



New South Wales

Fair Trading Amendment (Commercial Agents) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to repeal the *Commercial Agents and Private Inquiry Agents Act 2004* so that persons who carry out **commercial agent activities** (being debt collection, repossession and process serving) are no longer required to hold a licence, and
- (b) to amend the *Fair Trading Act 1987* to provide for a negative licensing scheme that permits anyone other than certain disqualified persons to carry out commercial agent activities.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 repeals the *Commercial Agents and Private Inquiry Agents Act 2004* and the regulations under that Act.

Schedule 1 Amendment of Fair Trading Act 1987 No 68

Schedule 1 [1] inserts proposed Part 5 into the *Fair Trading Act 1987* (the **principal Act**), which comprises proposed sections 59–60F.

Proposed section 59 sets out a number of definitions used in the proposed Part.

Proposed section 60 sets out the activities that are commercial agent activities, being debt collection, process serving and the repossession of goods and sets out the circumstances in which corporations and directors of corporations are taken to have carried out commercial agent activities.

Proposed section 60A sets out the persons who are disqualified persons.

Proposed section 60B creates offences (with a maximum penalty of \$110,000 in the case of a corporation or \$22,000 or imprisonment for 12 months, or both, in the case of an individual) if a person who is a disqualified person carries out a commercial agent activity or if a corporation, that has a director who is a disqualified person, carries out a commercial agent activity.

Proposed section 60C provides that the Secretary (being the Commissioner for Fair Trading, Department of Finance, Services and Innovation or if there is no person employed as Commissioner for Fair Trading—the Secretary of that Department) may give a person a show cause notice if the Secretary is of the opinion that the person carried out a commercial agent activity in contravention of the principal Act or the commercial agent rules. A show cause notice requires the person to show cause why the person should not be prohibited from carrying out commercial agent activities.

Proposed section 60D provides that the Secretary may, after giving a show cause notice to a person and taking into consideration any submissions made in relation to the matter, make an exclusion order or a restriction order. An exclusion order prohibits the person from carrying out commercial agent activities. A restriction order places conditions, restrictions or limitations on the person in relation to the carrying out of commercial agent activities. A person who is subject to an order can apply for an administrative review of the decision to make the order. Failure to comply with a restriction order is an offence with a maximum penalty of \$110,000 in the case of a corporation or \$22,000 or imprisonment for 12 months, or both in the case of an individual (failure to comply with an exclusion order is an offence under proposed section 60B).

Proposed section 60E permits the regulations under the principal Act to prescribe rules of conduct for the carrying out of commercial agent activities including by prohibiting certain practices. It is an offence (with a maximum penalty of \$11,000 in the case of a corporation or \$5,500 in the case of an individual) if a person fails to comply with the commercial agent rules when carrying out a commercial agent activity or if a director of a corporation fails to take all reasonable steps to ensure that the corporation complies with the commercial agent rules when carrying out a commercial agent activity.

Proposed section 60F provides that proposed Part 5 does not apply to certain persons including police officers, government employees, legal practitioners, company auditors and employees of insurance companies and financial institutions.

Schedule 1 [2] inserts savings and transitional provisions consequent on the repeal of the *Commercial Agents and Private Inquiry Agents Act 2004* (the *CAPI Act*). Those provisions provide that no compensation is payable by the Crown because of the enactment and operation of the proposed Act, the repeal of the CAPI Act and the deregulation of the commercial agent industry. Those provisions also provide for a refund of a proportion of commercial agent licence fees, the withdrawal of applications and appeals under the CAPI Act, dealing with unclaimed trust money that has been notified to the Commissioner of Police and the circumstances in which persons (whose licences under the CAPI Act have been cancelled or suspended) will be taken to be disqualified persons.

Schedule 2 Amendment of other Acts

Schedule 2 amends a number of Acts consequential on the repeal of the *Commercial Agents and Private Inquiry Agents Act 2004*.