

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.

The Hon. DAVID CLARKE [5.47 p.m.]: The Commercial Agents and Private Inquiry Agents Bill is not opposed by the Opposition. It comes to us as a result of the national competition policy final report into the Commercial Agents and Private Inquiry Agents Act 1963. This bill is significant because it deals with the overall framework within which, and the regulations by which, commercial agents and private inquiry agents will legally operate in our State. It is significant because commercial and private inquiry agents play an important role in many aspects of the commercial and legal activity of our society, and their activities can and do very often impact significantly.

The purposes of the bill include, first, to protect the public in relation to commercial agent and private inquiry agent activities, including process serving, debt collection, repossession of goods, surveillance and investigation of individuals; secondly, to provide for the licensing of persons carrying on business in relation to commercial agent and private inquiry agent activities; thirdly, to establish standards to be observed by licensees in relation to commercial agent and private inquiry agent activities; and, fourthly, to ensure that licensees are accountable for their acts and omissions in relation to commercial agent and private inquiry agent activities.

Clearly this bill is important and far reaching. It repeals the Commercial Agents and Private Inquiry Agents Act 1963, which needs to be overhauled and updated to ensure proper standards are observed in order that commercial agents and private inquiry agents continue to conduct their activities in an acceptable and appropriate manner. This is an aim that the great majority of such agents know will assist to protect and enhance their good name. It will protect and enhance their good name by establishing a regulatory system where the rules and acceptable standards are clearly defined. It will ensure that the small number of fly-by-night and rogue elements who bring discredit to the industry are exposed and that unacceptable conduct and breaches of the acceptable standards are appropriately dealt with. This legislation will also give protection to the more vulnerable in the community, to those who very

often are susceptible to falling prey to harassment, undue pressure, and even standover tactics and other unacceptable behaviour and practices.

I hope the bill will be a win for commercial and private inquiry agents as a whole who want their good name protected as well as for the community, who expect that such agents should operate ethically and according to proper standards of behaviour. The bill will make it an offence to act as a commercial or private inquiry agent other than in accordance with a master licence issued for five years by the Commissioner of Police, who will have the power to impose conditions on, or refuse on certain specified grounds, the issue of a master licence. Additionally, there will be a power to cancel or refuse the issue of a master licence on certain grounds. The commissioner is given power to grant operator licences for between one and five years or to cancel such licences on certain grounds. A person's first operator licence will be a probationary one, effective for one year. A licensee or a person refused a licence will have the right of appeal from the commissioner's determination to the Administrative Decisions Tribunal.

A register of licences will be established, open to public scrutiny, and it will be an offence for a licensee to employ a disqualified or unlicensed person as a commercial or private inquiry agent. It will be an offence to obstruct an inspector in the exercise of his legal functions. Activity by agents deemed to be harassment will also be an offence. The commissioner is given power to require a licensee to provide relevant information or documents, and inspectors are empowered to enter non-residential premises to inspect documents or to monitor compliance with the proposed Act. All in all, it is to be hoped that the bill produces a regulatory framework that deals with concerns raised by commercial and private inquiry agents and satisfies the public's concern for the maintenance of ethical standards. It is further to be hoped that the bill will bring to an end the unsavoury practices of a very few.

There is some division in the industry concerning the bill. Whilst the Institute of Mercantile Agents supports the bill, arguing that existing legislation inadequately deals with changes in the industry, the Australian Institute of Private Detectives has a number of concerns, including concerns that the Commissioner of Police becomes the licensing authority and that NSW Police has the power to demand information and search premises. There have also been some concerns as to whether the regulations and schedule of fees and charges will be fair and reasonable in all the circumstances. Only time will tell. As I said earlier, the Opposition does not oppose the bill.

Ms LEE RHIANNON [5.52 p.m.]: The Greens support the bill and recognise the need for legislation that regulates debt collection practices. There is an obvious need for mechanisms that assist in the prevention of behaviour that significantly impacts on the economically disadvantaged members of our community. However, we should have concerns about the bill in relation to administration of the licensing system. It is unfortunate that the police will be involved in an unchecked way. We believe it would be much better if the role were performed by the Office of Fair Trading. As it stands, the bill will require that there be effective co-operation between the police as administrators of the

licensing system and other regulatory bodies. The issue is that one body, the police, will issue the licences yet the real problems will be identified only through consumer complaints and protection mechanisms.

The Greens also recognise the need for a mandatory code of conduct to accompany the statutory licensing system that would prohibit unethical commercial agents operating with impunity. Appropriate penalties for breaches are necessary. With sufficient resources to investigate and act on complaints, such a code would promote a culture of compliance. Such a code should apply widely to all companies or individuals undertaking any commercial debt collection activity whether or not they are licensed under the scheme of the bill. The Greens believe that such a code of conduct should have been included in the regulations of the bill and that any breach of the code should constitute a minor offence such that it may be a ground upon which an application for a licence may be refused. I imagine that many of us have heard stories of inappropriate collection of debt. It can be pretty ugly: people who are doing it hard can be put through humiliating experiences. Surely the law should be used to ensure that does not happen. The Greens believe that the inclusion of a mandatory code of conduct would help in providing the best consumer protection mechanism possible.

The Hon. Dr PETER WONG [5.55 p.m.]: I welcome many of the provisions of the Commercial Agents and Private Inquiry Agents Bill. For example, it is refreshing to see that the New South Wales Labor Government is concerned enough about the longstanding problems in the industry that it is now seeking to protect the public. I support that. I certainly support provisions that require the Commissioner of Police to keep a register of licence holders and, more importantly, that the register will be accessible by the public. Further, I think that provisions ensuring that "licensees are accountable for their acts and omissions" are long overdue. From reading the second reading speech I understand that "the bill makes it an offence to [among other things] 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 carrying out their duty".

I believe the policing of such offences will be welcomed by many in the New South Wales community. It is not before time that such measures were codified in New South Wales legislation. It concerns me that this has not been done previously. As leader of a party in this State that has done so much to improve policing in New South Wales—I need not remind honourable members of Councillor Thang Ngo's valuable work in Cabramatta-Fairfield in bringing about the inquiry into policing in that community—it alarms me that even an industry as obviously unregulated as this bill implies has great concerns about the bill. Frankly, I was unprepared for that.

For example, the Australian School for Security and Investigations reports of the industry's prescient concerns that while "the State's 3000 private eyes, debt collectors and repossession officers, many [of whom] are ex police or ex detectives who maintain links with their former colleagues" the provisions of

the Commercial Agents and Private Inquiry Agents Bill will ensure that "the industry will be plagued with the issues of conflict of interest, potential corruption and collusion if the police are put in charge of licensing and regulation". Frankly, I find this remarkable. I would expect to hear this from the Council for Civil Liberties or the Prisoners Action Group and not, as has occurred, expressed by the industry itself. Further, John Bracey of the Australian Institute of Private Detectives has stated:

This appears to be a Clayton's new Draft Bill compared to the existing Act as the only difference appears to be that instead of being licensed by the Local Court as in the past the Police will now issue licences...

The real Joke in relation to the draft Bill is that the government is proposing to issue Master and Operator licences for an as yet undisclosed fee for both companies and individuals to enable them to conduct investigations, carry out surveillance as well as process serving and debt collecting with no training or qualifications whatsoever.

While it is clear that the industry does require the additional safeguards that this bill proposes to deliver, it is also clear that this Government has not really taken the implications of the Wood royal commission into account. I will support the bill for the protection it does offer to the public. However, I am voicing a clear concern that the Government has not made the administration of this powerful sector as corruption proof as we should reasonably expect after all the hard work done by agencies such as the Police Integrity Commission and the Independent Commission Against Corruption. While I will not commend this bill to the House, I do commend the sector itself for bringing the concerns as outlined above to our attention. I for one will be watching the future administration of the licensing of agents under the bill and ask that other members of the House do likewise.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.59 p.m.]: I note that this bill has been promoted as dealing with regulation and consumer protection and compliance with the national competition policy, of which I am not a great fan. The Australian Institute of Private Detectives [AIPD] is extremely concerned about this legislation, and its president, Mr John Bracey, wrote the Minister some time ago—on 27 December last year—outlining the institute's position. Despite having drawn its concerns to the Minister's attention, the institute is still not happy with the legislation. It is concerned that the Minister for Police will now be the licensing agent. It suggests that responsibility for the industry should rest with the Attorney General. That arrangement would eliminate any conflict of interest between the Minister for Police and the commercial and private inquiry industry. That is a valid concern.

I have spoken to Cameron Murphy of the Council for Civil Liberties about this bill. He agrees that, given the findings of the Wood royal commission, police officers who have been the subject of inquiries about suboptimal behaviour should not be able to transfer to the commercial industry as a soft landing, as it were, to pursue an alternative career and to be quietly eased out of a difficult situation. It might be more appropriate if the Attorney General's Department

were the licensing authority and applicants were required to obtain a recommendation or approval from the police. In that scenario, the police would have a right of veto, but the final responsibility would rest with the Attorney General. We must prevent corruption being transferred from one system to another—which is a possibility that must be considered. I am not saying that police are corrupt, but if there were corruption in the NSW Police Service we should take steps to ensure it is not transferred to another industry. I am concerned about that aspect of the bill.

This bill has been around since 2003 and is a result of a national competition policy review of the Commercial Agents and Private Inquiry Agents Act. The old Act contained licensing provisions for people wanting to engage in the business of private investigation, debt collection and process serving. The institute's web site states:

The Australian Institute of Private Detectives (AIPD) was first incorporated in January 1992 following the Independent Commission Against Corruption (ICAC) inquiry into the unauthorised release of Government information.

The AIPD is the largest body representing the Industry and was formulated by the Private Investigation Industry to promote new legislation to take the Industry into the 21st century. The objectives of the AIPD are to institute professional and uniform training as well as ongoing education as to new laws affecting the Industry, which will benefit the commercial world and the general public.

It is essential for commercial interests and for the general public that the Industry has the same access to information in Government Departments and the private commercial areas as the Police have. This will assist in assuring that the commercial industry and the general public have the benefit of the ruling of the High Court of Australia so that everybody will be equal before the Law as the High Court has ruled in the Kable Legislation in September 1996.

The AIPD produces an Industry Directory which is sent out to all Law firms as well as Banks, Finance Companies, Building Societies and Insurance Companies and their branches.

This bill makes substantial changes to the licensing procedures. Section 10 of the Act provides that a person requiring a licence must make an application to the Local Court and that that application is passed on to the police station nearest the court. The police then make inquiries about the person to assess whether a licence will be granted. Objections can be made on a number of grounds. The principal objections are that the person is not of good fame and character, that the person is not a fit and proper person, and that the person does not have the required qualifications. I refer honourable members to section 10 (6) (a) (iii) of the Commercial Agents and Private Inquiry Agents Act. The regulations covering a natural person applying for a private inquiry agent's licence provide that the applicant must have been a licensed subagent for a continuous period of at least 12 months, or must have a certificate in

Private Agency Practice issued by the TAFE Commission.

The AIPD sent a letter to the Minister for Police on 27 December 2003 objecting to the proposed legislation. Its argument is based on the fact that NSW Police is not the appropriate body to issue licences, and that it would be more appropriately the responsibility of the Attorney General's Department. That is effectively what happens now, given that the department is in charge of the courts. The AIPD supports its argument by referring to a 1992 ICAC inquiry into the unauthorised release of government information. It contends that the inquiry stated that the police should never have anything to do with the private investigation industry. The AIPD also states that it is vital for private detectives to remain at arm's length from the police because many private investigations are undertaken on behalf of clients who are either plaintiffs or defendants in court cases. There is also some logic in the argument that police may take exception to a private investigator who has had an influence on a case that the police have been trying to prosecute. That would be true at both the initial application stage and the licence renewal stage. Applications for licences will now go to the security industry registry within NSW Police. Given that police have the right to object to a licence being issued, the ultimate licensing agency should be the Attorney General's Department.

Naturally, I have no objections to the consumer protection provisions in this legislation, but the other aspect I have raised should be addressed. Unfortunately, I have not had time to draft amendments, but it appears that the bill has sufficient support to pass without amendment. I will be monitoring this situation to see whether problems arise in this regard. Obviously, it would worry me if a major corruption scandal broke during the life of this legislation and we were complicit in establishing a framework that allowed that to happen.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [6.05 p.m.], in reply: I thank honourable members for their contributions and commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.