relating to the activities of the business, enter licensees' business premises under strict circumstances and provisions that enable search warrants to be obtained. There are also important consumer protection measures contained in the bill that provide that licence holders must display and provide licences so that the consumer is aware of the bona fides of the agent. I commend the bill to the House.