

**Sent:** Monday, 26 September 2011 9:35 AM  
**To:** Amanda Powell  
**Subject:** FW: COMMERCIAL AGENTS BILL

Hi Amanda,

Chris Irons provided me with your contact details and I understand you have spoken to him about our submission.

Below is the email I forwarded to the Shadow Attorney-General after a meeting I had with him.

I look forward to hearing from you.

Kind Regards,

Nick Wright

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Institute of Mercantile Agents		
	Secretariat for:	 
<b>Nick Wright</b> <b>President - Queensland Division</b>		
Ph: 07 3210 5000 Fax: 07 3229 7323 Email: <a href="mailto:qldpresident@imal.com.au">qldpresident@imal.com.au</a>		

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**From:** Nick Wright  
**Sent:** Tuesday, 16 August 2011 12:59 PM  
**To:** Kawana Electorate Office ([Kawana@parliament.qld.gov.au](mailto:Kawana@parliament.qld.gov.au))  
**Cc:**  
**Subject:** COMMERCIAL AGENTS BILL

Dear Jarrod,

I refer to our meeting on 30.06.2011 and now submit feedback in relation to the proposed ***Commercial Agents Bill*** to be considered at the upcoming Parliamentary Committee Review / Public Hearing of the Bill.

As advised in the meeting, the IMA is satisfied with the contents of the Bill except for the changes to the licence categories which took place under PAMDA and came into effect on **01.10.2010**.

Please advise if you require any additional information.

Kind Regards,

Nick Wright



16 August 2011

## Submission

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### INTRODUCTION

The Institute of Mercantile Agents (IMA) welcomes the opportunity to comment further on the Government Response to the Recommendations of the Service Delivery and Performance Commission Review Report on the Review of Regulatory Reform (Phase 2) – *Property Agents and Motor Dealers Act 2000* (“the Report”) and changes made to the licence classifications under the Act and to be enacted through the Commercial Agents Act.

By way of background, the IMA was established in 1961 to represent collectors, investigators, process servers and repossession agents throughout Australia. Our members generally work as agents for principals such as banks, credit providers, lawyers, insurers, government and the business community. Depending upon State regulations, most members hold a commercial agent, or private inquiry agent, licence or equivalent.

In addition to the licence(s) held in various jurisdictions, our members are subject to a range of legislative requirements at both Federal and State/Territory levels as well as contractual obligations to the principals who engage them.

### LICENCE CATEGORIES OF COMMERCIAL AGENTS AS EXISTED UNDER PAMDA PRIOR TO THE 1 OCTOBER 2010 REPRINT

Under the superseded legislation, the licence categories were as follows:

- Corporate/Firm Commercial Agent licence
- Licensed Director/Nominee
- Sub-Agent licence.

In order to obtain a **Sub-Agent Licence** the Applicant was required to nominate an “employer” on their application form and have such employer sign that form.

The interpretation of this requirement was that the sub-agent could only perform the duties it was authorised to perform under the direction/supervision of the employer nominated on the application form.

Accordingly, it followed that such sub-agent was not authorised to perform work for any other licensed corporation or full commercial agent licence holder.

The employer was also required to maintain a register of all licensed commercial sub-agents authorised by it to perform duties as a commercial sub-agent and have written authorities in place for all sub-agents authorised to perform work on behalf of the employer, detailing what duties were authorised to be performed.

In accordance with this requirement, a sub-agent could not sub-contract out to other agents holding full commercial agent licences or to corporate licensees. In order to do this an individual would have been required to hold a full commercial agent licence or a corporation firm licence (if a corporation), along with a licensed director/nominee licence.

## **LICENCE CATEGORIES AS THEY EXIST UNDER THE CURRENT PAMDA (AND TO BE ADOPTED UNDER THE COMMERCIAL AGENTS ACT ONCE ENACTED)**

Under the current legislation the licence categories are noted as being as follows:

- Corporation licence – in conjunction with an individual licensed director. After the introduction of the industry specific acts this will change and a corporation will no longer be required to have a director of the corporation licensed as a commercial agent provided that the person in charge of the corporation's business at a place is a licensed commercial agent.
- Commercial Agent licence (Individual Employer or Individual Employee) – required to be obtained when an individual is applying for a licence as a licensed director (in conjunction with the corporation application), as an employed licensee or as a sole trader. If the individual is to be employed by a licensed commercial agent they can apply for an individual licence as an employed licensee or as a commercial sub-agent.
- Sub-Agent licence – no requirement to have Employer sign the application or for sub-agent to identify an employer on the application. The commercial agent who is the principal licensee must still keep an employment register of each person who is an employed commercial agent or commercial sub-agent.

Under such arrangements, it appears an individual applying for a sub-agent licence would appear to be able to be employed by potentially a number of concurrent individual employers.

## **ISSUES WITH THE CURRENT LICENSING CATEGORISATION SYSTEM**

The elimination of the requirement by a sub-agent to nominate an employer on their licence form has created ambiguity and raised confusion amongst the industry. It is unclear, from the legislation, in light of the fact that a sub-agent no longer needs to nominate an employer on their application form or have the employer sign the form, whether sub-agents are now actually entitled to be concurrently employed as sub-agents by numerous employers (that is, on a subcontractor basis).

Logic suggests an "independent contractor" (i.e. a person seeking to work for multiple employers) would be a full licensee rather than a registered employee (sub-agent) under PAMDA, given that an independent contractor is unlikely to be under the direct supervision of only one licensee.

However, there is nothing detailed in the legislation which confirms this or clarifies the ambiguity mentioned. It is therefore unclear whether a sub-agent is able to definitively sub-contract with numerous employers concurrently in a legitimate manner.

## **RECOMMENDATIONS**

Whilst the IMA appreciates the Government's rationale in removing the requirement for a sub-agent to nominate an employer on their application form, being that it was considered unfair that a commercial sub-agent applicant was not able to be licensed ready to earn an income until such time that the applicant found employment, we respectfully submit that such amendments have unfortunately created a significant and unnecessary level of confusion amongst members and the industry generally.

In order to eliminate the ambiguity it is recommended that the following be introduced:

1. The requirement for a sub-agent to nominate an employer on the licence form be reinstated; or
2. Amending the current legislation in Queensland by defining a "sub-agent" to mean any person in the direct employ of or acting for or by arrangement with a commercial agent who for salary, wages, commission or other remuneration of any kind whatsoever exercises or carries on for that commercial agent alone any of the functions of a commercial agent for a period of time stipulated in the registration details. This would allow the holder of the sub-agent registration, time to secure employment and then apply for an individual employee licence or apply for full individual licence should they wish to subcontract their services.

We thank you for opportunity to provide this feedback. If required we welcome any enquiries in relation to the above recommendation and otherwise look forward to hearing from you in due course.

Yours faithfully

**INSTITUTE OF MERCANTILE AGENTS**

A handwritten signature in black ink, appearing to read 'Nick Wright', with a stylized flourish at the end.

**Nick Wright**

QUEENSLAND PRESIDENT