

PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT BILL 2012

Page: 16831
14 November 2012

Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.

Second Reading

Mr ANTHONY ROBERTS (Lane Cove—Minister for Fair Trading) [11.30 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Property, Stock and Business Agents Amendment Bill 2012. This bill is part of the Government's continued response to reducing red tape for small businesses in New South Wales. It follows a statutory review of the Property, Stock and Business Agents Act 2002 in 2007 and 2008. The review found that, while the Act was working well to achieve its objectives, a number of improvements could be made, particularly with a view to clarifying parts of the legislation and removing red tape for agents. The Property, Stock and Business Agents Amendment Bill 2012 aims to remove red tape while ensuring at the same time that consumer protection is not compromised.

The legislative amendments contained in the bill will clarify the legislation and reduce complexity for real estate agents, particularly in relation to their handling of trust accounts. Appropriate consumer protection safeguards will be retained and compliance costs reduced. This bill has been subject to considerable stakeholder consultation, with an exposure draft bill publicly released on 30 August 2012 for four weeks. I am pleased to report that the amendments contained in the bill received strong support from the majority of key stakeholders, including the Real Estate Institute of New South Wales, the Estate Agents Co-operative Limited, the Australian Livestock and Property Agents Association, the Australian Resident Accommodation Managers Association, and the Institute of Chartered Accountants in Australia. I now turn to the provisions of the bill.

Reform in the bill in relation to the handling of unclaimed trust money will assist consumers who will now have a one-stop shop for identifying and claiming their unclaimed trust money in New South Wales through the Office of State Revenue. A number of the amendments will enable compliance and investigative resources to be better targeted towards areas of highest risk. This bill makes good on this Government's commitment to reduce red tape and allow small businesses to operate efficiently. The bill amends the Property, Stock and Business Agents Act to give a court or tribunal the ability to allow commission or expenses to be paid to a real estate agent if the court or tribunal determines that a breach of the agency agreement requirements in the regulations is only minor. However, before any payment is authorised, the court or tribunal must first be satisfied no loss has been suffered by the consumer as a result of the breach, and that failure to make such an order to do so would be unjust.

For example, the regulations require a consumer warning to be placed in a certain position in the agency agreement. If the warning is placed anywhere else in the agreement the consumer

can refuse to pay any commission or expenses to the real estate agent for work the agent has performed in good faith—often worth thousands of dollars. This amendment addresses an anomaly where the court or tribunal does not have any discretion to award commission or expenses to an agent for work that has been performed properly in good faith if the agency agreement has a minor inconsequential error. This amendment provides a workable balance between the needs of the consumer and the real estate agent, while providing appropriate safeguards. The bill broadens the qualifications of auditors who conduct annual audits of real estate agents' trust accounts. The amendment allows for the broadening of qualifications for auditors to include audit companies and members of professional accounting bodies such as CPA Australia and the Institute of Chartered Accountants, so long as a Certificate of Public Practice is held with one or more of these bodies.

This amendment will provide particular relief for those agents in rural and regional areas of New South Wales who have found it difficult to engage a person to audit their trust accounts. This amendment will reduce red tape by reducing the need for agents to seek exemptions from NSW Fair Trading due to their inability to find an auditor in their area. It will free up Fair Trading compliance resources from considering exemption applications and allow them to focus on addressing compliance issues on the ground. The regulatory burden placed on agents caused by the general lack of auditors, particularly in rural and regional areas of the State, will be substantively reduced. The amendments proposed in this bill go even further towards freeing up real estate agents in this State.

The bill abolishes the current requirement for a licensee to lodge a separate statutory declaration with Fair Trading if the licensee did not hold or receive trust money during the audit year. This amendment will free up the majority of employed licensees who do not operate a trust account from this time-consuming task. The bill further clarifies that licensees who held or received trust money during the financial year will only be required to lodge an audit report with Fair Trading if it is qualified in any way by the auditor. However, licensees will be required to keep a copy of all audit reports for a period of three years so that they can be inspected by Fair Trading if required. The reports must be kept on business premises to allow for ease of inspection.

The bill defines the term "qualified audit report" for the purposes of the amendment. Consistent with the current definition under the Act, a report is qualified if the auditor discovers that any breach of the Act or the regulations has been committed, that there is any discrepancy in the trust account, or that the records or documents concerned are not kept in such a manner as to enable them to be audited properly. These amendments will remove red tape for real estate agents, who presently have to meet tight administrative deadlines for submission of audit reports to Fair Trading. To ensure compliance with the new requirement regarding submission of qualified audit reports, both the licensee and the auditor will be required to submit a copy of the report to Fair Trading.

To further support these amendments, the bill also gives the Commissioner for Fair Trading the power to order random audits of trust accounts. This amendment will provide additional

compliance powers for inspectors so the Government can safeguard protections for trust accounts and consumers; it will also allow Fair Trading to conduct concentrated targeted audit compliance inspection programs when required. The bill creates, for the first time, an offence provision under the Act for an auditor failing to notify Fair Trading of any discrepancy relating to the trust account to which an audit relates or that the records or documents are not kept in a manner enabling them to be audited properly. This amendment corrects an anomaly in the present legislation that has an offence provision for an agent failing to notify Fair Trading of such discrepancies, but not for the auditor, whose primary responsibility was the annual auditing of the trust account records.

The bill will require licensees to notify the Commissioner for Fair Trading in writing formally each time they open or close a trust account at an authorised deposit-taking institution—for example, a bank or a building society. These amendments will ensure that Fair Trading has better records of all trust accounts operated by agents and that it can check the records it receives from the financial institutions. This will also ensure that financial institutions have remitted the appropriate interest amounts from the trust accounts to the Statutory Interest Account, which is administered under the Act. This is important, as the funds accrued in the Statutory Interest Account are used for funding compliance efforts and other essential tasks associated with administering this legislation. The amendments seek to formalise an informal procedure that has been used by many real estate agents over many years, and the new procedures will be taken up readily by licensees.

As I mentioned on earlier, the bill amends the Property, Stock and Business Agents Act so that unclaimed trust money will now be dealt with by the NSW Office of State Revenue under the Unclaimed Money Act 1995. The bill makes consequential amendments to that Act to enable this to be achieved. The amendments bring the handling of unclaimed trust money into line with how unclaimed money held by other enterprises in New South Wales is dealt with by the NSW Office of State Revenue. Consumers will be able to search the dedicated website of the Office of State Revenue to locate details of unclaimed trust money and will be able to claim it directly from that office. Consumers will have up to six years to lodge claims for the return of any unclaimed money.

It is important to note that this amendment, while cutting red tape and making it easier for consumers to locate their unclaimed trust money, still retains protection for those consumers. The bill retains some current requirements relating to the handling of unclaimed trust money by agents. These requirements include that amounts under \$100, normally not dealt with by the Office of State Revenue, will still be regarded as unclaimed money and agents will be required to lodge the money. Agents will therefore not be able to obtain windfall profits from these amounts, but will still be able to clear their trust accounts of this money. In addition, trust money unclaimed for more than two years will still be regarded as unclaimed money for the purposes of the legislation.

To further cut red tape for licensees, the lodgement period for the unclaimed money declaration will be changed from the calendar year to the financial year, which will enable

licensees to fulfil all of their financial reporting responsibilities at the same time. In addition, licensees will now be able to lodge the unclaimed money in their accounts at the same time they lodge their declaration, which will remove the worry and administrative burden from them. Finally, the bill clarifies the present position in the Act that holders of certificates of registration under the Act can conduct stock auctions under the immediate and direct supervision of the holder of an appropriate stock and station agent's licence who need not be their employer.

The Act presently requires a certificate of registration holder to conduct stock auctions under the immediate supervision of their employer, the licensee in charge of their office. This is not always practical in a large office given the other pressing responsibilities of the licensee in charge. The amendment clarifies that a certificate holder employed by a stock and station agent can conduct stock auctions under the immediate supervision of a licensee who need not be their licensee in charge or their employer. However, the supervising licensee must have their licence endorsed as a stock auctioneer. This amendment will ensure that certificate holders will be able to obtain much-needed experience in this most demanding of fields, while ensuring at the same time that consumers are protected through proper supervision of their conduct.

This amendment is supported by the Australian Livestock and Property Agents Association. Importantly, the majority of the bill will commence on assent, meaning that licensees can gain the benefits outlined in the bill as soon as the Act commences. Fair Trading will work with the Office of State Revenue to ensure a smooth transition to the new unclaimed monies provisions, and will provide further advice to industry on the practical impacts of this change. This is important amending legislation. I commend the bill to the House.

Debated adjourned on motion by Ms Tania Mihailuk and set down as an order of the day for a future day.