

HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Wednesday, 11 March 1992

REAL ESTATE AGENTS AMENDMENT BILL

*Proposed Amendments*

Hon. D. A. M. GRAHAM, in Committee, to move the following amendments:

*Clause 2:* To omit *clause 2*, and substitute the following clause:

**2. Employment status of certain salespersons—**(1) The principal Act is hereby amended by inserting, after section 51, the following section:

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

“(a) Before that time and before the commencement of the Real Estate Agents Amendment Act 1992, 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 1992, 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 salesperson and a real estate agent, the salesperson shall for all purposes (other than 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.

“(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 salesperson and a real estate agent, the salesperson shall for the purposes of the Income Tax Act 1976 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 and before the 1st day of April 1992 when this section applies (or is deemed to have applied) to a salesperson and a real estate agent, the salesperson shall for all purposes (other than the purposes of the Goods and Services Tax Act 1985) be deemed

to be (or to have been) engaged by the agent under a contract for services.

“(5) At a time after the 31st day of March 1992 when this section applies to a salesperson and a real estate agent, the salesperson shall for all purposes be deemed to be engaged by the agent under a contract for services.

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

(2) Nothing in 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.

*New clause 2A:* To insert, after clause 2, the following clause:

**2A. Use of gender-neutral language in principal Act—**

(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “salesman”, and substituting the following definition:

“‘Salesperson’ means a person who, being employed or engaged (whether under a contract of service or a contract for services) by a real estate agent, works for the agent in selling or otherwise disposing of land or businesses (either with or without any interest in land), purchasing or otherwise acquiring land or businesses (either with or without any interest in land), or leasing or letting land; and—

“(a) Includes an officer of a licensee company who is not eligible to apply for or obtain a licence in his or her own right; but

“(b) Does not include a licensee, or an employee of a licensee whose work is primarily and predominantly clerical.”.

(2) The provisions of the principal Act specified in Part I of the Schedule to this Act (hereafter in this section referred to as the schedule) are hereby amended by inserting, after the word “himself” wherever it occurs, the words “or herself”.

(3) The provisions of the principal Act specified in Part II of the schedule are hereby amended by inserting, after the word “He” and the word “he”, wherever either occurs, the words “or she”.

(4) The provisions of the principal Act specified in Part III of the schedule are hereby amended by inserting, after the word “His” and the word “his”, wherever either occurs, the words “or her”.

(5) The provisions of the principal Act specified in Part IV of the schedule are hereby amended by inserting, after the word “him” wherever it occurs, the words “or her”.

(6) Section 3 (5) of the principal Act is hereby amended by omitting the words “or company on his or its”, and substituting the words “on the person’s”.

(7) The provisions of the principal Act specified in Part V of the schedule are hereby amended by omitting the word “Chairman” wherever it occurs, and substituting in each case the word “Chairperson”.

(8) The provisions of the principal Act specified in Part VI of the schedule are hereby amended by omitting the word

“salesmen” wherever it occurs, and substituting in each case the word “salespersons”.

(9) The provisions of the principal Act specified in Part VII of the schedule are hereby amended by omitting the word “salesman” wherever it occurs, and substituting in each case the word “salesperson”.

(10) The provisions of the principal Act specified in Part VIII of the schedule are hereby amended by omitting the word “salesman’s” wherever it occurs, and substituting in each case the word “salesperson’s”.

(11) Section 82 (5) of the principal Act is hereby amended by inserting, after the word “him”, the word “, her,”.

(12) Section 86 (4) of the principal Act is hereby amended by inserting, after the word “his”, the word “, her,”.

*Clause 3:* To omit the clause, and substitute the following clause:

**3. Transitional**—Notwithstanding anything in the Goods and Services Tax Act 1985, where a salesperson is deemed by section 51A (5) of the principal Act (as inserted by section 2 (1) of this Act) to be engaged by a real estate agent under a contract for services at a time before the 1st day of May 1992,—

(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 salesperson before the 1st day of May 1992,—

if it is performed before the 1st day of June 1992; 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 the 1st day of June 1992; and

(c) Any penalty arising or imposed in respect of a failure or refusal to perform the obligation shall be calculated or determined as if the period of default had commenced on the 1st day of June 1992.

*Schedule:* To add the following schedule:

Section 2A

## SCHEDULE

### PART I

*Insertion of “or herself” after “himself”*

Sections 3 (1), 16 (2), 40, 63 (1), and 69.

### PART II

*Insertion of “or she” after “He” and “he”*

Sections 3 (2), 4 (8), 5 (1), 5 (1A), 5 (1B), 5 (2), 6 (2), 16 (1), 17 (2), 17 (4), 21 (3), 24 (c), 27 (1), 27 (6), 29 (4) (d), 31 (2), 32 (2), 37 (1) (a), 41, 51 (2), 53 (1), 53 (3), 56 (1), 57 (1), 58, 61 (1), 62 (a), 63 (1) (a), 63 (2) (a), 67 (1), 67 (2), 67 (6), 68 (3), 68 (5), 68 (7), 69, 72, 73 (1), 88 (1), 91 (3), 97 (1), 97 (3), 109 (4), 117 (1), and 117 (5).

### PART III

*Insertion of “or her” after “His” and “his”*

Sections 3 (2) (a), 4 (4), 4 (5), 4 (7), 4 (8), 5 (1) (a), 5 (1A), 5 (3), 6 (2), 6 (4), 9A (1) (a), 13 (2), 14 (3), 17 (2) (a), 18 (2) (b), 19 (1), 20 (2), 20 (3) (b), 20 (3) (d), 21 (1), 21 (3), 22 (1) (b), 22 (1) (e), 25 (1) (a), 27 (1), 27 (6), 29 (2), 29 (4) (b), 29 (4) (c), 30 (1), 31 (1),

SCHEDULE—*continued*

32 (1), 33 (1), 37 (1) (a), 37 (1) (b), 42 (a), 50 (2), 51 (1), 53 (1), 53 (2), 55, 56 (1), 58 (1), 59, 62 (b), 63 (1), 63 (2) (b), 63 (3), 64 (2), 67 (4), 77, 79 (2) (a), 81, 82 (3), 82 (5), 84 (1), 88 (1) (b), 88 (1) (h), 88 (2), 89 (1), 90 (3), 91 (3), 91 (4), 91 (6), 94 (1) (b), 94 (1) (d), 98 (4) (b), 109 (1), 109 (4), 117 (3), 117 (9), 121 (1), 121 (2), 121 (3), and 124 (4).

## PART IV

*Insertion of "or her" after "him"*

Sections 3 (2) (c), 5 (1) (b), 5 (3), 14 (2), 16 (2), 30 (1), 31 (4) (b), 33 (1) (f), 34 (1), 36 (3), 41, 49 (1), 50 (3), 53 (2), 55, 56 (4), 58 (1), 58 (5), 59, 62, 68 (1), 77, 82 (3), 88 (1) (h), 89 (1), 102 (1), 109 (3), 117 (6), 121 (1), 121 (2), and 121 (4).

## PART V

*Substitution of "Chairperson" for "Chairman"*

Sections 4 (2) (a), 5 (2), 6 (1), 6 (2), 6 (3) (c), 9A, 12 (2), 14 (3), 91 (2), 97 (3), 100 (2), 101 (1) (a), 109 (1), and 109 (2).

## PART VI

*Substitution of "salespersons" for "salesmen"*

Sections 9 (1) (b), 45 (1), 49 (2), 54A (2), 70 (1) (h), 70 (1) (m), and 102 (1).

## PART VII

*Substitution of "salesperson" for "salesman"*

Sections 9A (2), 15, 17 (1) (d), 29 (4) (e), 42, 45 (1), 46 (1) (b), 47, 48 (1), 49 (1), 50, 51 (1), 54A, 54C, 54D (8), 98, 99 (2), 99 (3), 100 (2), 102, 105, 107, 108, 112 (2), 118 (1), 120, and 121 (2) (d).

## PART VIII

*Substitution of "salesperson's" for "salesman's"*

Sections 51 (1), 51 (4), and 102 (2) (a).

## EXPLANATORY NOTE

One of the effects of the Real Estate Agents Amendment Bill is to provide that, for the purposes of the Goods and Services Tax Act 1985, certain salespersons of real estate agents are deemed to be engaged as independent contractors. The deeming applies only at times on or after 22 August 1991 (when the Bill was introduced).

Because a consequence of this deeming might be the sudden imposition on a salesperson of obligations under the Goods and Services Tax Act 1985 that could not be performed within the time allowed by that Act, *clause 3* of the Bill allows such salespersons a period of 56 days after the commencement of the Bill within which to perform consequential obligations under that Act that would otherwise have to be performed before, or within 28 days of, that commencement.

The amendments to *clauses 2 and 3* set out in this Supplementary Order Paper have 3 effects. First, they provide for the deeming to apply only at times on or after 1 April 1992. Secondly, they allow salespersons until 31 May 1992 to perform consequential obligations under the Goods and Services Tax Act 1985 that would otherwise have to be performed before 1 May 1992. Thirdly, they omit all gender-specific language.

New *clause 2A* and the Schedule amend the rest of the principal Act so that it no longer contains any gender-specific language.