

Fair Trading Amendment (Commercial Agents) Bill 2016

Second Reading

The Hon. CATHERINE CUSACK (20:02): On behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

I am pleased to introduce the Fair Trading Amendment (Commercial Agents) Bill 2016.

This bill repeals the Commercial Agents and Private Inquiry Agents Act 2004 and provides for the transfer of responsibility for regulation of commercial agents in New South Wales to NSW Fair Trading. The bill also introduces a less costly and burdensome regulatory regime for this occupation.

The current Commercial Agents and Private Inquiry Agents Act 2004 [CAPI Act] provides for the licensing of commercial agents and private inquiry agents in New South Wales. The NSW Police Force currently has responsibility for issuing licences and enforcing the Act.

The Act defines commercial agent activity as debt collection, process serving and repossession of goods. Private inquiry agent activity is defined as investigation or surveillance of people.

Under the Act, a commercial agent or private inquiry agent business operator must hold a master licence and employees must hold an operator licence. Licensees must undertake prescribed training, be fingerprinted and considered a "fit and proper" person.

In 2014, the Legislative Assembly Legal Affairs Committee of this House conducted an inquiry into debt recovery in New South Wales. The committee found that the existing licensing system imposes unnecessary costs and delays and is out of step with the modern debt collection industry.

On 11 February 2016, on the basis of evidence about the low level of risk posed by face-to-face agents and the small numbers of such agents, the New South Wales Government agreed to the introduction of a negative licensing system for all commercial agents.

In today's industry, around 80 per cent of debt collectors work in call centres and have no face-to-face contact with debtors. The committee also noted that the debt collection industry is also subject to a range of other laws which provide protection to consumers. These include the Australian Consumer Law, the Australian Securities and Investment Commission Act 2001 [ASIC Act] and the National Consumer Credit Protection Act 2009.

Under the Australian Consumer Law and the ASIC Act, commercial agents undertaking debt collection are prohibited from engaging in deceptive or misleading conduct, unconscionable conduct, and physical force, undue harassment or coercion.

The National Consumer Credit Protection Act 2009 requires commercial agents who collect debts arising out of consumer credit and who own the debt, including debts bought from another

person, to obtain an Australian credit licence and comply with the Act's requirements in relation to training, standards of conduct, an internal dispute resolution procedure, and membership of an external dispute resolution scheme. Approximately 75 per cent of the debt collection market relates to consumer credit and much of the rest of the market relates to utility debts.

The telecommunications, energy and water industries have codes of conduct that cover complaint procedures and debt collection practices, and belong to external dispute resolution schemes such as the Telecommunications Industry Ombudsman or the Energy and Water Ombudsman. Industry members are required to comply with these codes in addition to conduct requirements under the ACL and ASIC Act.

The committee recommended that the New South Wales Government introduce a "negative licensing" scheme for commercial agents who have no face-to-face contact with debtors, while retaining "positive licensing" for commercial agents who do have face-to-face contact, often called "field agents".

A negative licensing scheme means that a person does not need a licence to work in an industry but they can be excluded from the industry on specified grounds prescribed by legislation. This contrasts with the existing positive licensing scheme which prohibits participants from working in the industry unless they hold a licence issued by the regulatory authority.

The committee also recommended that responsibility for commercial agents and private inquiry agents be transferred from the NSW Police Force to NSW Fair Trading. The Government agrees that NSW Fair Trading is best placed to regulate commercial agents. However, it considers that responsibility for private inquiry agents should remain with the NSW Police Force, in view of the greater risks posed to the public by the intrusive nature of such agents' activities.

On 4 August, my colleague the Deputy Premier, Minister for Justice and Police, Minister for the Arts, and Minister for Racing, introduced in this House the Security Industry Amendment (Private Investigators) Bill 2016. That bill removes the regulation of private inquiry agents or private investigators, as they are called, from the Commercial Agents and Private Inquiry Agents Act, and includes them as a class of licence under the Security Industry Act.

This bill will repeal the Commercial Agents and Private Inquiry Agents Act and insert a new section within the Fair Trading Act 1987 for the purpose of introducing a negative licensing system for approximately 2,000 licensed commercial agents in New South Wales.

In relation to field agents, the Government considers that, given the small number of commercial agents who undertake face-to-face work in New South Wales, estimated at around 200-300, and the very small number of complaints and evidence of misconduct from such agents, a positive licensing system for face-to-face agents would place unnecessary costs and regulatory burden on the commercial agent industry and on government.

In its evidence to the committee, the NSW Police Force stated that it views the commercial agent industry as having a low risk profile suitable for negative licensing.

The bill provides that it is an offence for a person to carry out commercial agent activity if the person is a disqualified person. A disqualified person is someone who is:

- under 18
- an undischarged bankrupt or taking advantage of bankruptcy laws
- a corporation that is subject to a winding up order or for which a controller or administrator has been appointed
- a person who has been convicted in the last five years of an offence involving violence, fraud, drugs or dishonesty, punishable by imprisonment for three months or more
- a person who has been convicted of a breach of provisions prohibiting harassment and coercion in the Australian Consumer Law or the ASIC Act
- a person who has been convicted of any other offence declared by the regulations to be a disqualifying offence
- a person who is the subject of an exclusion order prohibiting them from acting as a commercial agent or
- a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

Harsh new penalties for operating as a commercial agent or operating a commercial agent business will also be introduced. Fines of up to \$110,000 in the case of a corporation or \$22,000 or imprisonment for 12 months, or both in the case of an individual will apply. These new penalties will ensure that there is a strong deterrence for non-compliance.

The bill allows the Commissioner for Fair Trading to require a person who has contravened the Act or the rules of conduct to show cause why they should not be prohibited from carrying out commercial agent activities. After considering any submissions made by the person, the commissioner may make an order prohibiting the person from acting as a commercial agent or imposing conditions, restrictions or limitations on the person's ability to act as a commercial agent.

The commissioner may publicly notify the making of an exclusion order against a person, and the commissioner's decision to impose an order is subject to administrative review.

The bill allows the regulations to prescribe rules of conduct for the commercial agents, including prohibiting certain practices. These rules may deal with, among other things, matters such as:

- prohibited practices such as use of physical force, harassment, coercion, misrepresentation, threats, illegal entry to premises, impersonating a government employee or exposing a person to ridicule
- the keeping of records
- provision of information to the commissioner

- handling of complaints
- advertising or
- employment of disqualified persons.

Commercial agents must comply with any rules of conduct and each director of a corporation must take all reasonable steps to ensure that the corporation complies with the rules.

The New South Wales Government is committed to the reduction of red tape, while also ensuring the protection of consumers. This bill will ensure that private investigators continue to be licensed by the NSW Police Force, while commercial agents are subject to a less costly regulatory regime which is appropriate for modern debt collection practices.

It is intended that, once regulations are prepared and in place, this bill and the Security Industry Amendment (Private Investigators) Bill 2016 will commence together in 2017.

I commend the bill to the House.