



# Submission

## Property, Stock and Business Agents Amendment Bill

To:

The Hon. Anthony Roberts MP  
Minister for Fair Trading  
Level 36 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

## ***Introduction***

The Real Estate Institute of New South Wales (**REINSW** or the **Institute**) submission is in response to the draft Property, Stock and Business Agents Amendment Bill (the **Bill**).

The REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. The REINSW seeks to promote the interest of members and the property sector on property related issues, and in doing so the REINSW has a substantial role in the formation of regulatory policy in New South Wales.

The REINSW appreciates the opportunity to lodge this submission and welcomes discussion of the issues raised by this submission with the Minister and/or policy officers from NSW Fair Trading.

## ***Comments on the draft Bill***

The Institute is generally supportive of the proposed amendments, subject to the several comments below.

### **Section 11**

The authorisation that allows a stock and station agent to auction livestock is an endorsement on the agent's licence. Frequently the licensee in charge may not necessarily also be an auctioneer.

In order to clarify that the employer licence holder does not need to also be an auctioneer, REINSW submits that the wording of the proposed 11(4)(a) should read:

*(a) As an employee of the holder of a stock and station agent's licence; and*

### **Section 55A**

The Institute is supportive of this proposed amendment as frequently agents have missed out on commission and expenses because of a technical omission or minor non-compliance with the requirements of the Act and Regulations in relation to agency agreements, even though the agent has carried out the work and the consumer has suffered no loss.

In order to reduce the likelihood for disputes and differing interpretations by Tribunal members of what is considered to be "a minor failure" (proposed section 55A(3)(a)), it is submitted that some general non-limiting guidelines should be issued to clarify the types of matters that could fall within that term.

### **Section 86**

It is noted that an amendment to section 86(4) is proposed whereby licensees will be required to serve on the Director-General a copy of the notification given by the licensee to an authorised deposit-taking

institution that an account is a trust account required under the Act. The rationale for this as noted in the Summary Sheet of Amendments is to enable the Director-General to check trust account records against records held by the Office of Fair Trading. The Institute is concerned that this additional reporting requirement will place undue administrative burden on licensees who open multiple trust accounts for the purpose of investing deposits (e.g. where the licensee is engaged on the sale of large multi-unit projects). Given that the deposit-taking institutions already have reporting obligations to the Director-General in respect of trust accounts, the Institute is of the view that there is no additional consumer protection to be gained by imposing these new reporting obligations on licensees.

### **Section 113**

The REINSW supports the abolition of the requirement to lodge a statutory declaration where a licensee has not held trust monies as this will remove red tape for employed licensees.

The Institute suggests however that licensees in charge should still be required to lodge the statutory declaration as it is likely that most licensees in charge will have a trust account even if no monies are held during an audit period.

### **Other amendments**

The Institute does not oppose the remaining proposed amendments.

The REINSW appreciates the opportunity to comment on the draft Bill and would welcome the opportunity to discuss it further.

3rd October 2012



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