

[AS REPORTED FROM THE FINANCE AND EXPENDITURE
COMMITTEE]

House of Representatives, 17 December 1991.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. D. A. M. Graham

REAL ESTATE AGENTS AMENDMENT

ANALYSIS

Title	2. Status of certain salesmen
1. Short Title	3. Transitional
	4. Current proceedings not affected

A BILL INTITULED

An Act to amend the Real Estate Agents Act 1976

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Real Estate Agents Amendment Act 1991, and shall be read together with and deemed part of the Real Estate Agents Act 1976* (hereinafter referred to as the principal Act).

2. Status of certain salesmen—(1) The principal Act is hereby amended by inserting, after section 51, the following section:

“51A. (1) At any time, this section applies (or, as the case may be, shall be deemed to have applied) to a salesman and a real estate agent if—

*1976, No. 9

Amendments: 1981, No. 92; 1982, No. 129; 1983, No. 91; 1987, No. 53; 1989, No. 98

No. 91—2

Price
incl. GST \$2.30

Struck Out

- “(a) Before that time they agree (or agreed), whether expressly or by implication, that the relationship between them at that time should be that of employer and independent contractor; and
- “(b) The salesman’s terms of engagement at that time are (or were), or do not (or did not) differ materially from, terms, or terms of a kind, usually found in New Zealand at that time in contracts between real estate agents and their salesmen.

New

- “(a) Before that time and before the commencement of the Real Estate Agents Amendment Act 1991, they agreed, whether expressly or by implication, that the relationship between them at that time should be that of employer and independent contractor; or
- “(b) Before that time and on or after the commencement of the Real Estate Agents Amendment Act 1991, they agree expressly that the relationship between them at that time should be that of employer and independent contractor.

“(2) At a time before the 19th day of July 1990 when this section is deemed to have applied to a salesman and a real estate agent, the salesman shall for all purposes (other than the purposes of the (*Accident Compensation Act 1982, the Income Tax Act 1976,*) Income Tax Act 1976 and the Goods and Services Tax Act 1985) be deemed to have been engaged by the agent under a contract for services.

“(3) At a time after the 31st day of March 1991 and before the 22nd day of August 1991 when this section is deemed to have applied to a salesman and a real estate agent, the salesman shall for the purposes of the Income Tax Act 1976 and the Goods and Services Tax Act 1985 be deemed to have been engaged by the agent under a contract for services.

“(4) At a time after the 21st day of August 1991 when this section applies (or is deemed to have applied) to a salesman and a real estate agent, the salesman shall for all purposes be deemed to be (or to have been) engaged by the agent under a contract for services.

“(5) Notwithstanding **subsections (2) to (4)** of this section, a real estate agent is liable for the acts and omissions of a salesman engaged under a contract for services in the same manner, and to the same extent, as for the acts and omissions of a salesman engaged under a contract of service.”

(2) Section 2 (1) of the principal Act is hereby consequentially amended by inserting in the definition of the term “salesman”, after the word “engaged”, the words “(whether under a contract of service or under a contract for services)”.

New

(3) Nothing in **subsection (4)** of **section 51A** of the principal Act (as inserted by **subsection (1)** of this section) limits or affects the generality of section 2 (2) of the Accident Compensation Act 1982.

3. Transitional—Notwithstanding anything in the Goods and Services Tax Act 1985, where a salesman is deemed by **section 51A (3)** of the principal Act (as inserted by **section 2 (1)** of this Act) to have been engaged by a real estate agent under a contract for services at a time before the commencement of this Act,—

- (a) It shall be a sufficient compliance with any obligation under that Act—
 - (i) Arising in respect of or as a consequence of the engagement; and
 - (ii) Required to be performed by the salesman (whether before, on, or after that commencement) before the 28th day after that commencement—
if it is performed before the 56th day after that commencement; and
- (b) No penalty of any kind shall arise or be imposed in respect of a failure or refusal to perform the obligation if it is performed before that 56th day; and
- (c) Any penalty arising or imposed as a consequence of a failure or refusal to perform the obligation before that 56th day shall be calculated or determined as if the period of default had commenced on that 56th day.

4. Current proceedings not affected—Nothing in section 51A of the principal Act (as inserted by section 2(1) of this Act) shall have any effect in relation to any proceedings commenced before the 22nd day of August 1991.